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IN THE
COURT OF APPEALS OF INDIANA

Jaspreet Singh,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 20, 2023

Court of Appeals Case No.
22A-CR-1316

Appeal from the Cass Superior
Court

The Honorable Lisa L. Swaim,
Judge

Trial Court Cause No.
09D02-2103-F5-15

Opinion by Judge Crone
Judges Bradford and Pyle concur.

Crone, Judge.

Case Summary

- [1] Jaspreet Singh appeals his conviction for reckless homicide, a level 5 felony, and the resulting six-year sentence, which stemmed from a tragic vehicular crash. He raises evidentiary, instructional, and sufficiency issues and also challenges his sentence on multiple grounds. Because we reverse and remand as to the evidentiary issue, we do not reach the other issues.

Facts and Procedural History

- [2] On March 1, 2021, around 8:20 a.m., then-twenty-five-year-old Singh was traveling along U.S. Highway 35 South in a semi-tractor trailer on his way to Ohio to pick up cargo for his employer. He was driving in the left southbound lane of the four-lane highway preparing to turn left onto U.S. Highway 24 at the Anoka Exchange when his truck overshot the intersection. The roadway, with a speed limit of “60 miles an hour,” was “pretty open” with “very sparse” traffic, and the sun was bright. Tr. Vol. 2 at 218, 143-44, 155. Singh stopped the truck in the left lane, activated his “hazard lights [so they] were flashing,” and began reversing very slowly. *Id.* at 145, 148.
- [3] Moments later, a black 2018 Chevrolet Equinox SUV slammed into the back right corner of Singh’s truck, spun, and came to a stop in the right lane. The SUV’s only occupant, twenty-four-year-old driver Jamie Pay, died upon impact. Pay’s vehicle had been traveling in the left lane of U.S. Highway 35 South at “approximately 73 to 75 miles an hour,” and shortly before the crash, Pay started to turn her vehicle away from the semi but made “no hard movement

left or right.” *Id.* at 204, 211, 215. In addition to registering its speed, the SUV’s black box revealed that Pay “never activated” the brakes. *Id.* at 203. The SUV’s black box further recorded that Pay released the accelerator three seconds before the collision but then “reengaged” it half a second prior to impact. *Id.* at 208-10. Pay’s seatbelt was not latched. *Id.* at 218.

[4] Singh dialed 911, and an operator answered at 8:24:13 a.m. *Id.* at 134-35. Meanwhile, Tyson Freiburger, who had been driving his vehicle on U.S. Highway 24, had witnessed the “blur” of a dark vehicle hitting the rear of Singh’s truck. *Id.* at 150. Freiburger stopped and exited his vehicle, saw the accident debris, scanned the nearby fields and ditches for any bodies, ran toward the SUV, surmised that Pay was deceased, and made contact with Singh. Singh, who spoke limited English, handed Freiburger the phone so he could better communicate with the 911 operator.

[5] Prior to the arrival of first responders, two other vehicles stopped at the scene. Christopher Miller, one of the drivers who stopped, was an off-duty Indiana state trooper who had “seen a lot of wrecks,” including fatal accidents. *Id.* at 162. He described Singh and Freiburger as “kind of, were in shock[.]” *Id.* at 166. Cass County law enforcement interviewed Singh and transported him to and from a hospital for chemical testing. Test results for both Singh and Pay were negative for intoxicants.

[6] Slightly more than two weeks after the crash, the State filed a single charge against Singh: level 5 felony reckless homicide.¹ As the investigation unfolded, law enforcement recovered Pay’s cellphone, which they submitted to the Indiana State Police for forensic examination in June 2021. Indiana State Police digital forensic examiner Alva Whited was able to recover limited cellphone data from the date of the crash between 7:30 a.m. and 9:30 a.m., including Snapchat application (app) data. *Id.* at 107. Specifically, Pay’s cellphone received a Snapchat message from Derek Beckler on March 1, 2021, at 7:50:17 a.m. *Id.* at 109. Pay’s cellphone showed that Pay opened her Snapchat app and read Beckler’s message at 8:21:53 a.m. *Id.* Pay’s cellphone showed that she composed a Snapchat message, likely “a photo or video,” which she sent to both Beckler and Arian Burns at 8:22:41 a.m. *Id.* at 108-09, 112; Ex. Vol. 4 at 73, 77-78. Burns sent a Snapchat message to Pay at 8:32:07 a.m., but Pay’s cellphone did not mark it as read. Tr. Vol. 2 at 110, 112.

[7] In February 2022, a two-day jury trial was held during which Punjabi interpreters were utilized so that Singh could understand the proceedings. The State and Singh’s counsel vigorously debated whether the defense should be permitted to introduce the evidence that Pay was reading and composing Snapchat messages or videos to a friend prior to the crash and whether the defense could question the State’s reconstruction witness about whether

¹ No other felony, misdemeanor, or infraction appears to have been pursued.

distracted driving might have caused the crash.² The court excluded both the proposed evidence and the distracted driving line of questioning. Singh also tendered an instruction regarding intervening cause. Finding no evidence to support the instruction, the court declined to give it. The jury found Singh guilty as charged.

[8] In May 2022, the court held a sentencing hearing, again utilizing an interpreter for Singh. Heartbreaking letters and testimony painted a portrait of a beautiful, caring, hardworking young woman whose loss has been absolutely devastating to her family, friends, and community. The presentence investigation report revealed that Singh was born, raised, and attended high school in India, arrived in the U.S. in 2018, has a work permit, and was employed with a California trucking company at the time of the crash. He is single with no children, has a supportive family with whom he lives in California, and attends services at a

² Singh's offer of proof involved questioning Logansport Police Officer Flaude Dillon, who did accident reconstruction, as follows:

Q. Do drivers who are fully paying attention to the roadway traveling 15 miles per hour over the speed limit run head long into the back of another vehicle without braking or is it likely there was some level of distraction?

A. I don't know.

Q. So your training wouldn't assist you with that? Have you ever seen someone who's fully paying attention slam into the back of a semi-truck tractor trailer?

A. People wreck all the time paying fully attention.

Q. That didn't answer the question. Have you seen that specific circumstance previously?

A. This is the first time I've ever seen this kind of circumstance.

Tr. Vol. 2 at 243. The offer of proof also included Whited's testimony.

Sikh temple multiple times per week.³ He has no criminal record and no physical, mental health, substance, or behavioral issues and scored in the low-risk range to re-offend. He “speaks very little English.” Appellant’s App. Vol. 2 at 203. Singh’s cousin testified that her family was sponsoring him for legal immigration and is willing and able to continue assisting him with the process, housing, and any support once his sentence is completed. Tr. Vol. 3 at 120-21.

[9] The trial judge acknowledged Singh’s law-abiding life and lack of any criminal history, noted she did not know whether he “would ever do something like this again,” and stated she was “shocked by [his] lack of expression of remorse in this matter.” *Id.* at 127-29. The court issued an order sentencing Singh to six years in the Department of Correction. Additionally, the court suspended his driver’s license for five years and included a provision permitting Singh to serve 365 days of community corrections if he becomes eligible in the future.⁴ Appealed Order at 1-2; Tr. Vol. 3 at 129-30. Singh appeals both his conviction and his sentence.

³ In arguing against the use of “lack of expression of remorse” as an aggravator, defense counsel described Singh as “deeply religious,” but Sikh rather than Christian, and explained that Sikhs do not openly mourn a death. Tr. Vol. 3 at 124.

⁴ In an April 2022 notice of rejection, Cass/Pulaski Community Corrections had already denied California resident Singh entry into its program because, “[p]er department policy,” it “does not transfer terms of community corrections programming to out of state agencies.” Appellant’s App. Vol. 2 at 221.

Discussion and Decision

[10] Singh argues that the court committed reversible error when it excluded allegedly relevant evidence tending to show that Pay was using Snapchat to send and receive messages on her phone and thus was distracted around the time that her SUV collided with his truck. The appellate standard of review for the admissibility of evidence is well established. *Housand v. State*, 162 N.E.3d 508, 513 (Ind. Ct. App. 2020), *trans. denied* (2021). “The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal.” *Id.* (quoting *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006)). “We will reverse the trial court’s ruling on the admissibility of evidence only for an abuse of discretion.” *Id.* “An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Id.* “Errors in the admission or exclusion of evidence are considered harmless unless they affect the substantial rights of a party.” *Id.* “To determine whether an error in the admission of evidence affected a party’s substantial rights, we assess the probable impact of the evidence on the jury.” *Id.*

[11] Indiana Evidence Rule 401 provides that evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Indiana Evidence Rule 402 provides that relevant evidence is admissible unless otherwise provided by the United States or Indiana Constitutions, a statute not in conflict with the rules of evidence, the rules of evidence, or other rules

applicable in courts of this state, and that irrelevant evidence is not admissible. Under Indiana Evidence Rule 403, a “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.”

[12] To analyze relevancy here, we ask whether the Snapchat evidence had any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. To convict Singh of reckless homicide, the State had to prove beyond a reasonable doubt that he recklessly killed Pay. Ind. Code § 35-42-1-5. “A person engages in conduct ‘recklessly’ if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.” Ind. Code § 35-41-2-2(c). “The specific harm that a defendant convicted of reckless homicide must have plainly, consciously, and unjustifiably disregarded by their conduct is the risk of death of another person.” *Hurt v. State*, 946 N.E.2d 44, 49 (Ind. Ct. App. 2011), *trans. denied*.

[13] “Under the reckless homicide statute as currently written, the State faces a significant burden in proving that an automobile accident resulting in death was the result of a driver’s reckless disregard of the risk of death by their conduct.” *Id.* As we noted in *Whitaker v. State*, 778 N.E.2d 423, 426 (Ind. Ct. App. 2002), *trans. denied* (2003), a defendant could be guilty of reckless driving, but still not be guilty of reckless homicide if a death results, if the defendant lacked the

requisite mens rea for that death. *See Seibert v. State*, 239 Ind. 283, 286-89, 156 N.E.2d 878, 879-80 (1959). “Proof that an accident arose out of the inadvertence, lack of attention, forgetfulness or thoughtlessness of the [defendant] driver of a vehicle, or from an error of judgment on his part, will not support a charge of reckless homicide.” *Beeman v. State*, 232 Ind. 683, 690, 115 N.E.2d 919, 922 (1953). Even a “gross error in judgment” constitutes only negligence, not recklessness. *Whitaker*, 778 N.E.2d at 428 (“Our General Assembly has deemed that neither ‘negligent homicide’ nor ‘vehicular homicide’ is a crime in Indiana[.]”). “[A] defendant’s conduct need not be the sole cause of a death in order to support a conviction for reckless homicide. The State must only prove that the defendant’s conduct was *a proximate cause* of the victim’s death.” *Barber v. State*, 863 N.E.2d 1199, 1205 (Ind. Ct. App. 2007), *trans. denied*.

[14] Singh asserts that the evidence that Pay was composing Snapchat messages to friends on her phone while speeding in the left lane was relevant for three reasons. First, it would tend to show that because Pay was looking at her phone and thus not braking or changing lanes, her SUV would have hit Singh’s truck even if he were simply slowing down to enter the left turn lane rather than creeping backward in the left lane, so his conduct was not a proximate cause of her death. Second, it would negate the State’s theory that bright sun glare resulted in the inability to see the semi; that is, if Pay were looking at her phone, the brightness of the sun would be a nonissue. Third, the Snapchat evidence made the collision less foreseeable. Also, Singh maintains that the

Snapchat evidence was neither confusing nor unfairly prejudicial, thus the jury should have been allowed to weigh the evidence.

[15] The State responds that the Snapchat evidence was irrelevant because there was “no information about the contents of the messages Pay sent, so the data was not probative of the amount of time that Pay’s attention would have been diverted while composing the message,” let alone where she was when she used Snapchat. Appellee’s Br. at 17-18. The State claims that the Snapchat data tended to show merely that Pay interacted with the app “more than a minute before the accident that claimed her life.” *Id.* at 18. The State also claims that the Snapchat evidence would confuse the jury with the inapplicable theory of contributory negligence⁵ and would be highly prejudicial negative character evidence. *See* Ind. Code § 9-21-8-59 (except “in conjunction with hands free or voice operated technology,” a person “may not hold or use a telecommunications device while operating a moving motor vehicle”).

[16] We disagree with the State’s characterization of the Snapchat evidence. According to Whited, the digital forensics examiner, the Snapchat composed by

⁵ The State cites *State v. Plaspohl*, 239 Ind. 324, 326, 157 N.E.2d 579, 580 (1959), for the proposition that contributory negligence is not available as a defense or an excuse in a criminal prosecution. *Plaspohl*, an appeal from a directed verdict, involved a fatal accident that occurred while appellee was engaged in a drag race upon a state highway. The decedent was an occupant of appellee’s car and had actively participated in planning and starting the race. His death occurred when appellee’s car, which was traveling more than eighty-five miles per hour, went out of control after it attempted to pass the car with which it was racing. Of note, the court stated, “*if the death results from the reckless use of the highway, the fact that the deceased joined in the reckless activity does not negate the fact of the death[.]*” *Id.* at 327, 157 N.E.2d at 581 (emphasis added). Stated otherwise, if the jury determines that the death results from the defendant’s action, then if the victim joined in the action, that action does not absolve the defendant from responsibility.

Pay at 8:22:41 a.m. was likely a photo or video. Ex. Vol. 4 at 73, 77-78.

Regardless of the exact content or subject matter of the Snapchat message, a reasonable jury could infer that sending a photo or video via Snapchat might consume more attention than a standard text that might feasibly be done hands-free. Whited also explained that because Pay's cellphone was a newer model, powered off prior to analysis, and password protected, much of the data was unrecoverable. *Id.* at 63-64, 66. Without being provided with a password, Whited could not determine if other messages (text, SMS, or email) in addition to the Snapchats might have been sent or received. *Id.* at 72-73.

[17] We also disagree with the State's assertion that the ninety-two-second period necessarily reflects the time between when Pay sent her last Snapchat message (8:22:41 a.m.) and the moment the accident occurred. Rather, 8:24:13 a.m. is the time that the 911 operator answered Singh's call. A jury, if provided with the Snapchat evidence and the evidence about distracted driving, could have weighed all the evidence and reasonably determined that the crash occurred as Pay was sending the Snapchat message or seconds thereafter and that it took a minute or so for Singh to realize what had occurred, gather his senses, and then summon help by calling 911. Stated otherwise, the jury reasonably could have decided that the moment of impact was closer to 8:22:41 a.m. Yet, even if the jury made that determination, acquittal would not be automatic because the jury still could find that Singh's conduct was a proximate cause of Pay's death.

[18] Armed with a fuller picture of the circumstances surrounding the crash, the jury would then need to determine whether Singh plainly, consciously, and

unjustifiably disregarded the risk of death of another person when he activated the semi's flashers while slowly reversing in one lane of a sparsely traveled four-lane highway on a bright, sunny morning. Stated otherwise, when Singh maneuvered the truck, was he justified in not foreseeing the risk of death?

[19] Reckless-homicide-via-vehicle cases are incredibly fact-sensitive. Here, without the introduction of the Snapchat evidence or the evidence about distracted driving, the jury did not have the full picture of this tragic situation. We cannot expect a jury to fulfill its duties in a vacuum. The law requires that the jury receive this relevant evidence to weigh alongside other critical evidence to then determine whether Singh's conduct was a proximate cause of Pay's death, whether he unjustifiably disregarded a risk of death, and ultimately whether Singh is guilty of reckless homicide.

[20] Finding that the excluded evidence was indeed relevant, we turn to the Evidence Rule 403 balancing test. We do not agree with the State's contention that the Snapchat evidence constitutes the type of prior, uncharged bad acts that the rule is designed to guard against. The Snapchat evidence is not an attempt to "smear the character of" Pay, Appellee's Br. at 21, but is highly probative evidence of what exactly occurred that fateful day. If the defense had asked to introduce Pay's driving record, criminal history, or other far removed negative incidents, the 403 balance would be quite different, and we would find no abuse of discretion in excluding that type of evidence.

[21] However, given the facts and circumstances outlined *supra*, we conclude that it was reversible error to exclude the Snapchat and distracted driving evidence in this case. Accordingly, we must reverse Singh's conviction and sentence and order a remand. On remand, we encourage the careful drafting of instructions to alleviate any potential for prejudice or confusion that might arise depending upon what evidence the State and the defense present. Relatedly, we are not rendering an opinion regarding Singh's proposed intervening cause instruction because the propriety of such an instruction will likewise depend upon what specific evidence is put forth on remand. Our decision obviates the need for us to address either the sufficiency issue or the sentencing challenges.

[22] Reversed and remanded.

Bradford, J., and Pyle, J., concur.