IN THE COURT OF APPEALS

FOURTEENTH COURT OF APPEALS DISTRICT

No. 14-24-00614-CR

STANLEY LEWIS II

V.

THE STATE OF TEXAS

Appellant's Brief

Filed by James F. Pons
TXSBN 24041707
10900 N.W. Fwy., Ste. 230
Houston, TX 77092
Ph (832) 372 8138
Fax (713) 481 1726
Email: jpons_78221@yahoo.com

On behalf of Appellant: Stanley Lewis II

Appellant respectfully requests oral argument.

Identity of Parties and Counsel

Appeal from the 228 th Judicial District Court, Harris County, Texas, The State of Texas vs. Stanley Lewis, II, No. 1744718

HONORABLE Jessica Estrada on *voire dire* and HONORABLE Frank Aguilar PRESIDING

Appellant

Stanley Lewis II
4233 Moon Dr.
Ft. Worth, TX 76244

Attorney for Appellant
Mr. James F. Pons
TXSBN 24041707
10900 North West Fwy., Ste. 230
Houston, TX 77092

Trial Counsel for Defendant in The State of Texas vs. Stanley Lewis II, No. 1744718:

Ms. Vafa Jasemi-Zergani
SBOT No. 24087793
HARRIS COUNTY PUBLIC DEFENDER'S OFFICE
1201 Franklin, 13th Floor
Houston, Texas 77002
- and -
Mr. Eugene Hong
SBOT No. 24063819
HARRIS COUNTY PUBLIC DEFENDER'S OFFICE
1201 Franklin, 13th Floor
Houston, Texas 77002
- and -
Ms. Alexandra Tijerina
SBOT No. 24118556
HARRIS COUNTY PUBLIC DEFENDER'S OFFICE
1201 Franklin, 13th Floor
Houston, Texas 77002

Appellee

THE STATE OF TEXAS

Attorney for Appellee
Mr. Teare - District Attorney
Ms. J. Caird -ADA
1201 Franklin, Suite 600
Houston, Texas 77002
Telephone: (713) 274-5800

Trial Counsel for the State in
The State of Texas vs. Stanley Lewis II, No. 1744718:

Mr. Mateo Gonzalez
SBOT No. 24109320
Assistant District Attorney
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
1201 Franklin, Suite 600
Houston, Texas 77002
Telephone: (713) 274-5800
- and -
Mr. Taylor Carter
SBOT No. 24088813
Assistant District Attorney
HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
1201 Franklin, Suite 600
Houston, Texas 77002
Telephone: (713) 274-5800
* * * * * * * * * * * * * *

Table of Contents

Index of Authorities

Case Law

Statutory Authority

Statement of the Case and Jurisdiction

Appellant was indicted by a grand jury for Intoxication Manslaughter. (C.R. V.1 at 79). Following a jury trial, Appellant was convicted of the charged offense. Id. at 355. The Jury declined to find that the Appellant used his automobile as a deadly weapon. Id. at 359. After his Punishment Trial, the Appellant was sentenced by the Jury to a probated sentence. Id. at 376. Appellant filed a timely written notice of appeal. Id. at 393.

Statement Regarding Oral Argument

Appellant requests oral argument because the case at bar involves an evidence sufficiency claim requiring extensive review and analysis of the record. Further, the

case at bar presents an issue of first impression where the hospital blood vials were entered into evidence without the proper first link in the predicate chain.

Issues Presented

1) Was the evidence insufficient to prove that the Appellant operated a motor vehicle while intoxicated and that such intoxication caused the accident and death in this matter?

2) Did the trial court abuse its discretion by entering unauthenticated blood vials causing the Appellant harm?

Statement of Facts

On the night of October 23, 2021, Ciandra Reed, along with her cousin Porcha Thomas and friend Shatoria Woods, went out to Azura lounge in Houston after spending time together eating and shopping earlier that day. (R.R.V.3 at 35). After enjoying Houston's nightlife Ms. Reed drove her Toyota onto Interstate 10 to return home to Cypress. Id. 38-39.

During the early morning hours of October 24, 2021, while traveling down the highway, passenger Shatoria Woods became ill, requiring Ms. Reed to pull her Toyota Camry over onto the Interstate 10 shoulder / emergency lane. Id. Porcha Thomas admitted it was dangerous on the shoulder of the road that morning. Id. at 50. While Ms. Woods cracked opened her back passenger door to vomit onto the emergency lane, Ms. Reed stepped out of the driver's seat of her vehicle to assist. Id. at 39-40, 49. After checking on Ms. Wood's welfare she walked around the back of the car towards the lanes of the Houston freeway traffic. Id. at 45, 53, 60-61, (R.R. V.4 at 187). As she returned to the driver's seat a Hyundai Accent crashed into the back of her Toyota resulting in Ms. Reed's tragic passing. (R.R. V.3 at 45-46).

The collision caused Ms. Reed's body to be thrown forward in the emergency lane towards the barricade wall ahead of the vehicles. Id. at 45. She was pronounced dead at the scene. Id. 51.

The driver of the Hyundai was the Appellant, Stanley Lewis II. Id. at 88-89. When responding officers arrived, he was outside of his automobile speaking with paramedics. (R.R. V.6 at 11, 36, 52). The responding officers testified that the Appellant exhibited some clues of intoxication like red glossy eyes. Id. An empty cup of what was speculated to be some type of margarita mix was also found in the driver's cup holder. (R.R. V.3 at 101).

An autopsy revealed that Ms. Reed died from multiple blunt force injuries. (R.R. V.7 at 173). Her blood alcohol concentration that morning was .233. Id. at 165.

Accident reconstruction determined that the approximate speed of the Hyundai was 73 mph to 76 mph before impact. (R.R. V.4 at 169-71). Accident expert Detective Baker speculated that the speed at impact evidenced that the Hyundai did not take evasive maneuvers to avoid the collision. Id. at 171-72.

Detective Baker's testimony was that the accident was caused by the Appellant's failure to maintain a single lane and potential intoxication. (R.R. V.5 at 49).

As a basis for his opinion, Detective Baker relied heavily upon the tire marks he observed. (R.R. V.4 at 144-50). Relying on these marks, he testified they indicated heavy braking or loss of control prior to the impact, suggesting how the vehicles were positioned and interacted during the crash. Id. He claimed the

presence of scrape marks indicated where the tires lost traction, and the patterns helped determine the point of maximum engagement between the vehicles. Id. at 146-51.

Additionally, he testified that the absence of tire marks prior to the point of engagement suggested that Mr. Lewis did not engage in heavy braking moments before the collision, which indicated he may not have been attempting to stop before impact. Id. at 151.

The Defense disputed this reliance on the observed tire marks. Defense expert Ricardo Palcios testified that contrary to Detective Baker's assertions, the tire marks were probably there before the accident on October 24, 2025. (R.R. V.8 at 44, 56). The defense expert also contradicted the State's claim that the Toyota was parked entirely in the emergency lane. Id. at 52-53.

The Appellant's blood was drawn twice in this case. (R.R. V.6 at 118-38, 157). Once at the Hospital immediately after the collision and then a second time approximately three hours later at the HPD processing center. Id. The evidence proffered by the State did not establish who first took the Appellant's blood at the hospital. Id. at 137-38. Although the State established what the proper blood draw procedure was, the State never entered evidence that this protocol was followed because the agent who first drew blood from the Appellant was never identified. Id.

At 4:27 AM the Appellant's blood was drawn at the hospital. The BAC from the residual blood drawn at the hospital was .101 grams of ethanol per 100 milliliters of blood. (R.R. V.7 at 42). Approximately three hours after the hospital blood draw, at 7:24 AM, the Appellant's blood was drawn pursuant to a warrant and the results were .07 grams of ethanol per 100 milliliters of blood. (R.R. V.5 at 150.). The State did not provide retrograde extrapolation to the time of driving and only provided general information regarding human alcohol consumption and digestion. (R.R. V.7 at 63-73). Evidence that marihuana byproducts were present in the Appellant's system at the time of the collision were entered into the record, but there was no evidence linking this presence to the Appellant being intoxicated from marihuana at the time of the collision. Id. at 140-41, 152.

The jury found the Appellant guilty but did not consider the Hyundai a deadly weapon, resulting in a probated sentence of community supervision. (C.R. V.1 at 355, 359, 376).

Summary of Argument

The evidence in the record at bar is insufficient. Specifically, the evidence first fails to prove the Appellant operated a motor vehicle while intoxicated. Further, the record is devoid of evidence that the Appellant's intoxication caused the accident and death in this matter.

Further, the first blood draw in this case was admitted improperly. The State never established the first link in the chain of custody for the hospital blood vials. This lacking predicate made the Trial Court's decision to admit the vials and BAC into evidence was an abuse of discretion.

Argument

I. The Evidence of intoxication at time of operation and that intoxication caused the accident and death is insufficient in this case.

The indictment alleges Appellant Lewis operated a motor vehicle while intoxicated and by reason of such intoxication caused the death of Ciandra Reed, by accident or mistake upon striking a motor vehicle operated by Ciandra Reed with a motor vehicle operated by Mr. Lewis. (C.R. V.1 at 79). The court's charge to the jury conformed to the allegations of the indictment (C.R. V.1 at 355).

Appellant disputes that the evidence was sufficient to prove beyond a reasonable doubt that he operated a motor vehicle while intoxicated.

Further, Appellant maintains that the State failed to prove beyond a reasonable doubt that his intoxication caused the accident which resulted in Ms. Reed's death.

a. Review of Sufficiency of Evidence

In determining whether the evidence is legally sufficient to support a conviction, the reviewing court must consider "the combined and cumulative force of all admitted evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, a jury was

rationally justified in finding guilt beyond a reasonable doubt." Tate v. State, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016) (citing Jackson v. Virginia, 443 U.S. 307, 318–19 (1979)); see Huff v. State, 467 S.W.3d 11, 19 (Tex. App.—San Antonio 2015, pet. ref'd). In a sufficiency review, direct evidence and circumstantial evidence are equally probative. Tate, 500 S.W.3d at 413 (citing Winfrey v. State, 393 S.W.3d 763, 771 (Tex. Crim. App. 2013)). Circumstantial evidence alone may be sufficient to uphold a conviction; however, the cumulative force of such evidence must be sufficient to support the conviction. Ramsey v. State, 473 S.W.3d 805, 809–10 (Tex. Crim. App. 2015) (citing Winfrey, 393 S.W.3d at 771; Hooper v. State, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)).

The jury is the sole judge of credibility and weight to be attached to the testimony of witnesses, and an appellate court may not substitute its judgment for that of the jury. Huff, 467 S.W.3d at 19–20 (citing Williams v. State, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007)). As the sole judge of a witness's credibility and the weight to be given such testimony, the jury may choose to believe all, none, or any part of a witness's testimony, even if such testimony is contradicted. Rivera v. State, 507 S.W.3d 844, 853–54 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd); Dossett v. State, 216 S.W.3d 7, 31 (Tex. App.—San Antonio 2006, pet. ref'd). Moreover, juries are entitled to draw multiple reasonable inferences from the facts

as long as the evidence supports each inference. Tate, 500 S.W.3d at 413 (citing Jackson, 443 U.S. at 319); see Hooper, 214 S.W.3d at 16–17.

However, a jury may not draw conclusions based on pure speculation. Tate, 500 S.W.3d at 413 (citing Hooper, 214 S.W.3d at 16). Speculation, unlike a reasonable inference, is not sufficiently based on the evidence to support a finding beyond a reasonable doubt. Id. "When the record supports conflicting inferences, an appellate court must presume the jury resolved the conflicts in favor of the verdict." Id. (citing Jackson, 443 U.S. at 326). The presumption includes inferences from circumstantial evidence. Huff, 467 S.W.3d at 19; Harris v. State, 532 S.W.3d 524, 527–28 (Tex. App.—San Antonio 2017, no pet.).

In a prosecution for intoxication manslaughter under § 49.08(a), the State must prove the defendant: (1) operated a motor vehicle in a public place; and (2) was intoxicated and by reason of that intoxication caused the death of another by accident or mistake. Matamoros v. State, 500 S.W.3d 58, 62 (Tex. App. – Corpus Christi 2016, no pet). It is incumbent on the State to prove that intoxication, not just operation of a vehicle, caused the fatal result. See Daniel v. State, 577 S.W.2d 231, 233-34 (Tex. Crim. App. 1979).

b. Insufficient Evidence of Intoxication at the Time of Driving

The penal code defines "intoxication" as "not having the normal use of mental or physical faculties by reason of the introduction of alcohol, ... or having an alcohol concentration of 0.08 or more." TEX. PENAL CODE ANN. § 49.01(2)(A), (B).

First, the Appellant argues that the State failed to prove he was intoxicated at the time the accident occurred. The State in this matter was able to admit evidence that approximately an hour to two hours after the collision the Appellant's blood alcohol concentration was .101 grams of ethanol per 100 milliliters of blood. (R.R. V.7 at 42). However, the State admitted they were unable to provide retrograde extrapolation of this number back to the time of driving. (R.R. V.7 at 63-73). Further complicating the matter, the State introduced evidence that approximately four to five hours after the collision the Appellant's blood alcohol concentration was .07 grams of ethanol per 100 milliliters of blood. (R.R. V.5 at 150.). The State only used general principles of alcohol consumption and digestion to link the Appellant to intoxication at the time of operation. (R.R. V.7 at 63-73). The State also supplemented this information with some brief and general observations of responding emergency personnel and officers. (R.R. V.6 at 11, 36, 52). The State relied on HGN evidence that was obtained from Appellant after a major collision and while he was on his back. Id. at 36-37.

Based on this evidence a rational factfinder could not have found beyond a reasonable doubt that the Appellant was intoxicated at the time of the accident. The

Appellant's admissions did not provide enough detail about alcohol consumption to convict in this case. Appellant implores the court to compare the cases where the Defendant's admitted to having consumed multiple beverages in the hours leading up to the accident. See Zavala v. State, 89 S.W.3d 134, 140 (Tex. App.—Corpus Christi–Edinburg 2002, no pet.) (concluding that, though the precise time the accident occurred was unknown, evidence that appellant had been drinking several hours prior could be used to establish intoxication at the time of the accident); see also Gandee v. State, No. 13-18-00343-CR, 2019 WL 5609703, at *3 (Tex. App.—Corpus Christi–Edinburg Oct. 31, 2019, no pet.) (mem. op., not designated for publication) (concluding that the jury could have relied on appellant's admission to law enforcement that he consumed alcohol prior to the accident as evidence of intoxication); Salazar v. State, No. 13-16-00645-CR, 2017 WL 6545991, at *7 (Tex. App.—Corpus Christi–Edinburg Dec. 21, 2017, pet. ref'd) (mem. op., not designated for publication) (same).

Unlike the facts in Foley, the evidence that Appellant smelled of alcohol or appeared intoxicated was limited in this case because of the circumstances of the fatal collision. Compare Foley v. State, 327 S.W.3d 907, 915–16 (Tex. App.—Corpus Christi–Edinburg 2010, pet. ref'd) (concluding evidence was sufficient to support intoxication element where evidence included testimony that appellant's breath smelled strongly of alcohol); compare also Garcia v. State, No. 13-18-00373-

CR, 2020 WL 1858285, at *3 (Tex. App.—Corpus Christi–Edinburg Apr. 9, 2020, pet. ref'd) (mem. op., not designated for publication) (providing that lay opinion testimony may be probative evidence of intoxication as "a witness does not have to be an expert to testify that a person he observes is intoxicated by alcohol").

Although the State presented evidence that alcohol in an amount over the legal limit of 0.08 or more was found in the Appellant's system an hour or two after the accident, the Appellant challenges the sufficiency of the State's evidence to prove his alcohol concentration at the time of driving. The exact time of the accident was uncertain. (R.R. V.6 at 61). The time the Appellant began consuming alcohol was unknown. (R.R. V.3 at 90). No extrapolation evidence was submitted in this case. (R.R. V.7 at 63-73). The Appellant's blood was first drawn approximately two hours after the collision. (R.R. V.6 at 122).

The State's expert witness testified to the general physiological effects—such as impairment of reaction time, perception, and visual acuity—associated with alcohol consumption, but did not provide evidence that the Appellant suffered from such effects at the time of driving. But see Fulton v. State, 576 S.W.3d 905, 910 (Tex. App.—Tyler 2019, pet. ref'd) (concluding jury was entitled to believe expert's testimony concerning appellant's toxicology report and explanations of the intoxicating effects of alcohol consumption and its absorption and elimination rates).

Consequently, the Appellant asks this court to find that a rational factfinder could not have found beyond a reasonable doubt that he was intoxicated at the time of the accident. Compare Edward, 635 S.W.3d 649, 655(Tex. Crim. App. 2021); Murray v. State, 457 S.W.3d 446, 449 (Tex. Crim. App. 2015) ("Based on [the defendant's] admission that he had been drinking, [the officer's] observation that [the defendant] appeared 'very intoxicated,' and the fact that no alcoholic beverages were found in the vicinity, a factfinder could have reasonably inferred that [the defendant] consumed alcoholic beverages to the point of intoxication somewhere other than where he was found.").

c. Insufficient Evidence of Causal Link

As for causation, the penal code provides that "[a] person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." TEX. PENAL CODE ANN. § 6.04(a).

The existence or nonexistence of such a causal connection is normally a question for the jury's determination. Hardie v. State, 588 S.W.2d 936, 939 (Tex. Crim. App. 1979); see also Wooten v. State, 267 S.W.3d 289, 295 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). It is not enough that operation of a vehicle, even by an intoxicated person, causes the death; rather, the death must be the result

of the intoxication and proof must be made of that thing which worked as the causal connection between the intoxication and the death. Daniel, 577 S.W.2d at 233 (citing Long v. State, 152 Tex. Crim. 356, 214 S.W.2d 303, 304 (1948)) and Garcia v. State, 112 S.W.3d 839, 852 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

It is incumbent on the State to prove that intoxication, not just operation of a vehicle, caused the result of Ms. Reed's death. It is not enough that operation of a vehicle, even by an intoxicated person, causes the death. Instead, the death must be the result of the intoxication and proof must be made of that thing that worked as the causal connection between the intoxication and the death.

Proof of the causal link can be shown by a number of methods. Compare Glauser v. State, 66 S.W.3d 307, 313 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) (determining that the evidence was legally sufficient to prove causation by defendant's intoxication because the testimony reflected that someone in "full command of his mental and physical faculties while driving" at the rate of speed the defendant claimed to have been driving would have been able to avoid hitting the disabled vehicle); Matamoros, 500 S.W.3d at 64 (finding that testimony by lead investigator that someone in full command of his mental and physical faculties while driving within the speed limit would have been able to navigate the turn and the introduction of alcohol into the driver's system, according to the investigator, was a primary factor in causing the accident); Hale v. State, 194 S.W.3d 39, 43 (Tex. App.

– Texarkana 2006, no pet.) (concluding causal link shown by presentation of expert testimony demonstrating that driving while intoxicated impairs a person's ability to drive and slows reflexes due to the depressant effect of alcohol); and Garcia, 112 S.W.3d at 852) (upholding proof of causation when considering the facts shown at trial, an accident reconstructionist testified it was consistent for intoxicated drivers to (1) drive "by braille" by hitting the reflectors in a road; (2) drive either very slowly or very fast; (3) refuse to take sobriety tests; (4) have difficulty staying awake; (5) have "tunnel vision"; (6) have slower-than-normal reaction times; and (7) leave the scene of an accident).

The present matter is distinguishable from the above cited cases. Specifically, in this case the decedent's intoxication could have caused the accident alone without the contribution of the Appellant's intoxication. See TEX. PENAL CODE ANN. § 6.04(a). Respectfully, the Appellant would not have collided with the decedent but for her walking into the lanes of Huston traffic intoxicated. The evidence did not dispute this fact.

Relevant to this point is the inconclusive accident reconstruction. Although the State's expert relied on examining skids and gouges to the road surface, he could not determine where the decedent was at the time of collision. Further, whether the Toyota was entirely parked in the emergency lane was disputed. Although the State's expert speculated as to the cause of the accident there was no evidence

submitted showing that the Hyundai's failure to maintain a single lane or take evasive maneuvers combined with the Appellant's intoxication caused the death in this case. In fact, but for the intoxicated decedent walking into the lanes of traffic the death would not have occurred. TEX. PENAL CODE ANN. § 6.04(a). The jury acknowledged this lack of causation in its finding that the automobile in this case was not used as a deadly weapon. (C.R. V.1 at 359).

The State's failure to establish a causal link between Appellant Lewis' intoxication and the resulting accident requires reversal and dismissal of the conviction for intoxication manslaughter.

II. The hospital blood vials are inadmissible because the State failed to establish the first link in the chain of custody.

a. Error Preserved

Trial Counsel for the Appellant objected to the admission of the blood vials obtained by hospital personnel. (R.R. V.6 at 113), TEX. R. APP. P. 33.1 (a)(1)(A). Trial Counsel for the Appellant filed a written Memorandum of Points and Authorities in support of this objection. (C.R. V.1 at 336). After arguments from the parties, the Trial Court overruled the Appellant's objection. (R.R. V. 6 at 113).

b. Standard of Review

Admissibility of evidence is within the discretion of the trial court and will not be overturned absent an abuse of discretion. Moses v. State, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003) (citing Montgomery v. State, 810 S.W.2d 372, 391

(Tex. Crim. App. 1990) (*en banc*)). A trial court's ruling will be affirmed if it was within the zone of reasonable disagreement. Moses, 105 S.W.3d at 627; see Montgomery, 810 S.W.2d at 391 ("a trial court judge is given a 'limited right to be wrong,' so long as the result is not reached in an arbitrary or capricious manner.") (internal citations omitted).

c. Analysis

Appellant argues that the State failed to properly authenticate his blood test results from the hospital and establish a proper chain of custody to support its admission.

To admit blood test results as evidence, it is necessary to establish a proper chain of custody for the blood sample drawn from the accused and subsequently tested. Durrett v. State, 36 S.W.3d 205, 208 (Tex. App. —Houston [14th Dist.] 2001, no pet.) (citing Moone v. State, 728 S.W.2d 928, 930 (Tex. App. —Houston [14th Dist.] 1987, no pet.)).

Proof of the beginning and end of the chain will support admission, and any gaps in the chain go to the weight of the evidence rather than to its admissibility. See Penley v. State, 2 S.W.3d 534, 537 (Tex. App. –Texarkana 1999, pet. ref'd).

Registered Nurse Dumapat testified that the Appellant's blood was drawn at the hospital pursuant to the treating physician's orders, but he did not know who

drew his blood. (R.R.V 6 at 137-38). More importantly, he testified he did not draw the Appellant's blood. Id.

Although Nurse Dumapat testified as to the policies and procedures in place to ensure that blood samples match a particular patient prior to sending it to the laboratory for testing he could not establish the "beginning" of the Appellant's blood test's chain of custody. Id.

The Trial Court abused its discretion because the State failed to establish the first link in the chain of custody. Consequently, the State not proving the "beginning" and "end" of the chain of custody makes the hospital vials in this case inadmissible. Although courts recognize that gaps in the chain go to the weight of the evidence, admissibility requires proof of the first and last links in the chain of custody. See Penley, 2 S.W.3d at 537.

Beck v. State, 651 S.W.2d 827, 829 (Tex. App.—Houston [1st Dist.] 1983), is distinguishable because in Beck, a Doctor testified that he could not remember whether he took the blood sample or whether it was taken by someone in his presence. Here, the only Memorial Hermann Hospital employee produced by the State was Nurse Dumapat, who testified that he did not perform the blood draw and that he was not in the presence of the person who drew the Appellant's blood.

In State v. Guzman, 439 S.W.3d 482 (Tex. App. —San Antonio 2014), the court of appeals ruled that the BAC was admissible because the blood draw nurse's

supervisor testified, the supervisor identified the nurse by name, and the supervisor testified that the nurse would have followed proper protocol. Unlike the facts in Guzman, the State in this case failed to produce a witness who knows the name of the person who drew Mr. Lewis's blood and therefore cannot testify that that person followed proper protocol.

In Penley, the chain of custody begins with the testifying officer observing the blood draw and ends with the testifying toxicologist analyzing the blood. Penley, 2 S.W.3d at 537. In the Appellant's case, the State failed to establish the beginning of the chain through either the person who obtained the sample or anyone who observed the sample being collected.

In Patel v. State, No. 2-08-032-CR, 2009 WL 1425219, at *3 (Tex. App.—Fort Worth May 21, 2009), the chain begins with the blood draw nurse testifying and ends with the testifying analyst. The Patel court held that any evidence of potential alteration or tampering of the blood vials goes to weight not admissibility. Patel is unlike the Appellant's case, because the State has failed to establish the beginning of the chain through either the person who obtained the sample or anyone who observed the sample being collected.

During cross-examination, Nurse Dumapat was shown a screenshot from Officer Glass's body worn camera. (R.R. V.6 at 134-37). When asked who drew Mr. Lewis's blood, nurse Dumapat answered he did not know who drew Mr. Lewis's

blood. Id. at 137. All of the above cited cases are distinguished from Mr. Lewis's case because no employee of the person who drew the Appellant's blood testified to the blood draw person's identity therefore no one can assure the Court that the blood draw person followed proper protocol. See (C.R. V.1 at 336) "Memorandum in Support of Suppression."

d. Harm

Nonconstitutional error requires reversal if the error affects an appellant's substantial rights. See TEX. R. APP. P. 44.2(b). The admission of inadmissible evidence is nonconstitutional error, and such error does not affect a substantial right if, after examining the record as a whole, the reviewing court is reasonably assured that the error did not influence the verdict or had but a slight effect. Chapman v. State, 150 S.W.3d 809, 814 (Tex .App.—Houston [14th Dist.] 2004, pet. ref'd).

The blood vials and the subsequent BAC results influenced the Jury's verdict in this case. The effect on the verdict was great. The State used the hospital results to assert Appellant was over limit at the time of operation. The Jury found the Appellant guilty despite declining to find that the automobile in this accident was used as a deadly weapon. (C.R. V.1 at 359).

The exact time of the accident was uncertain. (R.R. V.6 at 61). The time the Appellant began consuming alcohol was unknown. (R.R. V. 3 at 90). No extrapolation evidence was submitted in this case. The Appellant's blood was drawn

approximately two hours after the collision. (R.R. V.6 at 122). In this case, the decedent walked into traffic.

III.
Prayer

The State's failure to establish that the Appellant operated a motor vehicle while intoxicated at the time of the collision requires reversal and dismissal of the conviction of intoxication manslaughter.

The State's failure to establish a causal link between Appellant Lewis' intoxication and the resulting accident requires reversal and dismissal of the conviction for intoxication manslaughter.

The Court's abuse of discretion by admitting the hospital blood vials and subsequent BAC results requires reversal and retrial without the blood results from the hospital.

Respectfully Submitted,

/S/ James F. Pons

James F. Pons
TXSBN 24041707
10900 N.W. Fwy., Ste. 230
Houston, TX 77092
Ph (832) 372 8138
Fax (713)869 8330

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Appellant's Brief has been served to the Harris County District Attorney on April 24, 2025.

/S/ James F. Pons
James F. Pons

Certificate of Compliance

I hereby certify that the preceding document is in compliance with Texas Rules of Appellate Procedure 9 and contains 4, 504 words.

/S/ James F. Pons
James F. Pons

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

James Pons on behalf of James Pons
Bar No. 24041707
jpons_78221@yahoo.com
Envelope ID: 100062107
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Brief
Status as of 4/24/2025 4:15 PM CST

Associated Case Party: Jessica Caird

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Caird		caird_jessica@dao.hctx.net	4/24/2025 4:02:39 PM	SENT