

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 KA 0113**

**STATE OF LOUISIANA**

**VERSUS**

**FRANK M. ADAMS, JR.**

Judgment Rendered: SEP 20 2006

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On Appeal from the 16<sup>th</sup> Judicial District Court  
In and For the Parish of St. Mary, State of Louisiana  
Trial Court No. 164,891  
Honorable Keith J. Comeaux, Judge Presiding

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\*\*\*\*\*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**



**HUGHES, J.**

The defendant, Frank M. Adams, Jr., was originally charged by grand jury indictment with vehicular homicide, a violation of LSA-R.S. 14:32.1. He entered a plea of not guilty. The defendant moved to quash the grand jury indictment. Thereafter, the indictment was dismissed and the prosecution was reinstated by bill of information.<sup>1</sup> Following a trial by jury, the defendant was convicted as charged. The defendant was sentenced to imprisonment at hard labor for fifteen years. The trial court suspended all but eight years of the sentence and ordered that the first two years be served without the benefit of probation, parole, or suspension of sentence. The court also ordered that the defendant serve five years on supervised probation with special conditions upon his release. The defendant now appeals, arguing in a single assignment of error that the evidence is insufficient to support the conviction.

**STATEMENT OF FACTS**

On May 13, 2004, at approximately 6:30 p.m., an automobile driven by the defendant collided with an automobile driven by the victim, sixty-one-year-old Virgie Moffett on Louisiana Highway 70 near the St. Mary/St. Martin parish line. According to witnesses, the defendant was erratically driving in the eastbound lane of travel on Highway 70. When the defendant entered the westbound lane in an attempt to pass the vehicle ahead of him, his vehicle collided head-on with the vehicle driven by the victim. The defendant and the victim were transported to Teche Regional Medical Center, where the victim was pronounced dead upon arrival. Dr. Francis H. Metz, the St. Mary Parish Coroner, examined the victim's remains. He

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<sup>1</sup> The record does not reflect that the defendant was ever arraigned after the filing of the bill of information. Nevertheless, because the defendant did not object to the failure to arraign him on the bill of information, the issue is waived. See LSA-C.Cr.P. art. 555.

opined that the victim's cause of death was massive total body trauma. Based upon sobriety tests performed at the hospital, the defendant was arrested for driving while intoxicated. The defendant's blood-alcohol concentration, determined from a blood sample taken on the day of the accident, was 0.23 percent by weight based on grams of alcohol per one hundred cubic centimeters of blood.

**ASSIGNMENT OF ERROR**  
**SUFFICIENCY OF THE EVIDENCE**

In his sole assignment of error, the defendant avers that the evidence presented at trial was insufficient to support the vehicular homicide conviction. The defendant does not deny that he was involved in a motor vehicle accident wherein he struck the victim's vehicle, nor does he contest the fact that he was intoxicated, or that his intoxication contributed to the accident. Instead, the defendant asserts the state failed to present evidence sufficient to establish that the victim's death was a result of the accident. Specifically, the defendant notes that the Coroner failed to perform an autopsy of the victim's remains to determine the exact cause of her death. He argues that the Coroner's testimony, without an autopsy, is insufficient to prove causation.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the Legislature in enacting LSA-C.Cr.P. art. 821 (pertaining to motions for post-verdict judgment of acquittal based on insufficiency of evidence), is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the

elements of the crime had been proved beyond a reasonable doubt. **State v. Brown**, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18. The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420.

Vehicular homicide is defined in LSA-R.S. 14:32.1, in pertinent part, as follows:

A. Vehicular homicide is the killing of a human being caused proximately or caused directly by an offender engaged in the operation of, or in actual physical control of, any motor vehicle, aircraft, watercraft, or other means of conveyance, whether or not the offender had the intent to cause death or great bodily harm, whenever any of the following conditions exists:

(1) The operator is under the influence of alcoholic beverages as determined by chemical tests administered under the provisions of R.S. 32:662.

(2) The operator's blood alcohol concentration is 0.08 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

Under the vehicular homicide statute, the state must prove that an offender's unlawful blood alcohol concentration combined with his operation of a vehicle to cause the death of a human being. **State v. Taylor**, 463 So.2d 1274, 1275 (La. 1985). The vehicular homicide statute does not impose criminal liability based solely on the coincidental fact that the fatal accident occurred (without fault on the part of the accused) while the accused was operating a vehicle under the influence of alcohol. Causation is a question of fact that should be considered in light of the totality of circumstances surrounding the ultimate harm and its relation to the actor's conduct. **State**

**v. Archer**, 619 So.2d 1071, 1074 (La. App. 1 Cir.), writ denied, 626 So.2d 1178 (La. 1993).

As previously noted, it is undisputed that the defendant in this case was operating the motor vehicle that crossed the centerline on Louisiana Highway 70 and collided with the vehicle the victim was driving. It is likewise undisputed that the tested sample of the defendant's blood showed his blood alcohol concentration was in excess of 0.08 percent. Thus, the only question that remains is whether the state sufficiently proved, beyond a reasonable doubt, that the injuries the victim sustained in the accident caused her death.

In his brief to this court, the defendant argues that the specific cause of the victim's death could not be determined because there was no autopsy. The defendant acknowledges that the Coroner performed a body viewing, but argues that such an examination is not an autopsy and cannot be used to prove cause of death in this case when there was "a reasonable probability that the violation of a criminal statute has contributed to the death." Citing LSA-R.S. 33:1563 and LSA-C.Cr.P. art. 102, the defendant asserts the Coroner's failure to perform the statutorily mandated autopsy in this case requires the conclusion that the state failed to meet its burden as to the victim's cause of death.

Although a coroner's autopsy is competent evidence to prove the fact of death and cause of death, the same can be proven by any competent evidence. **State v. Winzer**, 354 So.2d 533, 534 (La. 1978). Thus, we find it unnecessary to reach the issue of whether the postmortem examination performed by the Coroner qualified as an autopsy. The adequacy of procedure utilized by the Coroner in the postmortem examination goes to the

weight of the Coroner's testimony regarding the cause of death and not to its sufficiency.

Mallory Landry, the victim's granddaughter, testified regarding the victim's health and physical condition shortly before the accident. Ms. Landry explained that the victim had just dropped her off at home after taking her to a scheduled dental appointment on the day of the accident. The victim appeared to be fine and exhibited no signs of physical and/or health problems. Elmer Moffett, the victim's husband, testified that the only medication the victim took regularly was for high blood pressure and cholesterol. The victim was otherwise in good health. She was not under a doctor's care for any other conditions. According to Mr. Moffett, there was nothing else wrong with the victim on the day of the accident.

At trial, Dr. Metz, accepted by the court as an expert in the field of medicine, testified that he performed a postmortem "body view" examination of the victim's remains. This examination, Dr. Metz explained, consisted of visual examination and examination by palpation. Dr. Metz described the procedure as an "external autopsy." In the body view report, which was introduced into evidence at trial, Dr. Metz noted results of his examination of the victim's head, ears, eyes, nose, throat, neck, chest, abdomen, genitalia, and extremities. Dr. Metz opined that the fatal injuries were those to the victim's chest. The injuries to other areas of the victim's body, which included a laceration to the left forehead, an orbital fracture, a laceration of the left temporal area, a laceration of the left elbow, and open fractures of the tibia and fibula, were all nonfatal.

Regarding the victim's chest injuries, Dr. Metz specifically noted that, "[e]xamination of the chest revealed multiple comminuted fractures of the entire anterior chest, that I feel is incompatible with life." He explained that

the victim sustained several large lacerations. Upon placing his fingers inside the various lacerations and examining the abnormalities of the body structures, Dr. Metz concluded it was not necessary do to a more invasive examination of the victim to determine the cause of death. Dr. Metz further testified that, contrary to the defense's assertions, an invasive autopsy is not the only way to determine the cause of death. He explained that the term "autopsy" simply means, "see for yourself." Dr. Metz explained that the victim's chest injuries resembled that of a jigsaw puzzle and were totally "incompatible with life." There were multiple fractures of the entire chest. The injuries were so severe that the victim's chest could be pushed back almost to the backbone. Dr. Metz opined no individual could live with chest injuries of this nature. In his testimony, Dr. Metz stated that there was absolutely no support in the medical record to show that the victim died of anything other than massive full body trauma particularly to the chest area.

Considering the foregoing, we find that there was sufficient evidence of a causal relationship between the accident and the victim's death to support the vehicular homicide conviction. Even in the absence of an invasive (dissection) autopsy, the unrebutted and uncontradicted testimony of Dr. Metz showed that the victim died as a result of massive full body trauma caused by the head-on collision in question. Thus, there was sufficient evidence from which the jury reasonably could conclude that the victim died as a result of the injuries sustained in the accident. The defendant's argument that the state failed to meet its burden of proof on causation lacks merit.

#### **PATENT SENTENCING ERROR**

As mandated by LSA-C.Cr.P. art. 920(2), a patent error review has been made of the record in this case, revealing a patent sentencing error.

The penalty for vehicular homicide, at the time of this offense, was provided in LSA-R.S. 14:32.1(B), as follows:

Whoever commits the crime of vehicular homicide shall be fined not less than two thousand dollars nor more than fifteen thousand dollars and shall be imprisoned with or without hard labor for not less than two years nor more than twenty years. At least one year of the sentence of imprisonment shall be imposed without benefit of probation, parole, or suspension of sentence. The court shall require the offender to participate in a court-approved substance abuse program or a court-approved driver improvement program, or both. All driver improvement courses required under this Section shall include instruction on railroad grade crossing safety.

At the sentencing, the trial court failed to impose the mandatory fine of not less than two thousand dollars nor more than fifteen thousand dollars, as required by the statute. We have “considered”<sup>2</sup> this sentencing error pursuant to the mandate of LSA-C.Cr.P. art 920 and this court’s reasoning in **State v. Paoli**, 2001-1733 (La. App. 1 Cir. 4/11/02), 818 So.2d 795, writ denied, 2002-2137 (La. 2/21/03), 837 So.2d 628, and decline to take further action, inasmuch as the issue was not raised on appeal and any action taken by this court at this juncture would be a vain and useless act, if not a counterproductive one, when the costs and security risks involved in transporting the defendant back and forth for resentencing are weighed into the equation.

For the foregoing reasons, the conviction and sentence are affirmed.

**CONVICTION AND SENTENCE AFFIRMED.**

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<sup>2</sup> “Consider” may be defined as: to think about with care or caution; to regard, reflect, or deliberate; or to study, contemplate, or weigh.