

Supreme Court of Florida

THURSDAY, APRIL 16, 2020

CASE NO.: SC19-2133

Lower Tribunal No(s).:

1D17-5010;
032016CF001544XXAXMX

KENNETH LEE MANHARD

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

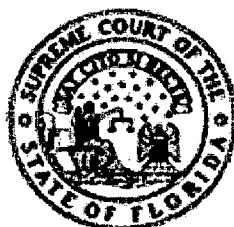
CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



ks

Served:

DANIELLE JORDEN
DAMARIS E. REYNOLDS
SHARON S. TRAXLER
HON. KRISTINA SAMUELS, CLERK
HON. BILL KINSAUL, CLERK
HON. MICHAEL C. OVERSTREET, JUDGE

Ex. 1 - (A)

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-5010

KENNETH LEE MANHARD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Michael C. Overstreet, Judge.

October 1, 2019

B.L. THOMAS, J.

Appellant challenges his judgment and sentence for leaving the scene of a crash involving death, DUI manslaughter, and driving while license canceled, suspended, or revoked, causing serious bodily injury or death. We affirm because the evidence was sufficient to sustain the conviction, and the trial court's relevant evidentiary rulings were correct.

Facts

All charges arose from a crash on April 7, 2016, that resulted in the death of a motorcycle driver. The parties stipulated that Appellant had a suspended driver's license at the time of the offense. Eyewitnesses testified that Appellant had been driving a white Hyundai sedan that morning. One witness testified that

EXHIBIT B 99

Appellant had appeared intoxicated at 3:54 a.m. when Appellant drove away in an undamaged white sedan. Other witnesses stated that between 4 and 5 a.m., they saw Appellant sitting behind the driver's seat of a white sedan with his eyes closed. They testified there was damage to the front of the vehicle and windshield, with the windshield containing a "butt print," blood, and hair. They also testified Appellant stated he had not hit anybody and that "someone threw a scooter at me."

A highway patrol officer testified that he responded to the scene of an accident involving the death of a motorcycle driver on Hathaway Bridge. The officer stated the damage to the rear and side of the motorcycle was consistent with a rear-end collision, and blood pools on the bridge indicated the motorcycle's driver had been hit and then moved by subsequent collisions. He testified that dispatch notified him of a suspect vehicle at a nearby gas station, where he observed Appellant next to a white Hyundai sedan, which had a damaged front end and windshield. He noted that both the blood and the "significant nature" of the deformed windshield showed the vehicle made contact with a human body, and there was an injury. In addition, he observed blue and green paint consistent with the victim's license plate, which had transferred onto the white vehicle.

A forensic pathologist testified that the cause of death was multiple blunt injuries, each of which could have caused great bodily harm. She stated, however, that it was impossible to determine which of the multiple impacts caused which specific injury.

After the State rested, Appellant moved for judgment of acquittal on all counts. Regarding the charge of leaving the scene of a crash involving death, Appellant argued the State failed to establish he knew or should have known he was involved in a crash with a person. He also argued the State failed to establish that he knew or should have known his crash with the victim resulted in the victim's death. He asserted that a driver must know of the specific impact that resulted in injury, when the crash involves multiple impacts.

As to the DUI manslaughter charge, Appellant argued the State failed to establish that he was impaired at the time he was

in actual physical control of the vehicle or that he caused or contributed to the victim's death. Lastly, regarding the charge of driving while license canceled, suspended, or revoked causing serious bodily injury or death, Appellant argued the State failed to provide evidence that Appellant drove carelessly or negligently. The trial court denied Appellant's motion on all counts.

Before trial, Appellant filed a motion in limine, stating:

The State [intends] to show the video from the backseat of [a] Trooper's vehicle. The video contains reference to matters which have been suppressed, crimes not charged, and further matters which are more prejudicial than probative in this case.

At a pretrial hearing, the State agreed to redact the recording to omit references to all the instances listed in Appellant's motion in limine, including the segment which showed Appellant being restrained. At trial, Appellant reaffirmed the objections listed in the motion in limine, stating, "[j]ust with previous objections."

The redacted recording showed that Appellant was advised of his *Miranda** rights, and he invoked his right to silence. However, Appellant continued to talk after invoking his right, and claimed he did not own and had not driven the vehicle. He further alleged a bird had hit his windshield. Throughout the recording, Appellant used offensive language, threatened the officers, and threatened to urinate in the car. The recording also showed an interaction between two officers during which one officer mentioned "[h]e's invoked his right to remain silent." Appellant made no other objections during or after the presentation of the recording and did not move for a mistrial.

On Appellant's Criminal Punishment Code scoresheet, the State assessed Appellant 120 points in the "Victim Injury" category for "death." Appellant filed a second motion to correct sentence under Florida Rule of Criminal Procedure 3.800(b). Appellant argued that because the jury did not find Appellant actually caused the death or that the death was a direct result of

* *Miranda v. Arizona*, 384 U.S. 436 (1966).

Appellant's actions; Appellant's scoresheet sentence was impermissibly increased by a factor not found by the jury.

The trial court denied Appellant's second motion to correct sentence, stating, "the language of [section 921.0021(7)(a), Florida Statutes] imparts no such requirement; [t]he Defendant's conviction for DUI Manslaughter is sufficient on its own to support the enhancement."

Analysis

I. The trial court did not err in denying the motion for judgment of acquittal

Our review of the trial court's ruling denying the motion for judgment of acquittal is *de novo*. *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002). "A trial court should not grant a motion for judgment of acquittal unless the evidence, when viewed in a light most favorable to the State, fails to establish a *prima facie* case of guilt." *State v. Odom*, 862 So. 2d 56, 59 (Fla. 2d DCA 2003). "Where the state has produced competent evidence to support every element of the crime, a judgment of acquittal is not proper." *Gay v. State*, 607 So. 2d 454, 457 (Fla. 1st DCA 1992).

Under section 316.027, Florida Statutes, to prove that the driver of a vehicle left the scene of a crash involving death or injury, the State must prove the driver of the vehicle had actual knowledge of a crash. But the State is not required to prove the defendant knew or should have known that a death occurred to sustain a conviction for leaving the scene of a crash resulting in death. *See State v. Dumas*, 700 So. 2d 1223 (Fla. 1997). Rather, the State must prove the defendant knew or reasonably should have known that a person was at least injured in the crash. *See State v. Mancuso*, 652 So. 2d 370, 371 (Fla. 1995) (holding that criminal liability for leaving the scene of an accident involving death or injury required proof that motorist knew of resulting injury or death or reasonably should have known from the nature of the accident).

The nature of the vehicle damage may be used to establish that the defendant should have known there was serious injury. *See Pitts v. State*, 227 So. 3d 674, 677 (Fla. 1st DCA 2017). In *Pitts*,

this Court held the trial court did not err in denying the defendant's motion for judgment of acquittal when the State had produced sufficient evidence that the defendant knew or should have known there was serious injury by presenting evidence that the defendant's DNA was on the steering wheel, the victim had rolled over the hood of the car, and the victim had impacted the windshield. *Id.* at 477.

Here, the State presented sufficient evidence that Appellant knew of the crash and knew or should have known there was serious injury. It introduced into evidence jail phone calls in which Appellant admitted, "somebody hit him into me, he rolled up over my car, broke the windshield, I freaked out, kept on driving." The State presented testimony that Appellant had been in the driver's seat with a damaged windshield and glass on him, and that he claimed a scooter hit his windshield. The State thus presented evidence that Appellant knew or should have known that there was serious injury to a person as Appellant's vehicle had hit the victim on his motorcycle from behind with enough "significant force" that the victim's body impacted the windshield. Viewed in the light most favorable to the State, the State established every element of leaving the scene of a crash involving death. *See Odom*, 862 So. 2d at 59.

Appellant also challenges the denial of the motion on the grounds that *Booker v. State*, 103 So. 3d 1035 (Fla. 2d DCA 2012) and *McGowan v. State*, 139 So. 3d 934 (Fla. 4th DCA 2014) hold for the principle that where the victim is involved in a multiple-impact collision, the State must prove the additional element that the driver knew of the *specific* impact that actually resulted in the injury. Even if these cases were binding on this Court, which they are not, *see Pardo v. State*, 596 So. 2d 665, 666–67 (Fla. 1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida *trial* courts") (emphasis added); *see Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958) (holding the district courts of appeal were never intended to be intermediate courts, and review by the district courts are final and absolute in most instances); *see In re Rule 9.331, Determination of Causes by a Dist. Court of Appeal En Banc, Fla. Rules of Appellate Procedure*, 416 So. 2d 1127, 1127–28 (Fla. 1982)(noting the amendment "substantially strengthened the position of the district courts of appeal as final appellate courts"), both cases are distinguishable.

In *Booker*, the Second District held the State failed to present evidence that Booker knew or should have known that injury was a consequence of the crash when there was minimal injury to the vehicle and the victim's car was partially obscured from view by a parked patrol car. 103 So. 3d at 1036. Furthermore, nothing about the nature of the impact in and of itself established Booker knew or should have known the victim's car was occupied or that the victim was injured. *Id.* The present case is distinguishable as the victim was driving a motorcycle on a bridge, there was no evidence presented that the victim or his motorcycle were obscured from view, and both the victim and his motorcycle, as well as Appellant's vehicle, sustained substantial damage.

In *McGowan*, the Fourth District held the State failed to prove that McGowan knew or should have known that the accident involved a person when McGowan was not the first vehicle to hit the victim, other cars before him had not stopped, and testimony established the victim could not have been seen given the dim lighting conditions and the way the victim's body flew up in the air. 139 So. 3d at 938-39. Here, the State provided evidence that Appellant should have seen the victim, and known the accident involved a person. In addition, Appellant admitted in a jail phone call that he had hit someone, "freaked out," and kept driving.

II. The trial court did not err in admitting into evidence the recording from the trooper's vehicle

Appellant challenges the court's admission of the recording from the trooper's vehicle. Appellant argues the recording contained evidence of bad acts, uncharged collateral crimes, and comments on Appellant's silence which encouraged the jury to render a verdict based on Appellant's bad character or prior bad acts, rather than whether the State proved his guilt for the crimes charged. We disagree.

First, we note that Appellant has not preserved his objections. "[T]o raise an error on appeal, a contemporaneous objection must be made at the trial level when the alleged error occurred." *Carr v. State*, 156 So. 3d 1052, 1062 (Fla. 2015) (citing *J.B. v. State*, 705 So. 2d 1376, 1378 (Fla. 1998)). "If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to

preserve a claim of error for appeal.” § 90.104(1), Fla. Stat. (2019). However, failure to object in the trial court does not constitute a waiver of the right to raise the issue upon appeal when the error of the trial judge constitutes a fundamental error. *Willard v. State*, 386 So. 2d 869, 871 (Fla. 1st DCA 1980). Fundamental error is error that “reach[es] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Carr*, 156 So. 3d at 1063 (quoting *Archer v. State*, 934 So. 2d 1187, 1205 (Fla. 2006)).

Here, Appellant objected to parts of the recording through his motion in limine and reaffirmed those objections at trial by stating, “[j]ust with previous objections.” Appellant made no other objections during or after the presentation of the recording, and did not move for mistrial. Appellant was not required to renew the objections concerning the portions of the recording listed in the motion in limine, and those issues have been preserved for appellate review. However, Appellant’s argument regarding his repeated use of profanities, threat to urinate, and the comment on Appellant’s silence was not included in the motion in limine, and Appellant did not make a contemporaneous objection. Accordingly, Appellant has not preserved the issues regarding his use of profanity, threats to urinate, and the comment on Appellant’s silence.

We further hold that the admission into evidence of the redacted recording did not constitute fundamental error. “For an error to be so fundamental that it may be urged on appeal though not properly preserved below, the asserted error must amount to a denial of due process.” *Castor v. State*, 365 So. 2d 701, 704 n.7 (Fla. 1978). The State introduced the recording as evidence of Appellant’s intoxication, an element of DUI Manslaughter. In addition, the comment regarding Appellant’s invocation of his right to remain silent was to inform the second officer that he could not ask Appellant any questions. The admission of Appellant’s actions and statements as well as the statement regarding Appellant’s silence did not create any error to the extent that a guilty verdict could not have been obtained without the assistance of the alleged error. See *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003). Thus, the trial court did not err by admitting the recording into evidence.

And even if the issues had been preserved, the trial court did not abuse its discretion. Appellant alleges the recording shows him threatening the officers and threatening to kick the window of the patrol car, which constitutes bad acts and uncharged collateral crimes. But, “collateral-crime evidence, such as bad acts not included in the charged offenses, is admissible when relevant to prove a *material* fact in issue, but is inadmissible when the evidence is relevant *solely* to prove bad character or propensity.” *Wright v. State*, 19 So. 3d 277, 291-92 (Fla. 2009)(emphasis supplied). The admission of collateral-crime evidence is not considered *Williams*-rule evidence when it is inextricably intertwined with the charged offenses. *Id.* at 292. Evidence of other bad conduct may be admitted as inextricably intertwined with the charged offense when it is “a *relevant* and *interwoven* part of the conduct that is at issue.” *Id.* (emphasis supplied).

Here, Appellant’s behavior, demeanor, words, and acts are relevant to establish the material fact of impairment at the time of the crash, an element of the crime of DUI Manslaughter. § 316.193(1)(a), Fla. Stat. (2019). Accordingly, the inclusion of evidence of Appellant’s conduct was relevant to show impairment and was inextricably intertwined with the DUI Manslaughter charge. Thus, the trial court did not err in admitting the recording, and did not abuse its discretion. *See Dorsett v. State*, 944 So. 2d 1207, 1216 (Fla. 3d DCA 2006) (holding where evidence of a prior drug transaction went towards a material issue in dispute, there was no abuse of discretion in admission of the evidence).

III. The trial court properly assessed victim-injury points

Appellant argues the 120 victim-injury points for death on the Criminal Punishment Code Scoresheet were assessed in error as the evidence did not show, and the jury did not find, that the death of the victim was the direct result of any of Appellant’s crimes or convictions in this case.

“[T]he decision of a trial court to impose victim-injury points is subject to an abuse-of-discretion standard.” *Sims v. State*, 998 So. 2d 494, 504 (Fla. 2008) (citation omitted). “Victim injury shall be scored for each victim physically injured during a criminal episode or transaction, and for each count resulting in such injury whether there are one or more victims.” Fla. R. Crim. P.

3.701(d)(7). “Points for victim injury [are] added for each victim injured during a criminal transaction or episode. The injury need not be an element of the crime for which the defendant is convicted, but is limited to physical trauma.” *Florida Rules of Criminal Procedure Re: Sentencing Guidelines (Rules 3.701 & 3.988)*, 522 So. 2d 374 (Fla. 1988). The supreme court clarified that the “direct result” language included a causation element linking the death of the victim and the charged offense. *Sims*, 998 So. 2d at 505. A conviction under “vehicular homicide or any other offense in which the crime actually involved the impact that caused the death . . . would have satisfied the causation requirement for the imposition of victim-injury points.” *Id.* Here, Appellant was charged with DUI manslaughter, which satisfies the causation requirement as it links the death with the charged offenses. Therefore, the victim-injury points were properly assessed.

AFFIRMED.

LEWIS and ROBERTS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, Danielle Jorden, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Appellee.

Warrant #: 16-242

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

VS

Kenneth Lee Manhard

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Before me, the undersigned Circuit/County Judge, State of Florida, personally came Corporal-Traffic Homicide Investigator William A. Mathers, who, by me being duly sworn, deposes and says that he believes and has good reason to believe that the laws of the State of Florida are being violated in or by means of, the following vehicle or evidence of a crime is contained within or about the following described vehicle, now stored in Bay County, Florida, to-wit:

EXHIBIT A

A white, 2008 Hyundai Accent, bearing vehicle identification number KMHCM36C68U065035, believed to be currently at the Florida Highway Patrol Station located at 6030 County Road 2321, Panama City, FL 32404, which was owned by Olive Faye Manhard, and was operated by Kenneth Lee Manhard, on April 17, 2016.

Your affiant has probable cause to believe that the following items are upon or within such vehicle.

EXHIBIT B

What is commonly referred to as the "event data recorder" (EDR), and any retrievable information contained therein, possible biological evidence on the interior and/or exterior of the vehicle, possible physical evidence (paint transfers, gouges, evidence of fresh damage, etc.) on the exterior of the vehicle; any potential identifying evidence contained on the interior of the vehicle.

EXHIBIT C

On April 17, 2016, at approximately 4:05 a.m. Kenneth Lee Manhard did commit the offense of DUI Manslaughter contrary to 316.193.3c3a F.S.S. when he was in active physical control of a motor vehicle involved in a crash while under the influence of alcohol and/or drugs which resulted in the killing of a human being, Jerry Malachi Jones Jr (09/19/1985). Kenneth Lee



TC

Warrant #: 16-242

Manhard did also commit the offense of DUI Manslaughter contrary to 316.193.3c3b F.S.S. when he was in active physical control of a motor vehicle involved in a crash while under the influence of alcohol and/or drugs which resulted in the killing of a human being, Jerry Malachi Jones Jr (09/19/1985) and at the time of the crash, the person knew, or should have known, that the crash occurred; and the person failed to give information and render aid as required by 316.062 F.S.S. Additionally, on April 17, 2016, at approximately 4:05 a.m. Kenneth Lee Manhard did also operate a motor vehicle while his driver license or driving privilege is canceled, suspended, or revoked and by careless or negligent operation of the motor vehicle caused the death of or serious bodily injury to another human being, Jerry Malachi Jones Jr. (09/19/1985), in violation of 322.34(6)(b) F.S.S.

On April 17, 2016, the Florida Highway Patrol Tallahassee Regional Communication Center received notification of a traffic crash with injuries on State Road 30 (eastbound Hathaway Bridge) in Bay County, Florida. Trooper B. Gill was dispatched to investigate. Upon arriving on scene Trooper Gill established the crash involved a blue scooter, operated by a Jerry Malachi Jones Jr (09/19/1985). Trooper Gill learned the crash had resulted in fatal injuries to the scooter operator. Due to the nature of the injuries Trooper Gill secured the scene, and began to collect information. Your Affiant, Corporal W.A. Mathers, was dispatched to conduct a homicide investigation.

Your Affiant approached the crash scene on State Road 30 (eastbound Hathaway Bridge) from the west. Your Affiant noted that State Road 30 (eastbound Hathaway Bridge) in the vicinity of the crash scene had been cordoned off and secured by other Florida Highway Patrol Troopers. Your Affiant observed a blue 2015 TAOI Scooter, bearing Florida License Plate 3793RW, at final rest overturned on the south shoulder of the roadway facing in a northerly direction. The damage indicated the TAOI was struck from the rear before overturning.

Your Affiant made contact with Trooper Gill who informed me the initial crash involved the TAOI operated by driver. Trooper Gill informed me the driver of the TAOI had been identified as Jerry Malachi Jones Jr by his Florida Driver's License.

Your Affiant conducted a walk-through survey of the crash scene. Your Affiant started the survey by back tracking the path of Jones and the TAOI from their location of final rest. Your Affiant was able to trace the path of both Jones and the TAOI by various surface marks and debris to the Area of Collision (AOC) on the center eastbound lane of State Road 30 (Hathaway Bridge).

Your Affiant determined that the TAOI had been traveling eastbound on State Road 30 (Hathaway Bridge) on the center lane. The posted speed limit on State Road 30 (eastbound Hathaway Bridge) was 45 miles per hour. Your Affiant also observed that portion of State Road 30 (eastbound Hathaway Bridge) at the scene had a positive grade (uphill) and was comprised of concrete.

Based on the physical evidence Your Affiant determined the TAOI was traveling eastbound on

Warrant #: 16-242

the center travel lane of State Road 30 (Hathaway Bridge) when it was struck from behind. The TAOI continued eastbound before overturning and traveling from the center eastbound lane, across the outside eastbound and onto the eastbound shoulder coming to final rest on its right side. The operator of the TAOI was ejected from the scooter colliding with the surface of the bridge on the right lane of State Road 30 (eastbound Hathaway Bridge). While at the scene, TRCC was notified that the suspect vehicle was traveling westbound on State Road 30. Trooper L. Tavares was able to located the suspect vehicle as it entered the Exxon gas station parking lot located at 7624 US 98 Panama city Beach, Florida 32407 and subsequently detained the driver and awaited my arrival.

After clearing the scene Your Affiant traveled to the Exxon gas station parking lot. As Your Affiant did so, Your Affiant saw that there was a white Hyundai Accent bearing a North Carolina license Plate YND4469. Your Affiant also saw that Sergeant J.D. Johnson, who also responded to the Exxon gas station, was talking with the detained driver of the Hyundai. After approaching the detained driver, YOUR AFFIANT learned that his name was Manhard. While talking to Manhard, Your Affiant could smell the strong odor of an alcoholic beverage coming from him and stronger as he spoke. YOUR AFFIANT also noted that Manhard was belligerent and uncooperative. YOUR AFFIANT noted that there appeared to be glass shards on the front portion of his shirt also. While present, Your Affiant learned that Manhard had a valid North Carolina Driver's License belonging to Kenneth Lee Mawhard. Upon inspection of the Hyundai, YOUR AFFIANT noted that there was damage to the frontal portion of the vehicle along with damage to the windshield. YOUR AFFIANT noted that there was blood and hair/skin present in the windshield and blue transfer paint on the frontal portion which was consistent with striking the TAOI and the operator. Inside the Hyundai, YOUR AFFIANT noted that there was clothing in the front passenger seat along with glass shards which indicated no one was present in the front passenger seat at the time of the collision. YOUR AFFIANT noted that there was glass shards spread across the rear (back) seat from passenger side to driver side also indicating that there was no one present in the rear seats at the time of the crash. There was glass shards in the driver's seat with a void in the center of the seat which indicated that there was someone occupying the seat at the time of the collision. Based on the Manhard possessing a North Carolina Driver's License, the Hyundai bearing a North Carolina License Plate, glass shards in the Hyundai indicated that there was only a single occupant and glass shards on the front of Manhard's clothing, it was determined that Manhard was the sole occupant and in active physical control of the Hyundai at the time of the collision. Based on my observations of Manhard, evidence supporting that he was in active physical control of the Hyundai at the time of the collision which resulted in the death of another human being, Jerry Malachi Jones Jr, and subsequently leaving the scene failing to leave information or render aid, YOUR AFFIANT placed Manhard under arrest. Based on the before mentioned evidence, Manhard was transported to Gulf Coast Community Hospital by Trooper Tavares.

While traveling to Gulf Coast Community Hospital, Manhard continued being uncooperative and combative, kicking at the rear passenger window of Trooper Tavares's marked patrol car. After stopping in the parking lot of the Winn Dixie, Trooper Tavares, Corporal Bailey and Your Affiant placed a hobble on Manhard preventing him from doing harm to himself or State

TC

Warrant #: 16-242

Ed. V. Miller 115
Affiant

Sworn to and subscribed before me this 14 day of October, 2015.

Cpl. L. C. J. # 654
Witness/LEO/State Trooper

The above application for search warrant coming on to be heard and having examined the applicant under oath and the above sworn affidavit set forth and thereupon being satisfied that there is probable cause to believe that the grounds set forth in said application ~~and facts~~ do exist and that the law is being violated as alleged, I so find, and a search warrant is hereby allowed and issued.

Tony C. Campbell
Circuit/County Judge
14th Judicial Circuit of Florida

Warrant # 16-242

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

vs

Kenneth Lee Manhard

SEARCH/WARRANT

In the name of the State of Florida.

TO: Officers of the Florida Highway Patrol, the Sheriff and Deputy Sheriffs of Bay County, and/or Investigators of the State Attorney's Office, 14th Judicial Circuit; Special Agents of the Florida Department of Law Enforcement

WHEREAS, complaint on oath and in writing, supported by affidavit has been made before the undersigned Judge of the 14th Judicial Circuit, State of Florida, and WHEREAS said facts made known to me have caused me to certify and find that there is probable cause to believe the laws of the State of Florida have been and are being violated on, or by means of the vehicle, and evidence that is contained within as follows:

A white, 2008 Hyundai Accent, bearing vehicle identification number KMHCM36C68U065035, believed to be currently at the Florida Highway Patrol Station located at 6030 County Road 2321, Panama City, FL 32404

NOW, THEREFORE, you or either of your, with such lawful assistance as may be necessary, are hereby commanded, in the daytime or in the night, or on Sunday, and then and there search diligently for the property described in this warrant, secure same and to make a return of your doings under this warrant to the undersigned instanter or as soon as reasonably possible, and you are likewise commanded in the event you seize or take the property or materials mentioned in this warrant to safely keep same until otherwise ordered by a court having jurisdiction thereof, that you give proper receipt for said property and deliver a copy of this warrant to the persons from whom taken or whose possession it is found, or in the absence of any such persons, to leave said copy in the vehicle where the property or material was found, and you are further directed to bring the property so found and also the bodies of the persons in possession thereof before the court having jurisdiction of this offense to be disposed of according to law.

Witness, my hand and official seal this 18 day of April 2016.

Timothy C. Campbell
Circuit/County Judge



IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

vs

Kenneth Lee Manhard

SEARCH/SEIZURE WARRANT RETURN

And returned this 19 day of April, A.D. 2016.

Served by making search as within directed; upon which search I, Corporal William Mathers, found:

On April 19, 2016, Corporal William Mathers of the Florida Highway Patrol, searched and seized a white, 2008 Hyundai Accent, bearing vehicle identification number KMHCM36C68U065035, located at the Florida Highway Patrol Station, Panama City, FL 32404. The vehicle and its contents were moved from VTF (Vehicle Temporary Facility and placed into the VIF (Vehicle Impound Facility) at the Florida Highway Patrol, Panama City station and secured as evidence. Evidence swabs were taking from multiple surface and collected as evidence by FDLE (Florida Department of Law Enforcement).

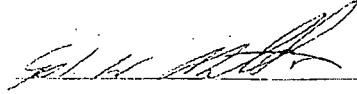
No further items.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

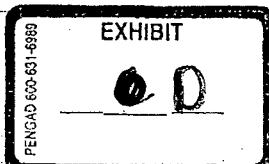
STATE OF FLORIDA
COUNTY OF BAY


Corporal William Mathers
FLORIDA HIGHWAY PATROL


Witness


Signature Officer Making Return

Corporal William Mathers
Printed Name/ Title



Warrant #: 16-254

J. W. Mabbs 1155
Affiant

Sworn to and subscribed before me this 21 day of April, 2016.

L.T. J. G. Grickland #0117
Witness/LEO /State Trooper

The above application for search warrant coming on to be heard and having examined the applicant under oath and the above sworn affidavit set forth and thereupon being satisfied that there is probable cause to believe that the grounds set forth in said application do exist and that the law is being violated as alleged, I so find, and a search warrant is hereby allowed and issued.

Timothy C. Campbell
Circuit/County Judge
14th Judicial Circuit of Florida

16-354

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA

vs

Kenneth Lee Manhard

SEARCH/SEIZURE WARRANT RETURN

And returned this 19 day of April, A.D. 2016.

Served by making search as within directed; upon which search I, Corporal William Mathers, found:

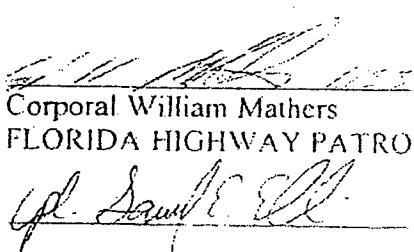
On April 19, 2016, Corporal William Mathers of the Florida Highway Patrol, searched and seized a blue, 2015 TaoTao Scooter, bearing vehicle identification number L9NPEACB1F1003321, located at the Discount Towing and Recovery 9309 Traina Lane, Panama City Beach, FL 32407. The vehicle and its contents were moved from Discount Towing and Recovery and placed into the VIF (Vehicle Impound Facility) at the Florida Highway Patrol, Panama City station and secured as evidence. Vehicle is being held as evidence for possible paint transfer match.

No further items.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

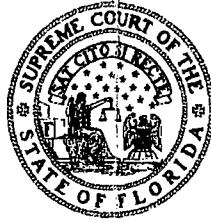
STATE OF FLORIDA
COUNTY OF BAY

Corporal William Mathers
FLORIDA HIGHWAY PATROL


Witness


Signature Officer Making Return

Corporal William Mathers
Printed Name/ Title



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
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PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

December 23, 2019

RE: KENNETH LEE MANHARD vs. STATE OF FLORIDA

CASE NUMBER: SC19-2133
Lower Tribunal Case Number(s): 1D17-5010; 032016CF001544XXAXMX
Lower Tribunal Filing Date: 12/19/2019

The Florida Supreme Court has received the following documents reflecting a filing date of 12/19/2019.

Notice to Invoke Discretionary Jurisdiction seeking review of opinion dated October 1, 2019, in which rehearing was denied November 19, 2019.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

DANIELLE JORDEN
SHARON S. TRAXLER
HON. KRISTINA SAMUELS, CLERK

EXH. B4-(E)

WALTER'S Crash Analysis & Reconstruction Services
walterscars@gmail.com Fax: (407) 834-1471 Cell: (407) 448-3606

Report of Findings

ACCIDENT RECONSTRUCTION

Prepared For:
FRITZ MANN
ASSISTANT PUBLIC DEFENDER
P.O. BOX 580
PANAMA CITY, FLORIDA 32402-0580

Scott A. Walter

Scott A. Walter
Senior Consultant

July 1, 2017

Exhibit 4

1-12

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Section I
INTRODUCTION

According to the traffic crash report and traffic homicide report a 2008 white Hyundai Accent, (V-1), driven by Kenneth Lee Manhard, (D-1), was traveling eastbound on US 98 on the Hathaway Bridge, approximately 1 mile east of CR 3031 in the center eastbound lane. Jerry Malachi Jones, Jr. (D-2), was driving a blue 2015 Taotao Scooter, (V-2) eastbound in the center eastbound lane of US 98 in front of V-1. D-1 failed to observe V-2 in front of him and struck V-2 in the rear with the right front of V-1 causing V-2 to overturn. V-2 came to final rest on the eastbound shoulder of the bridge. D-2 came to rest in the right eastbound lane of US 98. A second unknown vehicle struck D-2 and dragged him 118 feet to a second point of rest in the eastbound lane. A third vehicle then struck D-2 and dragged him 57 feet before he came to rest on the eastbound shoulder.

According to eyewitness, Debra Groves, she was the right front passenger in her car driven by Matthew Shavers. She described at least three and possibly four impacts to D-2 and his scooter after arriving on the scene of the crash that had occurred at an unknown time prior to her arrival. She did not see the initial impact to the scooter and did not have any idea how many times D-2 and his scooter were struck prior to her arrival. She witnessed a white SUV possibly a Chevrolet Tahoe strike D-2 as he was lying between the center and right eastbound lanes of US 98 on the Hathaway Bridge. She stated that when she first saw D-2 he was looking at her and following her car's movement as it passed D-2. She stated that Mr. Shavers pulled off the road onto the right shoulder east of D-2. She had just gotten out of her car when she observed a white Chevrolet Tahoe strike the scooter, then run over D-2 throwing him up into the air. As she went back to her car, she observed a small sedan either green or dark blue in color with dark tinted windows strike both the scooter and D-2. She heard another impact to

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the scooter by another vehicle that may have also struck D-2. The next vehicle that she saw run over D-2 was a black sedan with tinted windows and playing loud music with what appeared to be a Hispanic male that yelled out his window "wow, that's crazy" as he left the scene.

Walter's Crash Analysis & Reconstruction Services was retained to perform an accident reconstruction and determine if the evidence was consistent with the crash report, traffic homicide investigation and the charges resulting from the accident.

This report was prepared for the exclusive use of Fritz Mann and was not intended for any other purpose. My report was based on the information available to me at the time of my report, as described in **Section IV, BASIS OF REPORT**. Should additional information become available, I reserve the right to determine the impact, if any, any new information has on my opinions and conclusions and to revise my opinions and conclusions, if necessary and warranted through the discovery of new information.

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Section II CONCLUSIONS

- 1. The FHP Crash Report is not accurate.** The crash report authored by Trooper Brian Gil was not accurate in the fact that it only lists one vehicle (V-1) striking a scooter (V-2) and that is not consistent with the evidence, witness statements or depositions. Listing the 2008 Hyundai Accent driven by Kenneth Manhard as V-1 and the first and only vehicle that struck V-2 is not accurate. Although Trooper Gil identified damage on the Hyundai and Kenneth Manhard in the area of the Hyundai after 5:35 a.m., there was no evidence that indicated that Mr. Manhard was behind the wheel of the white 2008 Hyundai between 3:55 a.m. and 4:04 a.m. The narrative and diagram of his report is conjecture based on circumstantial evidence and not based on physical evidence or witness statements.
- 2. The FHP Traffic Homicide Report is not accurate.** The THI report lists a 2008 Hyundai Accent as V-1. There is no evidence to determine that the Hyundai was on the bridge at or around the time of the first collision. The damage to the front of the Hyundai was not consistent with the damage to the scooter. The nature of the damage to the front of the 2008 Hyundai Accent listed as V-1 in the aforementioned reports would not be consistent with the damage to the Tautau 50 scooter from the initial impact. There were blue and green marks on the front of the Hyundai. There was no source for the green paint on the Tautau scooter. There was no tread mark evidence on the front of the Hyundai. There was no tire mark evidence on the underside of the front bumper of the Hyundai. The damage to the scooter reflected that the front bumper of the striking vehicle overrode the rear tire of the scooter and severed the connecting supports for the seat, forcing the seat up. This damage would propel the rider of the scooter upward prior to striking the windshield. The dent on the front of the Hyundai, broken right headlight assembly, as well as damage to the windshield would reflect a straight rearward projection of an object that would

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have caused the damage and would be more consistent with a pedestrian collision.

The scale diagram provided by Corporal Mathers does not accurately reflect the first area of collision relating to this crash. The diagram is improperly oriented and there is no reference to any permanently fixed object or location on the bridge or nearest intersection. The location on Corporal Mathers diagram of the first area of collision was not consistent with a crash between a passenger vehicle and a motorcycle, scooter or bicycle. The collision of this nature would result in the two-wheeled vehicle being propelled in an upright position until the front wheel or handlebars are acted on by an outside force. Second, the driver of such two-wheeled vehicle will be propelled into the striking vehicle and carried for a distance that is dependant on the shape, speed and deceleration rate of the striking vehicle. Corporal Mathers' first area of collision on the reconstruction diagram would be more consistent with a second or third area of collision. This last mentioned scenario is consistent with the statements made by Debra Groves and Matthew Shavers.

3. The account of two witnesses, Debra Groves and Matthew Shavers, stated that they first noticed debris from the crash approximately 50 yards from the base of the bridge. They also stated the victim was not only conscious, but looked like he was attempting to get up when he was struck by the white SUV.
4. There was no evidence of white transfer paint in the area of the rear of the scooter. There was no evidence of parts from the Hyundai in the rear-damaged area on the scooter.
5. A witness by the name of Laura Ann Dee observed a 2008 white Hyundai Accent with damage to the hood, windshield and right front bumper in the parking lot of The Gold Nugget Gentlemen's Club. Ms. Dee followed the Hyundai when it left the parking lot. She followed him to the Exxon gas station, 7624 Front Beach Road, Panama City Beach, Florida 32407, She lost sight of the Hyundai at least two times, with one of those times being when she drove around the back of the Exxon station

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to wait for police. She directed police to the vehicle and Kenneth Lee Manhard who was outside his vehicle when the police arrived. There were no police officers that observed Mr. Manhard in actual physical control of the 2008 Hyundai. There were no witnesses that observed the 2008 Hyundai at or near the crash scene at or near the time of the crash. There are no witnesses that can place Mr. Manhard in actual physical control of the Hyundai at or near the crash scene at the time of the crash.

6. At the time that Corporal Mathers talked to the on-call state attorney, he had the vehicle with damage to the front bumper, headlight, hood and windshield with possible blood on the windshield and a small amount of blue and green transfer paint on the front of the Hyundai. He also had the glass shards from the windshield on Mr. Manhard and in the front and rear seat of the Hyundai. He didn't mention that there was a void of glass shards in the passenger front seat under the black jacket that could have been from a passenger that was wearing the jacket. The first photo of the black jacket in the front passenger seat of the Hyundai showed the glass shards in random places on the jacket, not consistent with being in the seat in that location when the windshield was shattered (**Photo 1 and 2**). Corporal Mathers also didn't mention that there was green transfer paint on the front of the Hyundai with no source for that paint on the scooter (**Photo 3**). He didn't mention if there were glass shards on the driver of the scooter to match with the evidence on the Hyundai. Corporal Mathers had very little to use as circumstantial evidence to tie the 2008 Hyundai and Mr. Manhard to the crash with the Taotao scooter, certainly not enough to determine that the Hyundai was the vehicle that was the first vehicle to strike the scooter and make an arrest or conduct a forced blood draw.
7. Dr. Jay Radtke, the District 14 Medical Examiner, could not associate which impact caused the injuries to the driver of the Tautau scooter, or which injuries were the life ending injuries.

Section III DISCUSSION

Observations

I reviewed all of the Florida Highway Patrol reports, F.D.L.E. laboratory and toxicology report, field note file, photographs, witness interviews, and depositions. I reviewed the complete medical examiner's report and photographs. I Photographed, measured, inspected and forensically mapped the scene. I physically inspected the 2008 Hyundai, (V-1) and the 2015 Taotao 50 scooter (V-2). I considered a scale diagram prepared by the Florida Highway Patrol and conducted my own forensic mapping of the scene. I also reviewed several video recordings.

Review of Police Report

According to the Florida Highway Patrol Traffic Homicide Investigation report by Corporal William Mathers, the following was reported. A white Hyundai Accent, (V-1), was being driven east in the center eastbound lane of US 98 on the Hathaway Bridge by Kenneth Lee Manhard, (D-1). A blue 2015 Taotao 50 scooter, (V-2) driven by Jerry Malachi Jones, Jr. was traveling east in the center eastbound lane of US 98 on the Hathaway Bridge in front of V-1. V-1 failed to slow or take evasive action to avoid V-2 and struck the rear of V-2 causing it to overturn. V-2 came to final rest on the eastbound shoulder of the Hathaway Bridge and D-2 came to final rest in the right eastbound lane. From there, a second unknown vehicle struck D-2, dragging him 118 feet east before D-2 came to final rest a second time in the right eastbound lane. From there, a third vehicle struck D-2, dragging him 57 feet before coming to final rest on the eastbound shoulder of the Hathaway Bridge. Panama City Police Department notified FHP that there was a suspect vehicle located in the Exxon gas station parking lot with a broken windshield and blood on the vehicle. Trooper Tavares and a deputy sheriff located the vehicle and driver and took the driver into custody. Corporal Mathers traveled to the Exxon station and

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observed the damage to a white Hyundai Accent (**Photograph 5**). He noted that there were two strikes to the windshield with what he thought was blood around the top edge of the hole in the windshield (**Photograph 6**). He also noted the damage to the right front and blue transfer paint that matched the color of the scooter. He noted that there was a black jacket on the front passenger seat with glass shards and a plastic piece from the right "A" pillar. He noted that there were glass shards on the front seat and rear seats with a void in the driver's seat. He took photographs of the interior and exterior of the vehicle before going to talk to Mr. Manhard. Corporal Mathers noted there were glass shards on Mr. Manhard's clothing, but was unable to photographically record this evidence. Corporal Mathers smelled the odor of an alcoholic beverage on the breath of Mr. Manhard. He also noticed that Mr. Manhard's speech was slurred and he mumbled. He observed that Mr. Manhard's eyes were bloodshot and glassy as well as the red color of his face. He also observed that he appeared to be unsteady. Corporal Mathers asked the subject his name and the subject replied with Manhard. Corporal Mathers started to read Mr. Manhard the Miranda warning, but was advised that Trooper Tavares had already advised him of the Miranda warning and Mr. Manhard had invoked his right to speak with an attorney before questioning. However, the Miranda Warning in Corporal Mathers field note file indicates that when Trooper Tavares advised Mr. Manhard his rights under Miranda, he said he would give a statement. (**Miranda Warning – Page 25**) Corporal Mathers contacted the un-named on-call state attorney and explained his probable cause. He explained his preliminary findings, including: How he was able to locate V-1, how he was able to identify D-1 as the driver and sole occupant of V-1 at the time of the crash, D-1's uncooperative nature and the fact that he didn't have access to E-Warrants on his computer to obtain a warrant for the blood draw, should one be needed. The on-call state attorney concurred that he had probable cause to believe that V-1 was the suspect vehicle that began the chain of events and that D-1 was the sole occupant and in active physical control of V-1 at the time of the collision. Corporal Mathers then went to Trooper Tavares patrol car to inform Mr. Manhard that he was under arrest.

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D-1 was transported to Gulf Coast Community Hospital for a forced blood draw in which it took two nurses to take the two samples. Registered Nurse L. Pierre drew the first sample and Registered Nurse C. Rodriguez drew the second sample. After the blood draw Corporal Bailey transported D-1 to the Bay County Jail and asked that Mr. Manhard submit to a breath test, which he refused. After Corporal Bailey read Mr. Manhard implied consent, he continued to refuse to submit to the breath test.

On April 14, 2016, Corporal Mathers attended the autopsy of Jerry Malachi Jones, Jr., conducted a laser mapping of the scene, and interviewed Matthew Brian Shavers and Debra May Groves.

On April 19, 2016, Corporal Mathers picked up a DNA card with the DNA from D-2, at the District 14 Medical Examiner's Office, served a warrant on V-1 and had FDLE Crime Analyst, Taryn Emswiler photograph and process V-1. Corporal Mathers also turned the DNA card from D-2 over to Ms. Emswiler for comparison. He then examined V-1 and V-2 for mechanical deficiencies. The FDLE crime lab positively matched the blood on the windshield to D-2.

Analysis

Based on the photographs, traffic homicide investigation (THI), review of the statements, depositions, autopsy report, Laboratory reports and my forensic mapping of the scene with a Top Con total station, I determined the area of collision between V-1 and V-2 listed in the THI report was inaccurate. The photograph from the scene photos that was designated as the area of collision showed two marks on the concrete road surface. The light mark was from metal contact from the scooter. The second mark was a dark mark from the scooter's tire (**Photograph 4**). These marks would indicate that the scooter was already down when it was struck at this location. There were no photographs to show the roadway west of the point that Corporal Mathers listed as "Area of Collision". However, the statements made by Matthew Shavers and Debra Groves indicated that they observed debris starting approximately 50 yards (150 feet) from the base of the bridge.

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The area of collision listed on the THI report started between over 1000 feet from the base of the bridge.

The F.D.L.E. laboratory report for the blood sample taken from the windshield and compared to Jerry Malachi Jones, Jr. DNA sample indicated that he did make contact with the windshield of the 2008 Hyundai. However, There is no evidence that Mr. Manhard was the driver at the time of the crash. When I inspected the vehicles at the Florida Highway Patrol Station, I found evidence on the front of the 2008 Hyundai that would be consistent with the scooter being down at the time of impact. There is also evidence that would be consistent with a pedestrian crash on the front of the Hyundai which would indicate that Mr. Jones was either standing in the roadway at the time of collision or that he was already in the air from another vehicle's impact. The fact that there were lights out on the bridge (**Photograph 7**) and Mr. Jones was wearing all black clothing would make him almost invisible if he was a pedestrian from already being struck by another vehicle. In my inspection of the 2015 Taotao scooter, I examined the light bulbs on the rear of the scooter as well as what I could see of the headlight without disassembling it, and found no evidence that would indicate the lights on the scooter were on at the time of the crash. The Blood Kit that was used to collect the blood from Mr. Manhard listed a "Certification Of Blood Withdrawal Form" that only listed Registered Nurse L. Pierre as the person that was authorized to draw blood. There was no certification form for the person that drew the second sample, Registered Nurse Christian Rodriguez. (**Certification Of Blood Withdrawal Form – Page 23**) The F.D.L.E. laboratory report that tested Mr. Manhard's blood for the amount of Ethyl alcohol in his system at the time of the blood draw revealed 0.191 and 0.190 g/mL in 100 mL of blood. This amount of alcohol in the blood would indicate that he was over the legal limit of 0.08 percent at the time that his blood was drawn. However, there is no evidence or witness that can place Mr. Manhard in actual physical control of a motor vehicle at the time of the crash.

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The statements that Mr. Manhard supposedly made to Richard Waldrup while in the Bay County Jail would not be consistent with what Mr. Manhard knew about the case. He knew that he was on video and had witnesses confront him at Ms. Newby's Liquor Store prior to the time of the crash. He also knew that a person went onto the hood and windshield of the 2008 Hyundai and wasn't dragged underneath the vehicle. Mr. Waldrup stated that he heard Mr. Manhard say that he dragged the person so far it looked like a spilled bucket of red paint. Mr. Manhard would have no knowledge of this unless he saw photographs of the scene and would know that the blood trails on the roadway had nothing to do with the impact with the 2008 Hyndai.