

Wisconsin Supreme Court
Wednesday, March 14, 2018
1:30 p.m.

2014AP2187-CR

State v. Kyle Lee Monahan

Supreme Court case type: Petition for Review

Court of Appeals: District IV

Circuit Court: Lafayette County, Judge William D. Johnston, judgment affirmed; order reversed and causes remanded with directions

Long caption: State of Wisconsin, Plaintiff-Respondent-Cross-Appellant, v. Kyle Lee Monahan, Defendant-Appellant-Cross-Respondent-Petitioner

Issue presented: May a reviewing court find a trial error harmless by examining the evidence and drawing inferences in the light most favorable to the state? More specifically here, the Supreme Court reviews whether the Court of Appeals properly found that a guilty verdict in a homicide by intoxicated use of a motor vehicle case was not attributable to an admitted error.

Some background: The event at issue in this case is an August 2011, single-car accident outside Shullsburg involving Kyle Lee Monahan and his girlfriend, Rebecca Cushman. Both were thrown considerable distances from the car in which they were the sole occupants. Neither was wearing a seat belt. Cushman died; Monahan was seriously injured and had to be flown from the scene to a hospital for emergency surgery. Blood tests showed that both Monahan and Cushman were intoxicated; Monahan had a 0.14 Blood-alcohol content (BAC) and Cushman had a 0.112 BAC. According to a GPS evidence admitted at trial, the car was speeding at close to 100 miles per hour at the time of the accident.

Monahan's defense at trial was that Cushman had been driving. He and two other witnesses testified that Cushman had been driving when they left a party north of Shullsburg. Monahan also presented the testimony of a crash reconstruction expert who opined that, based on his investigation, it was possible that either Monahan or Cushman was the driver.

Monahan told first responders at the scene that he "guessed" he was driving or that he "probably" was driving and explained how he lost control of the vehicle. Monahan told a med-flight medic and nurse that he was the driver and, incorrectly, that he was wearing his seat belt.

Following emergency surgery, he informed a hospital nurse that he had gone too fast over a hill and lost control of the car. The state also presented testimony from a crash reconstruction expert whose investigation showed that Monahan was the driver. The state also introduced evidence that Monahan's DNA was found on the driver's side air bag.

GPS showed that the car travelled from the party to Shullsburg, where it stopped for two minutes. The car then drove east of Shullsburg for four minutes until the accident occurred. Monahan wanted to introduce GPS evidence about the drive from the party to Shullsburg because he said it would reveal patterns that showed Cushman was driving the vehicle when the crash occurred. However, the trial court agreed with the state and allowed GPS evidence only for the Shullsburg-to-accident leg of the trip, indicating other data was inadmissible because it was "propensity evidence, you are having character, habit evidence, other acts evidence."

On appeal, Monahan argued that the trial court erred in excluding the GPS data of the car's high speed during the party-to-Shullsburg leg of the trip. The state conceded error. It wrote

in its appellate response brief that it “agrees with Monahan that the trial court erred when it excluded the [party-to-Shullsburg] speed evidence as inadmissible other acts evidence. The vehicle’s speed after it left the [party] was not other acts evidence but part of the continuum of facts relevant to the crime.”

Monahan argued that the prosecutor during closing arguments gave the jury the false impression that Cushman was not the at-fault driver because she would never have driven so fast given her unfamiliarity with the roads. Monahan considers this a misleading assertion given that the prosecutor knew: (1) that several witnesses testified that Cushman had driven away from the party; and (2) that the excluded GPS data showed high-speed driving had occurred during the party-to-Shullsburg leg of the trip. The Court of Appeals ruled that the exclusion of the party-to-Shullsburg GPS data was error, but it was harmless error.

Before the Supreme Court, Monahan argues, among other things, that a reviewing court cannot use a jury’s credibility determination as proof that an error is harmless when the error at issue is that the jury did not hear evidence it should have heard.