

Hernandez v. County of Los Angeles (2014) 226 Cal.App.4th 1599

Evidence of decedent's use of medical marijuana was inadmissible where defendant failed to establish a causal connection between the marijuana use and the decedent's injuries.

FACTS AND PROCEDURAL POSTURE

At about 5:40 a.m., February 28, 2010, Eric Lauderdale was driving a Cadillac in the fast lane of southbound highway 110 through Los Angeles when he got a flat tire. As he began to move to the right, he became worried about damaging his new rims, so he either stopped, straddling the two leftmost lanes, or was moving very slowly to the right. Randy Hernandez was in a Land Rover, driving behind Lauderdale at the time. The vehicles collided, and ended up disabled in the fast lane. Hernandez called 911. Initially, he stayed in his vehicle, but when a passing car caused heavy debris to fly up and hit his car, he exited the vehicle. Hernandez and Lauderdale were standing outside the vehicles, waiting for police to arrive, when an LA County Sheriff's Deputy, Ted Broadston, hit the Cadillac at full speed. The police car glanced left, travelled along the barrier, and struck both Hernandez and Lauderdale. Hernandez was killed.

Hernandez's minor daughter, Jocelyn, brought a negligence action against Broadston and the County. Because Hernandez had a medical marijuana card, Jocelyn moved in limine to exclude evidence of Hernandez's marijuana use on the grounds that the County could not show that his marijuana use was causally connected to his death, and was therefore irrelevant. In opposition, the County argued that Hernandez's marijuana use was probative to his operation of his car, and to his decision making after the initial accident occurred, such as his decision to stand outside his vehicle. The trial court permitted introduction of evidence of Hernandez's marijuana use.

At trial, plaintiff's expert testified that based on the level of marijuana in Hernandez's system, he likely had not ingested marijuana since the day before the accident, and that since most of the effects of marijuana would have worn off in three to four hours, Hernandez's driving skills would have been normal at the time of the accident, and his decision making would not have been impaired.

Defense expert testified that in her opinion, Hernandez had used marijuana five to six hours before his death. She explained that marijuana slows down thinking, and affects judgment and perception reaction time. She could not quantify the level of impairment at the time of the accident, and did not have an opinion that Hernandez's marijuana use caused the accident.

The trial court gave a jury instruction that "A person is not necessarily negligent just because he or she used drugs. However, people who take drugs must act just as carefully as those who do not." In closing argument, defense counsel repeatedly brought up the marijuana use. The jury determined 51% fault for the County, 35% for Lauderdale, and 14% for Hernandez. Judgment was entered for Jocelyn in the amount of \$280,500.

Jocelyn moved for a new trial, based in large part on a declaration of a juror, who had temporarily refused to participate in deliberations when the other jurors repeatedly brought up the marijuana use, and their own opinions about marijuana use and its effects. The county submitted declarations and questionnaires from other jurors which indicated that the marijuana was but one of many factors discussed during deliberations. The court denied the motion. Jocelyn appealed.

DISCUSSION

On appeal, Jocelyn contended that evidence of Hernandez's marijuana use was irrelevant, was inadmissible character evidence, and was far more prejudicial than probative within the meaning of Evidence Code section 352. She further contended that had evidence of marijuana not been admitted, it was reasonably probable that the jury would have reached a result more favorable to her.

The court agreed. Because the defense expert could not quantify the level of impairment at the time of the accident, did not form an opinion that marijuana use caused the accident, and could not say that marijuana use caused Hernandez's death, the County had not shown that the marijuana was a substantial factor in causing Hernandez's injuries. The court also noted that the County admitted in closing argument that there was no evidence that the marijuana use contributed to the death, but invited the jury to speculate about the effects of the marijuana anyway. Evidence of the use of marijuana was substantially more prejudicial than probative. Accordingly, evidence of marijuana use should have been excluded.

Additionally, the suggestion by defense counsel, in closing argument, that Hernandez did not have a legitimate medical need for marijuana, or that marijuana was not a legitimate treatment option, was impermissible character evidence.

The court found that it was reasonably probable that a result more favorable to Jocelyn would have been reached if evidence of Hernandez's marijuana use had been excluded. In the absence of speculation by the jurors about the use and effects of marijuana, it was unlikely that the jury would have attributed 14% of the fault to Hernandez.

Reversed and remanded for a new trial.