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Fort Worth Star-Telegram (TX)

July 24, 2003

Section: Metro

Edition: ARLINGTON

Page: 1

Jury gives probation in traffic death

ANTHONY SPANGLER

Star-Telegram Staff Writer

ARLINGTON--A 23-year-old Arlington man was sentenced to 10 years' probation Wednesday for killing his best friend in a drunken-driving accident last fall in Mansfield.

Damien Brock, who cried throughout the punishment phase of the trial, pleaded guilty Monday to a charge of intoxication manslaughter for the Sept. 14, 2002, traffic death of Timothy Berg, 22, of Arlington.

In tearful testimony Tuesday, Brock said he accepted responsibility for Berg's death.

The seven-woman, five-man jury deliberated 90 minutes before recommending the sentence, which included a \$10,000 fine. District Judge Sharen Wilson accepted the jury's recommendations and added 180 days' jail time.

After the trial, jurors said the wreck seemed to change Brock's life.

"When we first saw him during the jury selection, I think he was scared to death," said juror Sandy Brooks, 49, of Fort Worth. "But I really felt like he was sorry for killing his friend."

Brock and Berg had been drinking for several hours before riding in Brock's two-door 2002 Honda Civic about 4:30 a.m. on West Broad Street in Mansfield. Brock lost control of the car and struck a bridge abutment. Berg died about eight hours later at a Fort Worth hospital.

After the sentencing, Berg's mother, Laura Berg, addressed Brock in court during a victim's impact statement.

"I cannot describe the hole in my heart," she read from a statement. "I am so angry at you, Damien. I never heard you say you

were sorry. Your life is moving forward. But Tim's life is over."

Prosecutors urged the jury to send Brock to prison and send a message to the community about drunken driving.

"Tim Berg lost his life that night, and something has to be done to deter that kind of behavior," Assistant District Attorney Jesse McClure said in closing arguments.

Brock's attorney, **Wes Ball**, focused on his client's remorse in pleading for probation.

"He has taken responsibility and pleaded guilty. He will forever be a convicted felon," he said in closing arguments. "Don't send him to gladiator school with people who have committed acts of evil."

Brock crashed his car on a two-lane road in a 35 mph zone. Police said Brock's car was traveling about 57 mph just before the crash.

Brock and Berg began drinking beer in the late-night hours of Sept. 13 at the pizza restaurant where they worked as delivery drivers. They continued drinking at a south Arlington Hooters restaurant and at Berg's Arlington apartment.

A Tarrant County medical examiner's toxicologist testified that Brock's blood alcohol level was 0.135 percent. Another medical examiner expert, Mark Fondren, said Brock probably consumed 12 to 15 beers before the crash, judging from the blood test he took two hours after the wreck.

Brock cried throughout the trial, including while testifying that he accepted responsibility for his friend's death.

"I got myself into big trouble with the law and lost my best friend. And I have to live with it for the rest of my life," he testified Wednesday.

Prosecutor Rob Martinez said the jury did send a message by assessing the \$10,000 fine.

"The hope is that Mr. Brock takes advantage of this second chance," he said.

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Fort Worth Star-Telegram (TX)

September 23, 2000

Section: NEWS

Edition: FINAL

Page: 1

Evidence in slaying thrown out

Mansfield chief, others are faulted

Robert Tharp

Star-Telegram Staff Writer

A district court judge ruled Friday that Mansfield police Chief Steve Noonkester inappropriately struck a murder suspect, and the judge also threw out key evidence in the man's upcoming trial.

District Judge Everett Young ruled that police illegally took three written statements from Henry Lee McDonald that detailed the August 1999 kidnapping and slaying of Sheree Hopkins. He ordered attorneys in the case not to use the statements when the capital murder trial starts Oct. 2.

After a three-day hearing, the judge ruled that detectives failed to properly inform McDonald of his constitutional rights after his arrest. Young also ruled that Noonkester - who stands 6 feet 7 inches tall and weighs 270 pounds - used physical force against the handcuffed suspect.

Prosecutor Mike Parrish would not say how the judge's ruling will affect the case.

"We had three witness statements from a capital murder defendant. We don't have them now," he said.

Judy Redwine, Hopkins' aunt, said that without the confessions, prosecutors may have to call more witnesses.

"I think they still have enough to convict him," she said, adding that she is not upset with Mansfield police.

"They really have been very helpful to our family and tried their best," Redwine said.

Parrish said it is too early to determine whether Noonkester could face criminal charges for using force against McDonald.

Referring to testimony during the hearing, Young concluded that in two of the three written statements taken over a two-day period in August 1999, the detectives did not properly inform McDonald that he had the right to terminate his conversations with police.

Also, each of McDonald's three statements did not include required written notices indicating that he was aware of his rights and that he had waived them before talking to police. State laws require that police specifically warn suspects of their rights in print before taking written confessions.

"It gave Judge Young no choice. ... I've never had a statement in a capital murder case suppressed, let alone three." said **Wes Ball**, one of McDonald's attorneys.

Ball said Mansfield investigators made the same mistake when they took a confession from McDonald's co-defendant, Nathaniel White, who pleaded guilty to murder this year in exchange for a life prison sentence.

Ball said other, unrelated cases could be in jeopardy if investigators made the same mistake in those cases.

Bob Ford, a Fort Worth criminal appeals lawyer, said the error could give White grounds to appeal his conviction, although the case is complicated because he pleaded guilty.

"Just about any Tarrant County judge would have a problem with a suspect not being told you have a right to terminate this conversation. You have to have that right," he said.

Although Noonkester testified Friday that he did not strike or threaten McDonald, the judge said testimony by two witnesses - including a Mansfield police officer - indicated that the chief used physical force while he allowed the suspect to smoke a cigarette on the night of his arrest.

Ball also said police violated state laws by allowing McDonald, who was 17 at the time, to smoke cigarettes. McDonald is now 18 years old.

"There was inappropriate physical contact between Chief Noonkester and Mr. McDonald ... either a slapping, pushing or shoving while the defendant was in custody and handcuffed ... next to a police car with a dog in the back seat," Young said.

But Young ruled that Noon-kester's behavior did not "taint" some statements recorded on audio tape in which McDonald instructs police where to find a rusty knife and a gas can that were used in the slaying.

Ball said Noonkester's actions will resurface during the trial if the oral statements are used.

Noonkester is a witness in the case and cannot comment.

In addition to using McDonald's recorded statements leading police to the murder weapon, prosecutors plan to call two juvenile co-defendants who have already pleaded guilty to lesser charges with the agreement to testify against McDonald.

According to police reports, Hopkins, 33, was kidnapped while driving her Ford Mustang in Mansfield, was sexually assaulted and was stabbed 39 times with the rusty knife. Her killers then placed her in the trunk of her car and drove to a rural Johnston County road where her body was set on fire.

McDonald was arrested after police spotted him driving Hopkins' car. He was apprehended after he led police on a chase and wrecked the car.

Noonkester, 52, joined the Mansfield Police Department in 1989 as a patrol officer. He previously worked for 13 years on the Fort Worth police force. He served as acting chief in Mansfield on two occasions and was named chief in February 1997.

Mansfield Mayor David Harry said that he was disappointed by the judge's ruling but that he doesn't think Noonkester acted inappropriately.

"I'm not terribly concerned about the chief's actions," Harry said. "There have been multiple witnesses to that encounter, and all but one of them appeared to support the chief's explanation."

Mansfield City Prosecutor Bill Lane, who serves as the Police Department's legal adviser, accused McDonald's defense of trying to put Noonkester on trial.

City Manager Clayton Chandler also supported Noonkester, saying the chief shouldn't be criticized but "commended for solving this murder case and doing so very quickly."

Chandler acknowledged that the technical errors in documenting how the defendant was advised of his rights could result in additional training for officers.

"I'll leave that up to the police chief and the legal adviser to the Police Department," he said.

Chandler lauded what he called the increasingly community-friendly direction the Police Department has taken since Noonkester was hired. He cited bicycle and horseback patrols, the Citizens Police Academy, the Halloween program at Rose Park and other community-based programs initiated by the department's community resource office, which Noonkester helped create.

"Those programs have helped the department to get to know the community more," Chandler said. "It's fair to say that Steve and every member of that department are respected by the citizenry and businesses of the city."

Staff writer Christy Gonzales and correspondent Robert Cadwallader contributed to this report.

PHOTO(S): Head shots of McDonald; Noonkester

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