

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IRVIN RAY PRATER,

Defendant-Appellant.

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UNPUBLISHED

May 12, 1998

No. 199063

Calhoun Circuit Court

LC No. 96-000441-FH

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Defendant was convicted by a jury of operating a motor vehicle under the influence of intoxicating liquor causing death, MCL 257.625(4); MSA 9.2325(4). The trial court sentenced defendant to nine to fifteen years' imprisonment. Defendant now appeals as of right. We affirm.

This case arises out of an automobile accident on Beadle Lake Drive in Emmett Township, Calhoun County, in which defendant drove his pickup truck into the oncoming lane of traffic and collided head-on with a car driven by the victim, Jong Soon Seeley. The victim died as a result of her injuries.

Defendant first claims that the trial court erred in denying defendant's motion for funds to hire three expert witnesses. This Court reviews a trial court's decision whether to appoint an expert witness for an abuse of discretion. *In re Attorney Fees of Klevorn*, 185 Mich App 672, 678; 463 NW2d 175 (1990). In requesting an expert witness at the expense of the state, a defendant must show "to the satisfaction of the judge . . . that there is a material witness in his favor . . . without whose testimony he cannot safely proceed to a trial." MCL 775.15; MSA 28.1252; *Klevorn, supra* at 678.

Defendant requested \$1,000 for purposes of hiring three experts -- an accident reconstructionist, an alcoholism expert, and a toxicologist or lab expert. Defendant claimed that without those experts, he was unable to present a complete defense in light of the expert testimony being presented by the prosecution. The prosecution intended to call three expert witnesses at trial: Officer Larry Church, an accident investigator; Robert Wills, an automobile mechanic; and Lawrence Simson, a forensic pathologist. Also included in the prosecutor's witness list were Susan Ashley, the medical

technician who drew defendant's blood in the emergency room, and Isaac Karim, the medical technician who performed defendant's blood alcohol test. After reviewing the preliminary examination transcript, the trial court denied defendant's motion because the court did not believe that the requested experts could significantly contribute to defendant's case.

Defendant does not make specific claims that the testimony regarding the accident given by Officer Church was somehow incorrect or misleading; rather, defendant generally maintains that he was entitled to an independent investigation of the accident. However, defendant's general desire for an independent investigation does not constitute a sufficient showing that he could not "safely proceed" to trial without an accident reconstructionist. This case can be distinguished from *Klevorn, supra* at 679, in which this Court held that the trial court abused its discretion by refusing to appoint an accident reconstructionist at public expense. In *Klevorn*, the defendant specifically argued that the tests and conclusions of the prosecution's experts were faulty, that their results were in error, and that their testing procedures were inadequate. *Id.* In this case, defendant has not made any such allegations.

In addition, evidence favorable to defendant regarding the poor road conditions was introduced at trial without the use of a defense expert. Officer Church testified that the road had just been resurfaced with a "seal coat," a layer of tar covered by a layer of loose pea stone. He testified that the pea stone was dirty and created the same type of driving conditions as a dirt road. Officer Church also testified that there were no lines on the road because the seal coat had just been laid, that the street lights near the scene were not working, and that there was no evidence that defendant was speeding. Officer Crawford testified that the accident occurred in a curved section of the road. Finally, Sidney Combs, a witness to the accident, testified that he could only drive about twenty miles per hour because the dust from the road caused poor visibility.

With regard to defendant's claim for an alcoholism expert and a toxicologist, defendant has also failed to demonstrate why an expert paid for at public expense would advance his defense. Defendant suggests only that those experts were needed to impugn the prosecutor's evidence regarding defendant's blood alcohol content. Susan Ashley testified at trial regarding the procedure she used to draw defendant's blood, while Isaac Karim explained the procedure that he used to test defendant's blood and the controls that were used. Both witnesses were subject to cross-examination by defense counsel, and counsel elicited testimony from Karim that his test results had been incorrect two or three times in the past eight years. Once again, defendant failed to demonstrate how an expert in alcoholism or toxicology would have been of any significant benefit at trial. Hence, the trial court did not abuse its discretion in denying defendant's motion for the appointment of expert witnesses. *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995).

Next, defendant claims that the trial court erred in permitting the admission of a photocopy of the log sheet kept for the testing instrument that was used to measure defendant's blood alcohol content. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995).

MRE 1003 provides that a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Here, defendant does not question the authenticity of the original log sheet from which the admitted exhibit was copied. Indeed, Isaac Karim identified his handwriting on three pages of the log and testified that he recorded the results of defendant's blood alcohol test as .32 percent. Karim further stated that the document was an accurate copy of the log sheet. Under MRE 1003, the prosecutor was not required to show that the original log sheet was lost, destroyed or otherwise unavailable. Defendant failed to identify any circumstances that made it unfair to admit the copy rather than the original. We find no abuse of discretion in the trial court's decision.

Finally, defendant claims that his nine- to fifteen-year prison sentence was disproportionate. Provided permissible factors are considered, appellate review is limited to whether the sentencing court abused its discretion. *People v Odendahl*, 200 Mich App 539, 540-541; 505 NW2d 16 (1993). A sentencing court abuses its discretion when it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). Considering defendant's prior misdemeanor conviction for driving while impaired in November 1991, his extremely high blood alcohol level at the time of the accident, the fact that an innocent person was killed as a result of defendant's conduct, and the need to deter others from driving under the influence of alcohol, we conclude that defendant's sentence was proportionate. The trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Maura D. Corrigan

/s/ Joel P. Hoekstra

/s/ Robert P. Young, Jr.