

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICIA ANN STEELE,

Defendant-Appellant.

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UNPUBLISHED

January 12, 2010

No. 285641

Grand Traverse Circuit Court

LC No. 08-010487-FH

Before: Cavanagh, P.J., and Fitzgerald and Shapiro, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right her conviction of operating a motor vehicle while intoxicated (OWI) causing death, MCL 257.625(4)(a), OWI causing serious impairment of a body function, MCL 257.625(5), OWI, second offense, MCL 257.625(9)(b), and transporting an open container of alcohol, MCL 257.624a. We affirm.

Defendant's convictions arose out of head-on collision between her minivan and another car. The collision killed the passenger in the other car and seriously injured the driver. Defendant did not deny at trial that she was driving while intoxicated, but she claimed that a third, unidentified car was the superceding cause of the collision. Specifically, defendant claimed that the third car struck her minivan's rear bumper on the passenger side causing her to careen into the oncoming lane of traffic.

Defendant sought a continuance on the ground that she needed an opportunity to inspect the collision scene unimpeded by snow. The trial court denied defendant's motion without prejudice. Defendant now claims that the denial was an abuse of discretion and that the lack of a continuance deprived her of her constitutional right to present a defense. We review the trial court's ruling on the continuance for abuse of discretion. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). We review de novo the legal question of whether the trial court denied defendant her constitutional right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

We find no constitutional violation. Although a defendant has a constitutional right to present a defense, the right is subject to procedural and evidentiary rules. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). Here, the trial court properly found that defendant's reasons for seeking the continuance were speculative, but offered defendant the opportunity to

renew the request if less speculative information became available. Further, the existing evidence afforded defendant a sufficient opportunity to present her third-car theory to the jury. Further, her own expert testified that any roadway evidence indicative of the third car would be minimal. Given the speculative nature of the evidence sought, the denial of the continuance did not present constitutional issue.

Similarly, we find no abuse of discretion in the trial court's ruling. The burden is on the moving party to present good cause for the continuance. *Jackson*, 467 Mich at 276. Given that the continuance presented no constitutional issues, defendant must show that "'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999), quoting MCL 769.26. Defendant has failed to meet her burden. The record contained nothing to support defendant's claim that the evidence was necessary to allow her expert to analyze the collision. To the contrary, all of the experts, including defendant's expert, appeared to have access to the same set of data. Defendant's expert used the data to criticize and refute the opinions of plaintiff's experts. Defendant does not explain how any additional evidence that may have been gleaned from a roadway inspection would have altered the testimony or the verdict. Accordingly, defendant has failed to establish prejudice arising from the denial of the continuance.

Defendant, in her pro per supplemental brief, also contends that the police and the prosecutor engaged in misconduct. We review these unpreserved claims for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Having examined the record, we find no evidence of misconduct. Defendant claims that the police suppressed evidence and acted in bad faith. The trial testimony negates these claims. The police officers on the scene testified that a witness had said the minivan may have been hit from behind by a third car. The police testified that they examined the scene for evidence of a third car. There is no indication that they omitted any evidence indicative of a third car; rather, they simply found no such evidence.

Additionally, the trial evidence addressed the third car allegation in detail. The jury received all of the information regarding the third car, and in particular, the information concerning inconsistencies in an eyewitness's account of the collision. When a witness recants or changes a story, it is the province of the jury to determine which account is the truth. See *People v Morrow*, 214 Mich App 158, 165; 542 NW2d 324 (1995). Defense counsel cross-examined the eyewitness extensively about the apparent changes in her account, particularly with regard to whether a third car struck defendant's minivan prior to the collision. In addition, the jury heard a recording of the complete police interview of this witness, during which defendant claims the officer improperly influenced the witness. The jury thus had sufficient information with which to evaluate the eyewitness's testimony. This Court defers to the jury's assessment of the eyewitness's credibility. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Affirmed.

/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald  
/s/ Douglas B. Shapiro