

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERI LYNN CHAFFEE,

Defendant-Appellant.

UNPUBLISHED

June 19, 2012

No. 299758

Kalkaska Circuit Court

LC No. 09-003107-FH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of operating a motor vehicle while under the influence (OWI) of a controlled substance causing death, MCL 257.625(4)(a), and one count OWI of a controlled substance causing serious impairment of a bodily function, MCL 257.625(5). Defendant was sentenced to 43 to 180 months in prison for the OWI causing death conviction, and to 23 to 60 months in prison for the OWI causing serious impairment of a bodily function conviction. Defendant appeals as of right. For the reasons set forth in this opinion, we affirm the convictions and sentences of defendant.

On November 14, 2008, defendant was involved in a nearly head-on collision that resulted in the death of Mary Ann Harrier and serious injuries to Dean Harrier. There was testimony indicating that before the collision, respondent was driving erratically, weaving into oncoming traffic and following very closely behind a number of vehicles. One of the witnesses to defendant's erratic driving was an off-duty sergeant with the Grand Traverse County Sheriff's Department, who had been forced to the shoulder of the road to avoid defendant's car and then witnessed the accident through his rear view mirror. He drove to the accident site, informing his daughter to telephone 911. Two Kalkaska County Sheriff Deputies responded to the 911 call. At the scene, defendant admitted to Kalkaska County Sheriff Deputy Johnson that she had taken Xanax (Alprazolam) and Ambien (Zolpidem), both of which had been prescribed. In addition to these medications, a prescription bottle of morphine sulfate was found in her purse. Johnson retrieved defendant's medications from the purse defendant identified as belonging to her; namely, bottles of Xanax, Ambien, and morphine sulfate. Johnson noticed that there were broken pills in the Ambien bottle and after counting the contents, including the broken tablets, he determined that the bottle contained the equivalent of 26 tablets, despite the fact that the prescription was for 30 tablets. Johnson then inquired of defendant why there were only 26 Ambien pills in the bottle, but she did not provide an answer.

Based on the crash and his interactions with defendant, Johnson drafted a search warrant for defendant's blood to check the level of medication defendant had ingested. Johnson went to the hospital to have defendant's blood drawn after the warrant had been authorized. He eventually returned the blood sample to the sheriff's department and secured the sample for testing.

Jeffrey French, a forensic scientist with the State Police, eventually analyzed the blood sample taken from defendant. Because of holiday vacations, the laboratory was behind schedule and most samples took about two to three months to process from the time they were received. In this case, French began the day-long extraction process on January 25, 2009, and the samples were then run over the course of four days. Defendant's blood showed a concentration of 55 nanograms per milliliter (ng/ml) of Alprazolam, 18 ng/ml of morphine, and 206 ng/ml of Zolpidem. French completed his report on February 2, 2009. As a consequence of this delay, defendant was not charged until February 10, 2009.

John Lucey, an employee of the drug analysis unit of the Michigan State Police Grayling Forensic Laboratory, later analyzed the prescription drugs and confirmed that they contained Xanax, Ambien, and morphine. Xanax and Ambien are schedule 4 substances with medical value but also a potential for abuse whereas morphine is a schedule 2 substance with some medical use but a high potential for abuse.

Dr. Michele Glinn, French's supervisor, was qualified as an expert in forensic toxicology.¹ She testified that Xanax is generally used as an anti-anxiety medication, and that the level in defendant's blood was consistent with therapeutic levels, which can be as high as 100 ng/ml. Glinn further testified that morphine is a painkiller, and the level found in defendant's blood could be within therapeutic levels for someone taking the drug on a regular basis. However, it was "not a small amount," and Glinn would expect it to have some effect on defendant's ability to drive. Glinn testified that Ambien has a short half life of two to three hours, and is designed to leave no lingering effects in the morning if someone takes it before bed. However, the literature advises that an individual should lie down after taking the drug and not drive for at least eight hours. The therapeutic range is generally 150 ng/ml or below, but defendant's level was within the high end of laboratory studies indicating that the dosage had been recent. Glinn stated that all three drugs operate on the central nervous system and can cause sleepiness and drowsiness. Moreover, she stated that the effects can be exaggerated when the drugs are taken in combination and that the combination could have had an effect on a person's ability to operate a motor vehicle. Glinn would expect that defendant would have been impaired but she could not say what degree of impairment would exist, however she testified that she would expect that defendant would have appeared sedated.

The jury convicted defendant on the charges as indicated above, and the trial court sentenced defendant. This appeal then ensued.

¹ Dr. Glinn was unable to testify at trial, so both parties stipulated that her testimony from the preliminary examination would be played at trial.

On appeal, defendant first argues that the trial court erred in admitting testimony and physical evidence regarding levels of morphine and Xanax in defendant's blood, asserting that the level or nature of impairment with respect to these medications could not be determined with certainty and that it therefore did not make impairment more probable than it would have been absent the evidence. We review this preserved issue for an abuse of discretion. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). An abuse of discretion occurs where the result falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Under MRE 402, evidence must be relevant in order to be admissible. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *People v Small*, 467 Mich 259, 264; 650 NW2d 328 (2002). Even where relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." MRE 403. Under this standard, there exists no total prohibition on the introduction of prejudicial evidence. Rather, it will only be excluded where it is unfairly prejudicial. In other words, it must be excluded where "there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 596 NW2d 607 (1999).

We cannot find that the trial court abused its discretion in the introduction of the challenged evidence. The concentration of Xanax and morphine in defendant's blood was relevant because it made it more probable that defendant was operating her vehicle while under the influence of controlled substances. Forensic toxicologist Dr. Michele Glinn testified that morphine and Xanax could affect someone's ability to drive a car. Further, Glinn testified that a combination of these two drugs and Ambien could produce an exaggerated affect on one's ability to function because all three are central nervous system depressants that can result in drowsiness and affect reaction time. Moreover, defendant denied taking morphine when questioned at the scene of the accident, making the presence of a measurable amount of morphine in her bloodstream relevant to the question of whether she was operating under the influence of controlled substances.

In addition to being highly relevant, the probative value of this evidence was not substantially outweighed by the risk of prejudice to defendant. Defendant argues that she was prejudiced because the evidence implied that she was more impaired than could be proven. However, given Glinn's testimony about the potential combined effects of these substances on defendant's ability to operate a vehicle, the evidence was highly probative as to whether defendant was operating under the influence. Since the combination of drugs found in defendant's blood directly related to the central issue of whether defendant was operating a motor vehicle under the influence of controlled substances at the time of the accident, the trial court did not abuse its discretion in admitting the evidence, since its probative value was not substantially outweighed by the risk of prejudice to defendant. Accordingly, there was no error.

Next, defendant argues that the pre-arrest delay in her case, attributed to a laboratory back-up in processing blood tests, violated her due process right to a fair trial. We review the trial court's denial of defendant's motion to dismiss because of pre-arrest delay for an abuse of discretion. *People v Herndon*, 246 Mich App 371, 389; 633 NW2d 376 (2001). Delay between

the commission of an offense and the time of arrest is not in and of itself a due process violation. *People v Patton*, 285 Mich App 229, 236; 775 NW2d 610 (2009). In order to establish a delay requiring dismissal, a defendant must show that (1) actual and substantial prejudice resulted from the pre-arrest delay and (2) the prosecution intended to use the delay to gain a tactical advantage. *People v White*, 208 Mich App 126, 134; 527 NW2d 34 (1994). The defendant must demonstrate more than merely speculative prejudice; he or she must show that the delay meaningfully impaired the ability to defend against the charge and that the outcome was likely affected. *Patton*, 285 Mich App at 237. Once defendant has demonstrated such prejudice, the prosecution must persuade the court that the reason for delay justified that prejudice. *People v Cain*, 238 Mich App 95, 109; 605 NW2d 28 (1999).

Defendant's main argument on this issue is that the delay resulted in the destruction of her vehicle² prior to her arrest. Coupled with the substandard investigation³ conducted some time following the accident, defendant asserts that she suffered actual prejudice caused by the delay in analyzing her blood sample. We cannot agree because regardless of the reasons for or fault associated with the delay, defendant falls far short of establishing actual and substantial prejudice. Defendant's arguments as to resultant prejudice amount to mere speculation. Defendant's expert on accident reconstruction and automotive engineering testified that there had been only 21 total occurrences of tie rod problems or ball/joint separations that could have caused the crash among all vehicles of the same make and similar year. Further, he testified that the photographs of the vehicle made it appear upright and drivable, suggesting these were not the problem in this case. He also testified that the vehicle itself is the cause of accident in only about five to ten percent of cases. Because defendant cannot show that having access to the vehicle would have likely allowed her to defend the charge, and the denial of access did not likely affect the outcome of the case, defendant cannot establish a due process violation. Having failed to demonstrate actual and substantial prejudice, defendant was not entitled to dismissal as a result of the pre-arrest delay. See, *United States v Marion*, 404 US 307, 324-326; 92 S Ct 455; 30 L Ed 2d 468 (1971).

Affirmed.

/s/ Stephen L. Borrello

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

² The parties agree that defendant's vehicle was sold to the tow driver to pay for the towing fee and then destroyed prior to defendant's arrest. The prosecution asserts that defendant's vehicle was released under the mistaken assumption that it had been inspected.

³ The traffic crash reconstruction specialist did not begin his investigation of the crash until July, 2009, almost nine months from the date the accident occurred and approximately five months after defendant was charged.