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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/21/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0068
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
) (Not for Publication -
ROYCE EUGENE ARMBRUSTER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2005-128006-001 SE

The Honorable Christopher Whitten, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Craig W. Soland, Assistant Attorney General
Attorneys for Appellee

The Law Office of Michael J. Dew Phoenix
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Attorney for Appellant

P O R T L E Y, Judge

¶1 Royce Eugene Armbruster was convicted and sentenced to
life in prison for first-degree murder, kidnapping, and two

counts of aggravated assault. He contends that the trial court denied him the right to present an involuntary intoxication defense by precluding evidence, argument, and an instruction relating to his claimed paradoxical reaction to a prescription medication. For the reasons that follow, we find no reversible error and affirm.

FACTS¹ AND PROCEDURAL BACKGROUND

¶2 Shortly after midnight on September 3, 2005, the victim called 9-1-1 and told the operator that she had been "hit in the face." As the operator tried to get the Chandler police on the line,² she heard the victim begin screaming. The police arrived and found the garage door open, and a car parked in the driveway with the driver's side door open. Police officers observed Armbruster through the front window of the house sitting in a living room chair, but he refused to open the door. Instead, he got up and began to walk toward the other end of the house, where the garage was located.

¶3 After the police found a cell phone in the garage that they believed had been used to call 9-1-1, they entered the house. As soon as they opened the door, they found the victim lying in a pool of blood; her throat had been severely cut. The

¹ We view the evidence in a light most favorable to affirming the conviction. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

² The victim's 9-1-1 call initially went to the Maricopa County Sheriff's Office.

medical examiner testified that the victim died from multiple blunt-force and sharp-force injuries, including bilateral subdural hemorrhages in her brain, a broken bone in her nose, several fractures of her cheekbone, five rib fractures, and thirteen stab wounds to her face, neck, and chest, including two that penetrated the carotid artery.

¶14 Armbruster was covered with blood and had scratch marks on his chest, shoulder, and back. DNA taken from under the victim's fingernails was consistent with the DNA profile belonging to Armbruster.

¶15 Approximately five hours after his arrest, the police obtained a blood sample from Armbruster. Armbruster's expert's test revealed a blood alcohol concentration of approximately 0.15 percent;³ therapeutic levels of hydrocodone, an opiate; and below-therapeutic levels of lorazepam,⁴ a benzodiazepine. Armbruster did not have a prescription for lorazepam, but during a search of the house, the police found several empty bottles of lorazepam prescribed for the victim.

¶16 Armbruster did not testify, nor did he dispute that he killed the victim. Rather, he attempted to claim that the murder was committed during a period of involuntary

³ The State's test revealed a 0.172 percent blood alcohol concentration.

⁴ Lorazepam is sometimes referred to as "Ativan," which, according to Dr. Edward French, is the drug company name for lorazepam. For clarity, we simply use the term lorazepam.

intoxication. The jury, however, was instructed on "voluntary intoxication," and was told that "the abuse or improper use of prescribed medication," was not a defense. Despite the instruction, Armbruster argued that the homicide was the result of mixing drugs and alcohol which sent him "into a rage" instead of "mellowing him out." Armbruster claimed that he did not abuse prescription medication, and was, therefore, not voluntarily intoxicated, because the "vast majority of us" have, on occasion, probably taken someone else's medication.

¶7 Armbruster was convicted as charged. During the penalty trial, the jury was unable to reach a verdict on whether to impose the death penalty, so the court declared a mistrial. Armbruster subsequently stipulated to a sentence of natural life for the first-degree murder conviction, in exchange for the dismissal of the death penalty notice. As a result, he was subsequently sentenced to natural life for the murder conviction; thirty-five years for the kidnapping conviction, which was to be consecutive to the murder sentence; and fifteen years for each of the aggravated assault convictions, to be served concurrently with each other but consecutive to the kidnapping sentence. Armbruster filed an appeal.

DISCUSSION

¶8 Armbruster argues that his constitutional right to present a complete defense was denied because the trial court

abused its discretion by denying his requested involuntary intoxication instruction. Specifically, he argues that the court improperly precluded the following testimony: (1) that he had bipolar disorder and had been prescribed benzodiazepine; (2) that "it's not uncommon for people who have been prescribed medications in the past with no ill effects" to borrow the same medications from others; and (3) that he suffered an alleged paradoxical reaction to lorazepam before the murder.

I.

¶9 The State filed a motion in August 2008 to preclude any evidence of Armbruster's drug and alcohol use on the night of the offenses. Although Armbruster argued that the evidence was admissible to show involuntary intoxication, the trial court ruled that he could present evidence of his "alcohol and drug use at the time of commission of the offenses," but deferred deciding whether Armbruster was entitled to an involuntary intoxication instruction.

¶10 Nearly a year later, the State moved to preclude evidence that Armbruster suffered a paradoxical reaction to medication. The State also sought to exclude evidence that Armbruster suffered from a bipolar disorder and that he could not form the requisite mental state because of intoxication. After an evidentiary hearing, the trial court again denied the

State's motion and deferred determining whether an involuntary intoxication instruction would be given.

¶11 At trial, Armbruster called Dr. Edward French, a University of Arizona pharmacology professor, who testified that while lorazepam is normally prescribed to reduce anxiety and induce sleep, it was possible that Armbruster had experienced a rare "paradoxical reaction" to the lorazepam, which caused him to become aggressive and hostile. Dr. French testified that a person with bipolar disorder "may be predisposed to a paradoxical reaction" to lorazepam. He testified, however, that it was "common knowledge" that lorazepam should not be mixed with alcohol.⁵ He also conceded that Armbruster did not have a prescription for lorazepam.

¶12 After Dr. French testified, the court asked Armbruster to provide an additional offer of proof to support a defense of involuntary intoxication. The court was advised that Dr. Robert Smith would testify that Armbruster suffered from a bipolar disorder at the time of the offense and that he had been prescribed lorazepam in the past for this condition. As a result, he claimed that an inference could be drawn that he

⁵ Police found an empty prescription bottle of oxycodone for Armbruster at the residence. The oxycodone bottle contained a warning which stated in pertinent part: "[D]o not drink alcoholic beverages when taking this medication." Dr. French testified that although oxycodone and hydrocodone are different medications, the same caution about alcohol use would apply to hydrocodone.

viewed taking one pill from the victim's prescription bottle "would be sufficient to cure what ailed him." He also argued that because loose diclofenac pills found on the bed were similar in size to lorazepam, it could be inferred that he mistakenly took the lorazepam thinking it was his prescription diclofenac.

¶13 After finding that *State v. McKeon*, 201 Ariz. 571, 38 P.3d 1236 (App. 2002) required evidence that prescription medication was properly used for the involuntary intoxication defense to apply, the trial court ruled that:

There is absolutely no evidence that's been presented to this jury, nor is there any in the defendants' offer of proof . . . which would allow a reasonable juror to infer that the defendant meets those qualifications that he was not taking medication in an abusive or improper way.

* * *

The evidence by Dr. Smith that the defendant was bipolar at the time of this offense and, therefore, was more likely under Dr. French's testimony to have suffered a paradoxical reaction which would equate to he was impaired by the use of the medication is no longer relevant . . . and Dr. Smith no longer has any relevant testimony, and he won't be called as a witness.

The court also ruled that the jury would not be instructed on involuntary intoxication, and Armbruster would not be able to argue his paradoxical reaction because it was irrelevant.

¶14 The trial court then allowed the State to call Dr. Elizabeth Kohlhepp, a psychiatrist, as a rebuttal witness. She testified that, during her interview with Armbruster, he admitted that he did not have a prescription for lorazepam and had used the victim's lorazepam because he had run out of his prescription of hydrocodone. Armbruster also told her that he had ingested as many as ten lorazepam pills, "several to numerous" hydrocodone pills, and had drunk "a fifth of hard liquor" earlier that evening. Dr. Kohlhepp also testified that Armbruster had a long history of abusing alcohol and drugs, both prescription and non-prescription, and that there was nothing "paradoxical or unusual" about him becoming "violent or rageful" when intoxicated.

¶15 Then, as now, Armbruster argued that the court denied his constitutional right to present a defense.

II.

¶16 The constitutional right to due process guarantees a criminal defendant "a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). The right to present a defense is, however, not limitless. The United States Supreme Court has stated that "the accused . . . must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the

ascertainment of guilt and innocence." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973); see also *United States v. Scheffer*, 523 U.S. 303, 308 (1998) ("A defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions," including application of reasonable evidentiary rules); *State v. Dickens*, 187 Ariz. 1, 14, 926 P.2d 468, 481 (1996) ("Although a defendant has a fundamental constitutional right to confront witnesses and present a defense, the right is limited to presentation of matters admissible under the ordinary rules of evidence, including relevance"); cf. *Montana v. Egelhoff*, 518 U.S. 37, 56, 60-61 (1996) (holding that statute barring defendant from presenting evidence of voluntary intoxication to rebut *mens rea* does not violate due process).

A.

¶17 We review trial court rulings on the admissibility of evidence for abuse of discretion. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 42, 140 P.3d 899, 912 (2006). Because "[a] defendant is entitled to an instruction on any theory reasonably supported by the evidence," *State v. Anderson*, 210 Ariz. 327, 343, ¶ 60, 111 P.3d 369, 385 (2005) (internal punctuation and citation omitted), we review the refusal to give an instruction for abuse of discretion. *Id.* We also review the court's ruling regarding the scope of closing argument for abuse of discretion.

State v. Pandeli, 215 Ariz. 514, 525, ¶ 30, 161 P.3d 557, 586 (2007).

B.

¶18 The trial court did not abuse its discretion by precluding testimony and argument about involuntary intoxication or paradoxical reaction, or by refusing to instruct on involuntary intoxication.

¶19 Since the enactment of Arizona Revised Statutes ("A.R.S.") section 13-503 (2010) in 1994, a person's voluntary ingestion of drugs, alcohol or the abuse of prescription drugs – "voluntary intoxication" – cannot be used to negate any criminal act or mental state. The statute provides, in pertinent part, that:

Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol . . . or the abuse of prescribed medications . . . is not a defense for any criminal act or requisite state of mind.

A.R.S. § 13-503.

¶20 Although the legislative language is clear, in *McKeon* we held that "involuntary intoxication, when it arises from the non-abusive use of prescribed medication, may be relevant to the question whether a person accused of a criminal act had the requisite state of mind." 201 Ariz. at 572, ¶ 2, 38 P.3d at 1237. There, McKeon testified that he used medications

prescribed to him intermittently, and several experts testified that the combination of the prescription medicines could cause delirium or severe cognitive impairment. *Id.* at 575-76, ¶¶ 22, 25, 26, 38 P.3d at 1240-41. Although we found that the trial court erred in instructing the jury that McKeon's "voluntary intoxication" cannot be used to negate any criminal act or mental state, we also found that the instruction was, under the facts, harmless and affirmed his double first-degree murder conviction. *Id.* at 577, ¶ 31, 38 P.3d at 1242.

¶21 Although Armbruster continues to argue that he became involuntarily intoxicated and suffered a paradoxical reaction after ingesting prescription medicine, it is undisputed that he did not have a current prescription for lorazepam. Moreover, it is undisputed that before the homicide he abused the medication by taking as many as ten tablets, mixing them with "several to numerous" hydrocodone tablets and a fifth of hard liquor. Based on the undisputed evidence and the fact that Armbruster presented no evidence which even suggests that he had a prescription for lorazepam or was using it "pursuant to medical advice," a necessary predicate to an involuntary intoxication instruction, see *McKeon*, 201 Ariz. at 572, ¶ 2, 38 P.3d at 1237, the trial court did not err by refusing to give an involuntary intoxication instruction.

¶122 Likewise, we find no merit in the argument that Armbruster was entitled to the instruction and argument because he had used lorazepam in the past without ill effect, and his expert, Dr. Smith, would have testified that it is not "uncommon" for people to borrow medication from others. In fact, it is illegal for a person to knowingly use or possess a prescription-only drug without a valid prescription. A.R.S. § 13-3406(A)(1) (2010). If involuntary intoxication was a defense whenever a person experienced an adverse reaction to a prescription drug that had once been prescribed but obtained without a prescription on the occasion at issue, the exception would swallow the rule.

¶123 Similarly, the fact that Dr. French was unable to distinguish whether Armbruster's actions were based on the possible paradoxical reaction to lorazepam or intoxication caused by alcohol and/or other prescription drugs does not assist Armbruster. Although Dr. French testified that only lorazepam, and not hydrocodone, was associated with paradoxical reactions, the fact that Armbruster ingested many lorazepam tablets without a prescription and mixed them with several hydrocodone tablets and a large quantity of alcohol further supports the trial court's finding that Armbruster abused both the unprescribed, and prescribed, medications. Consequently, the court gave the only instruction reasonably supported by the

evidence – voluntary intoxication, which is not a defense to any criminal act or state of mind. See A.R.S. § 13-503.⁶

¶24 Because the evidence failed to support a defense of “involuntary intoxication,” the claim of “paradoxical reaction” was irrelevant. Although he was precluded from arguing his paradoxical reaction, Armbruster was free to argue, as he did, that the State had failed to demonstrate beyond a reasonable doubt that the evidence supported the fact that he had the sufficient state of mind necessary to commit the premeditated homicide. See *State v. Marshall*, 197 Ariz. 496, 501, ¶ 15, 4 P.3d 1039, 1044 (App. 2000). Consequently, based on the record, the trial court did not abuse its discretion by precluding the argument that Armbruster had a paradoxical reaction to lorazepam.

⁶ This case is also distinguishable from two other Arizona cases involving intoxication. See *State v. Edmisten*, 220 Ariz. 517, 520-24, ¶¶ 5-21, 207 P.3d 770, 773-77 (App. 2009) (holding the trial court did not fundamentally err in failing to clarify any ambiguity in its involuntary intoxication instruction, which the trial court had given on evidence that defendant’s girlfriend had secretly slipped two Ecstasy pills into his drink, which caused him to become disoriented); *State v. Boyd*, 201 Ariz. 27, 31, ¶¶ 19-20, 31 P.3d 140, 144 (App. 2001) (holding that strict liability statute prohibiting driver from operating vehicle with any illegal drug or its metabolite in his system was void for vagueness as applied to defendant, who had ingested legal drug and was not aware that it metabolized into an illegal drug in his system). And, we are not persuaded that we need to follow cases from other jurisdictions that interpreting standards for an involuntary intoxication defense in light of § 13-503 and *McKeon*.

¶125 Finally, because it was undisputed that Armbruster did not have a prescription for the lorazepam tablets he ingested before the murder, the trial court correctly ruled that Dr. Smith could not discuss Armbruster's prior prescription for lorazepam; it was not relevant and would have been contrary to the plain language in § 13-503 concerning the abuse of prescription medication. Moreover, whether it is "common" for people to borrow each other's medications was beyond Dr. Smith's expertise, would not have brought Armbruster's use within the scope of § 13-503, and there was no evidence that, even without a prescription, he properly used the lorazepam. In fact, the evidence was to the contrary. Consequently, the court did not abuse its discretion by precluding Dr. Smith's testimony.

CONCLUSION

¶126 For the foregoing reasons, we affirm Armbruster's convictions and sentences.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICK IRVINE, Judge