

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1166 / 12-1040  
Filed March 27, 2013

**LUKE ANTHONY PUTNAM,**  
Plaintiff-Appellee,

**vs.**

**HENRY M. KALBER and KAREN  
D. KALBER,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Scott County, Mary E. Howes,  
Judge.

Henry and Karen Kalber appeal from the judgment entered against them  
on Luke Putnam's negligence claim stemming from a motor vehicle collision.

**AFFIRMED.**

Matthew J. Nagle and Stephanie J. Canfield of Lynch Dallas P.C., Cedar  
Rapids, for appellants.

Peter John Leehey and Anthony J. Olson of Pete Leehey Law Firm, P.C.,  
Cedar Rapids, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

Luke Anthony Putnam filed a lawsuit against Henry and Karen Kalber for injuries he received in a motor vehicle collision. The jury found Henry Kalber was seventy-percent at fault in the collision and awarded Putnam damages. The Kalbers contend the district court erred in excluding evidence that Putnam tested positive for THC<sup>1</sup> metabolites thirty minutes after the collision.

We find the district court did not abuse its discretion in excluding the evidence. The evidence could only show Putnam ingested marijuana sometime in the last thirty days, and did not bear on the question of whether he was impaired at the time of the collision. Therefore, the evidence is not relevant. Any relevance the evidence does have is outweighed by the danger of unfair prejudice. Accordingly, we affirm.

***I. Background Facts and Proceedings.***

On July 27, 2010, Henry Kalber was driving eastbound on 53rd Street in Davenport, approaching Utica Ridge Road, a four-lane road (two westbound lanes and two eastbound lanes). He was driving a car owned by his wife, Karen. Kalber intended to turn left at the intersection and head north on Utica Ridge Road.

Putnam was also approaching Utica Ridge Road on 53rd Street, headed westbound on his motorcycle. Putnam was in the right lane of westbound traffic when he maneuvered into the left lane to pass Tammy Osert's vehicle. After

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<sup>1</sup> THC is the active ingredient in marijuana.

passing Osert, Putnam maneuvered back into the right lane of westbound traffic as he approached the intersection.

At the intersection, Kalber made a left-hand turn in front of Putnam. Although Kalber saw two cars approaching the intersection, he did not see Putnam until just before impact. Putnam struck the front-passenger side of Kalber's car.

Putnam was transported to the emergency room for treatment of his injuries. While there, he provided a urine sample. Testing revealed Putnam had 67 ng/mL of THC in his system, above the legal limit of 50 ng/mL.

On January 13, 2011, Putnam filed a petition seeking monetary damages against the Kalbers, alleging negligence. The Kalbers designated Lieutenant Neil Wellner of the Iowa State Patrol as an expert witness who would testify that the THC detected in Putnam's urine thirty minutes after the collision "was in excess of Iowa law for the standard of operating while intoxicated." In response, Putnam amended his expert witness designation to include Dr. Michael D. Corbett, who would testify "regarding THC levels and any other issues touching on driver impairment."

On March 6, 2012, Putnam filed a motion in limine, which sought to exclude—among other things—the evidence that he tested positive for THC metabolites thirty minutes after the collision. He argued that the test showed he had ingested marijuana "sometime in the last 30 days," but the test did not provide reliable evidence that he was impaired at the time of the collision.

Attached to the motion in limine was Dr. Corbett's deposition. Dr. Corbett testified that it is "impossible" to translate Putnam's drug test results into evidence that he was impaired. When asked what the value of the test results are, Dr. Corbett stated, "It means nothing in terms of whether [Putman] was impaired at this simultaneous time." He also testified that, with chronic users, marijuana metabolite can be detected in urine for upwards of a month following the last use of marijuana.

Putnam also attached Lieutenant Wellner's deposition to his motion in limine. In the deposition, Wellner testified that a positive test for marijuana use, like Putnam's, could result from smoking marijuana a week or more before the test. He also confirmed that a person's impairment cannot be determined based upon a urine test.

The Kalbers resisted the motion in limine and a hearing was held before the district court on March 9, 2012. On March 15, 2012, the court entered its ruling. The court found no convincing evidence that Putnam's positive test for marijuana metabolite was connected to his comparative fault. Finding the evidence would be more prejudicial than probative, the court granted Putnam's motion in limine.

The case proceeded to jury trial on March 19, 2012, and on March 21, 2012, the jury returned a verdict in favor of Putnam, finding Kalber was seventy-percent at fault for the collision and finding Putnam suffered \$169,283 in damages. After reducing the damage award by the thirty-percent attributable to

Putnam's comparative fault, the district court entered judgment in favor of Putnam in the amount of \$118,499.

The Kalbers sought a new trial based in part on the district court's exclusion of the drug test results. In its May 31, 2012 ruling, the district court denied the motion, stating:

Luke Putnam was never charged with driving while impaired. There is no evidence that Putnam was impaired other than he had ingested marijuana sometime in the last 30 days. In addition, the defendants had no expert witness evidence to convince the Court that he was impaired or under the influence. The Court declines to change its Ruling on the Motion in Limine and finds that under Iowa Rule of Evidence 5.403, the evidence should be excluded.

The Kalbers appeal.

## ***II. Scope and Standard of Review.***

We review evidentiary rulings for an abuse of discretion. *Hall v. Jennie Edmundson Mem'l Hosp.*, 812 N.W.2d 681, 684 (Iowa 2012). An abuse of discretion exists when the court exercises its discretion "on ground or for reasons clearly untenable or to an extent clearly unreasonable." *Heinz v. Heinz*, 653 N.W.2d 334, 338 (Iowa 2002).

## ***III. Analysis.***

All relevant evidence is generally admissible. Iowa R. Evid. 5.402. Relevant evidence is defined as "evidence having 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." Iowa R. Evid. 5.401. However, "relevant evidence may be excluded if its probative value

is substantially outweighed by the danger of unfair prejudice.” Iowa R. Evid. 5.403.

Relying on our court’s holding in *Ward v. Loomis Brothers, Inc.*, 532 N.W.2d 807 (Iowa Ct. App. 1995), the Kalbers argue Putnam’s drug test results should have been admitted. In that case, Terry Ward’s estate sued the general contractor of the construction site at which Ward was killed in a fall while working as a painter. *Ward*, 532 N.W.2d at 809. On appeal, the estate challenged evidence of Ward’s marijuana use, arguing it was prejudicial. *Id.* at 811. Our court held that there was evidence to support a finding Ward was impaired from marijuana use at or near the time of his fall, and that his impairment bore a causal connection to his fall. *Id.*

*Ward* differs from the case at bar. It is true that, like Putnam, Ward tested positive for marijuana use in a urine drug screen performed after the accident. The *Ward* test indicated marijuana use anytime from three hours to thirty days before the accident. *Id.* at 810. However, in *Ward* there was also evidence that Ward was a long-time marijuana user who was known to smoke marijuana while working. *Id.* Here, there is no evidence that Putnam was a long-time marijuana user prior to the accident, or that he was known to use marijuana and drive.

According to the deposition testimony of Dr. Corbett and Lieutenant Wellner, the only conclusion the jury could have derived, had the court allowed the drug test results to be introduced, would be that Putnam had ingested marijuana sometime in the last thirty days. This evidence fails to show that Putnam was impaired at the time of the collision. Therefore, the evidence is not

relevant and the district court did not abuse its discretion in excluding the evidence.

On appeal, the Kalbers argue that the testimony that Putnam was speeding and changing lanes just prior to the collision shows he was impaired, making the drug test results relevant. We disagree that this evidence is indicative of impairment. However, there was evidence by which the jury could determine Putnam was violating traffic laws and driving erratically. Two witnesses testified they believed Putnam was at fault for the collision. This evidence alone, without the drug test results, was relevant to the jury's determination of fault. Evidence that Putnam had ingested marijuana anytime in the last thirty days would not have made this evidence any more probative, but would have been unfairly prejudicial to Putnam.

Because the Kalbers have failed to show the district court abused its discretion in excluding the evidence, we affirm.

**AFFIRMED.**