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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000801-MR

KATHERINE J. KILGORE

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 14-CR-00210

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, D. LAMBERT, AND STUMBO, JUDGES.

DIXON, JUDGE: Katherine J. Kilgore appeals from the judgment of the Pike Circuit Court convicting her of reckless homicide and fourth-degree assault. After careful review, we affirm.

In the early afternoon of April 3, 2014, Ramsey Kendrick and his mother-in-law were driving to the Oasis Pawn Shop in Pikeville, Kentucky. A

2003 Ford Expedition, driven by Kilgore, was following behind Kendrick for approximately eight miles on the two-lane highway. Kendrick was concerned by how close Kilgore was following him. Kendrick became separated from Kilgore when he drove through a yellow stoplight, and Kilgore stopped for the red light. Kendrick arrived at the pawn shop, but had to wait for oncoming traffic so he could turn left into the parking lot. Kendrick had been stopped in the roadway for a couple of minutes with his left turn signal on when he heard a squealing sound behind him. Kendrick looked in his mirror to see Kilgore's vehicle barely miss his bumper and swerve across the center line, striking a Plymouth Neon head on. The Expedition came to rest on top of the hood of the Neon, essentially crushing the front end of the smaller vehicle. The driver of the Neon, Dedra Fouts, was seriously injured, and her six year old daughter, Kyla Fouts, was killed as a result of the collision. Kentucky State Police Trooper Bryan Layne briefly questioned Kilgore, who had been placed in an ambulance due to her injuries. Kilgore admitted to Trooper Layne that she had taken a Lortab the day before the crash. Kilgore initially refused a blood test; however, she subsequently consented while in the emergency room. Kilgore was admitted to the hospital, and Trooper Layne interviewed her the day after the collision. Kilgore advised that the car in front of her suddenly slammed on its brakes, and she swerved to the left toward the parking lot of the Oasis Pawn Shop to avoid hitting the stopped car. When asked about medication, Kilgore asserted she had been taking over the counter sinus medicine, and she denied taking any controlled substances. The results of Kilgore's blood

test showed the presence of two controlled substances, Tramadol and hydrocodone, as well as a prescription anti-depressant, Citalopram. Trooper Layne also performed an accident reconstruction, which showed the vehicles collided head on because Kilgore steered her vehicle sharply to the left into oncoming traffic and then attempted to steer back toward the right. Trooper Layne's investigation showed no indication that Kendrick's vehicle had stopped suddenly in front of Kilgore and caused her to swerve. Kilgore was subsequently indicted on charges of reckless homicide and fourth degree assault. A jury found Kilgore guilty of both counts of the indictment, and she was sentenced to five-years' imprisonment. Kilgore now appeals her conviction.

I. Blood Test Results

The day before trial, Kilgore filed a motion in limine to exclude the results of the blood test as unduly prejudicial pursuant to KRE 403. The lab results did not indicate the level of the controlled substances in Kilgore's blood; rather, the test only showed that both substances were present. The court denied the motion, and the blood test results were introduced by the Commonwealth at trial. The laboratory technician testified about the results, identifying the controlled substances present in Kilgore's blood, but unable to state what effect those drugs would have on an individual.

In *Parson v. Commonwealth*, 144 S.W.3d 775, 781 (Ky. 2004), the Kentucky Supreme Court noted, "evidence that a person charged with vehicular homicide had intoxicating drugs in his system when the homicide occurred is

relevant to the issue of wantonness even without additional evidence of the degree of impairment caused by its presence.” KRE 403 states: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury”

Kilgore contends the blood test results were unduly prejudicial because the test did not establish the level of controlled substances in her system.

Our standard of review of a lower court’s evidentiary decision is abuse of discretion. *Barnett v. Commonwealth*, 979 S.W.2d 98, 103 (Ky. 1998). Accordingly, we will not disturb the court’s ruling unless it was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Kilgore asserts this case is analogous to *Burton v. Commonwealth*, 300 S.W.3d 126, 137-38 (Ky. 2009), wherein the Kentucky Supreme Court held that it was an abuse of discretion in a vehicular homicide case to admit the defendant’s urine screen, which was positive for cocaine and marijuana, because the drugs could have been ingested anywhere from four to seven days prior to the urinalysis.

In the case at bar, Kilgore admitted ingesting Lortab one day before the crash, and a subsequent blood test confirmed the presence of both hydrocodone and Tramadol in her system at the time of the wreck. The blood test results were probative on the issue of Kilgore’s ability to drive her vehicle in a safe manner, and an inference could be drawn that Kilgore’s driving ability was impaired, at

least somewhat, by the controlled substances in her blood. *See Berryman v. Commonwealth*, 237 S.W.3d 175, 178 n. 6 (Ky. 2007). Despite Kilgore's argument to the contrary, we do not believe the admission of the blood test results was unduly prejudicial. The trial court did not abuse its discretion on this issue.

II. Evidence of Child Restraint Device

Kilgore next argues she was precluded from presenting the complete circumstances of the collision when the trial court excluded evidence that the six year old victim was only restrained by a lap belt in the back seat of the car. Kilgore contends she should have been allowed to introduce the testimony of Trooper Layne, who determined the child's injuries could have been less severe if she had been restrained in a booster seat with a shoulder belt. We must disagree.

Our Supreme Court has addressed the issue of causation in *Sluss v. Commonwealth*, 450 S.W.3d 279, 287 (Ky. 2014). Therein, the Court stated,

It is abundantly evident that the issue of causation in homicide cases is framed in terms 'of whether or not the result as it occurred was either foreseen or foreseeable by the defendant as a reasonable probability.' *Lofthouse v. Commonwealth*, 13 S.W.3d 236, 239 (Ky. 2000) (quoting Robert Lawson and William Fortune, *Kentucky Criminal Law* § 2-4(d)(3), at 74 (1998)). *The matter of whether a victim was wearing a seatbelt at the time of an accident or the functionality of the air bag in a victim's vehicle is not relevant to whether the defendant was able to foresee the result of his conduct.*

Emphasis added.

We believe *Sluss* is directly on point on this issue, rendering Kilgore's argument meritless. Accordingly, the trial court did not abuse its discretion when it excluded evidence of how the victim was restrained inside the vehicle.

For the reasons stated herein, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR

BRIEF FOR APPELLANT:

Gerald DeRossett
Prestonsburg, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jeffrey R. Prather
Assistant Attorney General
Frankfort, Kentucky