

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY MATTHEW CARNICOM,

Defendant-Appellant.

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FOR PUBLICATION

October 31, 2006

9:00 a.m.

No. 259713

St. Joseph Circuit Court

LC No. 04-012272-FH

Official Reported Version

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of methamphetamine, MCL 333.7403(2)(b)(i), and was sentenced to five months in jail. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 21, 2004, Officer Nicholas Allen stopped defendant for a suspected seat belt violation. Upon investigation, it was discovered that defendant was operating the vehicle with a suspended Indiana driver's license and that an arrest warrant had been issued for his failure to appear in a court in St. Joseph County. Defendant was placed under arrest.

Before it was impounded, an officer inventoried defendant's vehicle. The officer found what appeared to be a controlled substance in the vehicle. The substance field-tested positive for methamphetamine.

Defendant's blood was drawn pursuant to a search warrant and sent to the Michigan State Police Forensic Science Division laboratory.<sup>1</sup>

At his interview at the police station, defendant proposed that the prescription medications he was taking, Avapro and Adderall, caused a false positive test for methamphetamine in his blood. Defendant insisted he had not used methamphetamine for 10 to 12 years.

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<sup>1</sup> Defendant was also originally charged with operating a motor vehicle while under the influence of a controlled substance, MCL 257.625(1). The prosecution dismissed that charge before trial.

A forensic scientist with the state police laboratory confirmed that the substance found in defendant's vehicle contained methamphetamine. Defendant's blood sample, which was tested by the Michigan State Police Toxicology Unit, contained traces of both amphetamine and methamphetamine.

The jury found defendant guilty of possession of methamphetamine.

Defendant argues on appeal that he was denied due process when the trial court denied his motion to authorize funds to conduct an independent test of his blood sample. Defendant claims that he was denied the opportunity to present a defense and asserts that the error requires a new trial.

This Court reviews for abuse of discretion a trial court's decision whether to grant an indigent defendant's motion for the appointment of an expert witness. MCL 775.15. The abuse of discretion standard recognizes "that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

MCL 775.15 authorizes payment for an expert witness, provided that an indigent defendant is able to show "that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to trial . . . ." If the defendant makes this showing, the judge, "in his discretion," may grant funds for the retention of an expert witness. *Id.*, A trial court is not compelled to provide funds for the appointment of an expert on demand. *Id.*; *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003).

To obtain appointment of an expert, an indigent defendant must demonstrate a nexus between the facts of the case and the need for an expert. *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995). It is not enough for the defendant to show a mere possibility of assistance from the requested expert. *Tanner, supra* at 443. Without an indication that expert testimony would likely benefit the defense, a trial court does not abuse its discretion in denying a defendant's motion for appointment of an expert witness. *Jacobsen, supra* at 641.

In the instant case, defendant is indigent and requested an expert witness at a motion hearing on July 29, 2004. In his motion, defendant told the trial court that he had discussed the parameters of the case with Speckin Forensic Laboratories in Okemos, Michigan, and that this laboratory was willing to do independent testing of defendant's blood, as well as present expert witness testimony at trial. Defendant did not state whether the expert's testimony would be in his favor.

Defendant believed that his expert witness would be able to offer testimony that would explain the presence of methamphetamine in his bloodstream at the time of arrest—specifically, that the presence of methamphetamine was caused by defendant's use of prescription Adderall. Besides defendant's assertion, there was nothing before the trial court to suggest that Adderall

could cause a false positive for methamphetamine. Defendant did not make any indication or offer any evidence that expert testimony would likely benefit him.

In the prosecution's brief in response to defendant's motion for an expert witness, the prosecution averred that the active ingredients of Adderall contain amphetamines, but not methamphetamines. At the motion hearing on the matter, the prosecution also pointed out that a toxicologist at the Michigan State Police Crime Laboratory confirmed that Adderall does not contain methamphetamines. Moreover, a prosecution witness testified at trial that, according to the Physicians' Desk Reference, methamphetamine is not found in Adderall. The witness also suggested that amphetamine and methamphetamine cannot be mistaken for one another because they have two distinct "spectrums" and were, therefore, two distinct drugs within the blood. The defense presented no witnesses to dispute this testimony and did not even claim that the expert would have testified favorably to the defense. Consequently, we find it doubtful that an appointed expert toxicologist would have benefited the defense. *Jacobsen, supra* at 641.

Moreover, defendant has not shown that an expert, even if he or she attributed the methamphetamine in defendant's blood to Adderall, would have anything directly relevant to say about the possession offense, which was based on the substance found in the plastic bag and the Wellbutrin pill bottle in defendant's vehicle. Defendant has not demonstrated a nexus between the facts of this case and the need for an expert. Absent an indication that the expert testimony would have likely benefited the defense, the trial court did not abuse its discretion in denying defendant's motion for appointment of an expert toxicologist.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen