

2017 IL App (3d) 150515-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).
Appellate Court of Illinois,
Third District.

The People of the State of Illinois, Plaintiff-Appellee,

v.

Stephen Corlett, Defendant-Appellant.

Appeal No. 3-15-0515

|

Order filed January 19, 2017

*** Start Section

...

Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois. Circuit No. 14-CF-169, Honorable David A. Brown Judge, Presiding.

ORDER

JUSTICE LYTTON delivered the judgment of the court.

*1 ¶ 1 *Held:* Plain error resulted from trial court's admission of expert testimony regarding results of scientific testing on defendant's blood that revealed presence of controlled substance where expert failed to testify how machine used was maintained and calibrated or that it was functioning properly when she used it.

¶ 2 Following a bench trial, defendant was found guilty of one count of aggravated driving under the influence (DUI) for driving while having alprazolam, a controlled substance, in his blood or urine. The trial court sentenced defendant to three years in prison. On appeal, defendant argues that the State failed to prove him guilty of aggravated DUI beyond a reasonable doubt because the results of blood tests performed by the State's expert using a liquid chromatography mass spectrometer (LCMS) machine were unreliable. We reverse and remand for a new trial.

¶ 3 On September 28, 2013, defendant Stephen Corlett, while driving an automobile in Peoria County, struck a motorcycle being driven by Joseph Spears, causing Spears' death. As a result of the collision, defendant was charged by indictment with two counts of aggravated DUI (625 ILCS 5/11-501(d)(1)(F) (West 2012)). Count I alleged that defendant was under the influence of a combination of diazepam, methadone and alprazolam "to a degree that rendered him incapable of driving safely." Count II alleged that defendant was driving with "an amount of a schedule IV controlled substance, alprazolam, in his blood or urine in violation of the Illinois Controlled Substances Act."

¶ 4 Defendant waived his right to a jury trial. At defendant's bench trial, the evidence established that at approximately 12:20 p.m. on September 28, 2013, both defendant and Spears were traveling west on Route 150 in Peoria County. Defendant was driving a car, and Spears was driving a motorcycle directly in front of defendant's vehicle. As Spears approached Route 150's intersection with Gilles Road, he slowed down because the vehicle in front of him was stopped, waiting to turn left onto Gilles Road. Defendant did not decelerate and crashed his vehicle into the back of Spears' motorcycle. Spears was thrown from his motorcycle and landed on the ground. Both Spears and defendant were taken to the hospital. At the hospital, blood and urine samples were taken from defendant.

¶ 5 The parties stipulated that prior to September 28, 2013, Spears was in good health. They also stipulated that the Department of Veterans Affairs (V.A.) keeps an exhaustive list of all medications prescribed to its patients and has a list of all medications prescribed to defendant. Alprazolam was not on the list of medications prescribed to defendant. All prescriptions, other than those written by the V.A., are recorded by the Illinois Prescription Monitoring Program. An employee of the Illinois Prescription Monitoring Program provided a complete and exhaustive list of all prescriptions, other than those prescribed by the V.A., prescribed to defendant from September 29, 2011, to September 29, 2013. Alprazolam was not on that list.

*2 ¶ 6 Jonathan Quast of the Peoria County Sheriff's Office was the first officer to respond to the scene of the accident. He spoke to defendant and saw no obvious signs

of impairment or behaviors that caused him to believe defendant was under the influence or impaired by drugs.

¶ 7 Deputy Lee Hoffman of the Peoria Sheriff's Office, arrived on the scene of the accident, spoke to defendant and transported him to the hospital so that blood and urine samples could be taken from him. Hoffman had no reason to suspect defendant was impaired based on his observations of and conversations with defendant at the scene of the accident, on the 20-minute drive to the hospital, or at the hospital, where Hoffman stayed with defendant for up to an hour.

¶ 8 Dave Hoyle, a detective with the Peoria County Sheriff's Office, testified that he investigated the collision. He went to the hospital and spoke to defendant. After spending approximately 30 minutes with defendant, nothing led Hoyle to believe that defendant might be under the influence of alcohol or a drug.

¶ 9 Dr. Scott Denton, a forensic pathologist in Peoria County, performed an autopsy on Spears and determined that he died as a result of [bronchopneumonia](#) in his lungs because of [brain injuries](#) caused by the September 28, 2013 motor vehicle accident.

¶ 10 Darea Paiva, a forensic scientist employed by the Illinois State Police Springfield Forensic Science Laboratory, testified for the State. She is certified by the Illinois State Police to analyze blood, urine and other body fluids to determine the presence of alcohol and other drugs. Paiva analyzed one tube of defendant's blood and one bottle of defendant's urine.

¶ 11 Paiva performed a TOXI-A extraction on defendant's urine, which is used to detect a variety of medications and illegal...

*** Start Section

... blood. Nevertheless, Paiva testified that the methods she used to test defendant's blood, including her use of the LCMS machine, are widely accepted and commonly used in the scientific community.

¶ 16 Defendant objected and moved to strike Paiva's testimony "as it relates to the results" of the testing she performed on defendant's blood using the LCMS machine, arguing that those results were not reliable. The trial court noted defendant's objection. At the close of the

State's case, defendant made an oral motion for a directed verdict, arguing that the State failed to meet its burden of proving that alprazolam was present in defendant's blood or urine based on Paiva's testimony. The trial court denied the motion.

¶ 17 James O'Donnell, a certified pharmacologist and licensed pharmacist, testified for defendant. He reviewed Paiva's lab report and disagreed with her conclusion that [alprazolam](#) was present in defendant's blood. He testified that since the lowest level of detection used by Paiva was 12.5 micrograms of [alprazolam](#) per liter and Paiva found less than 12.5 micrograms per liter of [alprazolam](#) in defendant's blood, the amount of [alprazolam](#) in defendant's blood was "below the reportable level" and should not have been reported as detected.

¶ 18 O'Donnell also disagreed with Paiva's conclusion that the presence of hydroxyalprazolam in defendant's urine meant that defendant had taken [alprazolam](#). O'Donnell explained that hydroxyalprazolam is formed through the metabolism of drugs other than [alprazolam](#), including [nidazolam](#)....

*** Start Section

... to provide additional testimony. She testified that it was still her opinion to a reasonable degree of scientific certainty that there was alprazolam in defendant's blood.

*4 ¶ 21 After both parties rested, the court addressed defendant's objection to the admission of the results of the testing performed by Paiva using the LCMS machine. The trial court overruled defendant's objection and denied his motion to strike Paiva's testimony. Defendant then renewed his motion for a directed verdict, which the trial court denied.

¶ 22 The trial court found defendant not guilty of count I of the indictment, explaining that it was "not convinced beyond a reasonable doubt that at the time of the accident * * * the drugs in [defendant's] system rendered him incapable of safely driving." The court found defendant guilty of count II of the indictment based on Paiva's testimony.

¶ 23 Defendant filed a motion for a new trial, followed by two amended motions for a new trial. In those motions, defendant argued that the trial court erred in admitting the results of the testing performed by Paiva with the

LCMS machine. The trial court denied the motions. The trial court sentenced defendant to three years in prison. Defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 24 ANALYSIS

¶ 25 Expert testimony is admissible if the proffered expert is qualified, a foundation is laid establishing a basis for the expert's opinion, and the testimony would assist the trier of fact in understanding the evidence. *Todd W. Musburger, Ltd...*

*** Start Section

... used it to analyze defendant's blood, the State failed to establish the necessary foundation for admission of Paiva's expert opinion. See *Raney, 324 Ill. App. 3d at 708-10*.

*6 ¶ 36 Having found that Paiva's testimony lacked the necessary foundation to be admissible, our next step is to determine if the admission of this evidence rises to the level of plain error because defendant did not object to Paiva's testimony on this basis. While defendant objected to Paiva's testimony on reliability grounds, he failed to object to it on foundational grounds. Therefore, the admission of this evidence constitutes reversible error only if it amounts to plain error. See *Korzenewski, 2012 IL App (4th) 101026, ¶ 7*.

¶ 37 Here, defendant was charged with two counts of aggravated DUI, one for driving while impaired and one for driving with [alprazolam](#) in his blood or urine. The trial court found that the State failed to prove that defendant was driving while impaired but found defendant guilty of driving with [alprazolam](#) in his blood or urine. The evidence in this case showed that Paiva found hydroxyalprazolam, but no [alprazolam](#), in defendant's urine. Defendant's expert testified and Paiva agreed that it was possible for a substance other than [alprazolam](#) to metabolize into hydroxyalprazolam. As a result, the State failed to prove beyond a reasonable doubt the presence of [alprazolam](#) in defendant's urine.

¶ 38 The only evidence of the existence of [alprazolam](#) in defendant's blood came from Paiva based on the testing she performed using the LCMS machine. Without those

results, there was no evidence that defendant had taken alprazolam before driving. Thus, the evidence against defendant was closely balanced, and the trial court's error in admitting the results of Paiva's testing tipped the scales of justice against defendant, resulting in plain error.

¶ 39 Having determined that the trial court committed plain error in admitting Paiva's testimony about the blood test results into evidence, we must determine the appropriate remedy. The double jeopardy clause prohibits retrial for the purpose of affording the prosecution another opportunity to present evidence it failed to provide in the first proceeding. *People v. Lopez, 229 Ill. 2d 322, 367 (2008)*. It does not preclude retrial where a conviction has been set aside because of an error in the proceedings if the evidence presented at the first trial, including the improperly admitted evidence, would have been sufficient for any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt. *Id.*; *People v. McKown, 236 Ill. 2d 278, 311 (2010)*.

¶ 40 To prove defendant guilty of aggravated DUI, as alleged in count II of the indictment, the State had to prove that defendant drove with an amount of alprazolam in his blood or urine. See *625 ILCS 5/11-501(d)(1)(F)* (West 2012). The trial court admitted the results of the tests Paiva performed showing that defendant had less than 12.5 micrograms per liter of alprazolam in his blood after the accident. Viewed in the light most favorable to the State, this evidence was sufficient for a rational trier of fact to find that defendant was guilty of aggravated DUI. Accordingly, there is no double jeopardy impediment to retrial, and we remand the cause to the trial court for that purpose.

¶ 41 The judgment of the circuit court of Peoria County is reversed, and the cause is remanded for a new trial.

¶ 42 Reversed and remanded.

Presiding Justice [Holdridge](#) and Justice O'Brien concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2017 IL App (3d) 150515-U, 2017 WL 237748

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

...