

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH LEE HART,

Defendant-Appellant.

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UNPUBLISHED

June 2, 2009

No. 285212

Gratiot Circuit Court

LC No. 07-005480-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of operating a motor vehicle while under the influence of liquor, third offense, MCL 257.625, and operating a vehicle with a suspended license, second offense, MCL 257.904. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in denying his request for a continuance. In *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992), this Court held:

We review a denial of a continuance for abuse of discretion. *People v Davis*, 343 Mich 348, 361; 72 NW2d 269 (1955). Some factors to be considered include whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments. *People v Charles O Williams*, 386 Mich 565, 578; 194 NW2d 337 (1972). Defendant must also demonstrate prejudice. *People v Sinistaj*, 184 Mich App 191, 201; 457 NW2d 36 (1990).

Defendant asserts that the constitutional right to present a complete defense was implicated because the trial court's denial of his request for a continuance precluded him from calling Rebecca Machado as a witness. Machado was a passenger in defendant's vehicle when he was arrested. Machado previously testified at a suppression hearing that defendant's driving was fine, that she did not observe him cross the centerline or speed, and claimed he stopped at both red flashing lights, contrary to the testimony of the arresting officer. Machado was allegedly returning from Florida around 5:30 p.m. on the day of trial, and would have been available to testify the following day. In denying the motion, the court noted that Machado's testimony would have been cumulative to that of Brandi Lynn Kern, and that a videotape of the police pursuit and sobriety tests would "speak for itself."

Kern testified that she rode home with defendant and Machado after the three of them spent the evening at a bar. Although acknowledging that she was intoxicated while riding in defendant's vehicle, Kern asserted that defendant was not speeding, and that she never noticed any swerving. Kern testified that defendant stopped at both traffic lights and at the second light, activated his signal before turning left. Kern said the officer then activated his overhead lights, and defendant pulled into a parking lot. Defendant contended that the videotape did not show his vehicle crossing of the yellow line or a failure to stop at any traffic signals. Defendant also asserted that the videotape contradicted the officer's testimony that he appeared intoxicated, and that the sobriety tests were not indicative of intoxication since his bad ankle would have affected the ability to walk a straight line and balance. Notably, evidence was admitted demonstrating defendant's blood alcohol level was approximately .15 percent shortly following his arrest.

Defendant was not precluded from presenting his defense by the absence of Machado. As the trial court correctly observed, her testimony would have been cumulative to Kern's testimony. See *People v Blackston*, 481 Mich 451, 461; 751 NW2d 408 (2008), citing MRE 403. Based on Machado's testimony at the suppression hearing, she would not have provided any additional facts. Moreover, to the extent the videotape showed what defendant represented, this would have been the clearest evidence of representations that he was driving prudently. Thus, defendant has failed to show that he suffered any prejudice by the denial of the continuance.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot