

[Cite as *Akron v. Peoples*, 2011-Ohio-579.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CITY OF AKRON

C.A. No. 25398

Appellee

v.

WANAKIE PEOPLES

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 07 TRD 14717

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 9, 2011

CARR, Judge.

{¶1} Appellant, Wanakie Peoples, appeals her conviction out of the Akron Municipal Court. This Court affirms.

I.

{¶2} On August 26, 2007, Peoples was cited by an Akron police officer for one count of operating a vehicle under the influence in violation of A.C.C. 73.01(A)(1)(a), and one count of failure to control in violation of A.C.C. 73.13(A). Peoples refused to submit to a breathalyzer test.

{¶3} Peoples pleaded not guilty and demanded a trial by jury. Prior to trial, Peoples filed proposed jury instructions, including a proposed instruction on the requirements for criminal liability pursuant to R.C. 2901.21 and the affirmative defense of involuntary intoxication which caused her to be temporarily insane, i.e. caused her to “lack[] the mental capacity to form the specific mental state required for the crime.” At the conclusion of the

presentation of evidence at trial, Peoples orally moved the trial court to instruct the jury on the affirmative defenses of involuntary intoxication and coma/blackout. The trial court refused to give either instruction. At the conclusion of trial, Peoples was found guilty of both counts, and the trial court attempted to sentence her accordingly. After three failed attempts to sentence Peoples properly, the trial court finally fully disposed of both counts. Peoples timely filed a fourth appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT VIOLATED APPELLANT PEOPLES’ RIGHT TO PRESENT A DEFENSE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION BY REFUSING TO GIVE APPELLANT PEOPLES’ TENDERED JURY INSTRUCTIONS ON BLACKOUT AND INVOLUNTARY INTOXICATION.”

{¶4} Peoples argues that the trial court erred by failing to instruct the jury in regard to the affirmative defenses of involuntary intoxication and unconsciousness/blackout in regard to the charge of operating a vehicle while under the influence of alcohol or drug of abuse. This Court disagrees.

{¶5} This Court “review[s] a trial court’s decision to give or decline to give a requested jury instruction for an abuse of discretion under the facts and circumstances of the case.” *State v. Evans*, 9th Dist. No. 07CA0057-M, 2008-Ohio-4772, at ¶12, citing *State v. Wolons* (1989), 44 Ohio St.3d 64, 68 (specifically addressing a proposed jury instruction regarding intoxication). An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶6} R.C. 2901.05(A) provides, in relevant part: “The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.”

{¶7} The Ohio Supreme Court has held:

“The proper standard for determining in a criminal case whether a defendant has successfully raised an affirmative defense under R.C. 2901.05 is to inquire whether the defendant has introduced sufficient evidence, which, if believed, would raise a question in the minds of reasonable men concerning the existence of such issue.” *State v. Melchior* (1978), 56 Ohio St.2d 15, at paragraph one of the syllabus.

Moreover, “[i]f the evidence generates only a mere speculation or possible doubt, such evidence is insufficient to raise the affirmative defense, and submission of the issue to the jury will be unwarranted.” *Id.* at 20.

{¶8} Peoples was charged with a violation of A.C.C. 73.01(A)(1)(a) which states that “[n]o person shall operate any vehicle within the municipality, if, at the time of the operation, *** [t]he person is under the influence of alcohol, a drug of abuse, or a combination of them.”

{¶9} Pursuant to R.C. 2901.21, no person can be found guilty of having committed a criminal offense unless both of the following are proven:

“(1) The person’s liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing [the actus reas requirement];

“(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense [the mens rea requirement].” R.C. 2901.21(A).

{¶10} Peoples acknowledges that operating a vehicle while under the influence of alcohol or drug of abuse is a strict liability offense. A.C.C. 73.01(A)(1)(a) is substantially

similar to R.C. 4511.19(A)(1)(a), which the Ohio Supreme Court has held to be a strict liability statute. *Defiance v. Kretz* (1991), 60 Ohio St.3d 1, 3. Accordingly, she does not argue that her proffered defenses serve to negate the requisite culpable mental state, or mens rea, associated with the offense. Rather, she argues that “both defenses relate to the voluntariness of [her] actions[.]”

Involuntary intoxication

{¶11} Peoples does not dispute that she was intoxicated at the time she hit a University of Akron police cruiser with her vehicle. At trial, she presented evidence through her treating psychiatrist Dr. Roger Sparhawk who testified that he had prescribed a combination of Wellbutrin, Klonopin, and Paxil for Peoples. He testified that he added Paxil to her treatment plan five days prior to the accident. The doctor testified that, when Peoples appeared for an office visit on September 4, 2007, about a week after the accident, he told her to discontinue taking Paxil because she may be experiencing confusion related to its use. Dr. Sparhawk viewed the videotape of Peoples’ behavior at the police station and testified that she appeared to be suffering from delirium at the time.

{¶12} Peoples testified that she has always been sensitive to medications. She testified that she took all three of her medications approximately one-half hour before she planned to go to bed. She ran into the police cruiser with her vehicle at approximately 1:00 a.m. the next morning.

{¶13} The trial court instructed the jury that Wellbutrin, Klonopin, and Paxil are all “drug[s] of abuse.” Peoples did not challenge that instruction before the trial court or on appeal.

{¶14} Although four police officers testified that Peoples’ body emitted an odor of an alcoholic beverage, Peoples’ undisputed intoxication during the accident might have occurred as

a result of a reaction to one or more of her prescribed medications. The jury was instructed, without objection, that each of those medications constitutes a “drug of abuse.” Peoples admitted that she took all three medications prior to the accident. Accordingly, even if one or more of those medications caused her intoxication, she ingested the medications voluntarily, even though she was aware that she has a general sensitivity to medication. Under these circumstances, Peoples failed to present any evidence that her actions in taking the medications, classified as “drug[s] of abuse,” were involuntary. Therefore, the trial court did not abuse its discretion by refusing to instruct the jury on the affirmative defense of involuntary intoxication.

Unconsciousness/blackout

{¶15} Peoples argues that her act of driving a vehicle which hit a police cruiser constituted an involuntary act because she was in a state of “blackout” and did not remember the incident after it happened.

{¶16} A.C.C. 130.07(C)(2) mirrors the language of R.C. 2901.21(D)(2) which states: “Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor’s volition, are involuntary acts.” In regard to the requirement for criminal liability set forth in R.C. 2901.21(A)(1):

“This voluntary act requirement is easily satisfied. The provision for involuntary acts is narrow and removes only truly uncontrollable acts from the realm of the voluntary. Neither proof of an irresistible impulse nor proof of duress negates the voluntariness of defendant’s conduct.” 26 Ohio Jur.3d Criminal Law 624.

{¶17} First, Peoples presented no evidence that, although she could not remember the accident after it occurred, she was not aware of the events as they were happening. In fact, the State presented evidence that she was aware of her actions at the time. Officer Jamie McKinley of the University of Akron Police Department, whose cruiser Peoples hit, testified that she overheard Peoples speaking to her mother who had arrived at the scene after the accident after

Peoples called her on her cell phone. Officer McKinley testified that Peoples, sobbing and visibly upset, told her mother that she had taken her medications and had been drinking. The officer testified that Peoples told her mother that she had just dropped off some girlfriends, that “she knew she messed up,” and that she was worried that she would now have to drop out of school and go to jail. Accordingly, although Peoples might not have remembered the incident the next morning, she did not present any evidence warranting an “unconsciousness/blackout” instruction because the evidence demonstrated that she was aware of her actions as they were happening and had engaged in them voluntarily.

{¶18} Second, Peoples did not otherwise present any evidence that her act of driving a vehicle while under the influence of alcohol or drug of abuse was involuntary. Although Peoples did not propose an explicit unconsciousness/blackout instruction¹, this Court has recognized the standard instruction for blackout. See *State v. Murray* (Apr. 18, 1990), 9th Dist. No. 89CA004648. That instruction provides:

“Where a person commits an act while unconscious as in a (coma) (blackout) (convulsion) due to (heart failure) (disease) (sleep) (injury), such act is not a criminal offense even though it would be a crime if such act were the product of a person’s (will) (volition).’ 4 Ohio Jury Instructions (1989) 62, Section 409.05.” *State v. LaFreniere* (1993), 85 Ohio App.3d 840, 848.

{¶19} Peoples’ mother, Karen Peoples, testified that she saw her daughter sleeping on a couch in their living room around midnight. She testified that her daughter called her approximately one-and-a-half to two hours later from the scene of the accident. The video taken by the police at the police station after the accident evidenced that Peoples was fully dressed, including shoes. Peoples told one of the police officers who was attempting to administer a breathalyzer test to her that she was only wearing one contact lens. Peoples does not dispute that

she was driving the vehicle that hit Officer McKinley's cruiser. Officer McKinley testified that, after Peoples hit her cruiser, she saw Peoples' brake lights flicker as though she was trying to put the car in drive. Peoples testified that she did not remember anything that happened that morning, including the accident and her time in police custody, inferring that she was in a state of "blackout" the entire time and not in control of any of her actions.

{¶20} A similar argument was raised by a defendant in *State v. Grimsley* (1982), 3 Ohio App.3d 265, wherein Grimsley argued that she could not be convicted of driving while under the influence of alcohol because she suffered from a multiple personality disorder and that one of her alternate personalities was in control during the commission of the crime. The First District disagreed, concluding that there was no evidence that Grimsley was unconscious and that it was "immaterial whether she was in one state of consciousness or another, so long as in the personality then controlling her behavior, she was conscious and her actions were a product of her own volition." *Id.* at 268.

{¶21} The circumstantial evidence established that Peoples, in one state of consciousness or another, got up from the couch where she was sleeping, got dressed, obtained her car keys, entered her car, put the keys in the ignition, and drove on the roadway, hitting Officer McKinley's cruiser only because she made too wide of a right turn onto an adjacent street into the lane of on-coming traffic. Peoples' actions constituted more than mere reflexive movements. She was even able to discuss the events with her mother soon after the accident.

{¶22} This case is distinguishable from the situation in *Murray* where we concluded that the trial court erred in failing to give a blackout instruction because *Murray* introduced sufficient evidence to warrant such an instruction. In that case, *Murray* presented evidence that he

¹ Peoples asserts in her brief that she filed a proposed blackout instruction on January 18, 2008,

remembered approaching an intersection and beginning to brake but that he did not remember anything else until he was being tossed around inside his vehicle after having passed through the intersection. There were no skid marks at the scene, indicating a momentary complete loss of consciousness and control of the vehicle. In this case, there was evidence that Peoples had control of the vehicle, even turning onto an adjacent street, albeit improperly due to her intoxication.

{¶23} Based upon a review of the evidence, this Court concludes that Peoples did not present sufficient evidence to demonstrate that her act of driving her vehicle into a police cruiser while under the influence of alcohol, drug(s) of abuse, or a combination thereof was involuntary. Accordingly, the trial court did not abuse its discretion by refusing to give her proffered affirmative defense instructions to the jury. Peoples' assignment of error is overruled.

III.

{¶24} Peoples' sole assignment of error is overruled. The judgment of the Akron Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

but the record does not include any such filing.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

J. DEAN CARRO, Appellate Review Office, School of Law, The University of Akron, for Appellant.

CHERI CUNNINGHAM, Director of Law, for Appellee.

DOUGLAS J. POWLEY, Chief City Prosecutor, and JEREMY A. VEILLETTE, Assistant City Prosecutor, for Appellee.