SECOND DIVISION
August 19, 2014

No. 1-13-1282

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 16584
	)	
MICHAEL BEARDSLEY,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *HELD*: Defendant's conviction for aggravated driving with an alcohol concentration of .08 or more is affirmed because the trial court did not abuse its discretion in making certain evidentiary rulings or in admitting into evidence defendant's medical records containing his blood test results under 625 ILCS 5/11-501.4.

¶ 2 Following a jury trial, defendant, Michael Beardsley (defendant), was found guilty of aggravated driving with a blood alcohol concentration (BAC) of .08 or more, pursuant to section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(1), (d)(1)(F) (West 2008)). The trial

court sentenced defendant to five years' imprisonment, two years of mandatory supervised release, and fines and fees of $2,207. Defendant appeals. For the reasons explained below, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 18, 2008, at around 10:00 p.m., defendant was involved in an automobile accident that killed his passenger, Steven Wasily. He was charged with two counts of aggravated driving under the influence (DUI) and one count of reckless homicide. The State dismissed the reckless homicide count before trial and the aggravated DUI count (625 ILCS 5/11-501(a)(2), (d)(1)(F) (West 2008)) at the close of its case-in-chief. The only remaining count was for aggravated driving with BAC of .08 or more (625 ILCS 5/11-501(a)(1), (d)(1)(F)). The trial testimony relevant to defendant's appeal is summarized below.

¶ 5 Kevin Pinner was with defendant and Wasily on the evening of the accident. As a witness for the State, Pinner testified about the events leading up to the accident. According to Pinner, he met defendant at a bar between 6:00 and 7:00 p.m. and witnessed defendant drink two beers. The three men then went to defendant's house, where defendant had two more beers before leaving in his car with Wasily to head to another bar. Pinner was following them in his own car when the accident occurred.

¶ 6 During cross-examination, Pinner stated that he previously had an altercation with Wasily before he knew defendant. When defendant's counsel asked Pinner to "tell us about" the altercation, the State objected. During the sidebar on the objection, defendant's counsel argued that evidence about the altercation between Pinner and Wasily was relevant as reputation evidence supporting defendant's theory that Wasily had pulled the parking brake, located in the middle of defendant's vehicle in the console area, and it was the pulling of the parking brake—as

opposed to defendant's alleged impairment—that caused the accident. The trial court rejected this argument and sustained the State's objection.

¶ 7 The police officers and paramedics that responded to the accident also testified for the State. Officer Lorek from the Oak Forest Police Department stated that when he spoke with defendant at the scene of the accident, defendant told Officer Lorek that "he was doing about 35 to 40 miles an hour on Forest View Drive when he struck something in the roadway and lost control of his vehicle." Officer Lorek also testified that he provided a traffic accident Warning to Motorist form to defendant, which, according to Officer Lorek, is "a form read to a driver of the vehicle that has been involved in an accident that resulted in either serious personal injury or a fatality." It informs the motorist that the officer "will be requesting an alcohol or blood analysis to determine whether or not either alcohol or drugs *** played a factor in the accident." Additionally, it tells motorists that if they take the tests and "the results come back positive[,] *** their license would be suspended for a minimum of three months"; should they refuse to submit to the tests, "their license could be suspended up to six months." Officer Lorek testified that after he read the warnings to defendant, defendant stated that they "were not going to take his blood" and "proceeded to rip the I.V. out of his arm."[1] Later, at the hospital, Officer Lorek advised the charge nurse that he needed a D.U.I. kit completed, but according to Officer Lorek, defendant never complied.

¶ 8 Detective Roberto Frias, a detective with the Oak Forest Police Department, was present at the scene to investigate the accident. During cross-examination, Detective Frias testified that the vehicle's emergency brake was "positioned up" as if it was "engage[d]."

[1] According to the testimony presented at trial, defendant was given an IV with saline solution in the ambulance, after paramedics arrived at the accident scene and placed him on a spine board.

¶ 9 The treating paramedics, Randy Ulaskas and Ross Laird, also testified for the State. According to their testimony, defendant had superficial cuts to the arms and received treatment on the scene. After he was placed in the ambulance, defendant was on a spine board with a cervical collar (or C-collar) to stabilize his spine, and was given an I.V. with saline solution. According to Ulaskas, defendant became "combative" in the ambulance after he was asked whether he had been drinking and pulled out his I.V. twice. The paramedics also explained that whenever an accident involves a fatality, every person in the vehicle automatically is transferred to the hospital because they could have an underlying injury.

¶ 10 Rachel McManus, an emergency room technician at Christ Hospital where defendant was treated, testified as to the general procedures employed during a blood draw, as well as the specific blood draw that she performed on defendant. McManus testified that the hospital has a standing order that certain labs are automatically prepared anytime a trauma patient comes into the emergency room and that defendant's blood test was undertaken pursuant to this order. According to McManus, when drawing patient blood, hospital employees verify that the information on the stickers for the blood vials matches the name and medical record number on the patient's armband. She further confirmed that before she drew defendant's blood at 11:15 p.m., she took the stickers for the vials and "check[ed] [defendant's] armband [to] make sure it's the right person." After drawing his blood, she "checked the armband again" and "timed, initialed, and stuck the stickers onto [the] tubes of blood." McManus additionally stated that she sent the blood to be tested at the laboratory in the hospital which is "always used to test *** blood."

¶ 11 Dr. Diana Strasburger was a resident in the Emergency Room at Christ Hospital at the time of the accident. She testified for the State concerning defendant's treatment, blood test

results, and medical records. Based on her review of defendant's medical records, Dr. Strasburger testified that defendant was "brought in by ambulance as a trauma where he was restrained with a backboard and C-collar." Dr. Strasburger further stated that in evaluating defendant she observed that "[h]e smelled of alcohol" and she "documented" this observation. With respect to defendant's blood test, Dr. Strasburger confirmed that she was "familiar with the procedures doctors follow when patients come to the emergency room." According to Dr. Strasburger, trauma patients "automatically get an alcohol level" test and that the test is ordered pursuant to hospital standing orders, *i.e.*, "orders that were set by the ER department and the hospital staff that all trauma patients have ordered." Dr. Strasburger also explained that she was "familiar with the records that are kept in relation to a patient's care" at the hospital. She stated that the results from defendant's blood test were received from the hospital laboratory, and she "documented the results" into his medical records. Records from the test results, she explained "are *** routinely entered for a patient's care and maintained by the hospital" and "are used for the treatment of a patient that comes in through the ER." She explained that the laboratory test results are generally "something [she] would rely upon for the patient's treatment" and that in this case she "rel[ied] upon those results for [defendant's] care." Dr. Strasburger testified that she documented in defendant's medical records that his "[a]lcohol level was 238 milligrams per deciliter entered Saturday, July 19, 2008, at 12:02 in the morning."

¶ 12 Laura LeDonne worked for the Illinois State Police Forensic Sciences Command in Chicago and was qualified by the court as an expert in forensic toxicology blood draws. LeDonne testified for the State about the numerical conversion of the serum ethanol concentration (the concentration from the hospital test results) into the whole blood concentration (the concentration recognized in a court of law). In her opinion, using the

generally accepted 1.18 conversion ratio, defendant's whole blood ethanol concentration was .201 grams per deciliter of ethanol whole blood compared to .08 grams per deciliter, the legal limit. Of particular relevance to defendant's appeal, during LeDonne's cross-examination, the trial court sustained the State's objection to the following question posed by defendant's counsel: "You don't know whether or not it [the blood sample] tied back to my client Michael Beardsley." However, LeDonne did testify that that she "didn't look at the vial to see if the stickers were proper to [defendant]."

¶ 13 After the State completed its case-in-chief, it moved to bar defendant's accident reconstruction expert, Officer Shawn Gyorke, from testifying that the pulled parking brake in defendant's vehicle caused the accident. The State argued that his testimony was irrelevant because aggravated driving with a BAC of .08 or higher was a strict liability offense. The trial court granted the State's motion, finding that Gyorke's testimony was irrelevant to determine defendant's BAC and likely would confuse the jury.

¶ 14 Defendant made an offer of proof on Gyorke's testimony outside the presence of the jury. Gyorke stated that, in his opinion, the accident occurred because the emergency brake was applied. However, he was unable to offer an opinion as to who pulled the emergency brake. After the offer of proof, defendant asked the trial court to reconsider its ruling, which the court denied.

¶ 15 Defendant then testified in his defense as to his version of events on the evening in question. According to defendant, he had two beers while at a bar with Wasily and Pinner and two more later at his house before the accident. Describing the accident, he stated: "While we were driving *** I felt like I hit something, and the next thing you know my car is flipping over, and it's spinning out of control." Defendant also testified that he did not pull the parking brake at

any time while he was driving and was unaware that it was engaged. Nor did he use the parking brake as leverage to pull himself out of the back window of his vehicle, which had landed on its roof. But defendant thought that Wasily might have pulled the brake as a joke.

¶ 16 The jury ultimately found defendant guilty of aggravated driving with a BAC of .08 or higher. Defendant filed a post-trial motion to reconsider the finding of guilty or, in the alternative, for a new trial, which the court denied on March 5, 2013. The trial court sentenced defendant to five years' imprisonment (with credit for the 333 days already spent in custody), two years of mandatory supervised release, and fines and fees of $2,207. Defendant appeals, and we have jurisdiction pursuant to Illinois Supreme Court Rules 603 and 606.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant raises two main arguments. First, defendant contends that the trial court prevented him from presenting his defense theory to the jury by limiting his counsel's cross-examination of certain witnesses and barring his expert from testifying. The excluded evidence, according to defendant, would have been relevant to impeaching the State's evidence that his BAC was .08 or over. Second, defendant argues that the trial court improperly admitted evidence of the hospital laboratory results because the State had not established the requisite foundation for their admissibility. As explained below, we reject both arguments.[2]

¶ 19 We review the trial court's evidentiary rulings for an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the

[2] While defendant vaguely alludes to others errors by the trial court—for example, he generally alleges that "the record will indicate [that] the Court repeatedly barred the Defendant from cross-examination and direct examination questions"—we limit our analysis to those issues specifically presented for our review. See *Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79 ("It is axiomatic that '[a] reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments,' [citation] and that failure to develop an argument results in waiver.").

view adopted by the trial court." *Id.* Further, "the latitude permitted on cross-examination is a matter within the sound discretion of the trial court, and a reviewing court should not interfere unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant." *People v. Kliner*, 185 Ill. 2d 81, 130 (1998).

¶ 20 Defendant was convicted of aggravated driving with a BAC of .08 or more under 625 ILCS 5/11-501(a)(1), (d)(1)(F). To obtain this conviction, the State was required "to prove beyond a reasonable doubt that the defendant was (1) in actual physical control of a vehicle, (2) with a BAC of .08 or more in violation of section 11-501(a)(1), and (3) the violation of section 11-501(a) was [a] proximate cause of another person's death." *People v. Merrick*, 2012 IL App (3d) 100551, ¶ 26 (citing 625 ILCS 5/11-501(d)(1)(F) (West 2004); *People v. Martin*, 2011 IL 109102). Section 11-501(a)(1), which applies to driving with a BAC of .08 or more, is a "strict liability" offense such that "proof of impairment" is not required. *Id.* ¶ 27 (quoting *Martin*, 2011 IL 109102, ¶ 26). "Therefore, when an aggravated DUI charge is based on a violation of 11-501(a)(1) *** 'section 11-501(d)(1)(F) requires a causal link only between the physical act of driving and another person's death.' " *Id.* (quoting *Martin*, 2011 IL 109102, ¶ 26).

¶ 21 A. The Trial Court's Evidentiary Rulings

¶ 22 On appeal, defendant first contends that the trial court's evidentiary rulings prevented him from presenting his defense to contradict the hospital laboratory results that his BAC was .08 or over. According to defendant, his "theory of the case" was that he "was not impaired and the alleged blood alcohol serum result of the hospital was in error." The trial court's evidentiary rulings, defendant contends, prevented him from presenting this theory to the jury.

¶ 23 Specifically, defendant argues that three evidentiary rulings by the court were erroneous: (1) sustaining the State's objection to a question asked by defense counsel during LeDonne's

cross-examination about whether she knew the tested blood sample belonged to defendant; (2) sustaining the State's objection to a question asked by defense counsel during Pinner's cross-examination regarding his alleged altercation with the victim; and (3) barring defendant's expert witness from testifying as to the cause of the accident. We address each issue in turn, combining the latter two which are related.

¶ 24 During the cross-examination of LeDonne, the State objected to the following question posed by defendant's counsel: "You don't know whether or not it [the blood sample] tied back to my client Michael Beardsley." The trial court sustained the State's objection. Defendant contends that this ruling improperly prevented him from "question[ing] the hospital blood results or infer[ring] that the blood may not be that of the Defendant." We disagree.

¶ 25 " 'It is not error for a trial court to refuse to permit a cross-examiner to go beyond the scope of the direct examination in an effort to present his theory of the case.' " *People v. Velez*, 2012 IL App (1st) 101325, ¶ 62 (quoting *People v. Hosty*, 146 Ill. App. 3d 876, 882-83 (1986)). Here, counsel's questioning solicited information which was outside of the scope of LeDonne's direct examination. Based on LeDonne's testimony, she was only responsible for reviewing the hospital laboratory results and converting the serum ethanol concentration in the hospital results to the whole blood concentration used to determine whether defendant's BAC was over the legal limit. She had no role in the collection or testing of defendant's blood, nor did she have a role in the preparation of the hospital laboratory results. Thus, the trial court did not err in sustaining the objection.

¶ 26 Further, despite the court's ruling, defendant nevertheless was allowed to develop his theory that the blood test results were not for defendant's blood through another question posed to LeDonne. Specifically, his counsel confirmed during LeDonne's cross-examination that she

"didn't look at the vial to see if the stickers were proper to [defendant]." Consequently, the court's ruling did not result in "manifest prejudice" to the defendant. *Kliner*, 185 Ill. 2d at 130.

¶ 27 Defendant next maintains the trial court improperly prevented him from eliciting testimony and presenting evidence related the pulled parking brake, which defendant contends is relevant to impeach the State's evidence that his BAC was .08 or over. From what we can discern from the arguments in his brief, defendant argues that evidence regarding the parking brake as a potential cause of the accident is relevant for purposes of impeaching the State's evidence regarding his BAC of .08 or over, because it suggests that defendant's impairment did not cause the accident. From this evidence, defendant argues, the jury could conclude that he was not impaired and that the hospital lab report showing a BAC of over .08 was inaccurate.

¶ 28 Specifically, defendant contends that two trial court rulings related to this issue were erroneous. First, defendant argues that he should have been allowed to question Pinner about his previous altercation with the victim, Wasily, because this "reputation evidence" could allow the jury to conclude that Wasily pulled the parking brake. Second, defendant maintains that the trial court erred in excluding the testimony of defendant's reconstruction expert, Shawn Gyorke, who would have testified that the cause of the accident was the pulling of the parking brake. Again, we agree with the State that the trial court did not abuse its discretion in excluding this evidence.

¶ 29 While a "[d]efendant undeniably has the right to present a defense, *** this right does not include the right to introduce irrelevant evidence." *People v. Lowitzki*, 285 Ill. App. 3d 770, 779 (1st Dist. 1996). " 'The test of admissibility of evidence is whether it fairly tends to prove the particular offense charged,' [citation] and whether what is offered as evidence will be admitted or excluded depends upon whether it tends to make the question of guilt more or less probable; *i.e.*, whether it is relevant." [Citation.] *People v. Enis*, 139 Ill. 2d 264, 281 (1990). "[A] trial court

may reject offered evidence on the grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or speculative nature." *Id.* at 282.

¶ 30 Here, based on the speculative nature of this evidence and its remoteness to the offense at issue, the trial court did not abuse its discretion in concluding that the evidence was irrelevant and likely to confuse the jury. Again, defendant maintains that evidence supporting his theory that Wasily pulled the parking brake suggests that defendant was not impaired. But as our supreme court held in *Martin*, neither proof of impairment nor proof that defendant's impairment caused the victim's death is required to sustain a conviction for aggravated driving based on a violation of § 11-501(a)(1) for a BAC of .08 or higher. *Martin*, 2011 IL 109102, ¶¶ 26-27; see also *Merrick,* 2012 IL App (3d) 100551, ¶ 26. Moreover, the speculative nature of this evidence, coupled with its remoteness to the State's evidence that defendant's BAC was over .08, further supports the trial court's evidentiary ruling. Defendant has articulated no other theory of relevance for this evidence, nor has he cited any authority supporting its admissibility. And "it is not the job of this court to bear defendant's burden of argument," *People v. Snow*, 2012 IL App (4th) 110415, ¶ 32. Thus, on the record before us, we cannot say the trial court erred in excluding it.

¶ 31 B. Admissibility of Defendant's Medical Records Under 625 ILCS 5/11-501.4

¶ 32 Defendant also argues that the trial court erred in admitting evidence of the blood test results from his medical records, contending that (1) the results did not comply with 625 ILCS 5/11-501.4 because he was not in need of medical treatment when the blood test was performed; and (2) the State did not lay a proper business record exception foundation for his medical records. Defendant notably fails to cite any authority in support of these arguments, nor did he

file a reply brief responding to the State's position. Based on the arguments presented, we find no abuse of discretion in the admission of defendant's medical records under section 11-501.4.

¶ 33 Section 11-501.4 of the Illinois Vehicle Code, titled "Admissibility of chemical tests of blood or urine conducted in the regular course of providing emergency medical treatment," provides:

> "Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, of any combination thereof, of an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code [625 ILCS 5/11-501] or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012 when each of the following criteria are met:
>
> (1) the chemical tests performed upon an individual's blood or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;

> (2) the chemical tests performed upon an individual's blood or urine where performed by the laboratory routinely used by the hospital; and
>
> (3) results of chemical tests performed upon an individual's blood or urine are admissible into evidence regardless of the time that the records were prepared. 625 ILCS 5/11-501.4 (West 2012).

¶ 34 Defendant, whose brief neglects to actually quote the language of the statute, contends that section 11-501.4 does not apply to his blood test results because he was not in need of medical treatment in the emergency room. We disagree. Section 11-501.4 applies to blood tests "conducted upon persons receiving medical treatment in a hospital emergency room" when those tests "were ordered in the regular course of providing emergency medical treatment." 625 ILCS 5/11-501.4. The State presented evidence that where, as here, an accident involves a fatality, all the individuals in the vehicle are automatically transported to the hospital for treatment. Furthermore, both Dr. Strasburger and McManus testified that defendant's blood test was undertaken pursuant to a hospital standing order that applies to all trauma patients in the emergency room. And Dr. Strasburger confirmed that she relied upon the test results in her treatment of defendant. Illinois courts have recognized that a blood test undertaken pursuant to a hospital's "standard protocol" or "general practice" in treating "all motor vehicle accident victims" satisfied section 11-501.4. See *People v. Hutchison*, 2013 IL App (1st) 102332, ¶ 20. Defendant has not identified any contrary authority supporting his position. Nor has he cited a single case addressing section 11-501.4. Based on the evidence presented, the trial court did not abuse its discretion in concluding that the blood test comported with section 11-501.4's express requirements.

¶ 35 Defendant next contends that, in addition to establishing the specific requirements explicitly set forth in section 11-501.4, the State must also lay a business record foundation for defendant's medical records before they are admissible. The State, however, maintains that only compliance with section 11-501.4 is required. We need not resolve this issue, however, because we conclude that the State sufficiently established the foundation for the business record exception.

¶ 36 The business record exception applies when "(1) the record was made as a record of the event; (2) it was made in the regular course of business; and (3) it was the regular course of the business to make a record at the time of the event or within a reasonable time thereafter." *People v. Henderson*, 336 Ill. App. 3d 915, 920-21 (3d Dist. 2003). Additionally, "someone familiar with the business and its mode of operation" must establish the foundation. *Id.* at 921.

¶ 37 Here, Dr. Strasburger, as a resident in the Emergency Room at Christ Hospital at the time of the accident, "was familiar with the hospital's business and its mode of operation," (*id.*), and testified that she was "familiar with the records that are kept in relation to a patient's care" at the hospital. According to Dr. Strasburger, she was the person "who documented the results that were received from the laboratory" for defendant's blood tests in his medical records. Based on the medical records, she entered the test results into the medical records at 12:02 a.m. on July 19, 2008, less than an hour after McManus drew defendant's blood. Dr. Strasburger further explained that "the records that are entered *** are *** routinely entered for a patient's care and maintained by the hospital" and "are used for the treatment of a patient that comes in through the ER." The documented laboratory results, she stated, are "something [she] would rely upon for the patient's treatment" and she "rel[ied] upon those results for [defendant's] care." Defendant

does not address any of this testimony. Based on the evidence presented at trial, the trial court did not abuse its discretion in allowing defendant's medical records into evidence.

¶ 38 Defendant has not identified any reversible error by the trial court. Thus, for the reasons explained above, the judgment entered against defendant is affirmed.

¶ 39 Affirmed.