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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0657**

State of Minnesota,
Respondent,

vs.

Richard Robert Rodriguez,
Appellant.

**Filed March 19, 2018
Affirmed
Worke, Judge**

Steele County District Court
File No. 74-CR-16-1517

Lori Swanson, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Dan McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant was convicted of driving while impaired (DWI) – test refusal. He argues (1) that the evidence was insufficient to convict him because the police lacked probable

cause to believe that he was driving while intoxicated and (2) that the district court abused its discretion in imposing fines. We affirm.

FACTS

Deputy Robbins of the Steele County Sheriff's Office observed appellant, Richard Robert Rodriguez, driving a car in southeast Owatonna. Deputy Robbins ran Rodriguez's driver's license and saw that it had been cancelled. After Rodriguez pulled his car to the side of the road, Deputy Robbins placed him under arrest for driving after cancellation. Deputy Robbins asked Rodriguez why he was driving, and Rodriguez answered that he was just "travelling." While Deputy Robbins was attempting to place Rodriguez in handcuffs, Rodriguez moved to reach into his car to grab his cellphone, and Deputy Robbins had to restrain him. Deputy Robbins placed Rodriguez in the squad car and smelled the odor of alcohol on his breath. After a short time in the back of the squad car, Rodriguez began to antagonize the deputy.

Rodriguez mocked the police, raised his voice, and complained about Deputy Robbins's driving. Rodriguez also told Deputy Robbins that he would hold him liable for any injuries he suffered while in the backseat of the squad car. Finally, Rodriguez told Deputy Robbins that the law applied to the deputy but did not apply to him.

Once Deputy Robbins arrived at the detention center, he asked Rodriguez to perform field sobriety tests. Rodriguez refused. Deputy Robbins explained at trial that at that point Rodriguez was also under arrest for DWI. Deputy Robbins based that decision on the odor of alcohol on Rodriguez's breath, Rodriguez's belligerent attitude, and Rodriguez's refusal to perform field sobriety tests. Deputy Robbins read Rodriguez the implied-consent

advisory, and Rodriguez asked repeatedly if he was being ordered to submit to a chemical test. Deputy Robbins explained that it was Rodriguez's decision whether or not to submit to the test. After Rodriguez continued to ask whether he was being ordered to submit, Deputy Robbins told Rodriguez that he was considering him to have refused the test.

Rodriguez was charged with DWI-test refusal and driving after cancellation. Rodriguez qualified for the services of a public defender, but he chose to represent himself. Deputy Robbins was the sole witness at trial. The jury found Rodriguez guilty of both charges. The district court imposed \$8,000 in fines as part of Rodriguez's sentence for DWI-test refusal and for violating probation on a previous DWI conviction. This appeal followed.

D E C I S I O N

Probable cause

Rodriguez argues that the state presented insufficient evidence to prove that Deputy Robbins had probable cause to arrest him for driving under the influence of alcohol, an essential element of the crime of DWI-test refusal. When a defendant challenges the sufficiency of the evidence after conviction, this court reviews the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in the light most favorable to the conviction, were sufficient to allow the jury to reach its verdict. *State v. Scanlon*, 719 N.W.2d 674, 687 (Minn. 2006). It is a crime for a person to refuse to submit to a chemical test when an officer has probable cause to believe that the person was driving, operating, or in physical control of a motor vehicle while impaired, and the person is arrested for DWI. See Minn. Stat. §§ 169A.20, subd. 2, 169A.51, subd. 1(a), (b)(1) (2014).

The Due Process Clause of the Fourteenth Amendment requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970).

Rodriguez asserts that the evidence was insufficient to prove that Deputy Robbins had probable cause to believe that he was under the influence of alcohol because the deputy's suspicion was based on the odor of alcohol alone. "[T]he probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime." *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) (quotation omitted). "Common indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude." *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004). But, "[a]n officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." *Id.* Nonetheless, Rodriguez argues that we have never upheld a warrantless DWI arrest when the officer's probable cause was supported by only a single indicator of intoxication. We decline to consider Rodriguez's argument here because Deputy Robbins cited three indicia of intoxication, not one.

Deputy Robbins testified that he believed Rodriguez was intoxicated because of the odor of alcohol on his breath, his belligerent attitude, and his refusal to perform field sobriety tests. We assume that the jury believed Deputy Robbins' testimony. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Deputy Robbins needed only one objective indication of intoxication to believe that Rodriguez was under the influence of alcohol, but he cited three, and no evidence contradicted his testimony. The evidence was sufficient for

the jury to find that Deputy Robbins had probable cause to believe that Rodriguez had been operating a motor vehicle while impaired.

Fines

Rodriguez also argues that the district court's order that he pay \$8,000 in fines is erroneous because the district court might have forgotten that Rodriguez was eligible for the services of a public defender and therefore qualified for a \$50 minimum fine. When reviewing a district court's decision to impose fines, we remain mindful of the broad discretion that district courts possess in sentencing criminals. *State v. Kujak*, 639 N.W.2d 878, 883 (Minn. App. 2002), *review denied* (Minn. Mar. 25, 2002). A district court "has broad discretion to impose significantly lower fines if it makes specific findings that immediate payment of the fine would create undue hardship for the convicted person." *State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000). But, "a sentencing judge need not specifically find that a defendant has the ability to pay a fine before imposing the fine as part of the defendant's sentence." *Perkins v. State*, 559 N.W.2d 678, 693 (Minn. 1997).

Rodriguez was subject to a maximum combined fine of \$17,000. *See* Minn. Stat. §§ 609.02, subd. 4, 169A.24, subd. 2 (2014). Generally, a district court may not impose a minimum fine less than 30% of the maximum. *See* Minn Stat. § 609.101, subd. 4 (2014). But it may reduce the amount of the fine to \$50 when a defendant qualifies for the services of a public defender. *Id.*, subd. 5(b). Rodriguez argues that because he proceeded pro se, it is possible that the district court forgot that he qualified for the services of a public defender and the \$50 minimum fine. Rodriguez did not object to the fines at sentencing, so we review his claim for plain error. *See State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). To

prevail, Rodriguez must show that the district court's decision to impose the fines was error, that the error was plain, and that the error affected his substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Rodriguez has not shown that the district court committed any error. The district court at its discretion "may reduce" a minimum fine to \$50 if the defendant qualifies for the services of a public defender, but there is no mandate that the district court do so. *See* Minn. Stat. § 609.101, subd. 5(b). Even if the district court had been indisputably aware that Rodriguez qualified for the lower minimum fine, the district court was still not required to impose a lesser fine. And while the record does not conclusively show whether the district court remembered that Rodriguez qualified for the services of a public defender, there is evidence that the district court was aware of Rodriguez's circumstances. The district court told Rodriguez at his first sentencing hearing that he should contact the public defender's office to obtain a letter that had been mistakenly sent to his assigned attorney, and when the district court announced Rodriguez's sentence at the second sentencing hearing, it mentioned that Rodriguez had failed to pay his outstanding public-defender fee.

As a practical matter, Rodriguez's claim would be more appropriate if it were raised in postconviction proceedings. It is impossible for us to determine whether the district court in fact forgot that Rodriguez qualified for a \$50 minimum fine on this record. Additional fact finding would be necessary to substantiate Rodriguez's claim. On this record, we see no error.

Affirmed.