

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1244**

State of Minnesota,  
Respondent,

vs.

Jerry Robert Deno,  
Appellant.

**Filed July 2, 2018  
Affirmed  
Ross, Judge**

Olmsted County District Court  
File No. 55-CR-16-7288

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Terry L. Adkins, Rochester City Attorney, Kelli L. Ceraolo, Assistant City Attorney,  
Rochester, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Hooten,  
Judge.

**UNPUBLISHED OPINION**

**ROSS, Judge**

Trooper Scott Barstad stopped Jerry Deno's pickup truck for Deno's suspected  
drunk driving and noticed that Deno's face was bruised and bloody. Deno stood trial for

second-degree gross misdemeanor test refusal and open-bottle possession. Deno's trial strategy was to highlight his facial injuries and maintain that all of the indicia of his intoxication could have been the result of those injuries rather than intoxication. The district court allowed Deno to advance this theory but did not allow him to present any argument or ask any question suggesting that the trooper's decision not to bring him to the hospital undermined probable cause for the arrest. Because this trial limitation falls within the district court's discretion, we affirm.

## **FACTS**

A police dispatcher sent Trooper Scott Barstad to a parking lot in Rochester on a report of a suspected impaired driver with a bloody face sitting in a pickup truck. The trooper found and stopped Jerry Deno's truck after he saw it exceed the speed limit and drift over the centerline. After the stop, the trooper saw that Deno's face was bloody and bruised. The trooper also saw signs of Deno's intoxication: Deno smelled of a strong odor of an alcoholic beverage; his eyes were bloodshot; and he slurred his speech. The trooper administered the horizontal gaze nystagmus test, which supported his suspicion that Deno was impaired. Deno refused to perform any other field sobriety tests, including a preliminary breath test. The trooper arrested Deno and searched his truck, finding a cold, open, partly consumed, 40-ounce bottle of Steel Reserve malt liquor in the center console.

Trooper Barstad took Deno to the detention center and read him the implied-consent advisory. The trooper asked Deno at least three times if he would submit to a breath test, but Deno refused. The state charged Deno with second-degree gross-misdemeanor test refusal, third-degree gross-misdemeanor driving while impaired, and open-bottle

possession. The state later dismissed the driving-while-impaired charge, and a jury considered the remaining offenses.

Deno's trial strategy was to argue that his visible facial wounds implied that he had suffered a head injury that caused him merely to appear to be impaired. The district court treated this as a valid defense theory but prohibited Deno from arguing "to th[e] jury that [the arresting trooper's] decision not to contact emergency medical care or seek out medical care somehow negates probable cause." During Deno's cross examination of Trooper Barstad, the district court sustained relevancy objections to the following questions: "[H]ow far would you say [the traffic stop] was from the closest hospital?" "Well, in any event, you did not take him to the hospital. Correct?" "Knowing now that [many of the circumstances that led you to believe Deno was impaired could have also been explained by his head injuries,] . . . if you had to do it again . . . ?"

The jury found Deno guilty. Deno appeals.

## **D E C I S I O N**

Deno argues that the district court denied him his constitutional right to present a defense to the test-refusal charge. A district court has broad discretion in making evidentiary decisions, and this court will reverse those decisions only if the district court abused its discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). One way a district court abuses its discretion is by denying a criminal defendant his right to present a complete defense. *See State v. Bjork*, 610 N.W.2d 632, 636 (Minn. 2000). To convict a defendant of test refusal, the state must prove that a peace officer had probable cause to believe that the defendant was driving while impaired. *See* Minn. Stat. §§ 169A.20, subd. 2(1), 169A.51,

subd. 1(b) (2016); *see also State v. Koppi*, 798 N.W.2d 358, 361–64 (Minn. 2011). Deno argues that by prohibiting him from asking questions that sought to undermine the existence of probable cause (by casting doubt on the trooper’s decision not to take Deno for medical treatment), the district court abused its discretion. The argument fails.

A defendant must exercise his right to present a complete defense within the bounds of the rules of evidence. *State v. Henderson*, 620 N.W.2d 688, 698 (Minn. 2001). Deno’s challenged questions were irrelevant under the rules. “Evidence is relevant when it logically or reasonably tends to prove or disprove a material fact in issue, or tends to make such a fact more or less probable, or affords a basis for or supports a reasonable inference or presumption regarding the existence of a material fact.” *State v. Walen*, 563 N.W.2d 742, 749 (Minn. 1997) (quotation omitted). In the context of the test-refusal statute, probable cause “exists whenever there are facts and circumstances known to the officer which would warrant a prudent man in believing that the individual was driving . . . while impaired.” *Koppi*, 798 N.W.2d at 362 (quotations omitted). Questioning the trooper about the proximity to the nearest hospital would not elicit any evidence relevant to whether probable cause existed. The location of a hospital has no bearing on whether a reasonable officer would suspect that impaired driving was caused by alcohol consumption. Deno’s other two challenged questions—“[I]f you had to do it again” and “You did not take him to the hospital”—likewise would not draw any testimony about whether probable cause existed *at the time of the arrest*. *See id.* The district court appropriately sustained the state’s relevancy objections.

We are not persuaded otherwise by Deno’s reliance on *State v. Tran*, 712 N.W.2d 540 (Minn. 2006), and *State v. Nissalke*, 801 N.W.2d 82 (Minn. 2011). Deno maintains that these cases stand for the proposition that “questions challenging [a] police investigation are always relevant.” Nothing in those cases stands for such a sweeping proposition of relevance or admissibility. And those cases had nothing to do with an officer’s probable cause as an element of an offense. Both cases instead addressed the application of the alternative-perpetrator rule in murder cases. *Tran*, 712 N.W.2d at 550–52; *Nissalke*, 801 N.W.2d at 99–103. That evidence of an alternative perpetrator is relevant under the alternative-perpetrator rule does not translate into a holding that evidence of some theoretical alternative cause is relevant to the element of the officer’s probable-cause determination. That determination is not diminished even if some other cause might be theoretically plausible. This is because “even if there are valid alternative explanations, probable cause may still exist.” *State v. Moe*, 498 N.W.2d 755, 759 (Minn. App. 1993). The trooper knew that Deno reeked of alcoholic beverages, had been drinking an alcoholic beverage in his pickup, and had failed the nystagmus test (none of which can be explained by facial bruising), and that his driving, bloodshot eyes, and slurred speech were consistent with drunk driving. These circumstances established his probable cause for the arrest regardless of whether some of the circumstances may have also supported some other theory.

The district court’s evidentiary rulings did not deny Deno the right to present a complete defense.

**Affirmed.**