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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1900**

State of Minnesota,
Respondent,

vs.

Bruce John Johnson,
Appellant.

**Filed January 22, 2019
Affirmed
Larkin, Judge**

McLeod County District Court
File No. 43-CR-16-1186

Keith M. Ellison, Attorney General, St. Paul, Minnesota; and

Michael K. Junge, McLeod County Attorney, Daniel R. Provencher, Assistant County Attorney, Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of fleeing a peace officer in a motor vehicle, arguing that the district court erred by limiting his cross-examination of a witness regarding

the state's grant of use immunity and by allowing an officer to testify regarding the operation of vehicles with manual transmissions. We affirm.

FACTS

At approximately 10:45 p.m. on July 8, 2016, Officer Schmeling of the Hutchinson Police Department was parked in his squad car and observed a vehicle traveling in excess of the posted speed limit. As the vehicle passed Officer Schmeling's vehicle, it rapidly decelerated. Officer Schmeling observed that it was a red Nissan 350z from the mid-2000s, it had a wide-body kit and oversized rims, and its driver appeared to be male. Officer Schmeling pursued the vehicle, shined his spotlight at it, and activated his emergency lights. The vehicle did not pull over. The vehicle stopped at a stop sign, and Officer Schmeling, who was approximately one-half of a car length from the vehicle, again observed that the driver appeared to be male. The vehicle rapidly accelerated near the next intersection. Officer Schmeling activated his siren and pursued the vehicle, traveling at speeds of approximately 100 miles per hour to keep up with it. Officer Schmeling ended his pursuit of the vehicle for safety reasons. Brownton Police Chief Bauer learned about the pursuit and notified his officers that the vehicle was similar to one owned by appellant Bruce John Johnson.

Brownton Police Officer Warzecha observed a vehicle similar to the one involved in the chase. Officer Warzecha followed the vehicle, and it accelerated rapidly. After briefly losing sight of the vehicle, Officer Warzecha saw it parked at Johnson's residence. Officer Warzecha observed two people exit the vehicle. Brownton Police Officer Anderson, who was off-duty and lived nearby, observed a silhouette of a person on each

side of the vehicle. The person on the driver's side of the vehicle ran west from the vehicle. The person on the passenger side of the vehicle approached the officers and was identified as J.V., Johnson's girlfriend.

J.V. was extremely intoxicated. J.V. asked the officers multiple times, "Why did you pull him over?" J.V. repeatedly told the officers that she was not driving the vehicle. J.V. eventually told the officers that she was driving the car. The officers arrested her, at which point she panicked and said that she was "just joking." J.V. asked one of the officers to retrieve her purse from the passenger side of the vehicle.

Officer Anderson encountered Johnson west of the vehicle after he emerged from the bushes of a nearby home. Johnson denied that he had been driving. He did not appear to be under the influence of alcohol. Officer Schmeling arrested Johnson. Officers searched the bushes where Officer Anderson had observed Johnson and found the car keys and a key fob for the vehicle. Officers also found Johnson's cell phone on the floor of the driver's side of the vehicle and beer bottles on the passenger side of the vehicle. Officers determined that the vehicle was registered to Johnson and that it had a six-speed manual transmission. After their arrests, J.V. and Johnson continued to deny that they had been driving.

Respondent State of Minnesota charged Johnson with fleeing a peace officer in a motor vehicle, and the case was tried to a jury. The state granted J.V. use immunity, and she testified that she was the driver. The state questioned J.V. regarding its grant of use immunity. The state also questioned J.V. regarding her experience driving vehicles with manual transmissions. Following J.V.'s testimony, the state recalled Officer Schmeling,

who testified regarding the operation of vehicles with manual transmissions, including Johnson's vehicle.

The jury found Johnson guilty of fleeing a peace officer in a motor vehicle. The district court entered judgment of conviction and stayed imposition of sentence for three years. This appeal follows.

DECISION

I.

Johnson contends that the district court erred by “[d]enying [him] the opportunity to question [J.V.] about why she decided to testify after being granted use immunity” and “unfairly impacted [his] right to present a complete defense.”

The due-process clauses of the Fourteenth Amendment of the United States Constitution and article I, section 7 of the Minnesota Constitution require that every criminal defendant be “afforded a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984); *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992). “A criminal defendant’s right to present a complete defense includes the right to call and examine witnesses.” *State v. Munt*, 831 N.W.2d 569, 585 (Minn. 2013). “But the evidence proffered in support of the defense must still comply with the rules of evidence.” *State v. Nissalke*, 801 N.W.2d 82, 102 (Minn. 2011).

Evidence is inadmissible unless it is relevant, that is, it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401, 402.

But the district court may exclude relevant evidence if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

We review the district court’s evidentiary rulings for an abuse of discretion. *State v. Anderson*, 789 N.W.2d 227, 234 (Minn. 2010). We apply the abuse-of-discretion standard even if a defendant claims that exclusion of evidence deprived him of his constitutional right to present a complete defense. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *see also* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

The relevant portion of the trial transcript shows that during the state’s direct examination of J.V., the following exchange occurred:

Q: [J.V.], are you aware that you were granted immunity for your testimony here today?

A: Yes, I am.

Q: And because of that, anything you say cannot be used against you by the State in a future criminal proceeding, correct?

A: Correct.

....

Q: [J.V.], you are aware that by admitting that you were driving today, you can’t be prosecuted because you were granted immunity for Fleeing a Peace Officer based on your testimony that you just said to the jury, right?

A: Yes.

Q: You understand that you could be prosecuted for perjury, correct?

A: Correct.

Q: But you cannot be prosecuted because the State gave you immunity for admitting that you were driving the vehicle, correct?

A: Correct.

Q: Prior to your getting that immunity, your story was consistent that you were not driving the vehicle, correct?

A: Correct.

During Johnson's cross-examination of J.V., the following exchange occurred:

Q: . . . [J.V.], you were just asked a few moments ago by [the prosecutor] about your use immunity, correct?

A: Correct.

Q: And essentially what that means is that you are free to testify today without potentially facing criminal charges, if you happen to testify to something that you could be criminally charged for, correct?

A: Yes.

Q: The exception to that would be a perjury charge, right?

A: Yes.

Q: And prior to being granted use immunity, had you been planning on testifying today?

A: No, I was not.

Defense counsel began to ask J.V., "Were you by chance planning," and the prosecutor objected. The district court held a bench conference and sustained the objection. The state later explained that it objected because J.V. had already answered that she did not plan to testify before being granted use immunity and because whether J.V. planned to invoke her right against self-incrimination was irrelevant, given that she had been granted immunity. Defense counsel argued that the defense "was barred from bringing up the fact that [J.V.] testified after being granted immunity, when her plan previous to that was never to testify for fear of incriminating herself" and that this "impede[d] the defense's ability to give a defense."

On appeal, Johnson argues that the district court erred because he “wanted to establish that [J.V.] had not previously admitted she was driving [his] car because she was afraid of being criminally charged with fleeing the police” and that “[a]fter being granted use immunity, she no longer had that fear, which is why she chose to testify truthfully at trial.” But those points were implied in the direct and cross-examination of J.V. quoted above. Moreover, Johnson argued in his closing argument that

[J.V.] was here to testify because she had been given what is called “use immunity.” Use immunity means that she could no longer decline to testify out of fear of incriminating herself. She couldn’t do that because she was no longer at risk of being charged with a crime. Once the fear of being charged with a crime went away, she came in and testified and told the truth, that she was the person driving the vehicle.

In short, Johnson ultimately made the argument that the district court purportedly prohibited. On this record, Johnson fails to show that the district court abused its discretion by limiting his questioning regarding J.V.’s decision to testify or that he was prejudiced by that ruling. Johnson is therefore not entitled to relief based on the district court’s evidentiary ruling.

II.

Johnson also contends that the district court erred by allowing Officer Schmeling to provide rebuttal testimony regarding the operation of vehicles with manual transmissions. He argues that such testimony was improper lay-opinion testimony.

At trial, the state questioned J.V. regarding how she operated Johnson’s vehicle during the chase and her experience driving manual-transmission vehicles. J.V. testified that during the chase, she drove the vehicle in fifth gear. J.V. also testified that generally,

when approaching a stoplight or stop sign on a highway in fifth gear in a manual-transmission vehicle, she would downshift through each individual gear to first gear.

On rebuttal, the state called Officer Schmeling, who testified that he has owned and operated vehicles with manual transmissions, that he has taught friends how to drive vehicles with manual transmissions, and that he drove Johnson's vehicle to the Hutchinson Police Department's impound lot after Johnson's arrest. Officer Schmeling testified that a driver would typically shift a passenger vehicle with a manual transmission into neutral when slowing down to stop. Officer Schmeling testified that it is possible to downshift when making a stop in a vehicle with a manual transmission, but that it is unusual to do so in a passenger vehicle.

Officer Schmeling also testified that Johnson's vehicle had a six-speed manual transmission. He testified that a person driving a vehicle with a six-speed manual transmission would probably have to be in sixth gear in order to reach 100 miles per hour and that if the vehicle was in fifth gear "[t]he engine would be revving at a very high rate of speed, possibly even red lining."

When the prosecutor asked Officer Schmeling which gear he would use if he were driving a vehicle with a manual transmission on the highway, Johnson objected on speculation grounds. However, Johnson concedes that he did not object that Officer Schmeling's testimony was improper lay-witness opinion testimony and that we should therefore review the district court's ruling on this objection under the plain-error standard of review.

Under the plain-error test, we will not grant relief unless (1) there is an error, (2) the error is plain, and (3) the error affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “An error is plain if it was clear or obvious. Usually this is shown if the error contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations and citations omitted). If the three prongs of the plain-error test are met, we may correct the error only if it is necessary to “ensure fairness and the integrity of judicial proceedings.” *Griller*, 583 N.W.2d at 742. If an appellate court concludes that any prong of the plain-error analysis is not satisfied, it need not consider the other prongs. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

Again, the issue is whether Officer Schmeling’s testimony was improper lay-opinion testimony.

If [a] witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Minn. R. Evid. 701.

Johnson argues that the district court plainly erred by admitting Officer Schmeling’s testimony regarding manual-transmission vehicles because Officer Schmeling’s opinion “was not based on firsthand knowledge and therefore was not rationally based on his own perception.” Johnson notes that Officer Schmeling never testified that he had “personally observed [J.V.] drive [Johnson’s] car—or any car with a manual transmission” or that he had “driven [Johnson’s car] at a high rate of speed on a highway.”

The state argues that Officer Schmeling’s testimony satisfied the requirements of rule 701 because it was “rationally based on his perception” given that he has owned or operated vehicles with manual transmissions—including Johnson’s vehicle—and because it was “helpful to the trier of fact in determining the credibility of [J.V.]”

Officer Schmeling’s testimony regarding his experience with manual-transmission vehicles adequately established his knowledge regarding the operation of such vehicles. Thus, his opinions regarding the operation of manual-transmission vehicles were rationally based on his perceptions. In addition, Officer Schmeling’s testimony regarding manual-transmission vehicles helped the jury to assess J.V.’s claim that she was the driver. Lastly, the challenged testimony was not based on scientific, technical, or other specialized knowledge within the scope of Minn. R. Evid. 702, which governs testimony by experts. We fail to see how the district court clearly or obviously violated rule 701 by allowing Officer Schmeling to testify about the operation of vehicles with manual transmissions. Johnson is therefore not entitled to relief. *See Brown*, 815 N.W.2d at 620 (stating that if an appellate court concludes that any prong of the plain-error analysis is not satisfied, it need not consider the other prongs).

Affirmed.