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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0451**

State of Minnesota,
Respondent,

vs.

Christopher Richardson,
Appellant.

**Filed March 18, 2019
Affirmed
Larkin, Judge**

Stearns County District Court
File No. 73-CR-17-7500

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

Cynthia R. Kirchoff, St. Cloud City Attorney, Kirsten A. Lucken, Assistant City Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree driving while impaired (DWI), arguing that the district court violated his right to present a complete defense by limiting his cross-examination of the arresting officer. We affirm.

FACTS

At approximately 11:18 p.m. on August 22, 2017, St. Cloud Police Officer Kaleb Waaraniemi received a driving complaint. Officer Waaraniemi saw a vehicle that appeared to match the description of the complained-of vehicle traveling near Tenth Street in St. Cloud, but he was unable to verify that it was the suspect vehicle. Approximately 30 seconds later, Officer Waaraniemi observed what he thought was the same vehicle. The vehicle was stationary, its headlights and taillights were illuminated, and the driver's door was open. As Officer Waaraniemi pulled his squad car behind the vehicle, appellant Christopher Richardson exited the vehicle through the driver's door, from the driver's seat, carrying a set of car keys. Officer Waaraniemi never determined if those keys were the keys to the vehicle.

Officer Waaraniemi told Richardson to return to the vehicle and sit down. Richardson complied and shut the driver's door after doing so. Officer Waaraniemi approached the vehicle on the driver's side and asked Richardson to roll down the driver's window. Richardson told Officer Waaraniemi that the window was not operational, and Officer Waaraniemi opened the driver's door at Richardson's request.

Officer Waaraniemi smelled an odor of alcohol emitting from Richardson's breath, observed that his eyes were bloodshot and watery, and noticed that his speech was slurred. Richardson admitted that he had consumed three beers, but he repeatedly denied having driven the vehicle and initially refused to participate in any field sobriety tests on the ground that he had not been driving. Richardson eventually agreed to perform the horizontal gaze nystagmus test, performed poorly on the test, and refused to take other field sobriety tests.

Officer Waaraniemi arrested Richardson for DWI and offered him a preliminary breath test, which he refused. Officer Waaraniemi transported Richardson to the Stearns County Jail, where he read Richardson a breath-test advisory and asked him to submit to a breath test. Richardson refused the breath test.

Respondent State of Minnesota charged Richardson with third-degree DWI, second-degree DWI—test refusal, and driving after revocation. The case was tried to a jury. At the beginning of the trial, the state dismissed the third-degree DWI and driving-after-revocation charges.

Officer Waaraniemi testified at trial, and the state questioned him regarding why he approached and questioned Richardson. Officer Waaraniemi testified that he was dispatched based on a driving complaint. He saw a moving vehicle that appeared to match the description of the complained-of vehicle, and he believed that the stationary vehicle that Richardson exited was the moving vehicle that he had just seen. He testified that he believed Richardson had been driving the vehicle.

Richardson also questioned Officer Waaraniemi regarding the basis for his investigation. The state objected to several of his questions. The district court allowed some of Richardson’s questions but disallowed others, reasoning that they were not relevant.

The jury found Richardson guilty of second-degree DWI—test refusal. The district court entered judgment of conviction and placed Richardson on probation. Richardson appeals.

D E C I S I O N

Richardson contends that the district court erred by “prohibit[ing him] from cross-examining the arresting officer regarding whether [he] drove the vehicle prior to the officer making contact with [him] inside the parked vehicle” and that this “violated [his] constitutional right to present a meaningful 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. A 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 a “clear abuse of discretion.” *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015). “Under an abuse-of-discretion standard, [an appellate court] may reverse the district court when the district court’s ruling is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). 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). If a defendant shows that the district court erroneously excluded defense evidence in violation of the defendant’s right to present evidence, this court must determine “whether, assuming that the damaging potential of the excluded evidence were fully realized . . . the error was harmless beyond a reasonable doubt.” *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (quotation omitted).

Richardson assigns error to the district court’s disallowance of some of his cross-examination of Officer Waaraniemi regarding whether he had been driving the vehicle. As to that issue, the state introduced the following testimony:

PROSECUTOR: Officer, just in general terms, why were you dispatched?

OFFICER WAARANIEMI: There was a driving complaint

....

PROSECUTOR: Now, was the vehicle stationary or actually moving?

OFFICER WAARANIEMI: I believe I witnessed the vehicle moving as it traveled southbound on 32nd Avenue. When I activated my emergency lights, the vehicle was stationary.

....

PROSECUTOR: Now, when—at this point in your investigation, *did you have reason to believe that [Richardson] may have been driving this vehicle?*

OFFICER WAARANIEMI: *I believe that he had.*

PROSECUTOR: And did you, yourself, see [Richardson] in the driver's seat driving the vehicle at any time?

OFFICER WAARANIEMI: I did not.

PROSECUTOR: Okay. And had you seen the vehicle being driven earlier?

OFFICER WAARANIEMI: I believe that I had.

....

PROSECUTOR: While the vehicle was in motion, were you able to get close enough to the vehicle that you're just talking about that you saw several blocks away?

OFFICER WAARANIEMI: I was not able to verify that was the same vehicle. I lost sight of it and then located the vehicle in question, stationary, shortly after.

....

PROSECUTOR: Okay. Now, when you confronted [Richardson] about driving the vehicle, what, if anything, did he say to you?

OFFICER WAARANIEMI: He said that he had just gotten to the vehicle to retrieve some cigarettes, but that he had not been driving it.

....

PROSECUTOR: Now what factors did you take into consideration to support your suspicion that [Richardson] was in physical control while under the influence of alcohol?

OFFICER WAARANIEMI: The factors that weighed into my decision to arrest him was that a named complainant had first initiated a driving complaint. I later located the same vehicle. And when I made contact with *the driver*, he had the odor of an alcoholic beverage on his breath; slurred speech; bloodshot,

watery eyes. And then when I conducted the horizontal gaze nystagmus test, all of these six indicators were present for impairment.

(Emphasis added.)

Richardson complains that during his cross-examination of Officer Waaraniemi, he attempted to challenge the officer's testimony that the officer believed that Richardson had been driving the vehicle, but the district court sustained the state's relevance objections.

In district court, the prosecutor explained that she objected to that line of questioning because the state was "not proceeding on the theory that [Richardson] was driving [his] motor vehicle" and instead was arguing that Richardson "was in physical control of the vehicle" when the officer made contact with him. Defense counsel argued that, because "[y]ou must look at the totality of the circumstances leading to the stop" to determine whether Officer Waaraniemi had probable cause to believe that Richardson was in physical control of the vehicle in violation of the DWI statute, questions regarding the circumstances leading to the stop were relevant. The district court sustained the prosecutor's objections, reasoning: "There is no evidence of a driving conduct here that would lead to a Driving While Impaired charge. This is simply a being in physical control case. And so the evidence will need to conform with those allegations."

On appeal, the state again argues that Richardson's proposed cross-examination was irrelevant because "this was a 'physical control' [case]" and not a "'driving' while impaired case." The state's argument is disingenuous because the state made Richardson's alleged driving relevant by presenting Officer Waaraniemi's testimony that he believed Richardson had been driving the vehicle.

The state charged Richardson with second-degree DWI—test refusal under Minn. Stat. § 169A.25, subd. 1(b) (2016). The underlying test-refusal statute provides that it is a crime for any person to refuse to submit to a chemical test of the person’s breath under Minnesota’s implied-consent statute. Minn. Stat. § 169A.20, subd. 2(1) (Supp. 2017). The implied-consent statute provides:

[A breath] test may be required of a person when an officer has *probable cause* to believe the person was driving, operating, *or in physical control of a motor vehicle* in violation of section 169A.20 (driving while impaired), and one of the following conditions exist:

(1) the person has been lawfully placed under arrest for violation of section 169A.20 or an ordinance in conformity with it[.]

Minn. Stat. § 169A.51, subd. 1(b)(1) (2016) (emphasis added).¹

“Probable cause under section 169A.51, subdivision 1(b), exists whenever there are facts and circumstances known to the officer which would warrant a prudent man in believing that the individual was driving or was operating or was in physical control of a motor vehicle while impaired.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (quotation omitted). “[P]robable cause requires that, *under the totality of the circumstances*, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *Id.* at 364 (emphasis added) (quotation

¹ Consistent with the implied-consent statute, the district court instructed the jury to determine whether Officer Waaraniemi had “probable cause to believe that [Richardson] was in physical control of a motor vehicle while under the influence of alcohol.”

omitted).² Thus, Officer Waaraniemi's beliefs that the stationary vehicle was the complained-of vehicle and that Richardson had been driving that vehicle were relevant to the jury's totality-of-the-circumstances inquiry regarding whether the officer had probable cause to believe that Richardson was in physical control of the vehicle.

This court has previously concluded that it is "substantial error" to completely disallow cross-examination regarding evidence that the state has introduced at trial. *State v. Carroll*, 639 N.W.2d 623, 626 (Minn. App. 2002), *review denied* (Minn. May 15, 2002). We stated that "once evidence is admitted in a trial and heard by the jury, thus giving the jury the right to consider it for whatever it is worth, we cannot fathom a case where either the state's attorney or the defendant's attorney *is not allowed to refer to evidence that has been admitted!*" *Id.* at 629.

Accordingly, if the district court had not allowed any cross-examination regarding Officer Waaraniemi's belief that Richardson had been driving the vehicle, a reversal might be necessary. *See id.* at 626. However, the district court allowed the following cross-examination regarding that issue:

DEFENSE COUNSEL: And in the driving complaint there was no description of a driver, correct?

....

OFFICER WAARANIEMI: I was advised that two males had gotten into the vehicle.

DEFENSE COUNSEL: And was there any description of those males?

OFFICER WAARANIEMI: That was the full description that I received.

² Consistent with caselaw, the district court instructed the jury that it was required to "look at the totality of the circumstances leading to the stop" in determining whether the officer had probable cause.

DEFENSE COUNSEL: Okay. Dispatch didn't advise you of the race of the males?

OFFICER WAARANIEMI: No.

....

DEFENSE COUNSEL: So did you do any investigation between—to see if anyone else was driving?

OFFICER WAARANIEMI: Again, I asked who I could speak with; and I don't recall a name of anyone that I was given.

....

DEFENSE COUNSEL: And when you—when Dispatch gets a call saying—and you call it a driving complaint—that doesn't necessarily mean that there is any driving conduct, correct? It just means that someone called in and was concerned?

OFFICER WAARANIEMI: It could be for any number of reasons related to driving.

The district court disallowed the following questions, which solicited more details regarding the description of the complained-of driver and the complainant's veracity or motive:

Did the caller give any description that would allow you to determine who the driver was when they called in?

....

Do you know whether the person who called in saw anybody drive the vehicle?

....

And did you ever, like, go back—during all of [Richardson's] objections and how upset he was—to try to get more information from the person who called in about who they saw driving or a description?

....

Okay. When someone calls in a driving complaint, whether they are saying that they saw someone driving or they saw some driving conduct that made someone think they were drunk or whatever, is there any investigation into the veracity or the motive of that person calling in?

Because the district court had already allowed some cross-examination to show that Officer Waaraniemi lacked information regarding the identity of the complained-of driver

and the reason for the complaint, additional questioning regarding these points was arguably cumulative and could have confused the issues.

In sum, the district court's approach allowed Richardson to challenge the basis for Officer Waaraniemi's investigation without risking the introduction of cumulative and confusing evidence. Although the district court's stated reason for disallowing the additional questioning was based on the state's relevance argument—which we reject—its ruling was not against logic and the facts in the record and, therefore, not an abuse of discretion. *See Bustos*, 861 N.W.2d at 666; *see also Kahn v. State*, 289 N.W.2d 737, 745 (Minn. 1980) (“[An appellate court] will not . . . reverse on appeal a correct decision simply because it is based on incorrect reasons.”). And because the prohibited cross-examination did not comply with the rules of evidence, the district court's limitation did not violate Richardson's right to present a complete defense. We therefore affirm.

Affirmed.