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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0806**

State of Minnesota,
Respondent,

vs.

Aaren Treina Bertelsen,
Appellant.

**Filed April 1, 2019
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69DU-CR-17-91

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges her conviction of theft of a motor vehicle, arguing that she was denied her right to present a complete defense when the district court excluded her testimony and argument concerning her necessity defense. Because there was no error in the determination that appellant did not have a valid necessity defense, we affirm.

FACTS

Appellant Aaren Bertelsen and K.O. each regarded J.H. as her boyfriend. Early in the morning of January 7, 2017, appellant and J.H. were in J.H.'s house when K.O. drove up. She left her car running in the driveway and approached the door.

After appellant let K.O. into J.H.'s house, the two women began to fight over whose boyfriend J.H. was. They fell to the floor, and appellant bit K.O.'s thumb. J.H. broke up the fight. Appellant then left the house and drove away in K.O.'s car, which contained K.O.'s purse, wallet, checkbook, prescription medication, and cell phone. K.O. called 911, saying that appellant had stolen her car. Two police officers went to J.H.'s house, and K.O. filled out a stolen-vehicle report.

Appellant drove to a casino that was open all night, left the car, and got a cab. She directed the cab to her apartment, about 12 miles from K.O.'s house, and the police found her there. She had two purses, her own and K.O.'s, when she was taken into custody. Appellant's purse contained a bottle of Lorazepam prescribed to K.O., a cell phone, a plastic straw used for the ignition interlock system in K.O.'s car, and K.O.'s insurance

cards. Police later found K.O.'s car parked outside the casino. Appellant was charged with theft of a motor vehicle and theft of a controlled substance.

Appellant wanted to raise a necessity defense to the charge of auto theft. The district court refused her request to testify about or to argue this defense, saying, "This is not a case where a necessity defense would be allowed and I'm not going to allow it. . . . I wouldn't allow [appellant to testify] regarding her belief that [taking K.O.'s car] was necessary because that would then be irrelevant"; nor would the district court allow appellant to testify that she "had to take the car because [she] felt like [she] was in a situation that [she] had to get away from." The judge precluded her from bringing in the evidence by denying the defense.

But on direct examination, appellant did testify that: (1) when she saw K.O.'s car running in J.H.'s driveway, her instinct was to jump in and go so K.O. and J.H. would not be able to get her; (2) she knew she did not have permission to take K.O.'s car; (3) she drove it to a casino because she thought she would be safe there; (4) she left the car at the casino; and (5) although she planned to tell K.O. where the car was, she did not.

During closing argument, appellant's attorney told the jury that appellant: (1) "was just attacked at her new boyfriend's house in the country"; (2) "testified that she had too much to drink"; (3) "[left J.H.'s] house in a hurry"; (4) "believed [leaving his house] was reasonable"; (5) "didn't intend on keeping that car"; (6) "wanted to get home"; (7) "wanted to get to a place of safety"; (8) "wanted to be around lights and people"; and (9) "did the only thing she [could] think to do and that [was] to get home, to get to a place of safety. . ."

The jury convicted appellant of car theft but not of theft of controlled substances. She challenges the exclusion of her testimony and argument about why she took and drove K.O.'s car.

DECISION

Appellant argues that the exclusion of evidence was erroneous because it violated her constitutional right to introduce evidence in her defense. An alleged constitutional error is subject to harmless-error review. *State v. Taylor*, 869 N.W.2d 1, 12 (Minn. 2015).

Assuming without deciding that the district court erred in excluding the evidence, and applying the harmless-error test to the exclusion, we must be satisfied beyond a reasonable doubt that an average jury (i.e., a reasonable jury) would have reached the same verdict if the evidence had been admitted and the damaging potential of the evidence fully realized.

Id. (quotations omitted).

A necessity defense defeats a criminal charge if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant's breach of the law. In addition, the defense exists only if (1) there is no legal alternative to breaking the law, (2) the harm to be prevented is imminent, and (3) there is a direct causal connection between breaking the law and preventing the harm.

State v. Rein, 477 N.W.2d 716, 717 (Minn. App. 1991) (quotation and citations omitted), review denied (Minn. Jan. 30, 1992). To have the jury instructed on the necessity defense, a defendant must make a prima facie showing of necessity. *State v. Brodie*, 532 N.W.2d 557, 557 (Minn. 1995).

Appellant argues that the district court denied her the “constitutional right to present a defense by prohibiting her testimony and argument about why she took [K.O.’s] car.”

But this argument has two defects. First, the transcript shows that, despite the district court's disallowance of testimony regarding appellant's belief that taking K.O.'s car was a necessity, both appellant on direct examination and her attorney in closing argument did inform the jury of appellant's belief that taking the car was a necessity and that she had no alternatives. Therefore, the district court's decision did not prejudice appellant because the jury was informed of appellant's necessity defense and would have reached the same verdict if the evidence had been admitted.

Second, appellant implicitly if not explicitly argues that a defendant's constitutional right to present a complete defense equates to the right to present any evidence, regardless of relevance or admissibility. For this argument she relies on *State v. Wiltse*, 386 N.W.2d 315, 317-18 (Minn. App. 1986) (holding that, when a defendant's presence in a particular place is an essential element of a crime, the defendant has the right to explain that presence to the jury), *review denied* (Minn. June 30, 1986). Here, the elements of appellant's crime were (1) taking or driving a motor vehicle (2) without the owner's consent and (3) knowing that the owner did not give consent. Appellant admitted to the jury that she took and drove K.O.'s car without K.O.'s consent and that she knew K.O. had not given consent; she also told the jury that she did so because she wanted to leave J.H.'s house. Thus, *Wiltse* is distinguishable: appellant was not prevented from explaining any element of her crime to the jury.

Appellant also relies on *State v. Thompson*, 617 N.W.2d 609, 613 (Minn. App. 2000) (holding that a defendant was denied her due-process right to present a complete defense when the district court suppressed her statement to the police and limited her

testimony). In *Thompson*, the defendant was substantially prejudiced by not being allowed to tell the jury “why she acted with aggression” toward the victim, who the defendant believed had been having relations with the defendant’s 13-year-old daughter. *Thompson*, 671 N.W.2d at 613. “[T]he jury may have inferred [the defendant] was a crazy woman who just assaults people for no good reason.” *Id.* (quotation omitted). Here, the jury heard from appellant why she had driven off in someone else’s car. Neither *Wiltse* nor *Thompson* supports appellant’s position.

Moreover, the district court’s decision to exclude further evidence of appellant’s reason for taking the car is supported by *State v. Thiel*, 846 N.W.2d 605, 614-16 (Minn. App. 2014) (finding no error in exclusion of a California medical marijuana patient verification card offered as necessity evidence for possession of marijuana because it “would have served to confuse and mislead the jury” since “a defense of medical necessity is not available in Minnesota for . . . a controlled-substance crime”), *review denied* (Minn. Aug. 5, 2014), and by *Rein*, 477 N.W.2d at 718 (finding no error in the exclusion of necessity-defense evidence when the defendant was not entitled to raise a necessity defense).

Appellant has not shown that, if the district court had allowed her testimony and argument about her reason for taking and driving K.O.’s car, the jury would have reached a different verdict.

Affirmed.