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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0387**

Leonard Connell Brown, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 9, 2019
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-16-2131

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Jim Thomson, Brooklyn Park City Attorney, Ellen A.C. LaVigne, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the postconviction court's denial of his petition for postconviction relief, arguing that the district court deprived him of his right to present a

complete defense by excluding certain evidence. Because the postconviction court did not abuse its discretion when it denied appellant's petition, we affirm.

FACTS

In January 2016, appellant Leonard Connell Brown, Jr., called 911 to report that he had been prohibited from leaving an apartment with his child and had been assaulted. Brown told the 911 operator that he was inside his car and the operator told him to wait there until police arrived. When police arrived, they saw Brown driving his car toward them. The police observed indica of intoxication while speaking with Brown and arrested him for driving while impaired. Ultimately, the state charged Brown with two gross-misdemeanors for driving while impaired in violation of Minn. Stat. § 169A.20, subds. 1(1), (5) (2014).

Brown gave notice of his intent to assert the affirmative defense of necessity.¹ The state moved the district court to prohibit Brown from raising the defense of necessity at trial and to exclude the audio recording of Brown's 911 call as irrelevant. After a hearing on the matter, the district court issued an order determining that Brown's defense of necessity had not been established and the court excluded both the 911 audio recording as well as any testimony regarding Brown's 911 call.

¹ The necessity defense only applies "in emergency situations where the peril is instant, overwhelming, and leaves no alternative but the conduct in question." *State v. Johnson*, 183 N.W.2d 541, 543 (Minn. 1971). A defendant must meet three criteria in order to assert the affirmative defense of necessity: "(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).

Because Brown intended to appeal the district court’s pretrial ruling disallowing his necessity defense and excluding the 911 audio recording, the parties agreed to a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 4. After the stipulated-evidence trial, the district court found Brown guilty of fourth-degree driving while impaired. Brown did not file a direct appeal. Instead, in 2018, Brown filed a petition for postconviction relief. In his petition, Brown argued that the district court plainly erred in its pretrial ruling granting the state’s motion to exclude the audio recording of Brown’s 911 call and his testimony regarding the call. In January 2019, the postconviction court denied Brown’s petition for relief.

This appeal follows.

D E C I S I O N

I. The parties stipulated to dispositive issues that limit the scope of appellate review.

Minn. R. Crim. P. 26.01, subd. 4, “allows a criminal defendant to plead not guilty; waive all trial-related rights, including his or her right to a jury trial; stipulate to the state’s evidence in a trial to the court; and then appeal a dispositive, pretrial ruling.” *State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016). The rule was enacted to “replace[] *Lothenbach* as the method for preserving a dispositive pretrial issue for appellate review in a criminal case.” *Id.*; see also *State v. Lothenbach*, 296 N.W.2d 854, 858 (Minn. 1980), *superseded by statute on other grounds*, Minn. R. Crim. P. 26.01, subd. 4.

In a stipulated-evidence trial, “the parties agree that the court’s ruling on a specified pretrial issue is dispositive of the case,” which allows the defendant “to preserve the

[pretrial] issue for appellate review.” Minn. R. Crim. P. 26.01, subd. 4(a). “The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant’s guilt, or of other issues that could arise at a contested trial.” *Id.*, subd. 4(f).

At the stipulated-evidence trial, Brown expressly agreed to the dispositive issues to be preserved for appeal:

DEFENSE ATTORNEY: You also are agreeing that this issue that’s going to the Court of Appeals is what you really want to contest. You want to contest whether or not the Judge made the correct decision in excluding your necessity defense. Is that correct?

DEFENDANT: Correct.

DEFENSE ATTORNEY: And you believe that without that, you don’t want to go to trial.

DEFENDANT: Correct.

...

THE COURT: . . . I also want to make sure, Mr. Brown, that you’re aware that if you pursue an appeal, the appeal would be as to the pretrial issue of the necessity defense and the 911 call. It wouldn’t be about your guilt based on stipulated evidence if that is excluded.

DEFENDANT: Correct.

Further review of the transcript confirms that the parties agreed only to the necessity defense and the exclusion of the 911 audio recording as dispositive issues:

THE COURT: . . . And I am going to have both your counsel and the prosecutor agree on the record that the pretrial issue would be—the way that the Court handled the pretrial issue makes a jury trial on the misdemeanor charge unnecessary.

DEFENSE ATTORNEY: Your Honor, the defense agrees that given the Court's ruling, we do not believe that we would be successful at trial because that was our defense, and we have no other defense to offer.

PROSECUTOR: That's correct, Your Honor.

THE COURT: Okay. And the discreet issue would be the admissibility of the 911 tape, as well as the ability to present the necessity defense to the jury, correct?

DEFENSE ATTORNEY: Correct.

PROSECUTOR: Correct.

In this appeal, Brown raises two arguments that the district court infringed upon his right to present a complete defense by: (1) excluding the 911 audio recording; and (2) by prohibiting him from explaining his conduct. But this court's review is expressly limited to the dispositive issues identified and preserved below: (1) whether Brown should have been permitted to present a necessity defense²; and (2) whether the 911 audio recording was admissible at trial. Accordingly, Brown's argument regarding the limitation on his testimony is not properly before this court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that a reviewing court "will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure."); *see also State v. Marsh*, ___ N.W.2d ___, ___, 2019 WL 2571677, at *3 (Minn. App. June 24, 2019) (holding that when the parties agree to proceed under Minn. R. Crim. P. 26.01, subd. 4, issues not expressly preserved are forfeited).

² We note that Brown did not directly appeal the district court's decision regarding the necessity defense or raise any arguments regarding the necessity defense to the postconviction court.

II. The district court did not abuse its discretion when it excluded the 911 audio recording.

Brown argues that the postconviction court abused its discretion by denying his petition for postconviction relief. This court reviews a postconviction court's legal conclusions de novo and will reverse a postconviction court's order denying relief when the court abuses its discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). "The postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Jackson v. State*, 927 N.W.2d 308, 312 (Minn. 2019). In considering whether the postconviction court abused its discretion, we must analyze Brown's argument that the district court erred in its decision to exclude the 911 audio recording.

The parties suggest that this should be reviewed for plain error.³ Evidentiary rulings rest within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). A criminal defendant has a constitutional right to 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). "But this right is not absolute" as "[c]riminal defendants are bound by the rules of evidence, which are designed to assure fairness and reliability in ascertaining guilt or innocence." *State v. Wilson*, 900 N.W.2d

³ Absent an objection, reviewing courts reverse a conviction if the district court committed (1) an error; (2) that was plain; and (3) that affected the appellant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If those three factors are met, this court then considers whether addressing the error is necessary to ensure the fairness and integrity of the judicial proceedings. *Id.*

373, 384 (Minn. 2017) (citations omitted). Even where a criminal defendant alleges that the inability to present a defense violates his constitutional rights, evidentiary questions are reviewed for an abuse of discretion. *Id.* (citing *State v. Henderson*, 620 N.W.2d 688, 698 (Minn. 2001)). Therefore, appellant has the burden of establishing that the district court abused its discretion and that appellant was thereby prejudiced. *Amos*, 658 N.W.2d at 203; *State v. Hall*, 764 N.W.2d 837, 841 (Minn. 2009).

Here, the district court excluded the 911 audio recording on relevance grounds. The district court noted that the 911 audio recording would have been admissible if the defense of necessity was part of trial, but because Brown’s “offer of proof [did] not make a prima facie showing as required to justify allowing a necessity defense to proceed at trial . . . [Brown]’s proffered testimony and evidence related to the circumstances surrounding his 911 call [were] not relevant.” Because Brown does not appeal the court’s determination on the necessity defense, we see no abuse of discretion in the district court’s determination that the 911 audio recording was irrelevant.

Affirmed.