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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0458**

State of Minnesota,
Respondent,

vs.

Eugene Robert Rosnow,
Appellant.

**Filed January 13, 2020
Affirmed
Kirk, Judge***

Beltrami County District Court
File No. 04-VB-18-3525

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

David L. Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County
Attorney, Bemidji, Minnesota (for respondent)

Eugene Rosnow, Leonard, Minnesota (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Kirk,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KIRK, Judge

In this appeal from a petty-misdemeanor citation for speeding, the self-represented appellant argues (1) that there was insufficient evidence to convict him of speeding, and (2) he did not receive notice of an amended citation charging him with a different offense prior to trial. We affirm.

FACTS

On December 20, 2018, while traveling northbound on Highway 89, Minnesota State Trooper Jesse Herding observed appellant Eugene Robert Rosnow traveling south on Highway 89 “at a rapid pace.” Based on his training and experience in estimating the speed of vehicles, he estimated that Rosnow’s vehicle was going 70 miles per hour (mph) in a 55-mph zone. He activated his front-facing radar, which indicated that Rosnow was traveling 70 mph, he then pulled Rosnow over and gave him a citation under Minn. Stat. § 169.14, subd. 2(a)(3) (2018), for going 65 mph in a 55-mph zone.

Rosnow appeared pro se at his trial, pleaded not guilty, and testified. At trial, Trooper Herding testified that he is trained and certified in the operation of the radar unit that is installed in his squad car. He stated that he received training on examining the calibration and testing the radar’s accuracy. He also testified that at the beginning and end of each shift he conducts internal and external checks on the radar by using the internal self-test button and conducting tuning fork checks on the radar unit. These are recorded in his radar log. Trooper Herding also testified that he conducted the internal and external tests on the day he pulled Rosnow over, and that everything checked out. He testified that

he is trained in determining if the radar unit is receiving any interference or distortion and, when the radar clocked Rosnow traveling at 70 mph, there was no interference present.

At trial, Trooper Herding's radar log and certificate of the tuning fork accuracy were shared with Rosnow and offered into evidence. Rosnow did not object to the tuning fork certification of accuracy and it was admitted into evidence. He did object to the radar-calibration log, which was admitted into evidence over his objection. Trooper Herding also testified to the existence of a certificate for the radar machine, that he is the one who personally installed the machine in the car, and that he has received training on how to install the radar into the car.

Rosnow testified that when he was pulled over he was going "between 55 and 60" mph. Rosnow was found guilty of the charged offense. This appeal follows.

D E C I S I O N

I. There was sufficient evidence to convict Rosnow of speeding.

"Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Radar results are reliable if the unit is properly tested and operated. *State v. Gerdes*, 191 N.W.2d 428, 430-31 (Minn. 1971). In order to admit radar results in a case where it is relevant, the following must be shown:

- (1) the officer operating the device has sufficient training to properly operate the equipment;
- (2) the officer testifies as to the manner in which the device was set up and operated;
- (3) the device was operated with minimal distortion or interference from outside sources; and

- (4) the device was tested by an accurate and reliable external mechanism, method, or system at the time it was set up.

Minn. Stat. § 169.14, subd. 10(a)(1)-(4) (2018); *see also Gerdes*, 191 N.W.2d at 432.

The record indicates that the requirements of Minn. Stat. § 169.14, subd. 10, were met. First, Trooper Herding testified that he had sufficient training to properly operate the radar device. Second, he testified how he set up the radar device, how he tested it before and after his shift both internally and with the tuning forks, and how it was used when he clocked Rosnow's speed. Third, he testified that the radar device did not indicate any interference when it was operated. And fourth, the device was tested prior to and after his shift with both tuning forks, which are accurate external mechanisms used to test the accuracy of a radar unit. Additionally, Rosnow was provided with the certificate of accuracy of the tuning forks and the tuning-fork log for the entire month of December, 2018.¹ Rosnow did not object to the admission of the tuning-fork certification of accuracy, and this evidence was properly admitted. Based on this evidence, Trooper Herding's testimony, and Rosnow's admission that he was going above 55 mph, there was sufficient evidence to establish that Rosnow was speeding.

¹ Although Rosnow claims that the admission of the radar log was improper because it was "based upon the unverified accuracy of the squad car's speedometer," this is not the case. The radar log that was admitted at trial was a record of the daily tests regarding the accuracy of the radar unit and had nothing to do with the speedometer.

II. The state did not fail to provide Rosnow notice of an amended citation.

Rosnow also claims that the state failed to provide him with an amended citation prior to trial. The Minnesota Rules of Criminal Procedure apply in petty misdemeanor cases in district courts. Minn. R. Crim. P. 1.01. And “[t]he court may permit an indictment or complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if the defendant’s substantial rights are not prejudiced.” Minn. R. Crim. P. 17.05.

Prior to the start of the trial, the district court judge asked Rosnow if he received the amended citation. Rosnow said that he had it, and, therefore, he was given it prior to trial. Rosnow was always charged under Minn. Stat. § 169.14, subd. 2(a)(3). The only difference between the first citation and the amended citation is that the first citation stated Rosnow was going 65 mph in a 55-mph zone, and the second said he was going 70 mph in a 55-mph zone. Because the charged offense did not change, and the state gave Rosnow the amended complaint prior to trial, the state did not fail to provide notice of the amended citation.

Because there was sufficient evidence to convict Rosnow of speeding and the state provided him notice of the amended citation, we therefore affirm.

Affirmed.