STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1750

State of Minnesota,
Respondent,

vs.

Paul Scott Seeman,
Appellant.

Filed January 16, 2024
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19HA-CR-20-3077

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

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that his conviction of second-degree test refusal must be reversed because the district court abused its discretion by denying his request to modify the pattern jury instruction to include a definition of "under the influence." In a pro se supplemental brief, appellant also argues that probable cause did not support his arrest and that law enforcement violated his Fourth and Fifth Amendment rights. We affirm.

FACTS

On December 17, 2020, just after 1:00 a.m., a sheriff's deputy observed a pick-up truck traveling without illuminated taillights and initiated a stop after observing it touch the fog line at least once. The deputy spoke with the lone occupant, appellant Paul Scott Seeman, who had the driver-side window down when the deputy approached. After checking appellant's driver's license, the deputy learned of an active Rice County warrant for appellant's arrest, reapproached appellant's vehicle, and asked appellant if he knew about the warrant. Appellant said "no." The deputy asked appellant to step out of the vehicle until they learned whether Rice County wanted appellant held. The deputy patted appellant down, handcuffed him, and patted him down again before placing him in the back of the deputy's squad car.[1] Appellant stopped answering the deputy's questions after the second pat-down.

[1] The parties do not dispute that appellant was arrested at this point.

Two other officers arrived on-scene to assist. After talking to the officers, the deputy asked appellant to step out of the squad car. The deputy smelled an "alcoholic beverage" coming from the back passenger seat of the squad car. Once outside, the deputy smelled alcohol coming from appellant and noticed that appellant's eyes were bloodshot, watery, and that his pupils were constricted. The deputy patted appellant down again and asked him if there was anything in his truck that the officers should know about. Appellant asked if he was under arrest, and the deputy responded, "right now, for the warrant, yeah." Rice County then informed the deputy by radio that they did not want appellant held.[2]

The deputy then asked whether appellant had anything to drink that night and shined his flashlight towards appellant's eyes. Appellant asked the deputy, "Am I under arrest, or no?" The deputy responded that he was not under arrest for the warrant and again asked appellant how much he had had to drink. Appellant did not answer the question but stated, "so, you can take these handcuffs off right f--king now." The deputy repeated the question, and appellant repeated his response. After the deputy repeated the question a third time, appellant asked if the deputy was going to remove the handcuffs. The deputy responded, "not right now, with the attitude, no." The deputy asked appellant if he would perform field sobriety tests (FSTs) and informed appellant that he was now being investigated for

[2] In appellant's pro se supplemental brief, he alleges that Rice County radioed the deputy *before* the deputy removed appellant from the squad car. This rendition of facts is consistent with appellant's version of the facts in his memorandum in support of his motion to dismiss and with the district court's findings of fact in its order denying appellant's motion to dismiss. However, the record and the facts set out in both appellant's principal brief and the state's brief support that the deputy had already removed appellant from the vehicle when Rice County radioed. Despite these inconsistencies, neither party seems to dispute the facts on appeal, and they do not impact our analysis.

drinking and driving, and that appellant would not be under arrest until the deputy was done investigating. Appellant then indicated that he wanted to speak with an attorney immediately.

The deputy placed appellant back in the squad car and informed him that he was under arrest for driving while impaired (DWI). The deputy then told the other officers, "I can smell it . . . once I brought him back out again." The deputy took appellant to the Dakota County Jail, where the officer read appellant a breath-test advisory, and appellant attempted but was unable to contact an attorney. Appellant continued to refuse to answer questions or take a breath test.

Respondent State of Minnesota charged appellant with second-degree DWI-test refusal under Minn. Stat. §§ 169A.20, subd. 2(1) (2020), and 169A.25, subds. 1(b) and 2 (2020).[3] Appellant moved to dismiss the charge, arguing in part that the state lacked probable cause to arrest him for DWI and that the deputy's conduct during the encounter violated his Fourth and Fifth Amendment rights. After a contested omnibus hearing, the district court denied appellant's motion, determining that both his initial arrest based on the Rice County warrant and his subsequent arrest for DWI were supported by probable cause with only a temporary detention between arrests.

In September 2022, the district court held a three-day jury trial. Prior to trial, appellant requested the district court include the definition of "under the influence" in its

[3] The state also charged appellant with driving while impaired under Minn. Stat. §§ 169A.20, subd. 1(1) (2020), and 169A.26, subds. 1(a) and 2 (2020), which it dismissed before trial.

jury instructions. The district court denied appellant's request, reasoning that the standard instruction does not define "under the influence" and including the definition may cause jury confusion regarding the state's burden of proof.

At trial, the jury found appellant guilty, and the district court entered judgment of conviction and sentenced appellant to 121 days in jail, with 121 days of credit for time already served. This appeal follows.

DECISION

I. The district court did not abuse its discretion by denying appellant's request to define "under the influence" when instructing the jury.

Appellant argues that the district court's failure to define "under the influence" in the jury instructions prejudiced his right to a fair trial. We are not persuaded.

"The district court has broad discretion in determining jury instructions and [appellate courts] will not reverse in the absence of [an] abuse of discretion." *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). "A district 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." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). A jury instruction must fairly and adequately explain the law governing the case and is erroneous if it materially misstates the applicable law. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011).

When an officer has probable cause to believe a person was driving while impaired and lawfully arrests the person for that reason, a chemical test may be required of the person. Minn. Stat. § 169A.51, subd. 1 (2020). Under those circumstances, it is a crime

for a person to refuse to submit to a chemical test. Minn. Stat. § 169A.20, subd. 2(1). Driving while impaired includes driving a motor vehicle while the person is "under the influence of alcohol." Minn. Stat. § 169A.20, subd. 1(1).

Here, the district court instructed the jury regarding the crime of refusal to submit to testing and each element of that crime, consistent with the criminal statute and jury-instruction guide. *See* 10A *Minnesota Practice*, CRIMJIG 29.21 (Supp. 2021); 10A *Minnesota Practice*, CRIMJIG 29.22 (Supp. 2021). Although the district court did not define "under the influence," that is not an element of the crime of refusal to submit to a chemical test.

Appellant relies on *Koppi* and *State v. Kuhnau*, 622 N.W.2d 552 (Minn. 2001), to support his argument that the district court improperly instructed the jury. Both cases are distinguishable. In *Koppi*, the supreme court held that the district court abused its discretion by issuing a jury instruction that erroneously articulated a subjective standard of probable cause. 798 N.W.2d at 362-64. Probable cause is an element of test refusal. *Id.* at 362. Unlike in *Koppi*, appellant does not claim here that the district court misstated the law, only that it failed to include a definition that is not in the pattern jury instruction for the crime and is not an element of the crime. In *Kuhnau*, the supreme court held that "the district court abused its discretion by refusing the defendant's request to include within the jury instruction on the conspiracy charge *all the elements* of the substantive crime that was the object of the conspiracy." 622 N.W.2d at 553 (emphasis added). The "omission of an element of the [substantive crime] did not fairly and adequately explain the law of the case and was error." *Id*. at 558. Unlike *Kuhnau*, the district court did not omit a required

element of the crime here because the jury did not need to find that appellant was "under the influence" to find him guilty of test refusal.

State v. Moore, 863 N.W.2d 111 (Minn. App. 2015), *rev. denied* (Minn. July 21, 2015), also cited by appellant, is particularly instructive here. In *Moore*, this court held that a district court must instruct the jury on the statutory definition of "force" when a defendant is charged with third-degree criminal sexual conduct and the state seeks to prove that the defendant used force to accomplish the crime. 863 N.W.2d at 113-14. This court reasoned that the jury instruction did not accurately state the applicable statutory definition under which Moore was charged because the statute defined "force" more narrowly than the lay definition. *Id*. at 121-22.

Unlike *Moore*, Chapter 169A does not define "under the influence." Further, "under the influence" has a common, ordinary meaning, which the district court instructed the jury to apply. *See* 10A *Minnesota Practice*, CRIMJIG 3.29 (2015). As the supreme court stated in upholding the state's DWI statute in *State v. Graham*, "[t]he expression 'under the influence of intoxicating liquor' is in common, everyday use by the people. It is older than this law. When used in reference to the driver of a vehicle on the public highways, it appears to have a well-understood meaning." 222 N.W. 909, 911 (Minn. 1929).

Because the district court provided an instruction regarding test refusal and its elements, and because "under the influence" has a common, ordinary meaning, we conclude that the district court did not abuse its discretion by refusing to include its definition in the jury instructions.

II. The district court did not err by determining that the deputy had probable cause to arrest appellant and that appellant's Fourth and Fifth Amendment rights were not violated.

In his pro se supplemental brief, appellant appears to challenge the district court's pretrial determination that the deputy had probable cause to arrest him and did not violate his Fourth and Fifth Amendment rights.[4] We address each issue in turn.

When considering a pretrial motion, appellate courts "review the district court's factual findings for clear error and its legal determinations de novo." *State v. Sargent*, 968 N.W.2d 32, 36 (Minn. 2021) (quotation omitted). In applying the clear-error standard, we view the evidence in the light most favorable to the district court's findings, will not reweigh the evidence, and will not reverse unless we are "left with a definite and firm conviction that a mistake has been committed." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). When applying a de novo standard, the appellate court will not defer to the analysis of the district court but will exercise independent review. *Sargent*, 968 N.W.2d at 36.

A. The deputy had probable cause to arrest appellant for DWI.

"Probable cause to arrest exists when, under the totality of [the] facts and circumstances, a person of ordinary care and prudence would entertain an honest and strong

[4] Within his pro se brief, appellant cites to proceedings outside the scope of the record on appeal. Because our review is limited to documents filed in the district court, the exhibits, and the transcripts of the district court proceedings, we refuse to address these portions of appellant's pro se argument. Minn. R. Civ. App. P. 110.01; *State v. Maidi*, 520 N.W.2d 414, 419-20 (Minn. App. 1994) ("Generally, we may not base our decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."), *aff'd*, 537 N.W.2d 280 (Minn. 1995).

suspicion that a crime has been committed." *State v. Prax*, 686 N.W.2d 45, 48 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Dec. 14, 2004). Probable cause is something more than mere suspicion, but less than the evidence needed for conviction. *Id*.

At the omnibus hearing, the deputy testified to observing appellant driving just after 1:00 a.m. without illuminated taillights and seeing appellant's vehicle touch the fog line at least once. Although the deputy did not initially investigate for evidence of appellant driving while impaired, he did so as soon as he smelled alcohol coming from appellant. The deputy then flashed his light in appellant's eyes, asked appellant if he had been drinking, and observed that appellant's eyes were bloodshot, watery, and his pupils were constricted. We conclude that the totality of the evidence reasonably supports the district court's determination that the deputy had probable cause to arrest appellant for DWI.

B. The district court did not err by determining that the deputy did not violate appellant's Fourth Amendment rights.

Both the Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect the "right of the people to be secure in their persons . . . and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Appellate courts analyze an alleged violation in two steps: (1) determining whether the officer's conduct constituted a search or seizure and (2) determining whether the officer engaged in unreasonable conduct. *Sargent*, 968 N.W.2d at 37. For the second step, the Minnesota Supreme Court has stated that "each incremental intrusion during a traffic stop [must] be tied to and justified by . . . (1) the original legitimate purpose of the stop, (2) independent probable cause, or

(3) reasonableness." *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). To determine whether an officer's conduct is reasonable, courts must apply an objective standard and ask whether, based on the totality of the circumstances, "the facts available to the officer at the moment of the seizure [would] warrant a man of reasonable caution in the belief that the action taken was appropriate." *Id.* at 364 (quotation omitted).

Here, appellant challenges whether the deputy had probable cause to arrest him for DWI and whether it was reasonable for the deputy to keep him handcuffed throughout the encounter. As noted above, the record supports the district court's determination that the deputy had probable cause to arrest appellant. Further, the deputy's decision to keep appellant handcuffed was reasonable based on the totality of the circumstances. The deputy had only just learned that Rice County did not want appellant held, it was late at night, and appellant appeared hostile immediately upon the deputy asking about drinking. Under the circumstances, the deputy's conduct did not violate appellant's Fourth Amendment rights.

C. Appellant's Fifth Amendment rights were not violated because appellant was not "in custody" when the deputy initiated the DWI investigation.

Appellant did not raise his Fifth Amendment argument as a separate issue, but instead mentioned it within the purview of his Fourth Amendment arguments before the district court and now on appeal.

"[U]nder the Fifth Amendment, a criminal defendant has a right against self-incrimination and [must be] informed of that right." *State v. Mellett*, 642 N.W.2d 779, 787 (Minn. App. 2002) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)), *rev. denied*

(Minn. July 16, 2002). However, "[t]he right to a *Miranda* warning attaches only during custodial interrogation." *Id*. Whether a person is in custody is an objective inquiry that requires a district court to determine "whether a reasonable person in the suspect's situation would have understood that [they were] in custody." *Id*. "If a suspect is not under arrest, a district court must consider all of the surrounding circumstances and assess whether a reasonable person in the suspect's position would have believed [they were] in custody to the degree associated with arrest." *Id*.

State v. Werner, 725 N.W.2d 767 (Minn. App. 2007), is instructive here. In *Werner*, the defendant was lawfully stopped, handcuffed, and arrested for an outstanding felony warrant. 725 N.W.2d at 769. While discussing the warrant with the defendant, officers noticed he had bloodshot, glassy eyes and smelled of alcohol. *Id*. An officer asked the defendant if he had been drinking, and appellant indicated that he had. *Id*. While the defendant was handcuffed, the officer administered two verbal FSTs and then uncuffed the defendant for the physical tests. *Id*. The officer then told the defendant that, based on the tests, he believed the defendant was impaired, and the only way to avoid being arrested for suspicion of DWI was to take and pass a preliminary breath test. *Id*. This court concluded that, because the defendant was under no additional restraint beyond those imposed on him for arrest on the warrant, he was not in custody. *Id*. at 771. This court stated that merely because a person is arrested on an unrelated warrant and not free to leave is not dispositive of whether an interrogation occurred for *Miranda* purposes. *Id*.

Considering *Werner*, although appellant's unrelated warrant arrest had ended before the deputy's questions regarding drinking began, the record supports the district court's

determination that appellant was no longer "in custody" for *Miranda* purposes. The deputy repeatedly told appellant that he was no longer under arrest for the warrant, but that the deputy was investigating drinking and driving, and that appellant wouldn't be under arrest until after the investigation. *See State v. Scruggs*, 822 N.W.2d 631, 637 (Minn. 2012) (noting that an officer expressly informing suspect they are not under arrest is factor indicating that suspect is not in custody). Although appellant remained handcuffed, it was because he had just previously been lawfully arrested. So long as the deputy's actions are reasonable, handcuffing does not per se transform an investigatory detention into an arrest. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Here, appellant's hostile demeanor in response to the deputy's questions about drinking supported the reasonableness of the deputy keeping appellant handcuffed. Further, appellant *did not answer* the deputy's questions about drinking. Appellant's Fifth Amendment rights were not violated.

Appellant argues briefly that the deputy's actions were coercive and implicate the unconstitutional-conditions doctrine, citing *Frost v. R.R. Comm'n of Cal.*, 271 U.S. 583 (1926) (invalidating statute that required petitioner to give up a constitutional right as a condition to enjoyment of a privilege). Because appellant did not raise these arguments to the district court, they are not properly before us, and we decline to address them. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that appellate courts generally do not decide issues not raised before the district court).

Appellant further contends that there is sufficient evidence in the record for this court to conclude that appellant ultimately remained arrested for the Rice County warrant. Because we have concluded that appellant's arrest for the Rice County warrant ended

before his arrest for DWI began, and because appellant again seeks our review of information outside the appellate record, we do not address his argument. *Maidi*, 520 N.W.2d at 419-20; Minn. R. Civ. App. P. 110.01.

Affirmed.