

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0392**

State of Minnesota,
Respondent,

vs.

Elvis Joko Porte,
Appellant.

**Filed February 5, 2024
Affirmed
Segal, Chief Judge**

Olmsted County District Court
File No. 55-CR-22-2343

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Segal, Chief Judge; Johnson, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from the judgment of conviction of third-degree controlled-substance crime, appellant argues that the district court violated his right to present a

defense because appellant was not able to call a law-enforcement witness to testify during the defense portion of the trial. We affirm.

FACTS

In the early morning hours of April 12, 2022, a Minnesota State Patrol trooper initiated a traffic stop after observing a car with windows that the trooper believed were tinted in violation of state law. The trooper approached the car, identified himself and the reason for the stop, and asked the driver for his license and proof of insurance. While waiting for the driver to provide the documents, the trooper saw that the driver appeared to have loose-leaf marijuana on his lap, the front-seat passenger was rolling a blunt, and the back-seat passenger was spraying a fluid from an aerosol can on his hands. Appellant Elvis Joko Porte was the back-seat passenger. The trooper also detected “a heavy aerosol, hand sanitizer smell, along with fruity cover scents.”

The trooper ran the driver’s license and issued a warning to the driver for the window-tint violation. He then administered field sobriety tests to the driver because he suspected the driver may have been smoking marijuana, but ultimately determined the driver was not impaired. The trooper asked to search the car and the driver consented. The trooper asked the two passengers to get out of the car and then proceeded with the search. By that time, two additional officers from the Rochester Police Department had arrived at the scene.

During the search, the trooper discovered a Pepsi can that “felt odd.” He was able to remove the top of the can and discovered “off colored white powder in [a] small, twisted-off sandwich baggie.” He suspected that the baggie contained a controlled substance. He

placed the Pepsi can on the roof of the car and continued the search. While the trooper was conducting the search, one of the Rochester officers saw Porte run toward the car, grab what appeared to be a soda can off the roof, and run away. The other officer told Porte to stop, but he kept running.

The trooper and one of the officers ran after Porte. During the chase, the trooper saw Porte toss the Pepsi can. Porte tried to jump a fence but tripped and fell, at which point Porte was taken into custody and the trooper found and retrieved the Pepsi can from a nearby yard. The trooper later photographed the Pepsi can and its contents, but he elected not to field test the substance due to fear of fentanyl exposure. He placed the items in an evidence bag and placed the bag in the secure evidence locker at the state patrol office.

Respondent State of Minnesota charged Porte with third-degree controlled-substance crime and fleeing a peace officer. The case proceeded to a jury trial, during which the trooper and the two Rochester police officers testified to the events described above. The state called three additional witnesses to establish the chain of custody and results of the chemical testing of the powder found in the Pepsi can. The testing revealed that the powder contained a mixture of fentanyl, tramadol, and fluorofentanyl.

A Minnesota State Patrol sergeant testified that on the day of the incident that he removed the evidence from the evidence locker and logged it into the department's database, where it was assigned a unique barcode. He then placed it on a shelf in the evidence room. Later that month, a second sergeant received a request from the county attorney's office to have the evidence tested by the Minnesota Bureau of Criminal Apprehension (BCA). The evidence to be tested consisted of two cellophane bags

containing suspected controlled substances. The second sergeant removed the cellophane bags from the Pepsi can, placed them back in the evidence bag without the Pepsi can, and resealed the bag with packing tape. He then filled out the evidence submission form for the BCA.

Approximately one week later, the first sergeant transported the evidence bag to the BCA and checked the evidence in with the intake technician. When the evidence was returned from the BCA, the second sergeant photographed the evidence and placed it back on the shelf in the evidence room. Finally, a forensic scientist from the BCA testified about the results of the chemical testing and that the combined weight of the substances was 25.612 grams.

After the state rested its case, Porte elected to discharge his counsel and proceed pro se. The district court informed Porte that he had to decide whether to testify, and Porte responded that he wanted to “re-question the witnesses that were called.” The district court informed Porte that they were not “starting anything over. Not the trial; not any examination of witnesses.” Porte then waived his right to testify, and the court took a recess.

When the parties returned to discuss jury instructions and closing arguments, Porte requested that he be permitted to re-question the trooper. Porte argued that the trooper had committed perjury because the trooper testified that he did not weigh the suspected controlled substances, but the police report indicated that he did and got a result of 27 grams. The district court explained that the discrepancy was not necessarily perjury but inquired with the state about the trooper’s availability to testify. The prosecutor stated that

it was “[u]nlikely” the trooper would be available. After additional discussion about the trooper’s schedule, the district court stated, “[The trooper] is not available to us,” and moved on with the trial. The parties made closing arguments and the jury began deliberations.

During deliberations, the jury asked, “Is there documentation showing that [the sergeant] documented in the chain of custody, dating and signing the evidence out for transportation to the BCA? Is that pertinent?” While discussing how to respond, Porte indicated there were documents showing that the sergeant obtained the chain of custody but “did not sign,” and that he was not given the chance to introduce that evidence. The district court responded that it would not comment on the existence of anything not in evidence. The jury ultimately found Porte guilty of both charges. The district court sentenced Porte to 57 months in prison for third-degree controlled-substance crime.

DECISION

Both the United States and Minnesota Constitutions “protect a criminal defendant’s right to a meaningful opportunity to present a complete defense.” *State v. Pass*, 832 N.W.2d 836, 841 (Minn. 2013) (citing U.S. Const. amend. XIV; Minn. Const. art. 1, § 7). “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).

Porte argues that the district court deprived him of his right to present a complete defense by “rul[ing] that [Porte] could not call witnesses in the defense portion of the case.” Appellate courts “review a district court’s evidentiary rulings for abuse of discretion, even when . . . the defendant claims that the exclusion of evidence deprived him of his

constitutional right to a meaningful opportunity to present a complete defense.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). “Even if an objection was made and a district court abused its discretion, [appellate courts] reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt.” *Id.*

Here, the trooper was the only witness Porte sought to call to the stand during the defense portion of the case, but Porte never subpoenaed the trooper. Porte was also on notice prior to trial that the trooper’s availability was limited. The state in fact had sought a continuance at a pretrial hearing because the trooper was going to be on vacation and otherwise not available “starting August 16[, 2022] and for . . . the next three weeks.” The district court then stated that the August 29 trial date would be left on the schedule, and asked the prosecutor to inquire whether the trooper would be available to “make it for a day or half-day of testimony.” The prosecutor confirmed that he would “inquire regarding how rigid [the trooper’s] unavailability is with the eye towards him testifying the morning of August 30th.” At no point was there any discussion about the possibility that the trooper may be asked to return to testify during the defense portion of the trial.

The trooper testified on the morning of August 30 as anticipated and was cross-examined by Porte’s counsel. The trooper was then excused by the district court. When Porte later attempted to call the trooper after dismissing his counsel, the prosecutor indicated that it was unlikely that the trooper would be able to return to testify based on the prosecutor’s understanding of the trooper’s work and vacation schedule.

The district court’s discretion in evidentiary matters includes the discretion to “reasonably control[] the trial process.” *State v. Richards*, 495 N.W.2d 187, 195 (Minn.

1992); *see also* Minn. R. Evid. 611(a) (“The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence”); *State v. Thomas*, 891 N.W.2d 612, 619 (Minn. 2017) (noting that adopting a rigid evidentiary rule would “infringe on the district court’s discretion to manage criminal trials”). We conclude that the district court acted within its discretion here because Porte had not subpoenaed the trooper and the trooper’s limited availability was known to the defense prior to trial.

Additionally, we discern no violation of Porte’s right to present a defense because, even if we were to conclude that the district court erred, any such error fails to meet the standard required for reversal—that the error “was not harmless beyond a reasonable doubt.” *Zumberge*, 888 N.W.2d at 694. “An error is not harmless beyond a reasonable doubt when ‘there is a reasonable possibility that the [error] complained of [may] have contributed to the conviction.’” *Id.* (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)) (other quotation omitted). Here, there is no reasonable possibility that the denial of Porte’s request to re-question the trooper contributed to the verdict.

Porte’s defense at trial was that the state failed to establish the chain of custody of the drug evidence because the chain-of-custody form, which was submitted into evidence, lists a weight of 27 grams, but the trooper and two sergeants all testified that they did not weigh the substance. Porte argues that this discrepancy demonstrates that a member of the state patrol must have weighed the substance in the can, contrary to the testimony of the law-enforcement witnesses. Porte claims that his defense was impaired by his inability to question the trooper about this inconsistency.

Porte, however, did not need to present additional testimony from the trooper to make this argument. The chain-of-custody form showing a weight for the substance was in the record, along with the testimony of the trooper and the two sergeants denying that they weighed it. And Porte, in fact, made this very argument in his closing statement to the jury. Based on the evidence presented by the state at trial, we conclude that, even if there was an error, any such error was harmless beyond a reasonable doubt. Porte has thus failed to make out a constitutional violation.

Affirmed.