**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-1060**

State of Minnesota,
Respondent,

vs.

John Louis Corrigan,
Appellant.

**Filed February 27, 2012**
**Reversed and remanded**
**Cleary, Judge**

Washington County District Court
File No. 82-VB-11-6326

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael A. Welch, Forest Lake City Attorney, Forest Lake, Minnesota (for respondent)

John Louis Corrigan, Forest Lake, Minnesota (pro se appellant)

Considered and decided by Johnson, Chief Judge; Cleary, Judge; and Collins, Judge.*

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

## U N P U B L I S H E D  O P I N I O N

**CLEARY**, Judge

Pro se appellant challenges his conviction of not driving as nearly as practicable entirely within a single lane of traffic in violation of Minn. Stat. § 169.18, subd. 7 (2010), arguing that: (1) the evidence was insufficient to prove he committed the violation; (2) the district court's refusal to allow appellant to testify under affirmation rather than the standard oath constituted reversible error; (3) the amendment of the charges against appellant immediately before trial amounted to unfair surprise; (4) the appellant's conviction under a general category of violations, rather than a specific violation, did not provide appellant with notice of what provision to appeal; (5) the statutory subdivision under which appellant was convicted is unclear and confusing; and (6) charging appellant with multiple violations for the same course of action violated appellant's due process rights. Because we find that appellant's constitutional right to testify was violated, we reverse and remand.

## FACTS

While on duty on April 3, 2011, a Forest Lake police officer witnessed a vehicle that he was following cross over the double yellow center line of a roadway and occupy an oncoming lane of traffic. The officer immediately pulled the vehicle over. He identified the driver as appellant, John Corrigan. The officer then issued a citation to appellant for an "over center line" violation. The citation lists the offense as a violation of Forest Lake, Minn., Code of Ordinances § 70.02 (2006). A bench trial was held on

June 1, 2011. At trial, prior to swearing the first witness, the district court granted respondent's motion to amend the charge against appellant to include two counts, the first for driving left of roadway center and the second for failing to drive entirely within one lane. Minn. Stat. § 169.18, subds. 5, 7 (2010).

Respondent's only witness was the officer who issued the citation. On direct examination, the officer testified that he saw appellant swerve over the center line. The officer also observed that appellant drove entirely in an oncoming lane of traffic. Finally, the officer stated that appellant straddled the center line before he returned to the correct lane of traffic. Respondent also entered a video into evidence from the officer's squad car showing the path of appellant's vehicle for 30 seconds prior to the stop. The officer used this video to illustrate and explain what prompted him to stop appellant's vehicle. During cross-examination, the officer also testified that he saw discernible yellow lines marking the pavement. After the officer was finished testifying, appellant attempted to testify pursuant to his own affirmation by stating, "I solemnly undertake to tell the truth." The district court prohibited the affirmation, and when appellant refused to take the standard oath, the court prevented appellant from testifying.

At the close of trial, the district court found that appellant's vehicle "went over the center dividing line which separated the northbound and southbound traffic, specifically the [appellant's] vehicle went over entirely into the traffic which was designed to be a turn lane for traffic driving from the opposite direction." The district court further found that respondent proved both amended charges beyond a reasonable doubt. As part of

sentencing, the court dismissed the charge under Minn. Stat. § 169.18, subd. 5, and found appellant guilty of Minn. Stat. § 169.18, subd. 7.

After appellant perfected his appeal with this court, respondent moved to remand the matter to the district court for a new trial, acknowledging the likelihood of this court reversing and remanding on the grounds of trial error. However, appellant's brief raised issues in addition to the oath-or-affirmation issue, one of which may have entitled appellant to outright reversal. Accordingly, this court determined that remanding would deprive appellant of the opportunity to fully argue this appeal, and therefore the state's motion was denied. The only argument that appellant makes that would entitle him to outright reversal regards the sufficiency of the evidence against him. That argument is addressed as a preliminary issue. Because this matter is reversed and remanded for a new trial based on the denial of appellant's right to testify, his other arguments need not be addressed.

## D E C I S I O N

### I. Was the evidence sufficient to support appellant's conviction?

Appellant claims that the evidence was insufficient to support his conviction under Minn. Stat. § 169.18, subd. 7. "In reviewing a claim of [in]sufficiency of the evidence, this court is limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a court could reasonably conclude the defendant was guilty of the offense charged." *State v. Klimek*, 398 N.W.2d 41, 42 (Minn. App. 1986). "In considering a challenge to the sufficiency of the evidence, this court's review is limited to determining whether the evidence, when viewed in the

light most favorable to the conviction, is sufficient to find the defendant guilty beyond a reasonable doubt." *State v. Morin*, 736 N.W.2d 691, 697 (Minn. App. 2007) (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)), *review denied* (Minn. Sept. 18, 2007). "We will not retry the facts, but must take the view of the evidence most favorable to the verdict." *Klimek*, 398 N.W.2d at 42.

The evidence in this case was presented through the testimony of the officer who stopped appellant and the squad car video from the stop. This evidence is sufficient to sustain appellant's conviction of not driving as nearly as practicable entirely within a single lane of traffic. While the record may be incomplete at this stage given that appellant was not allowed to testify, sufficient evidence has been presented to find appellant guilty of the offense charged. We look at the facts in the record in the light most favorable to the conviction, and a court could reasonably conclude that appellant was guilty of the offense charged. The evidence presented was sufficient to convict appellant under Minn. Stat. § 169.18, subd. 7.[1]

**II. Did the district court commit reversible error when it denied appellant the right to testify?**

Appellant argues that the district court committed reversible error when it prevented him from testifying under affirmation after he refused to take the standard oath. He claims that this violated his constitutional right to testify on his own behalf.

[1] Given that this case is being remanded for a new trial, this court would not normally review the sufficiency of the evidence. However, because appellant challenged the sufficiency of the evidence and sought dismissal rather than remand, this analysis is included in the opinion.

Whether a constitutional right has been violated is question of law, and this court reviews the question de novo. *State v. Smith*, 749 N.W.2d 88, 97 (Minn. App. 2008); *State v. Sewell*, 595 N.W.2d 207, 211 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). Usually, an error violating a constitutional right is reviewed under a harmless error standard. *State v. Kuhlmann*, 806 N.W.2d 844, 850 (Minn. 2011). However, the Minnesota Supreme Court has stated that "the right to testify is such a basic and personal right that its infraction should not be treated as harmless error." *State v. Rosillo*, 281 N.W.2d 877, 879 (Minn. 1979). Because the constitutional right to testify on one's own behalf "is a basic right, fundamental to a fair trial, prejudice need not result in order to require a new trial. The denial itself is sufficient." *Irwin v. State*, 400 N.W.2d 783, 785 (Minn. App. 1987) (citing *Rosillo*, 281 N.W.2d at 878), *review denied* (Minn. Mar. 25, 1987).

A "criminal defendant has a constitutional right to testify on his or her own behalf." *State v. Walen*, 563 N.W.2d 742, 751 (Minn. 1997). *See also Rosillo*, 281 N.W.2d at 878-79; *Burns v. State*, 621 N.W.2d 55, 60 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001). "Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." Minn. R. Evid. 603. "Witnesses must be sworn by oath or affirmation. . . . Affirmation is simply a solemn undertaking to tell the truth; *no special verbal formula is required*." *State v. Mosby*, 450 N.W.2d 629, 633 (Minn. App. 1990) (quotations omitted), *review denied* (Minn. Mar. 16, 1990).

At trial, appellant attempted to administer his own affirmation to tell the truth by stating, "I solemnly undertake to tell the truth." The district court refused this affirmation and asked appellant to take the standard oath, which he refused to do. Through his attempted affirmation, appellant acknowledged the need to tell the truth while testifying, even though he refused to take the traditional oath.

No specific language is statutorily required in an affirmation. In *Mosby*, the defendant challenged the verbal formula under which a child witness was sworn. *Id.* At trial, the prosecutor asked the child if she understood that she was supposed to tell the truth, and she answered that she did. *Id.* This court found that the course of questioning made it clear that the witness "understood she was obliged to tell the truth." *Id*. at 633. This court highlighted that the flexibility of having no special verbal formula makes it easier to deal with children as witnesses and emphasized that "[a]ffirmation is simply a solemn undertaking to tell the truth." *Id*.

Cases in Minnesota have focused on this issue in the context of children as witnesses. In other jurisdictions, there have been situations more aligned with the facts in the present case. In a similar case, the defendant would not testify pursuant to the traditional oath, nor would he raise his right hand. *United States v. Looper*, 419 F.2d 1405 (4th Cir. 1969). The defendant in *Looper* stated at trial that if the judge asked him to tell the truth, he would do so. *Id.* at 1406. *Looper*, although not binding upon this court, is helpful because its facts are nearly identical to those in the present case. The *Looper* court found that:

> All that the common law requires is a form or statement which impresses upon the mind and conscience of a witness the necessity for telling the truth. Thus, defendant's privilege to testify may not be denied him solely because he would not accede to a form of oath or affirmation not required by the common law.

*Id*. at 1407. Similarly, appellant in this case would not take the standard oath, but solemnly stated that he would tell the truth. The court in *Looper* and this court in *Mosby* both acknowledged that there is no particular verbal formula for an affirmation, holding instead that the purpose of the oath or affirmation is to emphasize the need for truthfulness. This purpose was clearly met by appellant's offered affirmation. The denial of appellant's testimony by the district court was error.

The denial of the right of a defendant to testify on his or her own behalf should not be treated as harmless error. *Rosillo*, 281 N.W.2d at 877. As this court has stated, prejudice need not result from the denial of appellant's right to testify. *Irwin*, 400 N.W.2d at 785. Once it is found that appellant's constitutional right to testify was denied, the denial itself is sufficient to warrant a new trial.

Although on the record as limited by the district court's error there was sufficient evidence to convict appellant beyond a reasonable doubt under Minn. Stat. § 169.18, subd. 7, appellant was denied his constitutional right to testify on his own behalf. Because this right is a basic right and fundamental to a fair trial, the decision of the district court is reversed and this matter is remanded for a new trial. Because the matter is remanded for a new trial on these grounds, appellant's other arguments need not be addressed.

**Reversed and remanded.**