STATE OF MINNESOTA
IN COURT OF APPEALS
A11-711

State of Minnesota,
Respondent,

vs.

Carl Edward Rogers,
Appellant.

Filed March 19, 2012
Affirmed
Cleary, Judge

Ramsey County District Court
File No. 62-CR-10-9036

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

John J. Choi, Ramsey County Attorney, Mark Nathan Lystig, Thomas R. Ragatz, Assistant County Attorneys, St. Paul, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Klaphake, Judge; and Cleary, Judge.

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

CLEARY, Judge

Appellant challenges his conviction of felon in possession of a firearm under Minn. Stat. § 609.165, subd. 1b(a) (2010), arguing that the district court erred when it

ruled that he could not question the interrogating officer about certain statements made during his custodial interview or testify himself about those statements. Appellant argues that the ruling violated his due process right to present a defense and his right to testify on his own behalf. Because the district court did not abuse its discretion in excluding the evidence, we affirm.

FACTS

Appellant Carl Edward Rogers was arrested when St. Paul police officers responded to an emergency call about a man with a gun. John Laws was in front of his house at 658 Thomas Street talking on his cell phone when a man walked in front of his house. Laws thought the man looked dazed and confused, and Laws tried to offer him help. Laws testified that the man then pulled a gun out of his pocket and pointed it at Laws, mumbling incoherently as he did so. Laws went inside his house to get a crowbar and tried to follow him. By the time Laws returned outside however, the man was a block away, so Laws returned inside and called 911 to report the incident.

Police officers went to Laws's house to interview him about the incident, and Laws gave the officers a description of the man. Officers broadcast the description over the police radio and started searching in the area for someone who matched the description. Laws's description was that the suspect was "a black male in his fifties with salt-and-pepper hair, wearing a shiny, black hat, black, hooded sweatshirt and dark blue jeans."[1]

[1] There was conflicting testimony at trial about whether Laws independently described the suspect's hair as salt-and-pepper, or if that characterization was suggested by a police

Officers in the area observed appellant about a block and a half further down Thomas Street, walking away from the direction of Laws's house. The officers believed appellant matched Laws's description of the suspect. Because the situation was a "man-with-a-gun" call, the officers followed appellant for a short distance until they found a place to safely apprehend him. The officers stopped the suspect in the vicinity of 766 Thomas Street, and, after some initial confusion when appellant raised and lowered his hands multiple times, he complied with the officers' commands to stop and show his hands. Once the officers saw that appellant was not holding a weapon, they handcuffed him. One officer conducted a pat-down search of appellant and found two .40-caliber rounds in his sweatshirt pocket. The officer then searched the area around appellant and found a handgun on the ground about three feet from where appellant had been arrested. At that point, officers brought Laws to the scene so Laws could try to identify appellant. Laws identified appellant as the man who had pointed a gun at him earlier and stated he was "about a hundred percent" sure appellant was the same man.

When Laws described the gun he had seen to the officers, he stated that he thought it was a "Glock or a .44-Mag, somewhere around that caliber." Laws also told officers the gun was black. The gun recovered at the scene was a black Glock model 35 handgun. Officers recovered a magazine from the gun, 12 .40-caliber rounds in the magazine, and 1 .40-caliber round in the gun. Twelve of the rounds collected were Hornady brand, and

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officer. Similarly, there was conflicting testimony about how exactly Laws described the suspect's hat, whether he called it a Kangol hat or just a black shiny hat. Despite the conflicting testimony about the more specific identifying statements, appellant closely matched the general description of the suspect as stated above.

one was S&B brand. The two .40-caliber rounds found in appellant's sweatshirt pocket were also Hornady brand.

The day after appellant was arrested, Sgt. Jane Mead conducted a custodial interview with him. Sgt. Mead and appellant talked about the circumstances of appellant's arrest, how much he had been drinking, and whether he was carrying a gun before his arrest. She asked appellant to give a DNA sample to compare to any DNA discovered on the gun the officers found during appellant's arrest. Appellant was reluctant to give a DNA sample, but after assurances by the officer that he would be cleared of all charges if his DNA was not on the gun, appellant agreed to give a sample.

At trial, the forensic scientist assigned to the case testified that there was not enough DNA present on the gun to run any tests. Because there was not enough DNA material to conduct an analysis, the forensic scientist could not exclude anyone's DNA from the sample found on the gun. Additionally, officers did not find any fingerprint evidence on the gun, the magazine, the rounds in the magazine, the round found in the gun, or the rounds found in appellant's sweatshirt pocket.

Respondent did not call Sgt. Mead to testify at trial. The district court ruled that if appellant called the officer to testify, appellant would not be allowed to elicit testimony from her about the conversation leading to appellant providing a DNA sample. Similarly, the court determined that if appellant testified, he could not testify about those specific statements made during the interview either. The court did not prohibit appellant from testifying about his version of the underlying incident, and respondent did not object to appellant testifying that he voluntarily provided the DNA sample. As a result of the

court's rulings, appellant did not call Sgt. Mead to testify at trial nor did he testify himself.

At the close of trial, appellant stipulated to the fact that he was ineligible to possess a firearm as a result of a previous felony conviction. The jury had to decide whether appellant knowingly possessed a firearm and, if so, whether such possession occurred in Ramsey County on or about October 23, 2010. The jury found appellant guilty of possession of a firearm by an ineligible person, and the court sentenced him to a term of 60 months. This appeal followed.

D E C I S I O N

"[T]he district court has broad discretion when it comes to the admission of evidence and we will upset such rulings only if it can be said that the district court abused its discretion." *State v. Larson*, 788 N.W.2d 25, 31 (Minn. 2010) (quotations omitted). *See also State v. Nunn*, 561 N.W.2d 902, 906–07 (Minn. 1997). "[E]ven in cases . . . where the defendant contends that his constitutional rights have been violated, evidentiary questions are reviewed for abuse of discretion . . . ." *State v. Quick*, 659 N.W.2d 701, 713 (Minn. 2003). "We review evidentiary rulings under an abuse of discretion standard even when it is claimed that the exclusion of evidence deprived the defendant of his constitutional right to present a complete defense." *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006).

I. Did the district court abuse its discretion when it ruled that appellant could not elicit testimony from the interviewing officer about certain portions of his custodial interview?

The first question to address is whether the district court abused its discretion when it ruled that appellant could not elicit testimony from the interviewing officer about certain portions of the custodial interview. Specifically, appellant wanted to elicit testimony from the officer about the things she said to appellant to persuade him to provide a DNA sample. Appellant argues that the officer led appellant to believe that all charges against him would be dropped if his DNA was not found on the gun and that he would be released while the DNA results were being analyzed.[2] Appellant believes that exclusion of the officer's statements prevented him from presenting a complete defense.

"Due process requires that every defendant be afforded a meaningful opportunity to present a complete defense." *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003) (quotations omitted). "[T]he rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *State v. Richards*, 495 N.W.2d 187, 193 (Minn. 1992) (quotation omitted). "[A] defendant has *no* right to introduce evidence that either is irrelevant, or whose prejudicial effect outweighs its probative value." *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996). "'Relevant evidence' means evidence

[2] The interview between the police officer and appellant was lengthy. The district court ruled after a *Rasmussen* hearing that there was nothing in the interview "that indicates to this court that [the interviewing officer] unduly pressured the defendant, coerced the defendant, overcame his will, did anything of a nature that would indicate that [appellant's] consent to provide the DNA sample was overborne in an unacceptable way."

having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

The Minnesota Supreme Court has upheld the exclusion of evidence when the evidence offered was not relevant to the issues being litigated. *See Quick*, 659 N.W.2d at 712–16 (excluding testimony of defendant's attorney and marriage counselors because the conversations with defendant about which they would have testified occurred more than a month before the alleged murder, so their testimony could not provide relevant evidence to either the heat-of-passion defense or the premeditation issue).

Similarly, here, the court excluded the statements made by the interviewing officer because they were not relevant to the possession issue. The voluntariness of appellant providing his DNA sample had already been established prior to trial. Because there was not enough DNA found on the gun to conduct an analysis comparing it to appellant's DNA sample, the officer's statements made while obtaining the sample are irrelevant to the charges. The court did not abuse its discretion in excluding the statements.

II. Did the district court abuse its discretion when it ruled that appellant could not testify about certain portions of his custodial interview?

"[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). "The right to testify does not mean that the defendant's testimony is unrestricted." *Richardson*, 670 N.W.2d at 282. "As a general rule, the defendant must comply with the evidentiary rules. When the defendant's right to testify conflicts with a rule of evidence, the constitution demands that

restrictions imposed on that right not be arbitrary or disproportionate to the purposes they are designed to serve." *Id*. (quotation and citations omitted).

Appellant argues that, because he was prohibited from testifying about specific portions of his custodial interrogation with the police officer, the district court prevented him from exercising his right to testify. However, appellant was not prohibited from testifying about his actions on the night of the incident, whether he possessed the gun, and whether he voluntarily provided his DNA sample. He made the strategic choice not to testify based on the evidentiary ruling by the court.

In a similar case, a defendant who was charged with murdering his estranged wife's ex-husband argued that the district court erred in excluding testimony that he offered. *Richardson*, 670 N.W.2d at 272. In *Richardson*, the defendant wanted to testify about the character of his estranged wife and her ex-husband. *Id.* at 275. The district court determined that such character evidence was not relevant. However, the district court told the defendant that he could testify about his version of the events, and that if he presented evidence that his estranged wife fired the second shot or if anyone else offered such evidence, the character evidence might then become relevant. *Id.* at 276. The defendant claimed that, by prohibiting him from testifying as to the character of others involved in the crime, including their prior bad acts, the court "emasculated his potential testimony and caused him to decide not to testify." *Id*. at 282. The Minnesota Supreme Court stated that the "right to testify does not mean that the defendant's testimony is unrestricted. As a general rule, the defendant must comply with the evidentiary rules." *Id*. (citations omitted). Because the testimony the defendant offered regarding character

evidence was not relevant without some evidence indicating that his estranged wife fired the second shot, the district court had properly excluded it. The Minnesota Supreme Court found that this ruling did not deprive the defendant of his right to testify.

The situation in *Richardson* is comparable to this case. Appellant decided not to testify at all after the court ruled he could not testify about the statements made in his interview. The court found that those statements were not relevant to the possession issue. However, appellant was free to testify as to his version of the incident. He could also testify that he willingly provided his DNA sample. The court did not restrict appellant's testimony altogether; it only excluded the topics it determined were not relevant.

In another similar case, a defendant wanted to testify about parts of a previous statement he had given to police officers. *State v. Hurd*, 763 N.W.2d 17, 23 (Minn. 2009). In *Hurd*, the defendant was on trial for murder, and portions of his testimony at trial differed from his previous statement. *Id.* at 29. The defendant wanted to testify about the previous interview to show the facts and circumstances under which his statement was made. The state objected because the proposed testimony would introduce hearsay that would be offered to show that the defendant's interview was not voluntary. The district court held that the voluntariness issue had already been determined, and it prohibited the defendant from testifying about the specific previous statements. The Minnesota Supreme Court affirmed, stating that the defendant "had ample opportunity to explain the physical and psychological environment of the interview, and thereby attempt

to undermine the credibility of his statement, even though he was not able to relate precisely everything that the probation officer allegedly said to him." *Id.* at 29.

Similarly, here, appellant was prevented from testifying about portions of his interview, specifically about the statements the officer made when discussing whether appellant would provide a DNA sample. The court ruled that he could testify about his version of the events and that he could testify that he told the officer he did not have a gun. However, the district court stated that any testimony about coercion or "that he wouldn't have given his DNA but for what [the officer] said to him really strikes [the court] as irrelevant to the issue here as to whether or not he was in possession of a gun." Again, appellant was not prohibited from testifying altogether, he was only prohibited from testifying about irrelevant matters.

Appellant references the United States Supreme Court decision of *Crane v. Kentucky* and argues that whether a statement was given voluntarily is relevant evidence for the jury. 476 U.S. 683, 106 S. Ct. 2142 (1986). However, comparison to *Crane* is misguided because the relevant testimony in *Crane* involved a confession. *Id.* at 685–86, 106 S. Ct. at 2144. The Court ruled that it was error to exclude testimony regarding the circumstances surrounding the defendant's confession because that testimony weighed directly upon the credibility of the confession itself. *Id.* at 691, 106 S. Ct. at 2147. In the present case, there was no confession and therefore no credibility of a confession to address. The circumstances surrounding the interview were not relevant at trial because the interview was not even an issue at trial.

Appellant also discusses several other cases where courts held that defendants should have been allowed to testify about the events and circumstances surrounding the incidents at issue, rather than those surrounding a confession. *See United States v. Bowen*, 421 F.2d 193 (4th Cir. 1970) (holding that it was reversible error to refuse a defendant the opportunity to testify on the willfulness element of his failure to report for military service when the charge against him was willful failure to report); *State v. Wiltse*, 386 N.W.2d 315 (Minn. App. 1986) (holding that a defendant should have been allowed to present evidence of why he was at an apartment in violation of a restraining order), *review denied* (Minn. June 30, 1986); *State v. Blank*, 352 N.W.2d 91 (Minn. App. 1984) (stating that lawsuits are not tried in a vacuum and holding that, while the issue of admission of evidence of provocative language to explain circumstances of assault should usually be determined prior to trial, it was reversible error to allow reference to the provocative words in opening statements and then exclude such evidence from being admitted), *review denied* (Minn. Sept. 20, 1984).

These cases are distinguishable because the testimony that was improperly excluded in the cases presented a broader perspective of the circumstances surrounding the alleged crimes. The excluded testimony here only related to the officer's conduct during the custodial interview. Detailed information regarding the interview would not have been helpful to the jury because the interview was not an issue at trial and did not relate to the possession charges. Appellant's testimony on the interview would not have explained the circumstances surrounding the night of his arrest or provided any details

explaining why appellant was at the scene, why he had bullets in his pocket, or anything else that would provide a broader view of the situation.

Appellant argues that his testimony that he voluntarily provided the DNA sample was relevant to bolster his credibility. Appellant cites several cases where courts found that refusing to submit to field sobriety tests or fleeing from officers demonstrates consciousness of guilt. *See State v. McDaniel*, 777 N.W.2d 739 (Minn. 2010); *State v. Willis*, 332 N.W.2d 180 (Minn. 1983); *State v. Mellett*, 642 N.W.2d 779 (Minn. App. 2002). Appellant argues that willingness to provide a DNA sample demonstrates consciousness of innocence, and therefore the evidence that he voluntarily provided his DNA sample is relevant. There are no Minnesota cases directly discussing the proposition that evidence demonstrating consciousness of innocence is relevant, but other jurisdictions have admitted such evidence as relevant. *See*, *e.g.*, *State v. Santana-Lopez*, 613 N.W.2d 918, 921 (Wis. Ct. App. 2000) ("[A]n offer to undergo DNA testing, like an offer to take a polygraph examination, may reflect a consciousness of innocence."); *U.S. v. Biaggi*, 909 F.2d 662 (2nd Cir. 1990) (holding defendant's rejection of immunity was admissible to prove consciousness of innocence).

As previously stated, appellant was not prevented from testifying that he voluntarily provided the DNA sample, he was only prevented from testifying about the interviewing officer's exact words to him. The district court did not abuse its discretion when it prohibited appellant from testifying about certain portions of the interview with the officer.

Because the district court did not abuse its discretion when it prevented appellant from eliciting testimony from the interviewing officer about specific portions of the custodial interview, or from testifying about those portions himself, the court did not violate appellant's due process right to present a defense or to testify on his own behalf.

Affirmed.