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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0570

State of Minnesota,
Respondent,

vs.

Shane Scott Stone,
Appellant.

Filed January 29, 2018
Affirmed
Bjorkman, Judge

Pennington County District Court
File No. 57-CR-16-576

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Al Rogalla, Pennington County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges his convictions of fleeing a police officer in a motor vehicle and possession of drug paraphernalia, arguing that (1) the district court violated his

constitutional right to present a defense by limiting his testimony about why he fled police and (2) the district court erred by instructing the jury that it could have a reasonable doubt but still find appellant guilty of possessing drug paraphernalia. We affirm.

FACTS

On July 9, 2016, a Thief River Falls police officer observed appellant Shane Stone, with whom he had been familiar for several years, driving through the city. The officer knew that Stone's driver's license was revoked, so he activated his lights to execute a traffic stop. Stone did not stop but continued "at a high rate of speed" and made several "sharp turns." He ran a stop sign and reached speeds of approximately 90 miles per hour, then drove off of the road, causing the vehicle to roll into a ditch. Stone ran from the vehicle, and the officer gave chase. Stone eventually lay down on the ground, stating that he was done running. The officer held Stone at gunpoint until another police officer and a state trooper arrived.

As they arrested Stone, the officers observed that his vehicle contained apparent drug paraphernalia, including hypodermic needles and baggies. They obtained a warrant to search his vehicle and also recovered a scale, a digital camera, a glass tube that appeared to be a narcotics pipe, a rubber band/tubing, and a case containing hypodermic needles.

Stone was charged with fleeing a police officer in a motor vehicle, fleeing a police officer on foot, reckless driving, and possession of drug paraphernalia.[1]

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[1] Stone was also charged with fifth-degree possession of a controlled substance and driving after revocation of his driver's license, but the state dismissed the charges during trial.

While in jail, Stone wrote a letter to the officer who had pursued him. Stone apologized for "risking [the officer's] life and the community's," expressed surprise that nobody was hurt in the chase, and stated that he is working on sobriety.

At trial, Stone elected to testify in his defense. He advised the district court that he intended to testify that he fled from the squad car because he was concerned the driver might be a Thief River Falls police officer who had lied under oath during a prior federal prosecution against him, which was subsequently dismissed. The state objected. The district court ruled that Stone could testify about why he fled the police officer but would not be permitted to "give his opinion that officers at the other trial lied" or testify as to why the federal case was dismissed because these matters are outside Stone's personal knowledge and would confuse the issues for the jury.

Stone testified that he had been the subject of a federal criminal case that arose out of an investigation that included the Thief River Falls Police Department, that the charges were ultimately dismissed, and that "based on that experience that [he] had and the result of that case," he distrusts "certain people" in the police department. He testified that on the day of the chase, he could not see which police officer was pursuing him and fled because he was afraid to "face those issues again."

The jury found Stone guilty of all charges, and the district court sentenced him to 22 months' imprisonment. Stone appeals his convictions of fleeing a police officer in a motor vehicle and possession of drug paraphernalia.

D E C I S I O N

I. The district court did not abuse its discretion by limiting Stone's testimony regarding his reason for fleeing from police.

We review evidentiary rulings for an abuse of discretion, "even when a constitutional violation is alleged." *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015). Erroneous exclusion of evidence does not require reversal if the error is "harmless beyond a reasonable doubt." *In re Welfare of M.P.Y.*, 630 N.W.2d 411, 415 (Minn. 2001).

"[C]riminal defendants have a due process right to explain their conduct to the jury, whether or not their motives constitute a valid defense." *State v. Rein*, 477 N.W.2d 716, 719 (Minn. App. 1991), *review denied* (Minn. Jan. 30, 1992). But that right is limited by the rules of evidence. *State v. Richardson*, 670 N.W.2d 267, 277, 282 (Minn. 2003). A district court may restrict a defendant's testimony pursuant to an evidentiary rule, so long as the restriction is not arbitrary or disproportionate. *Id.* at 282.

Stone argues that the district court infringed on his right to present a defense by preventing him from testifying about "the details" of the federal prosecution that led him to fear a Thief River Falls police officer. We disagree for three reasons.

First, the district court's limitations on Stone's testimony about the federal case did not prevent him from explaining his conduct to the jury. Stone testified that he faced federal charges based in part on an investigation by Thief River Falls Police, that the charges were ultimately dismissed, and that he feared one of the police officers as a result of how the federal prosecution proceeded. On this record, we conclude Stone's constitutional right to present his defense was vindicated.

Second, the district court acted well within its discretion by excluding "the details"—including proposed testimony about "why the federal charges were dismissed," and that a Thief River Falls police officer "lied during the federal prosecution"—on grounds of confusion of the issues and lack of personal knowledge.[2] A district court "may limit the defendant's evidence to ensure that the defendant does not confuse or mislead the jury." *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010); *see* Minn. R. Evid. 403 (permitting exclusion of relevant evidence to avoid confusion). This includes a defendant's own testimony explaining his conduct. *State v. Greer*, 635 N.W.2d 82, 91 (Minn. 2001). The prospect of juror confusion is particularly salient when a defendant's explanation is not a defense to the charged offense. In such case, the district court must balance the defendant's right to present that explanation with its obligation to ensure the jury clearly understands the applicable law, including how that explanation does or does not constitute a legal defense to the charge. *Cf. State v. Thompson*, 617 N.W.2d 609, 613 (Minn. App. 2000) (discussing possibility of limiting instruction to avoid confusion in consideration of defendant's erroneously excluded explanation of her conduct). The district court could have mitigated possible confusion by instructing the jury that fear of the police is not a defense to the fleeing offense. But such an instruction was never discussed and may have been unacceptable to Stone. And, importantly, such an instruction would not have addressed the other basis for the district court's ruling—Stone's lack of personal knowledge.

[2] Stone asserts that the district court improperly limited his testimony on hearsay grounds. The district court mentioned hearsay but did not restrict Stone's testimony on that basis.

Third, the district court did not abuse its discretion by excluding testimony about which the witness lacked personal knowledge. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Minn. R. Evid. 602. Stone asserts that he has personal knowledge the officer lied and that the false testimony precipitated the dismissal because he was in the federal courtroom when the case was dismissed. This assertion is flawed in multiple respects. As to the purported lie, credibility is a nuanced concept, "broader . . . than truthfulness versus lying." *State v. Leutschaft*, 759 N.W.2d 414, 422 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). Stone apparently disagreed with the officer's unspecified testimony but did not articulate any foundation for his opinion that the officer lied. As to the basis for the dismissal, Stone strongly implies that it was because of the officer's allegedly false testimony but has never actually stated as much. In fact, he has not identified any precise reason for the dismissal, let alone established how he has personal knowledge of the reason.

Finally, the record demonstrates that any error in limiting Stone's testimony was harmless beyond a reasonable doubt. Stone directly admitted at trial all elements of fleeing a police officer. And his admissions were corroborated by his letter to the police officer and the video from the officer's dashboard camera. Accordingly, Stone's evidentiary challenge fails.

II. The district court's misstatement during jury instructions did not impair Stone's substantial rights.

Where, as here, an appellant challenges jury instructions to which he did not object at trial, we review for plain error. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012). Under that standard, an appellant must show that there was: (1) an error; (2) that is plain; and (3) the error must affect substantial rights. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). If he satisfies the first three prongs, we then consider whether reversal is necessary to protect the fairness, integrity, or public reputation of judicial proceedings. *State v. Griller*, 583 N.W.2d 736, 742 (Minn. 1998).

When reviewing jury instructions, we examine the instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Kuhnau*, 622 N.W.2d 552, 555-56 (Minn. 2001).

It is undisputed that the district court judge misspoke in reading a portion of the instructions regarding the drug-paraphernalia offense. Regarding the possession element of that offense, the judge stated: "You may find that the element of possession, as that term is used in these instructions, is present if you find a reasonable doubt that the defendant had actual or constructive possession." Because the instruction inadvertently omitted the word "beyond" preceding the words "a reasonable doubt," it is erroneous—and plainly so. But that does not end our analysis.

Stone contends that the error is also structural, requiring reversal regardless of prejudice. We disagree. A defect in a jury instruction defining reasonable doubt only requires automatic reversal of a conviction if the defect is so substantial as to deny the

defendant the right to a jury verdict of guilt beyond a reasonable doubt. *Sullivan v. Louisiana*, 508 U.S. 275, 281, 113 S. Ct. 2078, 2083 (1993); *see State v. Peterson*, 673 N.W.2d 482, 487 (Minn. 2004) (following *Sullivan*). The defect here falls far short of this standard.

There is little doubt that despite the misstatement, the jury understood that proof beyond a reasonable doubt was required for the possession element. At the beginning of the final instructions, the district court provided each juror with a copy of the written instructions and invited them to "follow along." These written instructions correctly state that the element of possession must be found beyond a reasonable doubt. Indeed, the discrepancy between the oral instruction and the written instruction, while legally significant, was so inconsequential in the moment that it did not stimulate an objection from defense counsel.

Moreover, the instructions as a whole require the state to prove guilt beyond a reasonable doubt. Both the written and oral instructions accurately state the presumption of innocence and repeatedly admonish the jury to find Stone guilty only if the state proves guilt beyond a reasonable doubt. The district court also repeatedly instructed the jury that each element of the four charged offenses must be proved beyond a reasonable doubt. And in its final instructions to the jury, after closing arguments, the district court reiterated: "It is fair to find the defendant guilty if you are convinced of guilt beyond a reasonable doubt. On the other hand, it is fair and proper to find the defendant not guilty if you are not convinced of guilt beyond a reasonable doubt." On this record, we are not persuaded that

there is a reasonable likelihood that the district court's misstatement substantially affected the jury's verdict. *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002).

In sum, the district court plainly erred in orally misstating the instruction that possession of drug paraphernalia must be proved beyond a reasonable doubt. But Stone has not demonstrated that the error was structural or impaired his substantial rights.

III. Stone's pro se arguments lack merit.

In a pro se supplemental brief, Stone reiterates his challenge regarding the limitation of his testimony. And he argues that (1) the district court erred by permitting the police officer to "suggest this case was a meth case"; (2) the officer "lied repeatedly throughout his testimony," particularly regarding the duration of his acquaintance with Stone; and (3) he "was never allowed to view the [dashboard-camera] video before trial." These arguments are unavailing.

First, there was no impropriety, let alone plain error, in the police officer's unobjected-to references to methamphetamine. *See Jenkins*, 782 N.W.2d at 230 (applying plain-error review to evidentiary challenge without objection). The officer did not state that Stone used or possessed methamphetamine but simply testified that several of the items found in Stone's vehicle are commonly associated with methamphetamine. This testimony may have supported unfavorable inferences but was not unfairly prejudicial as it was necessary to establish the drug-paraphernalia possession charge. *See* Minn. Stat. §§ 152.01, subd. 18(a), .092 (2014).

Second, Stone's challenge to the police officer's credibility is misplaced. It is the role of the jury, not appellate courts, "to determine the credibility of the witnesses and

weigh the evidence before it." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). Stone had ample opportunity to and did cross-examine the police officer. The jury nonetheless accepted the officer's testimony. We defer to that credibility determination.

Third, even if Stone did not view the dashboard-camera video, the record reflects that defense counsel was not surprised by the video at trial and had no objection to its admission. And Stone does not identify any prejudice that resulted from his personal lack of prior access.

Affirmed.