STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2245

State of Minnesota,
Respondent,

vs.

Dean Aaron Anderson,
Appellant.

Filed January 27, 2009
Affirmed
Lansing, Judge

Isanti County District Court
File No. VB-07-1386

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Jeffrey R. Edblad, Isanti County Attorney, David M. Kraemer, Assistant County Attorney, 555 Eighteenth Avenue Southwest, Cambridge, MN 55008 (for respondent)

Dean Aaron Anderson, #102, 1769 North Lexington Avenue, Roseville, MN 55113 (pro se appellant)

Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Worke, Judge.

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

LANSING, Judge

At trial on a charge of exceeding the posted speed limit, Dean Anderson unsuccessfully challenged the admissibility of test certificates to establish the reliability

of the radar device. The district court found Anderson guilty, and he appeals. Because the district court did not abuse its discretion in its evidentiary rulings and the evidence supports the conviction, we affirm.

F A C T S

An Isanti County deputy, using a radar device, measured the speed of Dean Anderson's vehicle on Highway 65 on August 7, 2007, as seventy-five miles an hour. The posted speed limit is sixty-five. The deputy stopped Anderson and issued a citation for speeding.

Anderson pleaded not guilty, and the case proceeded to a court trial. The deputy testified to his background and training in the use of radar and described his actions in setting up and operating the radar that day. He testified that he used the external tuning forks to calibrate the radar and submitted certificates verifying their accuracy. He also testified that no interference or distortion affected the radar measurement of Anderson's speed. Anderson challenged the admission of the tuning-fork certificates and cross-examined the deputy about his training. The district court sustained an objection to Anderson's attempted cross-examination about the officer's actions during the traffic stop.

In his defense, Anderson presented narrative testimony describing the traffic stop and implying that he had received the citation only because he would not consent to a search of his vehicle. At the end of his testimony, Anderson stated, "That's basically what I have to say." The district court found Anderson guilty, and he appeals.

D E C I S I O N

The Minnesota Traffic Regulations provide that exceeding a properly posted speed limit is prima facie evidence of a speeding violation. Minn. Stat. § 169.14, subd. 4 (2006). A violation may be proved by using radar evidence so long as the state provides adequate foundation for the officer's radar training, the radar's set-up and operation, the absence of all but minimal distortion or interference with the radar, and testing of the radar by a reliable external mechanism at the time of set up. *Id.*, subd. 10 (2006).

When sufficiency of the evidence is challenged on appeal, we must view the evidence in the light most favorable to the verdict and assume the fact-finder credited testimony that supported the verdict and discredited testimony that did not. *State v. Steinbuch*, 514 N.W.2d 793, 799 (Minn. 1994). We review the district court's evidentiary rulings for an abuse of discretion. *Francis v. State*, 729 N.W.2d 584, 591 (Minn. 2007), *cert. denied*, 128 S. Ct. 151 (2007). The appellant has the burden of establishing abuse of discretion and prejudice. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

The deputy who issued Anderson's ticket testified that he witnessed Anderson driving a car in Isanti County at a speed that the radar device showed to be in excess of the posted limit. He also testified to all of the facts necessary to provide a foundation for admission of the radar evidence. Assuming, as we must, that the district court credited the deputy's testimony and did not credit Anderson's theory accounting for why the officer issued the ticket, the evidence is sufficient to establish a speeding violation.

Anderson challenges the admission of the three certificates that verify the accuracy of the radar's tuning forks, one of which shows a small correction on the line on which the calibrator signal is written. Anderson argues that (1) admission of the certificates violated his right to confront the person who prepared them, (2) the certificates were generally unreliable, and (3) allowing the use of photocopies was improper.

We conclude that admission of the certificates was not an abuse of discretion. Test records for radar devices are specifically allowed into evidence in any prosecution for which a motor vehicle's rate of speed is relevant, so long as the records are "kept in the regular course of operations of any law enforcement agency." Minn. Stat. § 169.14, subd. 10(b). No further foundation is required. *Id.* The deputy provided adequate foundation, and the district court was free to admit the certificates without further testimony. Anderson's argument that the certificates violate his right to confront witnesses was not raised in the district court and will not be addressed here. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). We do note, however, that this court has previously held that admitting a radar certificate into evidence does not violate the right to confrontation because it is not offered "to directly connect appellant to the commission of the crime." *State v. Ali*, 679 N.W.2d 359, 367 (Minn. App. 2004).

Anderson's assertion that the certificates are incomplete or unreliable does not have support in the record. The deputy verified that the forks corresponded to the radar in his vehicle. The date on the certificates, which Anderson noted was later than the date of his citation, does not indicate unreliability; the forks were certified annually. And the

deputy testified that he believed the small alteration of one certificate simply showed that the tester had caught his own error and corrected it.

Despite Anderson's general objection, the rules of evidence allow duplicates to be admitted absent unfairness or a "genuine question . . . as to the authenticity of the original." Minn. R. Evid. 1003. The record demonstrates neither unfairness nor any challenge to the authenticity of the original. The district court did not abuse its discretion by admitting the duplicate certificates.

Anderson also argues that the district court abused its discretion by limiting cross-examination of the deputy. The district court cautioned Anderson not to quiz the deputy on the contents of the radar training manual, but this cautionary restriction did not prevent Anderson from asking about the deputy's training. The district court sustained the state's objection to Anderson's cross-examination questions about an allegedly illegal search at the time of the stop, because Anderson was unable to establish the relevancy of the questions. Absent an offer of proof to demonstrate relevance, the district court did not abuse its discretion by sustaining the state's objection. *See* Minn. R. Evid. 103 (stating error cannot be found when substance of evidence was not made known to court).

Anderson's last category of alleged error is that the district court's procedural rulings should have been more lenient toward him as a pro se defendant. *See Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987) (noting that district court should make reasonable accommodations for pro se litigants). Specifically, Anderson claims that he was deprived of a fair trial because the district court ruled without asking for closing argument.

The record shows that the district court adequately accommodated Anderson and was helpful at various points during trial. The district court may well have permitted Anderson to make a closing argument if Anderson had indicated that he wanted to present a formal closing argument or objected to being denied the opportunity. Anderson did not object, and, therefore, on appeal he must show that the district court committed plain error that deprived him of a fair trial. *Rairdon v. State*, 557 N.W.2d 318, 323 (Minn. 1996). The record does not support a claim of plain error. Instead it shows that Anderson concluded his case by stating, "That's basically what I have to say." Thus, it would be reasonable for the district court to conclude that Anderson's testimony incorporated his closing argument, and it was not clear error to proceed directly to a decision.

Affirmed.