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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1028**

State of Minnesota,
Respondent,

vs.

Devin Charles Neeland,
Appellant.

**Filed May 29, 2012
Affirmed
Ross, Judge**

Clearwater County District Court
File No. 15-CR-10-446

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

Richard C. Mollin, Clearwater County Attorney, Bagley, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

The state charged Devin Neeland with fourth-degree assault for spitting on a
corrections officer at the Clearwater County Jail. Neeland objected to testimony from a

police officer about Neeland's pre-arrest conduct. The district court overruled the objection and the jury found him guilty of assault. Neeland appeals, arguing that the evidence was irrelevant and unfairly prejudicial. Because the challenged testimony did no possible harm to Neeland's defense, the district court did not abuse its discretion by allowing it, and we affirm.

FACTS

In August 2010 Bagley police officer Ryan Solee was at a gas station investigating a report that Devin Neeland had assaulted a woman. Officer Solee found Neeland attempting to hide in a car. The car was not his. The officer arrested Neeland and took him to jail. Neeland arrived at the jail uncooperative and intoxicated. He was placed in a holding cell equipped with a camera to monitor activity.

About an hour later, corrections officer Kristopher Larson conducted a routine wellness check on Neeland and observed him lying on the cell floor with his eyes half open. Officer Larson opened the door and knelt in front of Neeland, calling his name, but Neeland did not respond. Officer Larson shook Neeland and yelled his name several more times, and Neeland uttered only unintelligibly. Officer Larson attempted to administer the horizontal gaze nystagmus test to assess Neeland's level of intoxication, but Neeland would not cooperate.

Officer Larson asked Neeland if he was on alcohol or drugs, and he responded by saying he was "on this." The officer asked what "this" was, and Neeland said, "That." Neeland then chuckled and sat up. Officer Larson heard the sound of Neeland building phlegm in his throat, and Neeland thrust his head toward Officer Larson and spat on him.

Officer Larson left the cell and asked for help to collect the spit from his clothes. Officer Solee, who was nearby, used a DNA testing kit to take swabs of the saliva.

The state charged Neeland with fourth-degree assault on a correctional officer. *See* Minn. Stat. § 609.2231, subd. 3(2) (2010). Before trial, Neeland moved in limine to prevent the state from introducing any testimony or evidence revealing the reason he was incarcerated when the spitting incident occurred. The state argued that it intended to offer the testimony of the gas station clerk to provide context and to demonstrate that Neeland was appropriately in jail. The district court granted Neeland’s motion and precluded the clerk’s testimony.

During the state’s direct examination of Officer Solee at trial, the prosecutor asked about his encounter with Neeland. The officer began, “Initially he was in a vehicle.” But Neeland’s attorney objected. The district court first sustained the objection and told the prosecutor to “jump ahead to [Neeland’s] arrival.” But after a bench conference, the court instead overruled the objection and the following dialogue occurred:

Prosecutor: I think my question is where did you locate Mr. Neeland in the area?

Officer Solee: Initially I found Mr. Neeland hiding in a vehicle.

Prosecutor: Okay. And where was he or how was he concealing himself in a vehicle?

Officer Solee: He was in the front seat in the passenger seat, and he was laying down to his left trying to hide underneath the dash.

Prosecutor: And did you check the vehicle itself to determine whose vehicle it was?

Officer Solee: It was parked outside an apartment, and we asked if—whose vehicle it was. And I do not recall the lady’s name. She says, it’s my vehicle and he had been hiding in it.

Prosecutor: So it wasn't Mr. Neeland's vehicle?
Officer Solee: No, it was not Mr. Neeland's vehicle.

The prosecutor then questioned Officer Solee about his contact with Neeland at the jail. In addition to the testimony of Officers Larson and Solee, the state introduced the DNA testing kit containing Neeland's spit. Neeland offered the testimony of another correctional officer, Kenneth Ames, and used this testimony to introduce the video recording of Neeland's holding cell. Officer Ames also testified that Officer Larson told him that he was going to go into Neeland's holding cell to check on him and to try and administer an alcohol test.

After deliberating twenty minutes the jury asked the district court if it could view the video recording again. After viewing the recording, the jury reconvened and reached a verdict nineteen minutes later. It found Neeland guilty of fourth-degree assault.

Neeland appeals.

DECISION

Neeland contends that the district court abused its discretion by overruling his objection and allowing Officer Solee's testimony that Neeland had been hiding in a car when he was arrested. We will not reverse a district court's evidentiary ruling absent an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Neeland has the burden of demonstrating that the district court abused its discretion and that he suffered prejudice as a result. *See id.*

We can bypass Neeland's various arguments contending that the testimony that police found him hiding in someone else's car was irrelevant or unfair (although it seems

that it was neither). We can bypass the arguments because Neeland fails to prove that he was prejudiced because any error was harmless beyond a reasonable doubt. *See State v. Quick*, 659 N.W.2d 701, 716 (Minn. 2003) (holding that a defendant who claims the district court erred by admitting evidence “has the burden of showing the error and any resulting prejudice”). The challenged evidence could not possibly have caused Neeland’s defense any harm. Of course Neeland prefers that the jury would have never learned that he had a negative encounter with police before the spitting. But Neeland does not dispute that the prosecutor had the right to explain to the jury that the officer found Neeland barely conscious on the cell floor. We are confident that a reasonable jury—even without the now-contested testimony—would have surmised that Neeland was lying intoxicated on the jail floor because he had some sort of negative encounter with police; people don’t just show up on jail floors.

Looking to the record as a whole, the evidence of guilt was overwhelming and the allegedly improper evidence insignificant. Because the jury’s verdict was surely unattributable to the alleged error, the error is harmless. *See State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997). The jury heard the unequivocal testimony of Officer Larson and Officer Solee, one who experienced Neeland’s spitting and the other who collected Neeland’s spit. The weight and credibility of witness testimony is for the jury to determine, and on review we assume that it believed the state’s witnesses and disbelieved any contrary evidence. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). Given the weight of the direct evidence and the brief deliberation, the jury’s guilty verdict could not

have arisen from the inconsequential contested evidence. We therefore find no persuasive merit in Neeland's argument.

Affirmed.