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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0626**

State of Minnesota,  
Respondent,

vs.

Nicholas Cosmo Stimpson,  
Appellant.

**Filed March 25, 2013  
Affirmed  
Hudson, Judge**

Sherburne County District Court  
File No. 71-CR-11-762

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Elisabeth A. Spilde, Assistant County Attorney, Elk River, Minnesota (for respondent)

Julie Lotfus Nelson, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Kirk, Judge.

**UNPUBLISHED OPINION**

**HUDSON, Judge**

On appeal from his convictions of fleeing a peace officer in a motor vehicle and driving after cancellation, appellant argues that (1) the district court abused its discretion

by admitting hearsay evidence and (2) the admissible evidence was insufficient to support his conviction of fleeing a police officer in a motor vehicle. Although the district court may have erred by admitting hearsay evidence, because the remaining evidence was sufficient to support appellant's conviction, rendering any error harmless beyond a reasonable doubt, we affirm.

### **FACTS**

At 10:24 a.m. on May 12, 2011, while stopped at an intersection, Elk River Police Officer Chris Morgan observed a black Pontiac Firebird with no passengers traveling northbound. Officer Morgan conducted a routine computerized check of the vehicle's license plate, revealing that the registered owner was appellant Nicholas Stimpson, that appellant's driver's license was cancelled, and that the vehicle's license plates were impounded. Based on this information, Officer Morgan decided to execute a traffic stop.

Officer Morgan activated his emergency lights, but the Firebird did not pull over. The vehicle increased its speed as high as 125 miles per hour and eventually evaded Officer Morgan. Officer Morgan terminated his 8-minute, 11-mile pursuit after losing sight of the Firebird.

Officer Morgan went to appellant's residence 45 minutes after the incident and interviewed J.S., appellant's brother, who stated that appellant had left the home about a half hour earlier. Stimpson's residence was located 1.5 miles from the location where Officer Morgan had first encountered the black Firebird.

The investigation was continued the next day by Elk River Police Detective Joe Gacke. He interviewed W.M. and J.P., who had not seen appellant in several months but

advised Detective Gacke that appellant's friend B.D. lived nearby. J.P. then sent a text message to appellant to let him know that the police were looking for him. J.P. also texted L.H., appellant's former girlfriend and the mother of appellant's daughter, to let her know that the police were looking for appellant. L.H. spoke with appellant in person later that day, and appellant told her that the police were after him "because they tried to pull me over yesterday, and I didn't."

Appellant told L.H. not to talk to anyone and informed her of his plan to tell police that he had sold the car. This was one of several instances in which appellant attempted to coach potential witnesses. Before trial, appellant contacted both J.P. and L.H. and told them that they did not have to say anything when they testified. Investigators later recorded a phone call placed by appellant from jail, where he told a female friend that she should try to avoid being subpoenaed, and to claim that she did not know anything if she was required to testify.

After speaking with W.M. and J.P., Detective Gacke went to B.D.'s residence, located approximately 4.5 miles from where Officer Morgan lost sight of the Firebird. When they arrived, Detective Gacke spotted a portion of a black Firebird behind the residence. After gaining access to the area behind B.D.'s residence, Detective Gacke discovered that the vehicle had no license plates but determined that the vehicle was the black Firebird that had evaded Officer Morgan the prior day by cross-referencing the vehicle's VIN with the license plate number recorded by Officer Morgan. Detective Gacke recorded an interview with B.D., but the content and admissibility of that interview are disputed.

Appellant was charged with fleeing from a police officer in a motor vehicle, driving after license cancellation, and displaying suspended license plates. At trial, before B.D. testified, the state notified appellant's counsel that because B.D. appeared to have no recollection of his interview with Detective Gacke, it intended to introduce B.D.'s recorded statement to Detective Gacke under either Minn. R. Evid. 803(5), the recorded-recollection exception to the hearsay rule, or rule 807, the residual exception to the hearsay rule. Appellant argued that the transcript was hearsay and not admissible under any exception. The district court stated that it appeared that the transcript would be admissible as a recorded recollection, depending on the foundation and circumstances. The district court then advised appellant's counsel to approach the bench if he wanted to "make some kind of record beyond the normal objection."

B.D. testified that appellant's black Firebird was at his residence when Detective Gacke arrived on May 13. B.D. recalled having a conversation with Gacke, but did not recall the contents of his discussion with Detective Gacke or his interactions with appellant on the date of the offense. B.D. was shown what the prosecutor claimed was a transcript of B.D.'s interview with Detective Gacke, but the transcript did not refresh B.D.'s recollection. The transcript was not entered into evidence, and the record does not indicate who prepared the transcript, whether B.D. signed or initialed the transcript, or that B.D. had validated the accuracy or authenticity of the transcript in any way. The audio recording of the interview was never entered into evidence or played at trial.

After a bench conference, the prosecutor handed the transcript to B.D. and asked a series of questions whereby the prosecutor would read a passage from the transcript and

ask B.D. to confirm that the transcript contained the passage. According to the transcript, B.D. stated that on the date of the incident, appellant arrived at B.D.'s residence around 11:30 a.m. or noon driving the black Firebird. The transcript further stated that appellant left the Firebird at B.D.'s residence, and appellant left driving a red pickup truck.

Detective Gacke confirmed during his testimony, given after B.D.'s testimony, that he took a recorded statement from B.D. on May 13 in which B.D. stated that appellant had arrived at his house driving a black Firebird around noon on the date of the offense, stored the Firebird at B.D.'s residence, and left driving a red pickup truck. Yet Detective Gacke did not review the transcript while testifying, nor did he testify regarding the circumstances under which the transcript was prepared, or confirm that the transcript was an accurate reflection of his interview with B.D.

The jury found appellant guilty of fleeing a police officer in a motor vehicle and driving after cancellation. The third count for displaying suspended license plates was dismissed before trial. The district court imposed and executed the presumptive 22-month prison sentence for the conviction of fleeing a police officer in a motor vehicle. No sentence was imposed on the other charge, as it was determined to be part of the same course of conduct. This appeal follows.

## **D E C I S I O N**

### **I**

Appellant contends that the district court abused its discretion by permitting the state to introduce the transcript of B.D.'s recorded interview with Detective Gacke, arguing that the transcript was hearsay that did not fall within an exception to the hearsay

rule. Generally, evidentiary rulings rest within the sound discretion of the district court, and those rulings will not be disturbed absent a clear abuse of discretion. *State v. Jackson*, 770 N.W.2d 470, 482 (Minn. 2009).<sup>1</sup> On appeal, it is the appellant's burden to establish that the district court abused its discretion and that appellant was thereby prejudiced. *State v. Holliday*, 745 N.W.2d 556, 568 (Minn. 2008). A district court's erroneous admission of evidence that does not implicate constitutional protections "is harmless if there is no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* (quotation omitted)

Any error by the district court in admitting the transcript of B.D.'s interview with Detective Gacke or Detective Gacke's testimony about that interview was harmless. It is undisputed that the black Firebird owned by appellant was the vehicle that evaded Officer Morgan. Appellant effectively confessed his crime when he told L.H. that the police were after him "because they tried to pull me over yesterday, and I didn't." Appellant argues that this statement is consistent with a theory that appellant was a passenger in the vehicle. This argument is wholly unpersuasive given appellant's use of the singular first-

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<sup>1</sup> Respondent argues that admission of the transcript should be reviewed for plain error. But appellant entered a lengthy objection to admission of the transcript, stating specific grounds, after which the district court ruled that the transcript appeared to be admissible as a recorded recollection. The district court stated that admissibility would ultimately depend upon the foundation and circumstances, and then instructed the parties that they could approach the bench to register further objections. Two bench conferences occurred off the record while B.D. was on the stand and the state was attempting to introduce the transcript. Thus it is likely that appellant lodged an additional objection to admission of the transcript. Under these circumstances, we conclude that appellant properly objected to admission of the evidence. *Cf. State v. Brown*, 792 N.W.2d 815, 820 (Minn. 2011) (applying plain-error analysis because the grounds for defendant's objection to the admission of testimony could not be determined).

person pronouns “me” and “I” while speaking with L.H., coupled with Officer Morgan’s testimony that, throughout the 11-mile pursuit, he saw nobody in the Firebird other than the driver. We therefore conclude that there is no reasonable possibility that admission of evidence of B.D.’s interview with Detective Gacke significantly affected the verdict.

## II

Appellant argues that the admissible evidence was insufficient to establish that appellant was guilty of fleeing a police officer in a motor vehicle. In considering a claim of insufficient evidence, this court conducts a painstaking analysis of the record to determine whether the evidence, viewed in a light most favorable to the conviction, was sufficient to allow the fact-finder to reach the verdict that it did. *State v. Hurd*, 763 N.W.2d 17, 26 (Minn. 2009). We will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). We assume that “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). And we defer to the fact-finder’s credibility determinations. *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002).

Minn. Stat. § 609.487, subd. 3 (2010), states that “[w]hoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony.” Appellant argues that the evidence that he was

driving the vehicle was wholly circumstantial, requiring us to apply heightened scrutiny to that element of the offense. *See State v. Al-Naseer*, 788 N.W.2d 469, 473–74 (Minn. 2010). Yet heightened scrutiny is required where proof of one element of the offense relies entirely upon circumstantial evidence. *Id.* at 474. Here, appellant’s statements to L.H. regarding his evasion of a police officer constitute direct evidence that he was driving the vehicle, and thus we decline to apply heightened scrutiny to the question of whether appellant was driving the vehicle. *See id.* And viewed in the light most favorable to the verdict, appellant’s statements to L.H., in addition to the evidence that it was appellant’s Firebird being driven and Officer Morgan’s testimony that he witnessed no passengers in the vehicle, were sufficient to allow the jury to reach the verdict that it did. *See Hurd*, 763 N.W.2d at 26.

Appellant next argues that the evidence was not sufficient to show that Officer Morgan was acting in lawful discharge of an official duty, because the random license-plate check that led Officer Morgan to attempt to initiate a traffic stop was an illegal search. This argument lacks merit, as a defendant has no expectation of privacy in his license plate while driving, and therefore a random, computerized license-plate check does not constitute a search. *State v. Setinich*, 822 N.W.2d 9, 12 (Minn. App. 2012). Upon discovering that the appellant, the registered owner, had a suspended license, and that the vehicle’s license plates were impounded, Officer Morgan had reasonable suspicion of criminal activity, and was therefore permitted to conduct an investigatory stop. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). Accordingly, there was



sufficient evidence to conclude that the peace officer from whom appellant fled was acting in lawful discharge of an official duty.

**Affirmed.**