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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1418**

State of Minnesota,  
Respondent,

vs.

Curtis Dean Erickson,  
Appellant.

**Filed July 16, 2012  
Reversed and remanded  
Kalitowski, Judge**

Kandiyohi County District Court  
File No. 34-CR-10-126

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Jenna Fischer, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant Curtis Dean Erickson challenges his convictions of second-degree controlled substance crime and storing methamphetamine paraphernalia in the residence

of a child, arguing that: (1) the district court abused its discretion in excluding testimony supporting his defense that he was framed; and (2) his trial counsel's errors deprived him of his right to counsel and his right to a fair trial. Because we conclude that the district court abused its discretion in excluding appellant's proffered evidence, and that the error was not harmless beyond a reasonable doubt, we reverse and remand for a new trial.

## D E C I S I O N

“A criminal defendant has the right to a meaningful opportunity to present a complete defense. This right necessarily includes the ability to present the defendant's version of the facts through witness testimony.” *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (citing U.S. Const. amend. XIV; Minn. Const. art. I, § 7; *State v. Profit*, 591 N.W.2d 451, 463 (Minn. 1999)). A defendant has the right to make “all legitimate arguments” based on the evidence presented in support of his defense, “to explain the evidence, and to present all proper inferences to be drawn therefrom.” *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009) (quotation omitted). “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.” *Penkaty*, 708 N.W.2d at 201.

On February 10, 2010, on a tip from L.E., law enforcement searched appellant's residence for controlled substances. In appellant's bedroom, officers found drug paraphernalia, baggies containing trace amounts of methamphetamine, and, behind a dresser, a baggie containing 9.6 grams of methamphetamine.

Prior to trial, appellant indicated that he planned to call as witnesses L.E., his estranged wife, B.E., his adult daughter, and W.M., his friend, to support his theory that the baggie containing 9.6 grams of methamphetamine was planted in his bedroom by L.E. The state filed a motion in limine to exclude L.E. and B.E.'s testimony, arguing that the testimony would be irrelevant, confusing, or prejudicial. The district court did not rule on the motion in limine.

At a hearing on the morning of trial, the district court stated that appellant had made a motion for the admission of alternative-perpetrator evidence. After hearing testimony from appellant, L.E., B.E., and W.M., the district court concluded that appellant failed to demonstrate facts with an "inherent tendency to connect [L.E.] with the crime." Accordingly, the district court ordered that although appellant could testify as to his belief that L.E. planted the methamphetamine, the testimony from L.E., B.E., and W.M. as to appellant's theory that he was framed lacked foundation and was irrelevant, and was therefore inadmissible. After a jury trial, appellant was convicted of second-degree controlled substance crime, in violation of Minn. Stat. § 152.022, subd. 2(1) (2008), and storing methamphetamine paraphernalia in the residence of a child, in violation of Minn. Stat. § 152.137, subd. 2(a)(4) (2008).

Appellant argues that the district court's evidentiary ruling violated his constitutional right to present a complete defense. We agree.

The record establishes that L.E., W.M., and B.E.'s testimony would have provided circumstantial evidence to establish L.E.'s opportunity and motive to plant methamphetamine in appellant's bedroom. At the alternative-perpetrator-motion hearing,

appellant testified that L.E. came to his residence on February 10, 2010, and that she was angry with him. L.E. testified that she went to appellant's residence to ask him to accompany her to the bank to have divorce documents notarized. Appellant stated that his female roommate and W.M. were in the kitchen when L.E. arrived. He testified that he was in the bathroom showering, and then in his bedroom getting dressed, for approximately an hour while L.E. was in the residence. During that time, his roommate and W.M. left, leaving L.E. unsupervised. Appellant also testified that he had frequently observed L.E. using drugs in the past and that she obtained drugs for her own use.

W.M. testified that L.E. was anxious when she arrived at the residence on February 10, that she became more agitated as she waited for appellant, and that she was unsupervised for approximately 45 minutes while appellant was in the bathroom and bedroom. He also testified that there were no drugs or drug paraphernalia in plain view in the residence.

B.E. testified that she spoke to L.E. in January 2010, and L.E. was "very upset" about appellant's relationship with his female roommate. B.E. testified that L.E. said that she "knew what was going on in that house, and [appellant] was going to go down one way or another." B.E. testified that she was concerned L.E. might do "something to hurt [appellant] out of anger."

L.E. testified that although she previously used methamphetamine and had associated with persons who use drugs, she did not know where to obtain methamphetamine. She testified that, on February 10, she was not angry with appellant.

It is undisputed that, upon leaving appellant's residence, L.E. reported to law enforcement that drugs and drug paraphernalia were present in "multiple places" in appellant's residence. The record establishes that contraband was only found in the bedrooms and was not in plain view in the common areas of the residence.

### **Right to Present a Defense**

We observe that although the parties and the district court analyzed appellant's proffered testimony as alternative-perpetrator evidence, appellant's contention was not that L.E. is the person guilty of possessing the methamphetamine found in his bedroom. Instead, appellant argues that he is not guilty because he was framed. Thus, rather than evaluating whether appellant demonstrated that his proffered evidence had "an inherent tendency to connect the alternative perpetrator to the commission of the charged crime," *State v. Ferguson*, 804 N.W.2d 586, 591 (Minn. 2011) (quotations omitted), the admissibility of appellant's proffered evidence should have been analyzed in light of appellant's constitutional right to present a complete defense, limited only by "procedural and evidentiary rules designed to ensure both fairness and reliability." *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003) (quotation omitted).

The district court concluded that the proffered evidence was irrelevant. We disagree. L.E., B.E., and W.M.'s testimony tending to demonstrate that L.E. had an opportunity and motive to frame appellant was relevant because it had some tendency to make appellant's defense more or less probable. *See* Minn. R. Evid. 401 (stating that evidence is relevant when it has "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”). Because there is nothing in the record to suggest that the testimony was otherwise inadmissible under procedural or evidentiary rules, the district court’s exclusion of appellant’s proffered testimony hindered his right to present a complete defense.

### **Alternative Perpetrator**

Even if the alternative-perpetrator foundation requirement is applicable here, appellant argues that the district court abused its discretion in concluding that he failed to establish foundation for L.E., B.E., and W.M.’s testimony. We agree.

The right to present a complete defense includes the right “to present evidence showing that an alternative perpetrator committed the crime with which the defendant is charged.” *Atkinson*, 774 N.W.2d at 589. Before alternative-perpetrator evidence is admitted, the defendant must make “a threshold showing that the evidence the defendant seeks to admit has an inherent tendency to connect the alternative perpetrator to the commission of the charged crime.” *Ferguson*, 804 N.W.2d at 591 (quotations omitted). When evaluating whether the requisite showing is made, the district court should not make credibility assessments, and need only determine “whether the inherent tendency connection, beyond a bare suspicion, has been made.” *State v. Blom*, 682 N.W.2d 578, 621-22 (Minn. 2004). If the defendant establishes foundation, he may then introduce evidence of a “motive of the third person to commit the crime, threats by the third person, or other miscellaneous facts” tending to prove the third party committed the crime. *Atkinson*, 774 N.W.2d at 590 (quotation omitted).

Appellant argues that he presented evidence having an inherent tendency to connect L.E. with his defense that L.E. planted the drugs, including evidence tending to demonstrate that: (1) L.E. had access to the drugs because she used methamphetamine in the past and associated with persons who used methamphetamine; (2) L.E. was angry with appellant and made a threatening statement about appellant to B.E. in January 2010; (3) L.E. had an opportunity to plant the methamphetamine because she was unsupervised in appellant's residence on February 10; and (4) L.E. reported appellant's drug possession to law enforcement just after leaving his residence on February 10. We agree that this evidence satisfies the threshold-showing requirement connecting L.E. to appellant's theory that he was framed.

Appellant also argues that the district court improperly made credibility findings and evaluated competing evidence when determining whether the foundational requirement was satisfied. We agree.

The district court noted that persons other than L.E. had an opportunity to enter appellant's bedroom, L.E. denied entering appellant's bedroom, none of the other witnesses saw L.E. enter the bedroom, and appellant did not notice anything out of place in his bedroom. But the strength of the evidence is to be weighed by the jury at trial. *State v. Beecroft*, \_\_\_ N.W.2d\_\_\_, 2012 WL 1859133, at \*18 (Minn. May 23, 2012) (stating that the "fundamental right" to a complete defense includes "'the right to present the defendant's version of the facts . . . to the jury so it may decide where the truth lies'" (quoting *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 1923 (1967))). And a defendant's constitutional right to present alternative-perpetrator evidence may not be

denied on the ground that the prosecution's case is overwhelmingly strong. *Holmes v. South Carolina*, 547 U.S. 319, 329-30, 126 S. Ct. 1727, 1734 (2006).

The district court also noted that appellant's testimony about a lockbox found in his bedroom containing drug paraphernalia was contradictory, and that he admitted to being a drug user. The district court further determined that L.E.'s testimony that she did not plant the methamphetamine, did not know where to obtain methamphetamine, and was not angry with appellant, demonstrated that appellant's defense was implausible and B.E.'s testimony was speculative. But the relative credibility of appellant, L.E., and B.E. was to be determined by the jury at trial, as "[i]t is the jury's role to assess the credibility of the [alternative-perpetrator] evidence." *Blom*, 682 N.W.2d at 622.

Moreover, the district court failed to address the fact that it was L.E. who informed law enforcement that methamphetamine and drug paraphernalia were present in multiple locations in appellant's trailer. This undisputed fact tends to contradict L.E.'s statement that she was not angry with appellant and tends to support appellant's defense theory.

"Exclusion of evidence supporting a defendant's theory that an alternative perpetrator committed the crime with which the defendant is charged will almost invariably be declared unconstitutional when it significantly undermines fundamental elements of the defendant's defense." *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004) (quotation omitted). Because appellant proffered sufficient evidence to establish a nexus between L.E. and his contention that he was framed, and because the district court improperly weighed competing evidence and made credibility determinations in making

its pretrial evidentiary ruling, we conclude that the district court abused its discretion in excluding the testimony.

### **Harmless Error**

When the district court abuses its discretion in excluding a defendant's evidence, the "conviction will stand if the constitutional error committed was harmless beyond a reasonable doubt." *Atkinson*, 774 N.W.2d at 589. "The error is harmless if the jury's verdict is surely unattributable to the error." *Id.* (quotations omitted).

Appellant argues that the error was not harmless, because his own testimony that L.E. planted the methamphetamine was less persuasive than the proffered witness testimony would have been. He also argues that if the witness testimony had been permitted he may have chosen not to testify, and therefore he would not have been impeached with a prior methamphetamine conviction.

On this record, we cannot conclude that the error was harmless beyond a reasonable doubt. Had the jury believed B.E.'s testimony and disbelieved L.E.'s testimony, or had the jury found appellant credible, the jury may have acquitted appellant of the second-degree controlled substance crime charge. Because the district court's exclusion of appellant's proffered testimony was an abuse of discretion and was not harmless beyond a reasonable doubt, we reverse and remand for a new trial.

Finally, appellant argues that his trial counsel's disclosure of confidential information deprived him of his right to counsel and right to a fair trial. But because we reverse and remand on the evidentiary issue, we need not address this argument.

**Reversed and remanded.**