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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0764**

State of Minnesota,
Respondent,

vs.

Dean Aaron Anderson,
Appellant.

**Filed September 9, 2008
Affirmed
Toussaint, Chief Judge**

Anoka County District Court
File No. T0-06-29043

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Kurt B. J. Glaser, Lexington City Attorney, 610 Butler North Building, 510 First Avenue North, Minneapolis, MN 55403 (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Toussaint, Chief Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Dean Aaron Anderson challenges his conviction of improper lane usage, arguing that there is insufficient evidence to support his conviction and that he was denied his due-process right to a fair trial. Because appellant's conviction is supported by the record and because the district court did not abuse its discretion at trial and in denying appellant's motion to dismiss, we affirm.

FACTS

On September 17, 2006, a Centennial Lakes police officer was traveling eastbound on Lake Drive in Lexington, following the vehicle that appellant was driving. After observing the vehicle cross the right-turn-lane line at an intersection but continue straight through the intersection, the officer stopped the vehicle. Appellant was cited for failing to wear a seat belt in violation of Minn. Stat. § 169.686, subd. 1(a)(1) (2006), and for an expired driver's license in violation of Minn. Stat. § 171.27 (2006).

Later, after appellant explained to the police chief that his driver's license was valid at the time of the stop and had not expired, the officer who issued appellant's citation sent him a letter dated September 19, 2006, informing him that the citation was voided and the charges dropped.¹ The officer issued appellant a new citation by mail for improper lane usage in violation of Minn. Stat. § 169.18, subd. 7(a) (2006). Appellant pleaded not guilty to the improper-lane-usage charge and obtained subpoenas for the

¹ Apparently, appellant possesses a certificate from a physician exempting him from having to wear his seatbelt pursuant to Minn. Stat. § 169.686, subd. 2(3) (2006).

police chief and a second officer to testify at trial.

Appellant's bench trial commenced on April 4, 2007. The officer who pulled the vehicle over testified that the intersection of Lake Drive and Lexington Avenue consists of a left-turn lane, a center lane for traffic going straight, and a right-turn lane. The officer testified that he "observed the vehicle [driven by appellant] basically cross over the dividing line which divides" the through-traffic lane from the right-turn lane about two to three feet for a distance of approximately 20 feet. The officer testified that he assumed that appellant had crossed the line to enter into the right-turn lane in order to make a turn, but instead, appellant drove the vehicle back over the line into the center lane and stopped at the stoplight so that he could continue traveling straight.

Following the officer's direct examination, appellant told the district court that he wished to submit a motion to dismiss on the ground of prosecutorial misconduct.² The district court replied, "Let's conclude the witness's testimony and then we can go to that matter." On cross examination, the officer's letter to appellant dismissing the original charges was admitted into evidence. Appellant asked the officer to read a portion of the letter into the record, but the district court denied his request, stating that the "[e]xhibit speaks for itself."

After the officer had completed his testimony, the district court considered appellant's motion to dismiss. Appellant claimed that he was unable to interview his subpoenaed witnesses prior to trial despite "making several attempts" and that the

² Appellant did not file this motion before trial, and the record suggests that neither the district court nor the prosecutor had notice of the motion before the trial began.

prosecutor interfered with his due-process rights by speaking with his subpoenaed witnesses before he was able to interview them. The prosecutor stated that he did talk to the witnesses prior to trial but did not prepare them for their testimony. The district court denied appellant's motion, stating: "It does not appear to me that the Prosecutor has done anything here, other than what is appropriate for him to do as a part of his own case preparation."

Appellant and his passenger testified; both denied that the vehicle crossed into the right-turn lane. Appellant also asked the district court that the second officer, whom he had subpoenaed, be held in contempt of court for failure to appear and testify. The district court did not respond.

At the trial's conclusion, the district court made findings on the record, concluding that the officer had "a sufficient basis to stop the vehicle because of his observation of improper lane usage" and that respondent met its "burden of proof to show that [appellant] committed the offense of improper lane usage."

DECISION

I.

Appellant contends that the evidence is insufficient to uphold his improper-lane-usage conviction. We review a claim of insufficiency of evidence through "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit" the district court to reach the verdict that it reached. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We review the district court's factual findings under the clearly-erroneous standard but review the

district court's legal determinations de novo. *See State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998). We must assume that the district court believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

First, appellant claims that he could not have violated the lane-usage statute because Lake Drive is not a divided highway and only has one lane in the direction that he was traveling. The issue is essentially whether the right-turn lane constitutes a "lane" for purposes of the improper-lane-usage statute. Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

Appellant was convicted of violating Minn. Stat. § 169.18, subd. 7(a), which provides:

Laned Highway. When any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(Emphasis added.) "Laned highway" is defined as "a highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic." Minn. Stat. § 169.01, subd. 34 (2006). "Roadway" is defined as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder." *Id.*, subd. 31 (2006).

Lake Drive is a “laned highway” under the statutory definition because it is divided into two or more lanes at the intersection where the vehicle driven by appellant crossed over the right-turn-lane line. The district court did not err in determining that the right-turn lane constitutes a “lane” for purposes of the improper-lane-usage statute.

Second, appellant claims that the officer did not have a reasonable basis to pull over the vehicle and seize him and that the officer fabricated the improper-lane-usage conduct to substantiate the stop when he realized that he had mistakenly cited appellant for an expired driver’s license. An officer may conduct an investigatory stop of a vehicle and briefly seize the driver if he or she “had a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (quotation omitted). “Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *Id.* at 823.

The record supports appellant’s improper-lane-usage conviction. The officer testified that he pulled over the vehicle after he witnessed it swerve over the right-turn-lane line and back into the center lane in violation of traffic law. *See* Minn. Stat. § 169.18, subd. 7(a). Although appellant was not initially cited for improper lane usage, nothing in the record indicates that the officer did not witness such a violation before pulling over the vehicle. Because the district court had the opportunity to observe the demeanor of witnesses, we accord deference to its determination to credit the officer’s testimony. *See Roettger v. Comm’r of Pub. Safety*, 633 N.W.2d 70, 73 (Minn. App.

2001). The district court's finding that the officer had a reasonable, objective basis to stop the vehicle driven by appellant is not clearly erroneous.

Third, appellant argues that it was improper for the officer to issue him a citation by mail after voiding the originally-issued citation, but points to no authority establishing such a rule. Minn. Stat. § 169.99 (2006) provides for a "uniform traffic ticket" throughout Minnesota but does not regulate the method in which police officers issue traffic tickets. Since traffic citations have the effect of a summons and complaint, we look to the rules of criminal procedure for guidance. *See id.* Minn. R. Crim. P. 3.03 states that a criminal summons may be served "by mailing it to the defendant's last known address." It was therefore proper for the officer to serve appellant with the traffic citation via mail.

II.

Appellant claims that his due-process right to a fair trial was violated and his defense was prejudiced because of the district court's alleged multiple abuses of discretion. The Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Minnesota Constitution both guarantee a criminal defendant "due process," which includes the right to a fair trial and the right to present witnesses in one's defense. *State v. Reardon*, 245 Minn. 509, 513-14, 73 N.W.2d 192, 195 (1955); *State v. Carroll*, 639 N.W.2d 623, 627 (Minn. App. 2002), *review denied* (Minn. May 15, 2002). The constitutional guarantee of a fair trial does not, however, mandate a trial which is perfect in every detail. *State v. Billington*, 241 Minn. 418, 427, 63 N.W.2d 387, 392-93 (1954).

First, appellant argues that the prosecutor denied him a fair trial by “interfering” with the two witnesses he had subpoenaed by interviewing them and that the district court abused its discretion by failing to grant his motion to dismiss based on that alleged misconduct. A district court’s denial of a motion based on alleged prosecutorial misconduct is largely within its discretion and will be reversed only “when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant’s constitutional right to a fair trial was impaired.” *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

“The prosecutor is an officer of the court charged with the affirmative obligation to achieve justice and fair adjudication, not merely convictions.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). A prosecutor commits misconduct when he or she engages in acts that undermine the fairness of the trial or violate clear and established standards of conduct. *Id.* Minn. R. Crim. P. 9.03, subd. 1, provides that a prosecutor shall not “advise persons having relevant material or information (except the accused) to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials, nor shall they otherwise impede opposing counsel’s investigation of the case.”

When the prosecutor interviewed appellant’s subpoenaed witnesses, he was relying on law enforcement for investigation of an alleged criminal act, in accordance with *ABA Standards for Criminal Justice Prosecution Function & Defense Function*, Standard 3-3.1(a) (3d ed. 1993). It is unclear why appellant was unable to interview his witnesses before trial, and he does not specifically allege that the prosecutor *prevented*

him from meeting with his subpoenaed witnesses or that the prosecutor *advised* his witnesses to refuse to be interviewed by him. Nothing in the record ties appellant's failure to the prosecutor's conduct. And even if the prosecutor's conduct had somehow prevented appellant from interviewing his subpoenaed witnesses, nothing in the record suggests that such misconduct was so serious and prejudicial as to impair appellant's due-process right to a fair trial. *Cf. State v. Peirce*, 364 N.W.2d 801, 809 (Minn. 1985) (finding no prosecutorial misconduct where there was no claim that prosecutor was making defense witnesses unavailable). The district court did not abuse its discretion in denying appellant's motion to dismiss based on prosecutorial misconduct.

Second, appellant argues that the district court abused its discretion when it ruled that the officer's letter could not be read into the record, thereby preventing him from impeaching the officer's testimony. "Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant has the burden of proving that the district court's evidentiary rulings prejudiced his defense. *Id.*

After eliciting the officer's statement on cross examination that the letter did not state that the vehicle had been pulled over because the registered owner had an expired driver's license, appellant attempted to impeach the officer's testimony by inconsistent statement using the letter. *See* Minn. R. Evid. 607 ("The credibility of a witness may be attacked by any party . . ."). But the letter does not state any reason why the vehicle had been pulled over and therefore does not contain any inconsistent statement. We see no abuse of discretion in the district court's prevention of appellant's improper impeachment

and no prejudice to appellant's defense.

Third, appellant claims that his defense was prejudiced when the district court proceeded with the officer's testimony before hearing his motion to dismiss. The district court is authorized and directed to exercise control over trials in order to, among other things, "avoid needless consumption of time." Minn. R. Evid. 611(a). We review the district court's handling of matters of trial procedure for an abuse of discretion. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997).

Appellant was permitted to fully argue his motion immediately after the officer's testimony, and the district court adequately considered appellant's motion on the merits before denying it. We see no prejudice or abuse of discretion in allowing the officer's testimony to be concluded before considering appellant's motion

Fourth, appellant alleges that the district court abused its discretion in not holding the second officer in contempt for failing to appear and testify pursuant to his subpoena. We will not reverse a district court's decision to enforce a subpoena absent a clear abuse of discretion. *Phillippe v. Comm'r of Pub. Safety*, 374 N.W.2d 293, 297 (Minn. App. 1985). The record indicates that the subpoenaed officer arrived at the scene after the vehicle driven by appellant was pulled over and did not witness appellant's improper-lane usage. Appellant has not shown that the second officer's testimony would have been relevant to his defense or that he was prejudiced by the officer's failure to appear. The district court did not abuse its discretion.

Affirmed.