STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1940

State of Minnesota,
Respondent,

vs.

Ikechi Kallys Albert,
Appellant.

Filed September 15, 2009
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CR-08-43718

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

Heather P. Magnuson, Associate City Attorney, City of Bloomington, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (for respondent)

Ikechi Kallys Albert, 2329 South Ninth Street, Unit B202, Minneapolis, Minnesota 55406 (pro se appellant)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

HUDSON, Judge

In this pro se appeal from a conviction and sentence for petty-misdemeanor speeding, appellant raises numerous grounds for reversal: discriminatory enforcement of

traffic laws, a claim of insufficient evidence, erroneous admission of evidence, imposition of an excessive fine, and a violation of the Fourteenth Amendment's liberty guarantee. We affirm.

FACTS

Appellant Ikechi Kallys Albert was cited for petty-misdemeanor speeding in Bloomington on August 9, 2008. Before trial, Albert, representing himself, moved for an evidentiary hearing, claiming that he was a victim of discriminatory enforcement of state traffic laws. At the bench trial on October 22, 2008, Albert again moved for a hearing on the issue of discriminatory enforcement. The district court denied his request but submitted Albert's motion into evidence. The court ultimately found that the motion was not pertinent to the speeding-ticket trial.

The ticketing officer, Bloomington Police Officer Steve Potter, testified at Albert's bench trial. Officer Potter testified that he is trained in the operation of the radar device and had tested his radar device that day at the beginning and end of his shift and found no irregularities. Officer Potter explained that on August 9, 2008, he had been on routine patrol, and that around 2:54 p.m., he was traveling westbound on Old Shakopee Road, when he saw an eastbound, red sport-utility vehicle (SUV) pass another eastbound vehicle. The speed limit in the area was 35 miles per hour, but Officer Potter visually estimated the SUV to be traveling at 45 miles per hour. He activated his squad's radar device and received a reading of 50 miles per hour. Officer Potter then initiated a traffic stop of the SUV, identified the driver of the SUV as Albert, and issued him a speeding ticket.

During the bench trial, Officer Potter testified that Albert stated that he thought the speed limit was 40 miles per hour and that he was traveling 40 miles per hour. Albert contradicted this testimony, however, claiming that he had not made such a statement. Albert further argued that road construction interfered with the radar reading. But Officer Potter denied receiving any interference with the radar reading of Albert's vehicle, stating, "At the point of [the officer] having a visual of [Albert] and using [his] radar, it was a clear target."

The district court found Albert guilty of petty-misdemeanor speeding, in violation of Minn. Stat. § 169.14, subd. 5 (2008), and ordered him to pay a $145 fine. Albert's pro se appeal follows.

D E C I S I O N

I

Albert challenges his conviction of speeding, arguing that he was a victim of discriminatory enforcement. The Equal Protection Clause of the United States Constitution prohibits discriminatory enforcement of nondiscriminatory laws. *Thul v. State*, 657 N.W.2d 611, 616 (Minn. App. 2003) (citing *City of Minneapolis v. Buschette*, 307 Minn. 60, 64, 240 N.W.2d 500, 502 (1976)), *review denied* (Minn. May 28, 2003). Generally, it is presumed that a criminal prosecution has been conducted in a nondiscriminatory manner and in good faith. *State v. Hyland*, 431 N.W.2d 868, 872 (Minn. App. 1988). To prevail on a claim of discriminatory enforcement, the defendant must show, by a preponderance of the evidence, first, that he has been singled out for prosecution while other similarly situated people were not prosecuted, and second, that

the government's selection of him for prosecution was invidious or in bad faith, i.e., that it was based on an impermissible consideration of race or some other protected classification. *Id.* at 872–73 (citing *State v. Russell*, 343 N.W.2d 36, 37 (Minn. 1984)). Claims involving the Equal Protection Clause involve a question of law and are reviewed de novo. *Thul*, 657 N.W.2d at 616.

Albert argues that the district court abused its discretion by denying his request for a full hearing on his discriminatory-enforcement motion. The defense of discriminatory enforcement is appropriately raised in a pretrial motion. *Buschette*, 307 Minn. at 66, 240 N.W.2d at 503. Albert seems to assert that he was entitled to a hearing simply because he filed a motion. But the mere assertion of discriminatory enforcement does not entitle a defendant to a pretrial evidentiary hearing. *Hyland*, 431 N.W.2d at 872–73. Rather, in order to make a threshold showing to trigger a discriminatory-enforcement hearing, "a defendant must allege sufficient facts to take the question past the frivolous state and to raise a reasonable doubt as to the prosecutor's purpose." *Id.* at 873. Because the decision to deny a hearing is similar to an evidentiary ruling, this court reviews the district court's decision under an abuse-of-discretion standard. *See State v. Henderson*, 620 N.W.2d 688, 704 (Minn. 2001) (using abuse-of-discretion standard to review district court's determination that defendant had failed to establish a prima facie case of purposeful discrimination in the exercise of a peremptory challenge).

To sustain his burden of production to obtain a discriminatory-enforcement hearing, Albert was required to produce specific evidence showing that he was targeted for the charge of speeding because of his race or color. But his motion presents no

evidence showing that he was singled out for enforcement or that his selection was invidious or in bad faith. Albert alleges that he is being personally singled out by officers due to his color, race, sex, and identity, and, in support of his position, points to two occurrences: the speeding ticket on August 9, 2008, and an arrest on an unrelated matter in January 2008. But these two contacts with different police officers on different matters over an eight-month span do not show that Albert was singled out—much less that he was singled out due to his race or color. The general and conclusory allegations of discrimination in Albert's motion are insufficient to trigger a discriminatory-enforcement hearing. Therefore, the district court did not abuse its discretion in denying Albert's motion for a discriminatory-enforcement hearing.

II

Next, Albert argues that the state failed to show by a preponderance of the evidence that he was cited for speeding for any reason other than his race or color. Albert's claim lacks merit for several reasons. First, Albert bears the burden of proving his discriminatory-enforcement claim by a clear preponderance of the evidence. *Russell*, 343 N.W.2d at 37–38. Second, as explained above, the district court properly denied Albert's motion for a discriminatory-enforcement hearing. "Regardless of whether discriminatory enforcement is shown at the pretrial hearing, consideration of discriminatory enforcement evidence at trial is inappropriate." *Hyland*, 431 N.W.2d at 873 (citing *Buschette*, 307 Minn. at 66, 240 N.W.2d at 503). Third, to the extent that Albert is attempting to challenge the sufficiency of the evidence supporting his speeding

conviction, his claim fails because the district court's finding of guilt is supported by the officer's testimony.

We review claims of insufficiency of evidence by carefully analyzing the record and determining whether it sufficiently supports the verdict when the evidence is viewed in the light most favorable to conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In doing so, we assume that the factfinder believed the evidence supporting the verdict and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The district court is in a superior position to assess the credibility of a witness, and we defer to its findings. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). A district court's finding of guilt will be reversed only if the district court could not reasonably conclude that the defendant is guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Minnesota's traffic regulations provide that exceeding a properly posted speed limit is prima facie evidence of a speeding violation. Minn. Stat. § 169.14, subd. 5. 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 (2008); *see also State v. Aanerud*, 374 N.W.2d 491, 492 (Minn. App. 1985) (holding that evidence was sufficient to sustain appellant's conviction for speeding based on radar readings and the officer's testimony); *State v. Dow*, 352 N.W.2d 125, 126 (Minn. App. 1984) (stating that radar results are reliable if the unit is properly tested and operated).

Here, these requirements were met by Officer Potter's testimony, which—contrary to Albert's claims—was not inconsistent. Officer Potter testified that he visually estimated and confirmed with radar that Albert was traveling in excess of the posted 35-mile-per-hour speed limit. Officer Potter is trained in the use, operation, and calibration of the radar device and had confirmed its accuracy on the day that Albert was ticketed. The state submitted a log confirming the accuracy of the radar unit and a certificate of accuracy for the tuning forks used to test the unit. Finally, although Albert asserted that there had been interference, Officer Potter maintained that he had obtained a clear reading of the speed of Albert's vehicle and testified that there were no vehicles or other sources of potential interference between his squad car and Albert. The district court clearly found Officer Potter's testimony credible, as it found that the state had established that the radar device was working properly and that there were no obstructions or "anything that would prevent it from working on that date."

Albert also asserts that the district court should have issued a subpoena to compel witnesses, including construction workers and a passenger in his car, to testify at his trial. At trial, Albert was free to call whatever witnesses he chose. Albert did not call any witnesses. Albert never mentioned wanting to call any construction workers. Although he mentioned at trial that he wanted a subpoena for a passenger in his car, there is no indication in the record that Albert requested a subpoena before the day of trial. Albert had his day in court and the opportunity to present witnesses.

We conclude that the evidence is sufficient to support the district court's finding that the state had proven beyond a reasonable doubt that Albert was speeding.

III

Albert also argues that certain evidence used by the prosecution was not disclosed to him before trial. He claims that before trial, he sought the documents and exhibits that the state intended to present to the court. The state provided Albert with a copy of his citation, but it did not provide him with three exhibits, namely, the certificate of accuracy of the tuning forks, the radar log, and a photograph of the speed limit sign, until the day of trial. The state claimed that it had not received the exhibits until that day. Albert argued that the exhibits should not have been admitted because they were not disclosed to him earlier.

The district court has considerable discretion in admitting evidence, and we review an evidentiary ruling for abuse of that discretion. *State v. Martinez*, 725 N.W.2d 733, 737 (Minn. 2007). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Albert appears to argue that the state did not comply with Minn. R. Crim. P. 7.01, which applies in misdemeanor cases and requires that a prosecutor notify a defendant of (1) evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping; (2) any confessions, admissions or statements in the nature of confessions made by the defendant; (3) any evidence against the defendant discovered as a result of confessions, admissions or statements in the nature of confessions made by the defendant; and (4) any identification

procedures that were used in the investigation of the case against the defendant. But the exhibits at issue here do not fall within any of these categories.

Minn. R. Crim. P. 7.04 also applies in misdemeanor cases and entitled Albert to inspect all police investigatory reports. Albert received a copy of his citation. Additionally, "[u]pon request, the prosecutor must also disclose any material or information within the prosecutor's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged." Minn. R. Crim. P. 7.04. Any other discovery is by consent of the parties or by motion to the court. *Id.* It is unclear what information Albert requested from the prosecutor because the district court record does not contain Albert's document request. *See State v. Smith*, 448 N.W.2d 550, 557 (Minn. App. 1989) ("Appellant has the burden of providing a record supporting his claims on appeal."), *review denied* (Minn. Dec. 29, 1989). Nor has Albert explained how the exhibits at issue here negated or reduced his guilt. At any rate, the record shows that Albert had the opportunity to review all of these exhibits before trial began. Albert has not shown that the prosecutor violated the rules of criminal procedure or failed to disclose evidence. Therefore, the district court did not abuse its discretion by admitting the exhibits.

Additionally, Albert argues that the district court and prosecutor erred in stating that the rules of criminal procedure did not apply to Albert's discovery claims. It is undisputed that Albert was convicted of a petty misdemeanor. The rules of criminal procedure "govern the procedure in prosecutions for . . . petty misdemeanors." Minn. R. Crim. P. 1.01. Although the district court and prosecutor apparently misspoke in this

regard, reversal is not warranted. Albert has not shown that the prosecutor or court failed to comply with the rules of criminal procedure.

IV

Albert next contends that the $145 fine created an "atypical hardship and violated his substantive due process rights." Albert offers no argument explaining how the fine violated his constitutional rights. Furthermore, he cites no authority or facts in the record that support his apparent claim that the fine was excessive. *See State v. Bartylla*, 755 N.W.2d 8, 22–23 (Minn. 2008) (stating that a reviewing court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority" if no prejudicial error is obvious on mere inspection), *cert. denied*, 129 S. Ct. 1624 (2009); *State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (refusing to consider portions of pro se briefs that contain only argument and are not supported by the facts on the record). Accordingly, this claim is waived.

Even if it were not waived, Albert's claim lacks merit. Whether the district court's application of a statute violates a constitutional provision is a legal question, which we review de novo. *State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000). The United States and Minnesota constitutions both prohibit the imposition of excessive fines. U.S. Const. amend. VIII; Minn. Const. art. I, § 5. But Minnesota courts recognize that "large discretion is necessarily vested in the legislature to impose penalties sufficient to prevent the commission of an offense, and it would have to be an extreme case to warrant the courts in holding that the constitutional limit has been transcended." *Rewitzer*, 617 N.W.2d at 412 (quotation omitted). To prevail on a claim that a fine is so excessive that

it violates constitutional standards, it must be "grossly disproportional to the gravity of the offense." *Id.* at 413. We assess disproportionality by considering the gravity of the offense, fines imposed for the commission of other crimes in the same jurisdiction, and fines imposed for the same crime in other jurisdictions. *Id.*

Here, Albert was convicted of petty-misdemeanor speeding. Petty-misdemeanor offenses carry a maximum fine of $300. Minn. Stat. § 169.89, subds. 1, 2 (2008); Minn. Stat. § 609.0331 (2008). Albert was fined $145, which is not unduly harsh in light of society's interest in deterring dangerous driving conduct to protect the safety of motorists and pedestrians. The financial penalty for Albert's offense is less severe than the next level of criminal offense and carries no possibility of imprisonment. *See* Minn. Stat. § 609.03(3) (2008) (providing that the next level of offense, a misdemeanor, is punishable by a fine of no more than $1,000, imprisonment for not more than 90 days, or both). Third, and finally, the fine is not disproportionate to the penalties imposed in other states. Other states impose maximum penalties for petty misdemeanors that include comparable fines and, in some states, the possibility of imprisonment. *See, e.g.*, *State v. Basabe*, 97 P.3d 418, 420 n.2 (Haw. App. 2004) (recognizing that petty misdemeanor in Hawaii is subject to maximum fine of $1,000 and imprisonment of no more than 30 days); *State v. Martini*, 860 A.2d 689, 692 (R.I. 2004) (recognizing petty misdemeanor in Rhode Island as criminal offense punishable by imprisonment not exceeding six months, fine of not more than $500, or both).

Albert's $145 fine is not disproportionate to the gravity of the offense, it is not disproportionate to the penalty for similar offenses in Minnesota, and it is within the

range of penalties imposed by other states for similar offenses. Consequently, the fine is not excessive within the meaning of the state or federal constitution.

V

Finally, Albert appears to claim that the bench trial violated the Fourteenth Amendment's liberty guarantee. Albert's brief contains no specific argument and appears to be incomplete. Because no specific argument is raised, Albert has waived this issue. *Bartylla*, 755 N.W.2d at 22–23.

Affirmed.