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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-917**

State of Minnesota,  
Respondent,

vs.

Pouch Phillip Ruach,  
Appellant.

**Filed June 15, 2010  
Affirmed  
Klaphake, Judge**

Freeborn County District Court  
File No. 24-CR-08-2216

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Craig S. Nelson, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, Katie Donald, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Hudson, Judge; and  
Collins, Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Pouch Phillip Ruach, who was convicted of first-degree robbery, claims that the district court abused its discretion and deprived him of the constitutional right to present a defense by excluding proffered evidence of a preliminary breath test (PBT) that showed alcohol concentration of .301. Because appellant offered no foundation to support admission of this evidence and because any error in exclusion of the evidence was harmless, we affirm.

## DECISION

“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). The party challenging an evidentiary ruling on appeal must establish that the district court abused its discretion and that it was thereby prejudiced. *Id.*

Appellant claims that he was too intoxicated to form specific intent to commit robbery. Appellant was convicted of first-degree aggravated robbery, which is defined as taking personal property from another while “having knowledge of not being entitled” to the property, Minn. Stat. § 609.24 (2008), and accomplishing the robbery while “armed with a dangerous weapon.” Minn. Stat. § 609.245, subd. 1 (2008). “[S]pecific intent, or a purposeful or conscious desire to bring about a criminal result, is an element of a robbery charge.” *State v. Charlton*, 338 N.W.2d 26, 30 (Minn. 1983). The defendant bears the burden of proving that intoxication has rendered him or her incapable of

forming intent. *State v. Perez*, 404 N.W.2d 834, 840 (Minn. App. 1987), *review denied* (Minn. May 20, 1987).

Although appellant used a bicycle as a getaway vehicle, he was given a PBT at the time of his arrest that revealed an alcohol concentration of .301. The district court excluded the PBT evidence at trial because it concluded that Minn. Stat. § 169A.41 (2008) prohibited its admission. Minn. Stat. § 169A.41, subd. 2, prohibits the results of a PBT from being used “in any court action” except for enumerated exceptions, none of which apply here. In general, PBT results “must be used for the purpose of deciding whether an arrest should be made and whether to require the tests authorized” for implied consent purposes. *Id.* For these reasons, the district court properly excluded the PBT results in this action. While appellant argues that the PBT evidence could have been admitted to show that his alcohol concentration was elevated, or that it was elevated to such a degree that he was unable to form intent to commit aggravated robbery, proof of those matters depended upon evidence of the PBT test results, use of which was prohibited by statute “in any court action.” Thus, the district court did not abuse its discretion by excluding the PBT evidence. Finally, any error committed by the court in excluding the PBT evidence was harmless because it was cumulative of other testimonial evidence of appellant’s intoxication, and the PBT evidence could not be used to establish the level of intoxication. *See State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (setting forth harmless error test for excluded evidence).

Appellant also argues that by excluding the PBT evidence, the district court denied his constitutional right to present a defense. “A criminal defendant has a constitutional

right to a meaningful opportunity to present a complete defense[,]" including "the right to present the defendant's version of the facts . . . ." *State v. Jones*, 753 N.W.2d 677, 695 (Minn. 2008) (citations and quotations omitted). Again, applying the harmless error rule, we conclude that any error in exclusion of the evidence was harmless. *See id.* Even if the PBT evidence had been admitted into evidence, it was cumulative of other evidence of appellant's intoxication. Appellant's constitutional claim is without merit.

**Affirmed.**