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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1389

State of Minnesota,
Respondent,

vs.

Wesley Eugene Brooks,
Appellant.

Filed July 6, 2010
Affirmed
Willis, Judge[*]

Dakota County District Court
File No. 19-K5-06-814

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Christine J. Cassellius, Michael E. Molenda, Severson, Sheldon, Dougherty & Molenda, P.A., Apple Valley City Attorneys, Apple Valley, Minnesota (for respondent)

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Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Willis, Judge.

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

WILLIS, Judge

Appellant challenges his conviction of driving after cancellation as inimical to public safety, arguing that the district court erred by admitting records from the Minnesota Department of Public Safety and that the evidence is insufficient to sustain his conviction. We affirm.

FACTS

This case arises out of a traffic stop in Apple Valley on February 14, 2006. On that day, Sergeant Michael Marben recognized the driver of a passing vehicle as appellant Wesley Eugene Brooks, and Sergeant Marben knew from previous contact that Brooks's driver's license was cancelled as inimical to public safety. Sergeant Marben ran a check on Brooks's license and confirmed it had not been reinstated.

After Sergeant Marben confirmed the status of Brooks's driver's license, Officer Brian Bone located Brooks's vehicle and stopped it. When Officer Bone asked Brooks for his driver's license, Brooks admitted that he did not have a valid license. Brooks also was unable to produce proof of insurance. As a result, the state charged Brooks with gross-misdemeanor driving after cancellation as inimical to public safety, under Minn. Stat. § 171.24, subd. 5 (2004), and with misdemeanor failure to provide proof of insurance, under Minn. Stat. § 169.791 (2004).

A bench trial was held in January 2007. Brooks stipulated that he had been driving a motor vehicle for which a driver's license is required and that his driver's license had been cancelled as inimical to public safety, and thus, the only issue relating to

the driving-after-cancellation charge was whether Brooks had received notice or should have known that his driver's license was cancelled. In addition, Brooks was found guilty of failure to provide proof of insurance. He does not challenge this conviction on appeal.

At trial, the state sought to introduce an exhibit that contained copies of notices mailed to Brooks by the Minnesota Department of Public Safety, informing him that his driving privileges had been withdrawn and that his driver's license had been cancelled as inimical to public safety, as well as a portion of Brooks's driving record. Brooks's address and the dates on which the notices were mailed appear on the notices. Brooks challenged the admission of the evidence on the grounds that it lacked a proper foundation and that it violated his rights under the Confrontation Clause. The district court instructed the state to obtain a witness from the department of public safety who could testify about how records are created and certified by the department. Francis P. Zawslak, interim driving-evaluation supervisor, and at that time a 41-year employee of the department of public safety, testified regarding how notices of cancellation are produced, how copies are made, and how certified copies are made. The district court ultimately admitted the evidence and found Brooks guilty of driving after cancellation. This appeal follows.

D E C I S I O N

I. The district court did not err by admitting department of public safety records.

Brooks argues that the district court erred by admitting copies of department public safety records for two reasons: because the state failed to establish a foundation for

the evidence and because admitting the evidence without the testimony of the people who signed the certifications is a violation of the Confrontation Clause.

A. The state established a proper foundation for the admission of the records.

Brooks argues that district court erred by admitting the department of public safety records without a proper foundation. Rulings concerning the admissibility of evidence are subject to an abuse-of-discretion standard of review. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Brooks argues that two documents entitled "Certificate of Order Sent/Not Returned," which precede the notification of the withdrawal of his driving privileges and the notification of the cancellation of his driver's license, are unclear in referring to an attached "order," that no one from the prosecuting attorney's office testified that these were the documents received in response to the prosecutor's request, and that the certificates incorrectly state that the person reviewing the records looked at the originals because that would be impossible.

Public records are admissible as an exception to the hearsay rule. Minn. R. Evid. 803(8); *see also State v. Romine*, 757 N.W.2d 884, 892-93 (Minn. App. 2008) (rejecting challenge to admission of certified copy of affidavit of service of order for protection), *review denied* (Minn. Feb. 17, 2009). "Furthermore, certified copies of public records are self-authenticating and, thus, require no foundation for admission." *Romine*, 757 N.W.2d at 893 (citing Minn. R. Evid. 902(4)). Thus, the department of public safety records were admissible here, and no foundation was required for their admission.

Even if the certifications of the records are flawed, the documents are also admissible under the hearsay exception for records "kept in the course of a regularly conducted business activity." Minn. R. Evid. 803(6). To qualify as a business record, a record must be "kept in the course of a regularly conducted business activity" and made as a regular practice of that business activity. *Id*. In addition, the custodian of the record or another qualified witness must provide a foundation for the evidence by "explain[ing] the recordkeeping of [the] organization." *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn. 1983).

Here, the district court heard Zawslak's testimony, which covers more than 25 pages of the trial transcript, that laid a foundation for the evidence in response to Brooks's challenge. Zawslak explained the procedure the department follows in sending out the notices of withdrawal and cancellation. He testified that although the department would not have the original notice after it had been mailed out, the department keeps electronic copies of the original notices. He testified that the certification "verif[ies] that the original document was viewed upon mailing, and the stored copy or the computerized or computer-generated copy that we now store electronically" exists. Finally, the records, on their faces, show the dates on which they were mailed and show Brooks's mailing address. Nothing in the rule or any statute requires that the department of public safety complete an affidavit of service each time a notice of withdrawal or cancellation is sent to an individual, and the authentication requirement requires only "evidence sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(a). The documents themselves, as well as Zawslak's testimony

"explain[ing] the recordkeeping of [the] organization," were sufficient to establish a foundation for the admission of the records as business records admissible under rule 803(6). *Nat'l Tea Co.*, 339 N.W.2d at 61.

Brooks also raises challenges to the language of the certifications and to the adequacy of the foundation establishing that these records were what the prosecutor received in response to a request for Brooks's driving records. Because we conclude that the records were admissible as either certified copies of public records or as business records for which an adequate foundation was laid, we do not need to address these arguments.

B. The admission of the records does not violate the Confrontation Clause.

Brooks argues that the admission of the records of the department of public safety violated his rights under the Confrontation Clause because the people who prepared and signed the records did not testify. Whether the admission of evidence violates a defendant's rights under the Confrontation Clause is a question of law, which is reviewed de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. In interpreting this requirement, the Supreme Court "held that statements from witnesses who do not testify at trial are not admissible unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant if the statements are 'testimonial.'" *State v. Bobo*, 770 N.W.2d 129, 143 (Minn. 2009) (quoting *Crawford v. Washington*, 541 U.S. 36, 59, 124 S. Ct. 1354, 1368-69 (2004)).

"[T]he critical determinative factor in assessing whether a statement is testimonial is whether it was prepared for litigation." *Caulfield*, 722 N.W.2d at 309. Brooks argues that the department of public safety records are testimonial. This court has already held, however, that the driver's-license records of the department of public safety are not testimonial. *State v. Vonderharr*, 733 N.W.2d 847, 853 (Minn. App. 2007). In *Vonderharr*, this court determined that certified copies of records of the department of public safety, specifically records that detailed the status of the defendant's driver's license at trial, were not testimonial and thus did not implicate rights under the Confrontation Clause. *Id*. at 852-53. In concluding that the records were not testimonial, this court reviewed the examples that the Supreme Court provided in *Crawford*. *Vonderharr*, 733 N.W.2d at 851. This court also examined decisions of the Eighth Circuit Court of Appeals holding that Bureau of Immigration and Customs Enforcement records kept in the normal course of business were not testimonial and that warrants of deportation were not testimonial. *Id.* at 851-52; *see also United States v. Torres-Villalobos*, 487 F.3d 607, 612-13 (8th Cir. 2007) (holding that warrants of deportation were not testimonial); *United States v. Urqhart*, 469 F.3d 745, 748 (8th Cir. 2006) (holding that immigration and customs enforcement records were not testimonial). This court concluded in *Vonderharr* that, like the records in *Urqhart* and *Torres-Villalobos*, the records of the department of public safety were not testimonial. *Id*. at 852-53. The court noted that, like the records in *Torres-Villalobos*, the fact that the records of the department of public safety would be used to prove an element of the charged offense did not alone mean that the records were created for the purpose of litigation. *Id*.

The reasoning of *Vonderharr* applies with equal force here. The records admitted were notices sent to Brooks that informed him of the status of his driver's license and a portion of Brooks's driving record. The records are not materially different from those in *Vonderharr* that this court found to be nontestimonial. *Id.* at 853.

Brooks argues that the records are testimonial because they were produced in response to the prosecutor's request for them in anticipation of trial. His argument relies on the dates of the certifications of the records and the date of the prosecutor's request for the records. The records themselves, however, were prepared well before the events giving rise to the charges here occurred. As the court in *Vonderharr* explained, the department of public safety records "were not prepared for the purpose of prosecuting [the defendant]" but rather "were produced before [the defendant] was charged and even before the incident that lead to him being charged occurred." *Id.* at 852. Thus, the records at issue here are not testimonial and do not implicate Brooks's rights under the Confrontation Clause. Because the records were admissible either as certified copies of public records or as business records for which an adequate foundation was laid and because they do not implicate the Confrontation Clause, the district court did not err by admitting the records.

II. The evidence is sufficient to support Brooks's conviction of driving after cancellation.

Brooks argues that if the district court erred by admitting the records, then the evidence is insufficient to support his conviction of driving after cancellation. Because the district court did not err by admitting the records, Brooks's challenge to the sufficiency of the evidence fails. When considering a claim of insufficient evidence, "we

must uphold the conviction if, based on the evidence contained in the record, the district court sitting as the finder of fact could reasonably have found [the defendant] guilty." *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009) (quotation omitted).

Brooks was charged with gross-misdemeanor driving after cancellation, under Minn. Stat. § 171.24, subd. 5. Under section 171.24, subdivision 5, a person is guilty if his or her (1) driver's license has been cancelled as inimical to public safety, under Minn. Stat. § 171.04, subd. 1(10) (2004); (2) "the person has been given notice of or reasonably should know of the cancellation"; and (3) the person operates a motor vehicle that requires a driver's license while the driver's license is cancelled. Minn. Stat. § 171.24, subd. 5. The only element at issue is whether Brooks had notice of the cancellation or "reasonably should [have known] of the cancellation." *Id*. Because the district court did not err by admitting the documents that show that Brooks was mailed notice that his driver's license was cancelled, the evidence could reasonably allow the district court to find Brooks guilty. *See Franks*, 765 N.W.2d at 73 (stating standard of review for sufficiency-of-evidence challenge). Thus, the evidence was sufficient for the district court to find Brooks guilty of gross-misdemeanor driving after cancellation.

Affirmed.