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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-434**

State of Minnesota,
Respondent,

vs.

Amy Jo Robbins,
Appellant.

**Filed November 30, 2010
Affirmed
Wright, Judge**

Blue Earth County District Court
File No. 07-VB-08-2497

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

Ross Arneson, Blue Earth County Attorney, Steven J. Kelm, Assistant County Attorney,
Mankato, Minnesota (for respondent)

Krista Jass, Fifth District Public Defender, Scott R. Cutcher, Assistant Public Defender,
Mankato, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges her conviction of having an alcohol concentration of .08 or
more within two hours of driving, arguing that the district court abused its discretion by

ruling that portions of expert testimony regarding alcohol-concentration test results obtained in a different case were inadmissible. We affirm.

FACTS

On April 4, 2008, Mapleton Police Officer Nathaniel Walton stopped a vehicle driven by appellant Amy Jo Robbins after observing that she failed to signal when she turned into a residential driveway. While speaking with Robbins, Officer Walton observed evidence that she was impaired. After Robbins performed poorly on field sobriety tests, Officer Walton arrested Robbins and transported her to the Blue Earth County Law Enforcement Center where she submitted a urine sample for testing. Robbins subsequently was charged with fourth-degree driving under the influence of alcohol, a violation of Minn. Stat. §§ 169A.20 subd. 1(1), 169A.27 (2008); and having an alcohol concentration of .08 or more within two hours of driving, a violation of Minn. Stat. §§ 169A.20, subd. 1(5), 169A.27 (2008).

During the jury trial that followed, the state called as an expert witness Dr. Kathryn Fuller, a forensic scientist with the Minnesota Bureau of Criminal Apprehension (BCA). Dr. Fuller testified during direct examination that she used a technique called headspace gas chromatography to analyze Robbins's urine sample. The BCA lab report that she prepared reflects that this analysis produced an alcohol concentration of .12.

During cross-examination, defense counsel asked Dr. Fuller whether a blood test could produce different results from a urine test. Dr. Fuller testified that it is possible that

simultaneously collected blood and urine samples may produce different alcohol-concentration test results. When defense counsel attempted to ask about a different case in which blood and urine tests administered at the same time produced different results, the state objected on relevancy grounds. The district court sustained the objection. In response to another question posed by defense counsel, Dr. Fuller indicated that, although she had seen the BCA reports from the other case, she did not know any details about the case. When defense counsel attempted again to inquire about the different test results, the state renewed its objection. Defense counsel explained during a bench conference that the jury should know that blood and urine samples taken from the same person at the same time in another case had produced different alcohol-concentration levels, specifically, the blood test result was .09 and the urine test result was .12. The district court sustained the objection and declined to permit any inquiry about BCA reports from an unrelated case. The district court reasoned that testimony regarding another case involving different testing methods was irrelevant because only a urine test was conducted in the present case.

The jury acquitted Robbins of fourth-degree driving under the influence of alcohol and returned a guilty verdict on the charge of having an alcohol concentration of .08 or more within two hours of driving.

At a subsequent hearing, Robbins moved for judgment of acquittal or a new trial, which the district court denied. This appeal followed.

DECISION

Robbins argues that, when the district court prevented her from questioning Dr. Fuller about a different case in which the blood and urine tests produced different alcohol-concentration results, the district court denied her Sixth Amendment right to confront an adverse witness and her Fourteenth Amendment right to present evidence in support of her defense.

The constitutional right to due process requires a person accused of an offense to “be treated with fundamental fairness” and to be “afforded a meaningful opportunity to present a complete defense.” *State v. Quick*, 659 N.W.2d 701, 712 (Minn. 2003) (quotation omitted) (citing U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7). An accused also has a right to be confronted by and to cross-examine an adverse witness. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *Melendez-Diaz v. Massachusetts*, ___ U.S. ___, ___, 129 S. Ct. 2527, 2531 (2009); *Pointer v. Texas*, 380 U.S. 400, 403, 85 S. Ct. 1065, 1068 (1965); *State v. Greer*, 635 N.W.2d 82, 89 (Minn. 2001). “The essence of confrontation is the opportunity to cross-examine opposing witnesses.” *Greer*, 635 N.W.2d at 89 (citing *Davis v. Alaska*, 415 U.S. 308, 315-16, 94 S. Ct. 1105, 1110 (1974)) (other citations omitted). The right to be confronted by and to cross-examine witnesses has been recognized as essential to due process. *State v. Richards*, 495 N.W.2d 187, 193 (Minn. 1992) (citing *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 1045 (1973)). But the right of confrontation is not absolute; it may be limited to accommodate other legitimate interests in the criminal trial process. *Id.* at 195 (“[T]he accused ‘must comply with established rules of procedure and evidence designed to assure both fairness

and reliability in the ascertainment of guilt and innocence.” (quoting *Chambers*, 410 U.S. at 302, 93 S. Ct. at 1049)). A district court has broad discretion to control the scope of cross-examination. *Greer*, 635 N.W.2d at 89; *State v. Lanz-Terry*, 535 N.W.2d 635, 639 (Minn. 1995). Accordingly, even when an appellant asserts a constitutional violation, our review of evidentiary questions is for an abuse of discretion. *State v. Profit*, 591 N.W.2d 451, 463 (Minn. 1999).

The admissibility of expert testimony also rests within the district court’s broad discretion, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may warrant reversal only if the district court clearly abused its discretion. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999); *see also State v. Grecinger*, 569 N.W.2d 189, 194 (Minn. 1997) (stating that reversal requires “apparent error”). We employ the same standard on this evidentiary issue as we apply in our review of the district court’s decision on the scope of cross-examination. *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998).

Robbins argues that, because the lab reports from another case may have disproved a fact important to her defense, the reports were relevant and admissible. Defense counsel argued at trial that the purpose of questioning Dr. Fuller about the other lab reports was to demonstrate that blood and urine testing procedures can produce different results. Because she sought to establish in her defense that the urine test may have produced an inaccurate result, Robbins maintains that the test results from the other case are relevant and probative even if the possibility of a difference between the results of a blood test and a urine test was remote. We disagree. The probative value of a

comparison between the results of a blood test and a urine test, if any, was extremely limited here. Robbins's urine test result established an alcohol concentration of .12, and a blood test was not conducted. Thus, there was no evidentiary basis for comparing two types of test results in this case. Any comparison to another case with more than one type of alcohol-concentration test result would have improperly invited the jury to speculate about the alcohol-concentration level that a blood test *might* have produced. *See State v. Utter*, 773 N.W.2d 127, 133 (Minn. App. 2009) (holding that district court erred by permitting evidence that allowed jury to speculate). Such speculation exceeds any reasonable inference the jury is permitted to make.

The disputed reports relate to tests conducted on a different subject, in a different case, by a different scientist. Dr. Fuller was qualified to testify about the report she prepared, the specimen she analyzed, and the test results she found. *See Gerster v. Special Adm'r for Estate of Wedin*, 294 Minn. 155, 160, 199 N.W.2d 633, 636 (1972) (“[T]he opinion of an expert must be based on facts sufficient to form an adequate foundation for his opinion and . . . an opinion based on speculation and conjecture has no evidentiary value.”). And she did so—both on direct examination and on cross-examination. But Dr. Fuller also testified that she did not have personal knowledge of the contents, analysis, or procedures of the excluded reports that Robbins proffered. Any testimony regarding the excluded test results, therefore, would have been devoid of evidentiary value. The district court's decision to exclude the reports and any testimony regarding them was within its discretion.

Robbins argues that the district court's decision also violated her right to mount a defense because, without a challenge to the credibility of the urine test results, juries have a "strong tendency" to accept scientific evidence as determinative. But without more, the disparate test results in another case do not undermine the validity of Robbins's urine test results. The constitutional right to mount a defense does not encompass a suspension of the rules of evidence to permit testimony, expert or otherwise, founded on speculation and conjecture and devoid of any evidentiary value. The jury could speculate only as to whether the different test results in another case were caused by problems with the testing methodology, errors in the testing process in that particular case, or any number of other circumstances.

Moreover, Robbins was not entirely precluded from casting doubt on the reliability of the testing procedures used in her case. Indeed, Dr. Fuller testified on cross-examination, based on her knowledge and experience, about the possibility that simultaneously collected blood and urine samples could produce different alcohol-concentration levels. This expert testimony, which directly supported Robbins's asserted defense, was available to the jury for its consideration.

Robbins also contends that the district court's ruling precluded her from testing the state's expert witness for bias, thereby violating her right to confront the adverse witness. But because defense counsel failed to alert the district court of this evidentiary purpose at trial, it likely was not part of the district court's consideration of the admissibility of the proffered evidence. We may decline to consider an evidentiary purpose that was not presented to the district court. *See State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000)

(stating that in general only “clear and specific objections raised before the district court” will preserve the issue of admissibility of evidence for appeal); *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (“This court generally will not decide issues which were not raised before the district court.”). Because Robbins did not raise witness bias as a purpose for the inquiry at trial, she forfeits the right to raise this issue on appeal.

Dr. Fuller testified about her employment and qualifications, the results of the urine test that she conducted on Robbins’s specimen, and the possibility that the results of a blood test and a urine test can differ. Because the proffered reports and testimony regarding them would have neither cast doubt on Robbins’s urine test results nor provided the jury with additional relevant evidence, the district court’s decision to exclude this evidence was within the sound exercise of its discretion.

Affirmed.