STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1470

Stephenne McGinnis,
Respondent,

vs.

Maria Yvonne McGinnis, et al.,
Defendants,

Ronald Lyle Kopeska,
Appellant.

Filed July 22, 2008
Affirmed
Muehlberg, Judge[*]

Mille Lacs County District Court
File No. 48-CV-05-2713

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Muehlberg, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

MUEHLBERG, Judge

On appeal from the denial of his motion for a new trial in an automobile-collision case, appellant asserts that the district court abused its discretion in denying his motion because the district court (1) improperly admitted evidence of his law license suspension and his consumption of an alcoholic beverage prior to the collision and (2) erroneously instructed the jury that his failure to comply with a construction-zone speed limit constituted negligence per se. Appellant also argues that the evidence does not support the jury's verdict. We affirm.

FACTS

On September 19, 1999, respondent Stephenne McGinnis was injured in a two-vehicle accident while a passenger in a car driven by her sister, 17-year-old Maria McGinnis. Just prior to the time of the accident, the McGinnis vehicle was travelling east on Ojibwe Drive in Milaca County and had stopped for a stop sign at the intersection of Ojibwe Drive and Highway 169 while waiting to make a left-hand turn to proceed north on Highway 169. This particular stretch of Highway 169 was under construction at the time, with numerous reflective barrels and road barricades in place. Speed limits were reduced and lanes of traffic were narrower than usual. After waiting several minutes for a break in the uncontrolled and "extremely heavy" flow of traffic, Maria McGinnis decided to enter the intersection. But as the McGinnis vehicle began crossing the southbound lane of traffic, it was struck on the driver's side by a southbound vehicle

driven by appellant Ronald Kopeska. As a result of the accident, Stephenne McGinnis sustained significant bodily injuries.

Stephenne McGinnis subsequently brought a negligence suit against Maria McGinnis and Ronald Kopeska, alleging that they were both responsible for her injuries. Before the matter proceeded to trial, Kopeska also brought a motion in limine to exclude evidence of (1) the suspension of his law license on the basis of perjury and (2) his consumption of an alcoholic beverage prior to the accident. The district court denied the motion.

At trial, Maria McGinnis acknowledged that she was a "relatively inexperienced driver" and had never driven on Ojibwe Drive prior to the day of the accident. But she claimed that she was not in a hurry as she waited at the stop sign, observing traffic coming from both directions for four to five minutes before attempting to turn onto the highway. When asked to describe her decision-making process in deciding to enter the intersection to make the left-hand turn onto Highway 169, Maria McGinnis answered, "[T]here seemed to be a break in traffic and . . . it seemed a big enough break that I was able to go out and take a left turn . . . without accelerating or jumping the engine." She estimated that the opening in the southbound lane of traffic as she attempted to cross was "a couple car lengths," but was unable to approximate the speed of Kopeska's vehicle as it approached the intersection. She also could not recall whether she had begun to turn into the northbound lane before the collision occurred because the entire sequence of events happened "in the blink of an eye."

Maria's and Stephenne McGinnis's mother, Arana McGinnis, who was also a passenger in the McGinnis car, provided a similar account of the accident. The mother testified that she helped Maria navigate the turn onto the highway and waited until she noticed a "large gap" in traffic before telling Maria that she was "clear" to begin crossing the southbound lane. She also testified that Maria accelerated into the intersection at a normal rate of speed. But only a moment after advising Maria to proceed, the mother noticed Kopeska's car "coming a lot faster or a lot closer than [she] expected." In response to questions at her deposition and in reports to police, the mother provided inconsistent estimates of the size of the opening in traffic, ranging from "two bus lengths" to "two car lengths," and by the time of trial she was unable to estimate the distance.

Kopeska testified that he had been travelling southbound on Highway 169 for several miles before the accident. At some point, he stopped at a restaurant and "had a drink and dinner." A blood alcohol test administered after the accident showed no signs of alcohol in his system. After dinner, Kopeska continued to travel south on Highway 169, and traffic became "extremely heavy." He claimed that he maintained a distance of four to six car lengths from the vehicle ahead of him, and as he approached the area where the accident occurred, the distance continued to increase. Kopeska entered a construction zone about two-thirds of a mile from the location of the accident that reduced southbound traffic to one lane and included a posted speed limit of 45 miles per hour. As he came within 50 feet of the Ojibwe Drive intersection, he observed movement from his right, and immediately "applied [his] brakes and swerved to the

right." Despite his efforts, Kopeska was unable to avoid the collision because he testified that he had only a moment to react.

Kopeska was questioned extensively about his rate of speed and whether he was aware of the posted speed limits in the construction zone at the time of the accident. Kopeska claimed he was unaware of the speed limit and had "no independent recollection of seeing a forty-five limit an hour speed zone sign." He also was unable to recount his exact speed at the time of the accident. But he was confronted with his deposition testimony that he was aware of the reduced speed limit, and opposing counsel also reminded him that he told police and a private investigator on three separate occasions that his estimated speed at the time of the accident was 50 to 55 miles per hour. When asked at his deposition why he provided estimates if he was uncertain of his speed, he explained that the police had "used [their] authority to extract information" from him. Prior to trial, Kopeska attempted to clarify his deposition testimony by submitting an affidavit explaining that he was not acting under police duress when he provided an estimate, but did so out of apprehension that he would be blamed for causing the accident.

David and Thomas Gliadon, who were travelling together in a vehicle directly behind Kopeska at the time of the accident, also testified. David Gliadon was driving at the time. He was unsure of his rate of speed and could not remember whether he noticed the reduced speed limit sign as he entered the construction zone. But he later admitted that he told a police officer that his speed, like Kopeska's, was "approximately fifty miles an hour, maybe fifty-five at the most" at the time of the accident. After Thomas Gliadon

warned him of the impending crash, David Gliadon observed the rear end of the McGinnis vehicle as it crossed the southbound lane in front of Kopeska's vehicle. He noticed Kopeska swerve to the left to avoid the collision, and upon impact, the front end of Kopeska's vehicle was slightly over the center line of the road. Based on his recollection, the accident was "instantaneous," and Kopeska had very little time to react before colliding with the McGinnis vehicle.

Thomas Gliadon provided a similar account of the accident. He testified that their vehicle slowed "at the same rate as" Kopeska as they entered the construction zone, and he estimated that that they were moving at approximately 45 to 55 miles per hour at the time of the collision. He observed the McGinnis vehicle "lurch[] ahead quickly" into the intersection, "as if whoever was driving hit the accelerator quickly." He testified the collision occurred one or two seconds later. In his opinion, "there . . . was literally no time for [Kopeska] to do anything" to avoid the collision.

Accident reconstructionist Roger Burgmeier also testified. He based his testimony on an inspection of the accident scene and his review of the state patrol's investigation. Without offering an opinion as to fault, Burgmeier provided an explanation of the effect that approach speed can have on a driver's ability to avoid a collision. He posited that the speed at which Kopeska was traveling at the time of the accident could have played a role in causing the collision. Depending on certain variables, he testified that it was possible that (1) the accident could have been avoided or (2) the point of collision might have occurred more toward the rear of the McGinnis vehicle, thereby reducing the severity of the crash.

Following the trial, the jury found both Maria McGinnis and Kopeska negligent and apportioned fault equally between the two parties. Kopeska moved for a new trial, which was denied. This appeal followed.

D E C I S I O N

I.

Kopeska argues that the district court abused its discretion by permitting evidence that (1) his law license was suspended for perjury and (2) he had consumed an alcoholic beverage prior to the collision. "The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 691 N.W.2d 484, 494 (Minn. App. 2005).

A. Law License Suspension

Kopeska claims that the district court abused its discretion by allowing evidence of his law license suspension because it was irrelevant and unfairly prejudicial. Evidence is relevant and generally admissible, Minn. R. Evid. 402, if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. But relevant evidence may be excluded if its probative value is substantially outweighed

by a danger of unfairly prejudicing a party, confusing the issues, or misleading the jury. Minn. R. Evid. 403.

Kopeska argues that evidence of his license suspension was irrelevant because the credibility of his testimony was not in dispute. Specifically, he claims that this evidence was unnecessary because the sole issues at trial with respect to his conduct at the time of the accident were his rate of speed and efforts to maintain a proper lookout, and his testimony regarding these factors was not in contention because (1) he conceded that he was speeding at the time of the accident and (2) his efforts to maintain a proper lookout were never challenged.

This argument is unpersuasive. The district court allowed this line of questioning as a means to impeach his credibility. A witness's credibility may be attacked by introducing specific instances of dishonesty, including perjurious testimony. *See* Minn. R. Evid. 608(b). As a party to the accident and a defendant in this case, Kopeska's credibility likely played a significant role in the jury's fact-finding process, and his testimony at trial concerning various factors of consequence to the collision, including his rate of speed, reaction time, and efforts at avoiding the accident, was inconsistent with his deposition testimony and accounts from other witnesses. Therefore, contrary to his assertion, the veracity of his testimony was in dispute.

Moreover, the evidence pertaining to his license suspension was relevant because it related to his character for dishonesty. *See King v. All-American, Inc.*, 309 N.W.2d 62, 63 (Minn. 1981) ("The fact that [an] appellant had lied under oath prior to trial should be considered a relevant fact that bears on his credibility as a witness."). Kopeska was

disciplined for committing perjury, which had a direct bearing on his truthfulness. His answers to questions about the details surrounding the suspension, which the district court characterized as "evasive and defensive," potentially impeached his credibility as it related to his testimony about the accident.

Kopeska also claims that the questions pertaining to his act of perjury resulted in unfair prejudice because they (1) were unnecessary to weigh his credibility; (2) were collateral and remote to the issues at hand; (3) offered an unfair advantage to his opposing litigants; and (4) reinforced the stereotype of dishonest lawyers.

However, as noted above, Kopeska's credibility was called into question through conflicting testimony from other witnesses and his evasive answers at his deposition and at trial. And despite the fact that his perjurious testimony occurred in a prior proceeding, this evidence of dishonesty was not collateral or remote, but directly related to his character for offering truthful testimony under oath. Kopeska also fails to explain how the introduction of this evidence resulted in an unfair advantage or reinforced preconceived biases toward attorneys. Accordingly, the district court did not abuse its discretion in admitting the evidence.

Kopeska also contends that the district court abused its discretion by allowing extrinsic evidence of his license suspension to be entered into evidence. The evidence included (1) a petition for disciplinary action; (2) Kopeska's answer to the petition; and (3) the supreme court opinion suspending his law license. Kopeska is correct that specific instances of conduct that are used to attack the credibility of a witness "may not be proved by extrinsic evidence" unless it relates to a criminal conviction. Minn. R.

Evid. 608(b). Therefore, these exhibits were improperly admitted unless they qualified for admission under another rule of evidence.

Stephenne McGinnis claims that the exhibits were properly admitted as admissions of a party opponent. A statement may be offered against a party in situations where (1) it is "the party's own statement, in either an individual or a representative capacity," or (2) if "the party has manifested an adoption or belief in its truth." Minn. R. Evid. 801(d)(2)(A)-(B).

Here, the answer to the disciplinary action is an admission because it contained statements made by Kopeska in response to allegations contained in the petition. The material portions of the petition also constitute adoptive admissions because Kopeska admitted in his answer that the allegations contained in it were true. Conversely, the supreme court opinion does not constitute an adoptive admission because Kopeska did not manifest an adoption or belief in its contents. In light of our holding that evidence of Kopeska's suspension was properly admitted for impeachment purposes, and the disciplinary petition and answer were properly admitted as admission of a party opponent, the only remaining issue relates to the improper admission of the supreme court's opinion in the disciplinary action. A party challenging an evidentiary ruling on appeal must establish both that the district court abused its discretion and that the error caused prejudice to the appellant. *Jerry's Enters., Inc.*, 691 N.W.2d at 494. Kopeska failed to meet that burden. The opinion is only one page long, it contains only a basic description of the conduct that led to Kopeska's suspension and is largely duplicative of the properly admitted testimony and admissions, and it does not contain any additional

information that could reasonably have influenced the jury or caused additional prejudice to Kopeska.

B. Alcohol Consumption

Kopeska also contends that the district court abused its discretion by allowing opposing counsel to present evidence that he had consumed a single alcoholic beverage before the accident. He claims that his consumption of such a small amount of alcohol was irrelevant and unfairly prejudicial because there was no evidence that he was intoxicated at the time of the accident.

We disagree. As Kopeska asserts, the weight of the evidence does not suggest that his driving was impaired or that alcohol was a factor in the accident. But despite the potentially improper inferences that could be drawn from this evidence, the district court provided a reasonable explanation for its decision. The court noted that the evidence was relevant because "consuming a meal and having a drink can have effects on a person beyond intoxication." The court also concluded that "[t]he evidence relating to . . . Kopeska's alcohol concentration and the time between the consumption and the accident are sufficient to rebut any argument of his intoxication, and thus, eliminate any prejudice stemming from concerns of intoxication." Because the district court's decision is well-reasoned and appropriately evaluates the potential for unfair prejudice, the admission of this evidence was not an abuse of discretion.

II.

Kopeska also claims that a new trial is necessary because the district court erred in instructing the jury that a violation of the highway-work-zone speed limits constitutes

negligence per se. A district court has broad discretion in determining jury instructions, and this court will not reverse in the absence of abuse of discretion. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). This discretion extends to both the propriety of an instruction and the language used. *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986). An error in a jury instruction warrants a new trial only if the error "destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice . . . ." "A new trial is required if a jury instruction was erroneous and the error was prejudicial to appellant or if its effect cannot be determined." *Bolander v. Bolander*, 703 N.W.2d 529, 539 (Minn. App. 2005) (citation omitted), *review dismissed* (Minn. Nov. 15, 2005).

Kopeska takes issue with the jury instruction pertaining to the highway-work-zone speed law, Minn. Stat. § 169.14, subd. 5d (2006). The instruction provided that "[i]f you find that Ronald Kopeska has violated the highway work zone speeding law, you must find that he was negligent." By indicating that the jury must find him negligent if he violated the statute, this language is tantamount to a negligence per se instruction. Kopeska argues that this instruction is erroneous because a violation of the statute only constitutes prima facie evidence of negligence.

The distinction between per se negligence and prima facie evidence of negligence is significant because the per se standard creates an irrebuttable presumption, while the prima facie standard creates a rebuttable presumption. *Demmer v. Grunke*, 230 Minn. 188, 193, 42 N.W.2d 1, 5 (1950). The general rule is that a "violation of a statute intended for the protection of the party injured is negligence per se unless the statute

makes it prima facie evidence of negligence." *Butler v. Engel*, 243 Minn. 317, 322, 68 N.W.2d 226, 230 (1954).

In this case, the highway-work-zone speeding law does not expressly state that a violation constitutes prima facie evidence of negligence. Minn. Stat. § 169.14, subd. 5d. But Kopeska contends that it must be read in conjunction with Minn. Stat. § 169.96(b) (2006), which provides, "In all civil actions, a violation of any of the provisions of [the traffic regulations] chapter, by either or any of the parties to such action or actions *shall not be negligence per se but shall be prima facie evidence of negligence only*." (Emphasis added.) Based on this language, he argues that the district court could only instruct the jury that a violation of Minn. Stat. § 169.14, subd. 5d, constitutes prima facie evidence of negligence.

The district court rejected Kopeska's argument and concluded that this issue is controlled by *Butler*. *Butler* examined whether a violation of the municipal speed limit under Minn. Stat. § 169.14, subd. 2, constitutes negligence per se despite the express language of Minn. Stat. § 169.96(b).[1] 243 Minn. at 330-38, 68 N.W.2d at 234-39. The statute construed in *Butler*, which distinguishes between municipal and non-municipal speed-limit violations, states in pertinent part:

> Where no special hazard exists the following speeds shall be lawful but any speeds in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful; except that any speed limit

[1] The language of Minn. Stat. § 169.96(b) has not changed since *Butler*. *Compare* Minn. Stat. § 169.96(b) (2006) *with Butler*, 243 Minn. at 330-31, 68 N.W.2d at 235 (providing the statutory language at the time of *Butler*).

> within any municipality shall be an *absolute* speed limit and any speed in excess thereof shall be *unlawful*.

Id. at 336, 68 N.W.2d at 232 (emphasis added).

Applying principles of statutory interpretation, the supreme court determined that a municipal violation constitutes negligence per se, while a violation occurring outside of a municipality remains only prima facie evidence of negligence. *Id*. at 338, 68 N.W.2d at 239. The supreme court was persuaded that the language in the statute identifying municipal speed limits as "absolute" and speeds in excess of these limits "unlawful" demonstrated a clear legislative intent for the per se standard to apply to municipal violations. *Id.* at 336-38, 68 N.W.2d at 238-39.

The portion of the speed-limit statute interpreted in *Butler* was later amended by replacing the term "absolute" with "maximum." *See* Minn. Stat. § 169.14, subd. 2 (2006). But this amendment did not alter the supreme court's construction of the statute. *See Duck v. Modern Roadways, Inc.*, 253 N.W.2d 822, 825 (Minn. 1977) (confirming that a violation of the amended version of the statute constitutes negligence per se).

In comparison, the highway-work-zone speed-limit statute, Minn. Stat. § 169.14, subd. 5d, provides in pertinent part:

> (a) The commissioner, on trunk highways and temporary trunk highways, and local authorities, on streets and highways under their jurisdiction, may authorize the use of reduced *maximum speed limits* in highway work zones. . . .
>
> (b) . . . The commissioner or local authority shall post the limits of the work zone. Highway work zone speed limits are effective on erection of appropriate regulatory speed limit signs. The signs must be removed or covered when they are

> not required. *A speed greater than the posted highway work zone speed limit is unlawful.*

(Emphasis added.)

Kopeska claims that *Butler* and *Duck* have no application here because there are significant differences in the language of the highway-work-zone speed-limit statute and the speed-limit statute construed in those cases. He argues that, unlike the statute at issue here, in Minn. Stat. § 169.14, subd. 2, the legislature expressed a clear intent to carve out an exception for municipal violations through the use of the term "except" and by juxtaposing the general prima facie standard for non-municipal violations with the "maximum" designation attached to municipal violations.

However, our review of the relevant statutes and case law convinces us that the district court's jury instruction is an accurate statement of law. As Kopeska suggests, Minn. Stat. § 169.14, subd. 5d, does not contain any express language classifying work-zone speeding violations as per se negligence. In fact, when considered in isolation, the statute appears to fall under the general prima facie standard of Minn. Stat. § 169.96(b). But one cannot overlook the striking similarities between the statute at issue here and the statute construed in *Butler*. Both laws are contained in the same statutory section, and the material language that formed the basis for the decision in *Butler* is nearly identical to the language found in the highway-work-zone speed-limit statute. Like the municipal speed limit, the highway work zone speed set by the commissioner is a "maximum" limit and a violation is considered categorically "unlawful." *See* Minn. Stat. § 169.14, subd. 5d(a)-

(b). Therefore, the district court did not abuse its discretion in instructing the jury that a violation of the highway-work-zone speeding law constitutes per se negligence.

III.

Finally, Kopeska argues that the district court erred in refusing to grant him a new trial because the evidence produced was insufficient to support the jury verdict that he was negligent and partially responsible for Stephenne McGinnis's injuries. The district court has discretion to decide whether to grant a new trial, and this court will not disturb the decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). On appeal from denial of a new-trial motion, this court reviews the evidence in the light most favorable to the jury verdict and will not set aside the verdict "unless it is manifestly and palpably contrary to the evidence viewed as a whole." *Navarre v. S. Wash. County Schs.*, 652 N.W.2d 9, 21 (Minn. 2002) (quotations omitted).

Kopeska argues that the evidence does not support the conclusion that his actions were a contributing factor in causing the accident. He claims that Maria McGinnis is solely responsible for the accident because she "was an inexperienced driver who had no justification for suddenly pulling out in front of the Kopeska vehicle." But our review of the record demonstrates that there is ample evidence to support the jury's decision to equally apportion fault between Kopeska and Maria McGinnis. As mentioned above, speeding in a highway work zone constitutes negligence per se, and the evidence supports the conclusion that Kopeska was speeding at the time of the collision. Kopeska estimated on several occasions that he was travelling approximately 50 to 55 miles per hour, or five

to ten miles over the speed limit, at the time of the accident. The Gliadons, who were directly behind Kopeska at the time of the accident, provided similar estimates. Likewise, Maria and Arana McGinnis testified that there appeared to be sufficient time to cross the intersection, which supports the inference that Kopeska's rate of speed may have been a contributing factor in causing the collision. The accident reconstructionist also posited that the speed at which Kopeska was traveling at the time of the accident could have played a role in causing the collision. The district court did not abuse its discretion in denying a new trial.

Affirmed.