

State v. Brandrup, Not Reported in N.W.2d (2013)

2013 WL 3779165

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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Adam Ross BRANDRUP, Appellant.

No. A12-1255.

|

July 22, 2013.

Olmsted County District Court, File No. 55-CR-08-9412.

**Attorneys and Law Firms**

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and Mark A. Ostrem, Olmsted County Attorney, James P.  
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respondent.

Frederic Bruno, Bruno Law, Minneapolis, MN, for appellant.

Considered and decided by CHUTICH, Presiding Judge;  
PETERSON, Judge; and SMITH, Judge.

**UNPUBLISHED OPINION**

SMITH, Judge.

\*1 Appellant challenges his conviction of first-degree manslaughter, arguing that (1) the circumstantial evidence presented at trial was insufficient to prove beyond a reasonable doubt that he caused the victim's death and (2) the district court erred by denying his motions for a disclosure of information pursuant to *State v. Paradee*, 403 N.W.2d 640 (Minn.1987), and by failing to conduct an in camera review regarding the employment records of the state's expert witness. We affirm.

**FACTS**

Following a jury trial, appellant Adam Brandrup was convicted of first-degree intentional manslaughter and fifth-degree assault. Brandrup was initially charged with second-degree felony murder, predicated on the state's theory that he, together with Joshua Lee, unintentionally killed the victim during the commission of an unspecified felony, in violation of Minn.Stat. § 609.19, subd. 2(1) (2008). The complaint was amended to add the count of first-degree manslaughter, unintentionally causing the death of another while committing a fifth-degree assault, in violation of Minn.Stat. § 609.20(2) (2008).

The charges stemmed from a bar fight that occurred near Club Amsterdam in Rochester, Minnesota. In the evening hours of October 1, 2008, Brandrup and a group of friends, including Lee, argued with another group of patrons in the bar. The eventual victim of the underlying offense was among this other group but not directly involved in the argument. As the argument escalated, M.O., a member of the other group of patrons, threw a pool ball that struck one of Brandrup's friends in the head. Brandrup's friends pushed M.O. through the front door and chased him. Brandrup and Lee left the bar shortly thereafter. Once outside, Brandrup and Lee encountered the victim. Apparently, believing him to be a member of M.O.'s group, Brandrup punched the victim on the side of his head and threw him to the ground. Lee then kicked the victim in his chest two to four times.<sup>1</sup> A nearby security camera recorded the assault.

<sup>1</sup> We previously upheld Lee's conviction for first-degree manslaughter due to his involvement in the offense. See *State v. Lee*, No. A11-978 (Minn.App. June 18, 2012), review denied (Aug. 21, 2012).

At trial, Brandrup testified that the victim attempted to block his path and that the victim approached him with clenched fists. Hoping to avoid a further altercation, Brandrup threw a "phantom punch." Brandrup testified that, although he believed the punch staggered the victim, the victim again attempted to block Brandrup's path. Brandrup also testified that, because he was nervous the victim might have had a weapon, he utilized a "take down" maneuver he had learned as a bar bouncer and, once the victim was on the ground, attempted to leave. Brandrup further testified that at this point Lee began kicking the victim, prompting Brandrup to pull Lee away and telling him to "knock it off" and "[t]hat's enough." When Brandrup and Lee left the scene, the victim was face down and motionless. Emergency personnel arrived within ten minutes of the assault and found the victim nonresponsive and without a pulse. Resuscitative efforts were

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unsuccessful. The county medical examiner pronounced the victim deceased at the scene.

\*2 Dr. Eric Pfeifer performed the autopsy. His examination revealed recent blunt force trauma to the victim's forehead, scalp, face, rib cage, arm, chest, and neck. Dr. Pfeifer determined that the actual cause of death was a consequence of "multiple blunt force injuries," which caused "sudden death." Dr. Pfeifer explained in detail the effects that an arrhythmia or dysrhythmia, which is an abnormal or absent heart rhythm, had on the victim. Toxicology reports revealed the presence of alcohol and cocaine in the victim's system. Dr. Pfeifer deemed the victim's alcohol concentration, recent cocaine use, and pulmonary emphysema contributing factors to his death. Dr. Pfeifer testified that what ultimately killed the victim was an assault, after which he characterized the victim's death as a homicide.

Prior to trial, Brandrup moved for a *Paradee* disclosure, seeking access to Dr. Pfeifer's employment records. Brandrup argued that the disclosure would "directly affect the credibility, experience, and overall qualifications of Dr. [Pfeifer] to give any opinion concerning the issue of cause of death." Attached to the motion was an affidavit from Brandrup's attorney, alleging that Dr. Pfeifer had engaged in questionable behavior. Brandrup argued that this constituted a "plausible showing that [the] evidence [requested] is material and favorable to the defense," sufficient to warrant an in camera review of the requested documents and possible disclosure. The district court denied the motion, concluding that Brandrup made "no showing as to how the confidential records at issue could be related to the defense or why the records are reasonably likely to contain information related to his case."

Brandrup's trial focused on the competing expert opinions of Dr. Pfeifer and Brandrup's expert, who testified that the victim's cause of death was "undetermined." On February 10, 2012, the jury found Brandrup guilty of manslaughter. Brandrup moved to vacate the verdict and for a new trial, arguing, in part, that the evidence was insufficient to support the verdict. He also renewed his contention that the district court should have conducted an in camera review of Dr. Pfeifer's employment records. The district court concluded that the evidence was sufficient to support the verdict, reasoning that it was within the jury's discretion to weigh the competing expert opinions regarding causation. Specific to the *Paradee* disclosure, the district court determined that, "[t]o this day, the request for Dr. Pfeifer's personal

and confidential records remains baseless, irrelevant, and purely a fishing expedition by Brandrup." On April 30, 2012, the district court sentenced Brandrup to 60 months' imprisonment, granting him a durational departure because the nature of the offense was less serious than those typically charged under the statute. This appeal followed.

## DECISION

Brandrup raises two claims on appeal. First, he argues that his manslaughter conviction merits reversal because the evidence presented by the state regarding his involvement with the victim's cause of death was too circumstantial to constitute proof beyond a reasonable doubt. Second, Brandrup contends that the district court erred by denying his motion for a *Paradee* disclosure. We address each in turn.

### I.

\*3 When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the charged offense based on the facts in the record and the legitimate inferences drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn.1999). In doing so, we view the evidence in the light most favorable to the guilty verdict, assuming that the jury believed the evidence supporting the verdict and disbelieved evidence to the contrary. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn.2010). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn.1988). Determining the credibility and the weight of witness testimony is within the exclusive province of the jury. *State v. Folkers*, 581 N.W.2d 321, 327 (Minn.1998).

Brandrup argues that the circumstantial nature of the evidence was insufficient to determine beyond a reasonable doubt that he caused the victim's death. Although Brandrup challenges a variety of Dr. Pfeifer's conclusions, his main contention is that the jury could not have found causation in light of his expert's conclusion that the cause of death was "undetermined." Specifically, Brandrup appears to suggest that Dr. Pfeifer's conclusions improperly stemmed from both his medical examination and from a review of the recording of the assault,

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and that the circumstantial culmination of this evidence led to Dr. Pfeifer's conclusion that "[w]hat ultimately killed [the victim] is an assault ... he was upright, mobile, assaulted, and then motionless." Brandrup argues that the evidence is too circumstantial to sufficiently eliminate reasonable doubt.

Circumstantial evidence is entitled to the same weight as any other evidence, provided that the "circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *State v. Pirsig*, 670 N.W.2d 610, 614 (Minn.App.2003), review denied (Minn. Jan. 20, 2004). For circumstantial evidence to support a conviction, the evidence "must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn.2012) (quotation omitted).

Brandrup contends that the circumstantial evidence gives rise to a reasonable inference other than guilt, namely, that the circumstances do not establish that he caused the death of the victim. But an appellant must demonstrate more than mere conjecture to overturn a conviction based on circumstantial evidence. *State v. Lahné*, 585 N.W.2d 785, 789 (Minn.1998). When reviewing circumstantial evidence, this court employs a two-part test. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn.2011). First, we must identify the circumstances proved by the evidence; then, we must independently examine the reasonableness of all inferences drawn from those circumstances and determine whether there is a reasonable inference other than guilt. *Id.* When engaging in such an analysis, we view the evidence as a whole. *Id.* at 623.

\*4 The circumstances proved establish that (1) a bar fight occurred; (2) as Brandrup and Lee were exiting the bar, the victim retreated to the rear of the bar; (3) Brandrup and the victim had an altercation that included Brandrup hitting the victim and then throwing him to the ground; (4) while on the ground, the victim was kicked multiple times; (5) the victim remained motionless as Brandrup and Lee left the scene; and (6) the victim was pronounced dead ten minutes later. Brandrup contends that these circumstances lead to a conclusion other than guilt because it cannot be established that his actions caused the death of the victim. Brandrup also contends that his expert's testimony created a reasonable doubt of his guilt. And Brandrup urges us to conclude that it was error for the jury to credit Dr. Pfeifer's conclusions

over his expert's conclusion that the cause of death was "undetermined." However,

[w]here the opinions of reputable doctors have a reasonable basis on the facts, it must be left to the trier of facts to say who is right when other doctors have conflicting opinions. [T]he credibility of the witnesses and the weight to be given their testimony, whether it be opinion testimony or otherwise, is for the trier of fact.

*State v. Ostlund*, 416 N.W.2d 755, 760 (Minn.App.1987) (quotation omitted), review denied (Minn. Feb. 24, 1988). In an appeal challenging the sufficiency of the evidence, we must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn.1989). It is apparent from the jury's verdict that it believed Dr. Pfeifer's testimony over that of Brandrup's expert witness.

Dr. Pfeifer conducted a thorough autopsy and formed his medical conclusions after reviewing the recording of the assault. The circumstantial connection between what Dr. Pfeifer observed on the recording of the assault combined with his discoveries during the victim's autopsy directly impacted his causation analysis. The jury then heard his conclusion that the victim's death was a homicide stemming from the assault. It was not improper for the jury to consider the circumstantial connection between the victim being ambulatory, assaulted, and then dead, all occurring within ten minutes, in light of the doctor's conclusions regarding causation. The jury credited this testimony over that of Brandrup's expert. We conclude that the evidence, when viewed as a whole and in the light most favorable to the guilty verdict, forms a complete chain unerringly supporting the jury's guilty verdict. Brandrup's challenge fails.

## II.

Brandrup contends that the district court abused its discretion when it denied his motion for a *Paradee* disclosure of Dr. Pfeifer's confidential employment records. We review evidentiary rulings for an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn.1997). "Entitlement to a new trial on the ground of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id.* at 46 (quotation omitted).

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\*5 “There is no general constitutional right to discovery in a criminal case.” *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 846 (1977). However, due process requires that defendants receive the government's assistance in compelling the attendance of favorable witnesses and discovering evidence that might influence a determination of guilt. *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S.Ct. 989, 1000 (1987). In Minnesota, a defendant is not entitled to access confidential records simply on a theory that they may contain information capable of influencing a determination of guilt. *State v. Paradee*, 403 N.W.2d 640, 642 (Minn.1987). Rather, a defendant may petition the district court to conduct an in camera review to determine if the exculpatory nature of the evidence outweighs the privacy inherent in confidential records. *Id.*; see also *Ritchie*, 480 U.S. at 60, 107 S.Ct. at 1002–03.

In camera review is not an automatic right. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn.1992). In *Hummel*, the Minnesota Supreme Court explained:

The *Ritchie* Court's analysis, which we adopted in *Paradee*, makes it absolutely clear that *some* showing is required before in camera review is granted. Petitioner made *no* showing to the trial court, which is deficient under any applicable standard. Contrary to petitioner's position, having the trial court review confidential material is not a right. It is a discovery option, but only after certain prerequisites are satisfied. In this case, they were not.

*Id.* (citation omitted). To determine the necessity of an in camera review, we analyze whether a defendant established “a basis for his claim that [the record sought] contains material evidence.” *Id.* (quotation omitted). A material demonstration requires a “plausible showing that the information sought would be both material and favorable to his defense.” *Id.* (quotations omitted).

Brandrup contends that he demonstrated a plausible showing that Dr. Pfeifer's confidential employment records would be material to his defense because the records are “relevant and subject [Dr. Pfeifer] to attack by impeachment.” However, the district court determined that Brandrup's allegations regarding Dr. Pfeifer, which may have subjected him to impeachment, had no basis in fact. Any alleged unlawful behavior on Dr. Pfeifer's part was determined to be “not

unlawful and not relevant to this case.” Further, regarding allegations of idiosyncratic behavior, the district court concluded that Brandrup's assertions were grounded in inadmissible hearsay stemming from interactions three years prior to the victim's autopsy. Upon Brandrup renewing his *Paradee* demand, the district court determined that “[t]o this day, the request for Dr. Pfeifer's personal and confidential records remains baseless, irrelevant, and purely a fishing expedition.”

Brandrup asserts that *State v. Burrell*, 697 N.W.2d 579 (Minn.2005), and *State v. Hopperstad*, 367 N.W.2d 546 (Minn.App.1985), definitively support his proposition that the district court's failure to at least conduct an in camera review mandates reversal. We disagree. Because *Hopperstad* was decided prior to *Ritchie* and *Paradee*, its precedential value on this point of law is outdated and inapplicable. Brandrup's reliance on *Burrell* is equally misplaced. In *Burrell*, the supreme court was concerned with the possibility that the state conditioned a co-defendant's guilty plea. 697 N.W.2d at 603. This fear, admittedly beneficial to the defendant if true, constituted a plausible showing that triggered a review of the confidential plea agreement. However, in analyzing whether *Burrell* had demonstrated a plausible showing warranting an in camera review, the supreme court deemed the situation a “close call.” *Id.* at 605. Brandrup's situation is no such close call. The district court determined his proposed plausible showing had no factual basis and relied upon outdated hearsay. *Burrell* is inapplicable.

\*6 As *Paradee* made plain, it is within the expertise of the district court to balance the need for disclosure against what information is necessary for the defense. 403 N.W.2d at 642. Brandrup's allegations fell short of the required plausibility showing. The district court did not abuse its discretion by denying the *Paradee* disclosure or for failing to conduct an in camera review.

**Affirmed.**

**All Citations**

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