

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2030**

State of Minnesota,
Respondent,

vs.

Roger Edward Naghash,
Appellant.

**Filed January 8, 2018
Affirmed
Bratvold, Judge**

Freeborn County District Court
File No. 24-VB-16-1618

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

David J. Walker, Freeborn County Attorney, Karyn D. Sackis Lunn, Assistant County Attorney, Albert Lea, Minnesota (for respondent)

Roger E. Naghash, Irvine, California (pro se appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges his speeding conviction, arguing that (1) the district court lacked jurisdiction; (2) the district court abused its discretion in admitting testimony about vehicle speed based on a hand-held laser device; (3) appellant's due process and equal

protection rights were violated during the trial; and (4) the record evidence is insufficient to establish appellant's guilt beyond a reasonable doubt. We affirm.

FACTS

On June 12, 2016, Minnesota State Patrol Officers Anthony Flerlage and Zachery Fay were in a squad car, parked on a bridge overpass in Freeborn County, Minnesota. Flerlage was conducting "field training" for Fay, who was using "lidar," a hand-held laser device, to monitor the speed of traffic. Flerlage testified that lidar measures distances and time to calculate the speed of a moving vehicle. Both troopers are licensed peace officers in Minnesota and were trained to use lidar to detect vehicle speed. Flerlage was certified in use of lidar and had used it on the job for five years. Before and after his shift on June 12, Flerlage had tested the lidar device and found it was functioning properly.

At approximately 9:00 a.m., both troopers saw a vehicle traveling on the interstate at "a high rate of speed" in a posted 70-mile-per-hour zone. Fay testified that he visually estimated the vehicle speed to be in the "mid-eighties." Fay pointed the lidar at the vehicle and observed a reading of 86 miles per hour. Both troopers testified that the lidar operated properly and displayed no error codes.

Fay drove, pursued the vehicle, and activated emergency lights. The vehicle stopped on the shoulder. Fay spoke with the driver, appellant Roger Edward Naghash, who stated that he was not "pay[ing] attention to his speed." Fay then issued a citation to Naghash for speeding in violation of Minn. Stat. § 169.14, subd. 2(a)(4) (2014).

Naghash entered a plea of not guilty. At trial, Naghash, who is a licensed attorney in California, appeared personally and represented himself. During his cross-examination

of Fay, Naghash attempted to introduce a video as evidence that lidar is inaccurate and misleading. The court sustained the prosecutor’s objection and ruled that the video was not admissible.

After the state rested, the prosecutor said he had a prior commitment, waived cross-examination of the defendant, waived closing argument, and asked for permission to leave, which the court allowed. Naghash proceeded to offer his own testimony, in which he denied he was speeding on June 12, denied making any statements to Fay about his speed, and stated that lidar devices are “inaccurate and unreliable.”

In its verdict and order, the district court found both officers credible, found lidar to be “a reliable mechanism” for determining vehicle speed, found that the lidar device used by Fay was operating properly and recorded an 86 mile-per-hour speed for Naghash’s vehicle on June 12. The court concluded that the state had proven the allegation of speeding beyond a reasonable doubt and found Naghash guilty. This appeal follows.¹

D E C I S I O N

I. The district court had jurisdiction.

Naghash characterizes his first argument as a challenge to the court’s jurisdiction. But Naghash has not provided any relevant case law in support of his jurisdictional

¹ Naghash’s appellate brief included attachments that were not in the appellate record. *See* Minn. R. Civ. App. P. 110.01 (providing that the record on appeal includes “documents filed in the district court, the exhibits, and the transcript of the proceedings, if any”). We decline to consider materials that are outside the record. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

challenge.² We note that Minnesota’s district courts are courts of original jurisdiction that have the power to hear all civil and criminal cases. Minn. Const. art. VI, § 3. “The district court may exercise its jurisdiction when the offense[] at issue . . . [is] alleged to have been committed within the territorial boundaries of the state.” *State v. Eibensteiner*, 690 N.W.2d 140, 149 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). Naghash’s speeding offense and citation occurred in Freeborn County, which is within the territorial boundaries of Minnesota. We conclude that the district court properly exercised jurisdiction.

II. The district court did not abuse its discretion by admitting testimony regarding vehicle speed based on the officer’s use of the lidar device.

Naghash next asserts that the district court erred in overruling his objection to the lidar evidence because the prosecution failed to present “competent and trustworthy” evidence that the lidar functioned properly and was operated correctly. We review a district court’s evidentiary rulings for an abuse of discretion. *State v. Chavez-Nelson*, 882 N.W.2d 579, 588 (Minn. 2016). We will reverse only if the appellant establishes that the district court abused its discretion and that the ruling prejudiced appellant’s substantial rights. *Id.*

Minnesota law provides that vehicle speed that exceeds a properly posted speed limit is *prima facie* evidence of a speeding violation. Minn. Stat. § 169.14, subd. 2(a).

² Naghash relies on *State ex rel. Duhn v. Tahash*, 275 Minn. 377, 382-83, 147 N.W.2d 382, 386 (1966), but this case appears to have no relevance to his argument, and may even undercut his argument. *Tahash* held that appellant waived his challenge to a defect in an arrest warrant when he entered a guilty plea. 147 N.W.2d at 386-87. While the court in *Tahash* determined that the complaint was defective because it failed to show probable cause, it also held that the defect did not deprive the court of jurisdiction because the defendant was present in court and the court had jurisdiction over the offense. *Id.* Similarly, Naghash was present in court and the district court had jurisdiction over the offense.

Before a district court may admit evidence of or testimony on vehicle speed measured by a radar or other speed-measuring device, the prosecution must establish as follows:

- (1) the officer operating the device has sufficient training to properly operate the equipment;
- (2) the officer testifies as to the manner in which the device was set up and operated;
- (3) the device was operated with minimal distortion or interference from outside sources; and
- (4) the device was tested by an accurate and reliable external mechanism, method, or system at the time it was set up.

Minn. Stat. § 169.14, subd. 10(a). These four conditions comport with the appropriate foundation for admission under the rules of evidence. *State v. Olson*, 887 N.W.2d 687, 689 (Minn. App. 2016). Here, the district court found that all four conditions were met.

We conclude that the district court did not abuse its discretion in admitting testimony about the officer's use of the lidar device and the speed measurements on June 12 because the record fully supports the foundational elements required by statute. First, the record contains evidence that both troopers were properly trained on how to operate the lidar. Second, Fay testified about how he set up and operated the lidar device on June 12. While Naghash challenged Fay's testimony during cross-examination, and raises the same challenges again on appeal, we conclude that the challenges go either to the credibility of the witness or the weight of the evidence. In both respects, we defer to the district court as the trier of fact. *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002) (holding that appellate courts defer to fact-finder on witness credibility); *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997) (holding that appellate courts defer to fact-finder on weight of evidence).

Third, the record includes evidence that the lidar device operated with minimal distortion or interference from outside sources. Similar to Naghash's claim on the second foundational element, he asserts on appeal that there was distortion or interference because the device was operated in a downward-facing angle from the overpass and Fay did not use a cushion to absorb engine "vibration" from the squad car. Naghash raised the same points during cross-examination and Fay testified that there was only a slight downward angle. Both troopers testified that the engine vibration did not affect the lidar. The district court credited the troopers' testimony on the operation of the device, as it was entitled to do. The district court also stated that it was persuaded, in part, because the lidar displayed no error codes and the device was used in the "proper mode," as described by Fay.

Fourth, the record contains evidence that Flerlage properly tested the lidar device at the beginning and end of his shift, and that the device operated properly during testing. On appeal, Naghash argues that no testimony establishes that Fay tested the device before using it on Naghash's vehicle. But neither the statute nor the rules of evidence require that the device must be tested by the same person who operates it to record a speeding vehicle. *See generally Olson*, 887 N.W.2d at 690-91 (holding police officer's testing of handheld laser speed-measuring device satisfied external-test requirement set out in Minn. Stat. § 169.14, subd. 10(a)).

Thus, we conclude that the district court did not err in admitting the challenged testimony because all four statutory conditions were satisfied. Further, the district court did not abuse its discretion in concluding that the state had sufficiently established proper foundation for the challenged testimony.

III. Naghash's conviction did not result in a violation of his due process and equal protection rights.

Naghash argues that the conviction violated his due process and equal protection rights in four respects: the initiation of the prosecution; the prosecutor's departure before the end of trial; the exclusion of evidence offered by Naghash; and prosecutorial misconduct. We will address each claim in turn.

A. Initiation of prosecution

Naghash's brief to this court contains a broad allegation that his due process and equal protection rights were violated. Naghash did not raise these constitutional issues before the district court, nor does he adequately articulate a specific theory in his brief to this court. Issues not argued to or considered by the district court and issues that are inadequately briefed are generally not considered on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (declining to hear an issue not raised in district court); *see McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (stating that issues not argued in briefs are waived). Consequently, we do not further consider Naghash's constitutional claims about the initiation of the prosecution.

B. The prosecutor's departure before the conclusion of trial

Naghash argues that his right to a fair trial was violated when the prosecutor left early because the prosecutor "delegated his prosecutorial duties" to the district court, making the court "the prosecutor, the judge, the jury, and the trier of fact." Under both the Minnesota and United States Constitutions, due process of law requires that a defendant receive a fair trial. U.S. Const. amend. XIV § 1; Minn. Const. art. I, § 7. This guarantee

“does not require a perfect trial, but rather one that is fair and does not prejudice the substantial rights of the accused.” *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001). “Although the right to a trial before an impartial judge is not specifically enumerated in the Constitution, this principle has long been recognized by the United States Supreme Court.” *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005).

Although the prosecutor’s early departure was unusual, it did not result in a violation of Naghash’s right to a fair trial. First, the record does not support Naghash’s claim that the state delegated prosecution to the court or that the court undertook any prosecutorial role. Second, Naghash does not specifically criticize any aspect of the district court’s conduct. Third, our review of the transcript reveals no concerns with how the trial proceeded in the prosecutor’s absence. Indeed, if anything, the early departure of the prosecutor may have worked to Naghash’s advantage, because he was not cross-examined and the state waived its closing argument.

Although the district court found Naghash guilty of speeding, an adverse ruling alone is insufficient to show judicial bias. *State v. Sailee*, 792 N.W.2d 90, 95-96 (Minn. App. 2010) (holding that “[d]ue process requires that a judge have no actual bias against a defendant or an interest in a case’s outcome,” but that “adverse rulings by a judge, without more, do not constitute judicial bias”) (quotation omitted), *review denied* (Minn. Mar. 15, 2011). We conclude that the prosecutor’s early departure did not result in a violation of Naghash’s right to a fair trial.

C. Exclusion of lidar video offered by Naghash

Naghash argues that the district court's exclusion of a video criticizing the reliability of lidar devices violated his constitutional right to present a meaningful defense. The Due Process Clauses of the United States and Minnesota Constitutions protect the accused's right to present a defense. *Hooper v. State*, 838 N.W.2d 775, 785 (Minn. 2013) (citing *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 1923 (1967)). But the right to present a defense is not without limitations; parties must comply with "procedural and evidentiary rules designed to ensure both fairness and reliability in the ascertainment of guilt and innocence." *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003) (quotations omitted). "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Here, Naghash was given the opportunity to present witnesses, cross-examine the troopers, and argue against the state's case. The district court excluded Naghash's video because, after the state's objection, Naghash admitted he had no witness to lay foundation. The district court concluded that the video was hearsay, did not fit into any hearsay exception, and that Naghash was attempting to admit "expert testimony without having an expert here [at trial]."

The record supports the district court's ruling because Naghash offered no witness to lay foundation for the video, nor did he identify any exception to the hearsay rule that allowed admission of the video. *See, e.g., State v. Bradford*, 618 N.W.2d 782, 793-94 (Minn. 2000) (holding that district court erred by admitting non-testifying expert

statements that were inadmissible hearsay and “improper expert testimony”); *see generally* *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (“The admission of expert testimony is within the broad discretion accorded a trial court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the trial court clearly abused its discretion.”) (quotation omitted).

Further, Naghash has not shown how exclusion of the video prejudiced his substantial rights when he was allowed to cross-examine both troopers regarding their use of the lidar device and its reliability. *See Amos*, 658 N.W.2d at 203 (requiring appellant to show prejudice by the evidentiary ruling). We conclude the district court did not abuse its discretion excluding the video, nor did the exclusion of this evidence impair Naghash’s right to present a meaningful defense.

D. Alleged prosecutorial misconduct

Naghash also claims that the prosecutor committed misconduct by “concealing [] evidence, records and information” and by failing to respond to discovery requests. Naghash also seems to argue that the prosecutor offered false testimony by both troopers. “Generally, a prosecutor’s acts may constitute misconduct if they have the effect of materially undermining the fairness of a trial.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Because Naghash did not object to any alleged misconduct during trial, we review his claim on appeal under the modified plain-error test. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). Additionally, Naghash appeared pro se, therefore, this court considers whether the misconduct was so serious that the district court should have intervened. *State v. Stufflebean*, 329 N.W.2d 314, 318 (Minn. 1983).

There is no support on the record for Naghash's allegation that the prosecution concealed evidence. Before trial, the court held a telephone hearing on Naghash's discovery requests and made rulings on what the state was required to disclose. The district court also confirmed before trial began that the state had provided the required disclosures. Our review of the record fully supports the district court's rulings.

Regarding Naghash's second claim of prosecutorial misconduct, there is no evidence that the prosecutor offered false testimony. Despite Naghash's contention that he did not make a statement about "pay[ing] attention to his speed," the district court specifically determined that the troopers' testimony was credible. There is no basis in this record for concluding that the prosecution committed any misconduct.

IV. The evidence is sufficient to support Naghash's conviction beyond a reasonable doubt.

Finally, Naghash argues that the evidence is insufficient to support his conviction because Flerlage testified that he saw a speeding "black SUV" while sitting on the overpass. Because it is undisputed that Naghash was driving a passenger car, as noted on the citation, he contends that we must reverse.

When sufficiency of the evidence is challenged on appeal, this court must view the evidence in the light most favorable to the verdict and assume the fact-finder credited testimony that supported the verdict and discredited testimony that did not. *State v. Steinbuch*, 514 N.W.2d 793, 799 (Minn. 1994). This is especially true when the record contains conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). Consequently, this court will not disturb the verdict if the fact-finder, acting with due

regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that a defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Under Minnesota law, vehicle speed that exceeds a properly posted speed limit is prima facie evidence of a speeding violation. Minn. Stat. § 169.14, subd. 2. The elements of a speeding violation are: (1) that the defendant drove a vehicle in an area where there was a posted speed limit; and (2) the speed of defendant's vehicle exceeded the posted speed limit. *Id.* When we compare the required elements to the record evidence, we conclude that the state sufficiently proved Naghash's guilt. *See State v. Aanerud*, 374 N.W.2d 491, 491-92 (Minn. App. 1985) (holding evidence sufficient to sustain conviction for speeding based on speeding-device readings and officer testimony); *State v. Ali*, 679 N.W.2d 359, 367-68 (Minn. App. 2004) (finding officer's visual estimate alone was sufficient to establish that appellant exceeded speed limit).

Fay testified that he witnessed Naghash speeding in excess of the posted speed limit of 70 mph and visually estimated his speed in the "mid-eighties." Fay also testified that the lidar device recorded Naghash's speed at 86 mph. As already explained, both officers also testified to all of the facts necessary to provide a foundation for admission of the lidar evidence. Flerlage's reference to the speeding vehicle as a "black SUV" is merely one conflicting fact in an otherwise consistent line of evidence establishing Naghash's guilt. Further, the presence of other potentially speeding drivers does not mean that Naghash was not speeding and cannot be convicted. The black SUV, mentioned by Flerlage, may also have been speeding. Moreover, the district court expressly found both troopers to be

credible. We conclude that the evidence is sufficient to establish that Naghash committed a speeding violation beyond a reasonable doubt.

Affirmed.