STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1704

State of Minnesota,
Respondent,

vs.

Davon Allen,
Appellant.

Filed September 4, 2018
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-16-20317

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Johnson, Judge.

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

WORKE, Judge

Appellant challenges his first-degree criminal-sexual-conduct conviction, arguing that he did not receive a valid stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3. Because appellant received a valid bench trial, we affirm.

FACTS

On the morning of July 23, 2016, police officers were dispatched to a grocery store in response to a criminal-sexual-conduct complaint. J.S. reported that she awoke that morning to an intruder sexually penetrating her. J.S. startled the intruder who fled. J.S. could not locate her cellphone, so she drove to the grocery store to contact police. J.S. was transported to the hospital. J.S. was bleeding from a vaginal laceration. Officers found J.S.'s phone in a drain several blocks from her apartment. Officers found fingerprint impressions in the dust on a partially open window at J.S.'s apartment. The fingerprints matched those of appellant Davon Allen. He was charged with first-degree criminal sexual conduct and burglary.

On May 15, 2017, Allen's trial was scheduled to begin, but the parties agreed to a stipulated-facts trial as to the first-degree criminal-sexual-conduct charge. The state agreed to dismiss the burglary charge and the parties agreed to a 192-month sentence. Allen agreed that the state would draft facts consistent with its case, and that he did not have to "agree that those fact[s] are true," but would agree that they are the facts that the district court would consider in determining whether he was guilty.

Although Allen claimed to feel "forced" to proceed in this manner, the district court informed him that he had to make a decision on how to proceed, because the case was almost a year old, had been continued, and was scheduled for a jury trial that day. Allen claimed several times that the facts in the written stipulation were "not true," but eventually agreed to submit it to the district court. Allen indicated that he understood the risks of going to trial and waived his right to a jury trial.

On May 18, 2017, the district court concluded that Allen was guilty of first-degree criminal sexual conduct. The district court sentenced Allen to 192 months in prison. This appeal followed.

D E C I S I O N

Stipulated-facts trial

Allen claims that he is entitled to a new trial because the stipulated-facts proceeding that occurred did not fall within the framework authorized by Minn. R. Crim. P. 26.01, subd. 3. "The interpretation of the rules of criminal procedure is a question of law that [this court] review[s] de novo." *Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013).

Under rule 26.01, subdivision 3, the parties "may agree that a determination of [the] defendant's guilt . . . may be submitted to and tried by the court based on stipulated facts." Minn. R. Crim. P. 26.01, subd. 3(a) (2016).[1] The defendant must waive the right to "(1) testify at trial; (2) have the prosecution witnesses testify in open court in the

[1] The rule has since been modified, stating that the parties "may agree that a determination of the defendant's guilt . . . may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both." Minn. R. Crim. P. 26.01, subd. 3(a) (2017).

defendant's presence; (3) question those prosecution witnesses; and (4) require any favorable witnesses to testify for the defense in court." *Id.* And the parties' "agreement and the waiver must be in writing or be placed on the record." *Id.*, subd. 3(b).

Allen does not claim that his waiver was invalid or that the agreement was not in writing or otherwise on the record; rather, he claims that his stipulated-facts trial was invalid because he never agreed that the "facts" in the stipulation were the facts of the case.

Allen cites *Dereje* to support his claim that a stipulated-facts trial is invalid when the parties do not agree about the actual events that occurred. 837 N.W.2d at 720. In *Dereje*, the parties agreed to a stipulated-facts trial pursuant to rule 26.01, subdivision 3. *Id.* at 719. The defendant waived his trial rights and the parties "submitted the complaint and police reports" to the district court for the stipulated-facts trial. *Id.* The district court found the defendant guilty after accepting the victim's version of events. *Id.* Dereje argued that he did not receive a valid stipulated-facts trial. *Id.*

The state argued that the rule "permits a defendant to stipulate to a body of evidence containing contrary versions of events, and that such a stipulation does not require agreement as to the accuracy of the facts reported, but merely to the fact that the evidence presented *was* reported." *Id.* at 720. The supreme court disagreed, stating that a mere agreement between the parties on the material to be submitted is not an agreement about the actual events that occurred. *Id.* In other words, a valid stipulated-facts trial requires an agreement as to the facts, not an agreement as to what material is submitted to the district court. Because the information presented to the district court included the victim's version of events and the defendant's version of events, the district court had to reject one, making

the proceeding a bench trial rather than a stipulated-facts trial. *Id.* at 721. The supreme court held that "the submission of documentary evidence presenting contradictory versions of events cannot constitute a valid trial on stipulated facts." *Id.* But the court rejected the demand for a new trial because the defendant received a valid bench trial under rule 26.01, subdivision 2. *Id.*

Based on *Dereje*, the procedure here was proper because the district court did not consider documentary evidence containing contradictory versions of events. The district court considered only the written stipulation that did not include Allen's version of events. During the hearing, Allen agreed that neither the police reports nor his statement would be submitted. His attorney stated: "[T]he state would be putting the words down on the page that . . . you don't have to agree are true, but you would be agreeing that those are the facts that the [c]ourt can consider when making the determination on guilt." The district court told Allen that his "version of what happened is not going to be considered," and that if he agreed to the stipulated-facts trial, he was agreeing to have the district court decide the case based on the stipulation.

Allen argues, however, that the stipulated-facts trial was invalid because he "never stipulated to the 'facts' considered by the district court." Allen relies on the supreme court's statements in *Dereje* that a "stipulation" is "[a] voluntary agreement between opposing parties concerning some relevant point," and a "fact" is "[s]omething that actually exists; . . . [a]n actual or alleged event or circumstance"; thus, "[a] stipulated fact is [an] agreement between opposing parties regarding the actual event or circumstance." *Id.* at 720 (quotations omitted). Allen claims that the stipulated facts are not what actually

occurred. In *Dereje*, however, in making these statements, the supreme court was explaining that a stipulated-facts trial is not an agreement on the material to be submitted, but rather an agreement about the actual events that occurred. *Id.* Here, the "facts" in the stipulation relate to the actual events that occurred. Allen, although denying that the facts in the stipulation were accurate, signed the form and agreed to submit it to the district court.

Based on *Dereje*, the version of rule 26.01, subdivision 3, that the district court applied prohibits disputed evidence rather than "facts" from forming the basis of a decision in a stipulated-facts trial. The district court here did not consider a packet of evidence, but rather only the stipulation. And although Allen claims that the stipulation is invalid because he disputes the accuracy of the stipulated facts, *Dereje* stated that a "fact" is "[a]n actual or alleged event or circumstance," *id.* at 720 (quotation omitted), and the stipulation includes what the state alleged occurred.

Although we conclude that the stipulated-facts trial here conformed to the instruction in *Dereje*, in that it did not include the district court's consideration of contradictory evidence, our review of the stipulation leads us to conclude that Allen, rather than receiving a stipulated-facts trial, received a valid bench trial. *See id.* at 721 (stating that when a defendant does not receive a valid stipulated-facts trial, a new trial is not warranted if the defendant received a valid bench trial under rule 26.01, subdivision 2, and validly waived his jury-trial rights, and the district court made detailed and thorough findings of fact).

The stipulated facts that the parties submitted include the following. On July 23, 2016, J.S. went to bed alone around 3:00 a.m. Around 5:00 a.m., J.S. awoke and felt a man

penetrating her vagina with his penis. The man initiated sexual penetration while J.S. slept. J.S. did not consent to sexual penetration by this man. The man fled when J.S. woke up. J.S. was unable to provide a physical description of the man. A sexual-assault examination showed that J.S. suffered a laceration on her vaginal opening that was bleeding during the exam. Fingerprint impressions identified on a window of J.S.'s apartment belonged to Allen. The DNA profile recovered from the sperm cell fraction from J.S.'s vaginal swab was a single source DNA profile that matched Allen's DNA profile. J.S. does not know Allen and did not consent to sexual intercourse with him.

The stipulation does not state that Allen sexually penetrated J.S.; it states that a "man" did. This is more akin to a bench trial because it leaves the district court to draw inferences from the stipulation and requires some fact-finding. The straightforward inference exists in the stipulation that the "man" who penetrated J.S.'s vagina without her consent while she slept was Allen based on the facts that J.S. does not know Allen and did not consent to sexual intercourse with him, his fingerprints were on a window to J.S.'s apartment, and the DNA match shows that Allen had sexual intercourse with J.S.

The procedure, therefore, fails to conform to the version of rule 26.01, subdivision 3, that the district court applied because the stipulation does not state "the actual events that occurred," *see id.* at 720, by simply providing information from which the district court could infer what actually occurred. As in *Dereje*, however, this procedure meets the requirements in rule 26.01, subdivision 2, for a bench trial because Allen consented to the stipulation, Allen knowingly waived his right to cross-examination and to submit

supporting evidence, and the district court made thorough findings of fact based on the stipulation. *See* Minn. R. Crim. P. 26.01, subd. 2; 837 N.W.2d at 721.

Pro se brief

Allen filed a pro se supplemental brief, raising claims that he was prejudged by the district court. While Allen's pro se claims could be deemed forfeited because they are unsupported by the record and lacking argument and citation to legal authority, we have considered Allen's claims and conclude that each lacks merit. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (stating that this court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority"); *Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se arguments without detailing consideration of each argument).

Affirmed.