STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0783

State of Minnesota,
Respondent,

vs.

Anthony Linard Collins,
Appellant.

Filed March 20, 2017
Affirmed
Toussaint, Judge*

Hennepin County District Court
File No. 27-CR-15-23491

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Toussaint, Judge.

* Retired judge of the Minnesota Court of Appeals, serving 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

TOUSSAINT, Judge

On appeal from his convictions of second-degree possession with intent to sell cocaine, and third-degree possession of heroin, appellant argues that the district court abused its discretion by (a) unduly limiting his ability to question jurors regarding race, policing, and bias in the criminal justice system, thereby depriving appellant of a fair trial; and (b) denying his motion for a downward durational departure. Because the district court did not abuse its discretion in limiting appellant's jury voir dire when exploring bases for exercising informed peremptory challenges, and because the district court did not abuse its discretion in sentencing appellant, we affirm.

D E C I S I O N

I.

The United States and Minnesota Constitutions guarantee the right to a trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "This right includes the ability to conduct an adequate *voir dire* to identify unqualified jurors." *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001) (quotation omitted). But district courts may restrict or prohibit repetitious, irrelevant, or improper questions. *Id.* We review the district court's voir-dire decisions for an abuse of discretion. *Id.*

Appellant argues that the district court's "decision to prohibit [him] from questioning jurors regarding their views on the Black Lives Matter (BLM) movement—which included opinions on the relationship between police and the black community in Minneapolis—and whether jurors believed a black man could get a fair trial in Hennepin

County, precluded [him] from a fair trial."[1] We disagree. In *State v. Owens*, 373 N.W.2d 313, 315 (Minn. 1985), the district court excluded the following questions to prospective jurors: (1) "Do you think it is possible for anyone in our society to be arrested and charged for a crime for which he is innocent?" and (2) "Have you ever been blamed in your life for something you did not do?" The supreme court did not address the appropriateness of the prohibited questions, but instead relied on the record in determining whether the limitation on voir dire "prevented the defendant from 'discovering bases for challenge for cause' or 'gaining knowledge to enable an informed exercise of peremptory challenges.'" *Id.* (quoting Minn. R. Crim. P. 26.02, subd. 4(1)). The supreme court explained that under rule 26.02, "either party may make reasonable inquiry of a prospective juror before exercising a challenge. It is the [district] court's responsibility to prevent abuse of the examination process and it is within the [district] court's discretion to deny permission to ask certain questions." *Id.* (citation omitted). The supreme court held that prohibiting the questions was not an abuse of discretion because "the record on appeal does not compel the conclusion that the [district] court's limitation on voir dire examination prevented defendant from" making a full inquiry. *Id.* (quotations omitted).

Here, the district court inquired during voir dire as follows:

> **THE COURT:** Now, I did want to ask some questions about another matter. The obvious fact is that [appellant] is a person of color, and I am just wondering if that creates any concern

[1] The state claims that this argument is forfeited because the objection "appears from the record to have been made after jury selection was complete." But the record clearly reflects that the matter was discussed in chambers and that when given the opportunity, appellant formally objected on the record. Appellant has not forfeited the issue.

about fairness on anybody's behalf, if they feel like they cannot be fair because of that fact?

Let me dwell on this for a minute. In this country, talking about race is always uncomfortable. We are not very good at it. But if you have a concern that you can't extend at least the minimum rights that a defendant has, which is the right to be presumed innocent, to not be convicted unless the State proves its case beyond a reasonable doubt, if you think you can't do that because of the defendant's color, now is the time to say so. We have plenty of other cases going on in this building where your services could be required where this isn't an issue. Does anybody have difficulty with those issues?

[**REPORTER'S NOTE:** No prospective jurors raised their hand.]

THE COURT: I would just say that we like to think that in our court system, justice is colorblind, and we hope to extend that to jurors as well. But if you're having a feeling that you're leaning one way or the other and the reason you're leaning that way is because of the defendant's skin color, again this is the time to say something.

Defense counsel later made the following inquiry of a prospective juror about race:

DEFENSE COUNSEL: Did you ever look at issues with race and justice or anything kind of related to that?

PROSPECTIVE JUROR: There were a lot of classes that revolved around the social problems in the world we live in, especially as it pertains to African-American folks.

DEFENSE COUNSEL: Including like perhaps biases or prejudices?

PROSPECTIVE JUROR: Sure. I mean, there were many discussions about those subjects. It was just part of getting your degree, I guess.

DEFENSE COUNSEL: So did you learn anything about racial prejudice or racial bias that you would bring into this case that might negatively affect your ability to serve?

PROSPECTIVE JUROR: Not at all.

The record reflects that appellant was permitted to pursue the issue of race and bias during voir dire, and he did so. The record also reflects that the district court made inquiries into the issue. Although appellant was not permitted to ask questions regarding BLM, the

death of Jamar Clark, and whether a prospective juror had an opinion on whether a black man could get a fair trial in Hennepin County, the district court did not prevent appellant from discovering bases for challenge or exercising informed peremptory challenges. The district court did not abuse its discretion by prohibiting the challenged questions.

II.

Appellant challenges the district court's denial of his motion for a downward durational departure. We review a district court's refusal to depart from the guidelines for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). Only in a "rare" case will an appellate court reverse a sentencing court's refusal to depart. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The district court must order the presumptive sentence provided in the Minnesota Sentencing Guidelines unless the case involves "substantial and compelling circumstances" to warrant a departure. *Id.* A district court only considers offense-related factors when determining whether to grant a durational departure. *State v. Peter*, 825 N.W.2d 126, 130 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013). Specifically, the district court considers "whether the conduct involved in the offense of conviction was significantly more or less serious than the typical conduct for that crime." *Id.*

Appellant claims that the following factors made his offense less serious than the typical drug offense: (1) the amount of drugs found was barely over the threshold for the amount necessary to sustain a conviction; (2) no witnesses, including several police officers, testified that they saw appellant sell drugs; (3) the case did not involve weapons; (4) the arrest did not occur near a school; (5) the arrest did not take place in front of

children; (6) appellant was respectful and cooperative throughout all stages of the case; (7) appellant lacked capacity for judgment when the offense was committed; and (8) the Minnesota Sentencing Guidelines Commission amended the drug laws to eliminate mandatory minimum sentences for drug crimes and had indicated that current drug laws are too harsh. Appellant argues that because the district court failed to properly consider these mitigating factors, the district court abused its discretion by denying his motion for a downward durational departure.

We disagree. The district court is not obligated to depart even when mitigating factors are present. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Thus, even if appellant established mitigating factors, the district court was under no obligation to depart. Moreover, we will affirm a presumptive sentence "when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *review denied* (Minn. Sept. 17, 2013). Here, the district court noted that he "often thought that the drug laws had gone too far," and in that vein, sentenced appellant to a bottom-of-the-box sentence. But appellant had a criminal history score of seven, and the district court stated that "the benefit to defendants lessens as one's record gets more lengthy." The district court carefully considered all of the information and circumstances before denying appellant's motion. Accordingly, the district court did not abuse its discretion by denying appellant's motion for a downward durational departure.

Affirmed.