STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1028

State of Minnesota,
Respondent,

vs.

Matthew Starnes,
Appellant.

Filed July 17, 2017
Affirmed; motion granted
Reyes, Judge

Anoka County District Court
File No. 02-CR-15-6336

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

Anthony Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Renée Bergeron, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant seeks reversal of his conviction of second-degree assault with a dangerous weapon, arguing that he was denied his due-process right to a fair trial because the district

court committed multiple errors, exhibited improper personal bias against appellant, and relied on information gained outside of trial. Appellant also argues that the evidence at trial was legally insufficient to support his conviction. We affirm.

FACTS

Appellant Matthew Starnes and victim R.G. were roommates at a homeless shelter located on the Anoka Metro Regional Treatment Center (AMRTC) campus. On the day of the incident, R.G. was working in the kitchen when appellant entered to prepare a meal for the following morning. Unaware that appellant had permission to be in the kitchen, R.G. confronted appellant, telling appellant that he could not be there. An argument ensued and R.G. struck appellant in the face. Appellant reported the incident to the executive director of the shelter, who spoke with both individuals.

A short while later, R.G. left the shelter and walked to a nearby park. While R.G. was at the park, C.G., an AMRTC employee, was driving and noticed him. C.G. stopped at an intersection as a black SUV approached the intersection. The male driver of the SUV told C.G. to "just go." C.G. continued driving, looked in her rearview mirror, and saw R.G. running away from three men who had exited the SUV.[1] R.G. saw a tall, skinny man get out of the driver's seat with a tire iron and appellant exit the rear passenger seat with a metal object in his hand.

The driver caught up with R.G. and struck him with the tire iron in the back of the head. R.G. fell on the ground while the assailants continued assaulting him. R.G. testified

[1] C.G. testified that she saw three men assaulting R.G. However, R.G. testified that while he saw three men in the SUV only two men assaulted him.

that appellant kicked him in the face, stabbed him near his eye, and stabbed him multiple times around his kidneys. C.G. testified that one of the individuals, whom she described as tall, skinny, and wearing a white shirt, was making a stabbing motion. Frightened, C.G. drove away and called her boss, who notified the police. Eventually, the men went back into the SUV and drove away, leaving R.G. on the ground.

R.G. was taken to Mercy Hospital where he was treated for his many injuries, including multiple stab wounds on his torso, a fractured rib, and a laceration to the back of his head. While at the hospital, R.G. was interviewed by a police officer and identified appellant as one of the attackers.

Appellant's girlfriend picked appellant up from the shelter, saw a cut on his hand, and drove him to Unity Hospital. From the hospital, appellant called 911 and reported that he had been assaulted. When the police officer who interviewed R.G. learned about appellant's report, he took a statement from appellant, and after a brief investigation, arrested appellant at Unity Hospital.

In an amended complaint, Respondent State of Minnesota charged appellant with one count of second-degree assault in violation of Minn. Stat. § 609.222, subd. 2 (2104) (substantial bodily harm) and one count of second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2014) (dangerous weapon). Appellant's jury trial began on January 11, 2016.

After six of the state's witnesses had testified, the district court learned that one of the jurors had been discussing the trial and her concern for her personal safety with other jurors. Appellant's counsel requested a mistrial, which the district court granted. The

district court was going to adjourn the case for jury selection, but appellant did not want to wait until the adjournment date. Appellant then requested to waive his right to a jury trial and proceed with the case as a bench trial. The district court gave appellant time to consider his decision and discuss it further with his attorney and adjourned the case for the following day. The next day, appellant waived his right to a jury trial on the record and requested to proceed with the rest of the trial as a bench trial, which the district court granted.

Appellant claimed self-defense and testified on his own behalf. At the end of the bench trial, the district court found appellant guilty on both counts. Instead of making written findings of fact and attaching them to the verdict sheet, the district court made oral findings of fact on the record and attached the transcript of the findings to the verdict sheet. Neither party objected. In its findings, the district court credited C.G.'s and R.G.'s testimony and discredited appellant's testimony. The district court determined that the state met its burden of proving beyond a reasonable doubt that appellant did not act in self-defense.

At the sentencing hearing, the district court adjudicated appellant guilty only of count one, second-degree assault (substantial bodily harm-dangerous weapon), and sentenced him to 71 months in prison.[2] This appeal follows.

[2] We note, however, that the warrant of commitment indicates that appellant was convicted and sentenced on count two, Minn. Stat. § 609.222, subd. 1 (dangerous weapon), and that count one was dismissed. "[A]n orally pronounced sentence controls over a [written] judgment and commitment order when the two conflict." *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (quotation omitted). Additionally, if there is a discrepancy between the oral and written sentences that is attributable to clerical error, the district court may correct it at any time. Minn. R. Crim. P. 27.03, subd. 10.

D E C I S I O N

I. Any alleged errors by the district court did not violate appellant's due-process right to a fair trial.

Under both the Minnesota and United States Constitutions, due process of law requires that a defendant receive a fair trial. U.S. Const. amends. V, 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). Additionally, a defendant, while entitled to a jury trial, may waive his jury-trial rights, "but the waiver must be knowing, intelligent, and voluntary." *State v. Little*, 851 N.W.2d 878, 882 (Minn. 2014). Here, appellant does not challenge the validity of his jury-trial waiver.

Appellant argues that the district court committed several errors that violated his due-process right to a fair trial, including: (1) depriving him of a fact-finder for part of his trial; (2) making erroneous findings of fact; and (3) issuing its essential findings of fact in violation of Minn. R. Crim. P. 26.01, subd. 2(b). We address each issue in turn.

A. The invited-error doctrine bars appellant from arguing that the district court deprived him of a fact-finder for any part of his trial because he fails to meet the plain-error test.

The invited-error doctrine provides that "a party cannot assert on appeal an error that he invited or that could have been prevented at the district court." *State v. Benton*, 858 N.W.2d 535, 540 (Minn. 2015) (quotation omitted). This rule stems from the principle that defendants should not be permitted "to court error in order to preserve a basis for appeal and thus force the state into the cumbersome necessity of a new trial." *State v. Kortness*,

284 Minn. 555, 558, 170 N.W.2d 210, 213 (1969) (quotation omitted). The invited-error doctrine applies unless a party meets the plain-error test. *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). And while the plain-error test has not been applied in this type of case, the test has been applied to other unobjected-to procedural trial errors under Minnesota Rules of Criminal Procedure 26.01. *See e.g.*, *State v. Little*, 851 N.W.2d 878, 883-85 (Minn. 2014) (applying plain-error analysis to district court's error in failing to obtain from defendant new jury-trial waiver after state filed amended complaint adding new criminal charge); *State v. Kuhlmann*, 806 N.W.2d 844, 852-53 (Minn. 2011) (applying plain-error analysis to unobjected-to error in failing to obtain valid jury-trial waiver from defendant).

"The plain error test gives us discretion to review unobjected-to errors if: (1) there is error, (2) the error is plain, and (3) the error affects substantial rights. If the defendant establishes all three factors, we consider a fourth: whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Carridine*, 812 N.W.2d at 142 (citation and quotation omitted). An error is plain if it violates or contradicts caselaw, a rule, or an applicable standard of conduct. *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014).

Here, even assuming that the district court's grant of appellant's request to continue the trial as a bench trial instead of adjourning the case for a jury-trial date was error, it was not plain error. Appellant does not cite to any statute, rule, or caselaw that requires a court to restart a trial from the beginning, specifically in a situation where the defendant, after a mistrial, waives his rights to a jury trial and elects to proceed as a bench trial. Furthermore,

appellant does not cite to any law that prohibits the district court, in assuming the role of factfinder, from considering the testimony that was presented prior to the mistrial in reaching its conclusions and finding appellant guilty. *See State v. Dorsey*, 701 N.W.2d 238, 249-50 (Minn. 2005) ("An impartial trial requires that conclusions reached by the trier of fact be based upon the facts in evidence and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." (citation omitted)).

Furthermore, appellant's due-process argument fails to demonstrate that any alleged error affected his substantial rights or "seriously affect[ed] the fairness, integrity, or public reputation of the judicial proceedings." *Benton*, 858 N.W.2d at 540. The witnesses that testified prior to the mistrial would likely have testified similarly the second time around. Moreover, these witnesses' testimony was under oath, meaning that if they did not testify similarly, the state would have been able to bring in their prior testimony as non-hearsay. Minn. R. Evid. 801 (d)(1)(A). Because appellant fails to satisfy any prong of the plain-error test, the invited-error test applies and bars his claim that he was deprived of a factfinder for part of his trial.

B. Any alleged errors in the district court's factual findings did not deprive appellant of a fair trial.

Appellant argues that the district court's erroneous oral findings of fact demonstrate that he did not get a fair trial. We disagree.

"A [district] court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. Findings of fact are clearly erroneous only if the reviewing

court is left with the definite and firm conviction that a mistake has been made." *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted).

Here, appellant points to a number of findings by the district court that he believes to be unsupported by the record and demonstrate that he did not receive a fair trial: (1) R.G. was stabbed near the eye; (2) most of the blood tested belonged to R.G.; (3) R.G.'s wounds were six inches deep; (4) the scratch on appellant's neck was minor and there was no sign of bleeding; and (5) C.G.'s description of the shirt worn by the individual who was making the stabbing motion was consistent with the shirt appellant was wearing when he arrived at the hospital.

Contrary to appellant's suggestion, there is support in the record that R.G. was stabbed near his right eye and that appellant's neck scratch was minor. R.G. testified that he was stabbed near his right eye, and the photographs in the record demonstrate that he suffered an injury near that eye. With respect to the blood tested, the testimony of one of the state's experts established that R.G.'s blood was found on appellant's shoe. The district court's remark that most of the blood tested belonged to R.G., even if incorrect, does not prove that appellant received an unfair trial. With respect to the district court's remarks regarding the depth of R.G.'s wounds, the district court understood and found, based on the evidence presented, that R.G. suffered substantial bodily harm.[3] Finally, the district court's remark about the shirt appellant wore was inconsistent with C.G.'s testimony. Any

[3] The district court stated, "I think [appellant] acknowledged [that the weapon used] was a box cutter. I don't know the length of the blade of that box cutter. The doctor that testified . . . had said that some of the stab wounds were as deep as [six] inches."

error here is immaterial because, as appellant's testimony makes clear, there is no doubt that appellant was involved in the attack and, in fact, appellant admitted to stabbing R.G. Even with this inconsistency, there is sufficient evidence to support the district court's finding that C.G.'s testimony was credible. In sum, none of the facts highlighted by appellant demonstrate that he received an unfair trial.

C. The district court made essential findings of fact and did not deprive appellant of a fair trial.

Appellant next argues that the district court erred when it failed to make essential findings of fact within seven days of making its general finding, in violation of Minn. R. Crim. P. 26.01, subd. 2(b). We disagree.

In bench-trial proceedings, the district court must make a general finding of guilty or not guilty and provide written findings of essential facts seven days after its general finding. Minn. R. Crim. P. 26.01, subd. 2(a)-(b). "An opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum." *Id.*, subd. 2(d). "If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding." *Id.*, subd. 2(e). The purpose of requiring written findings is to aid the appellate court in its review. *State v. Scarver*, 458 N.W.2d 167, 168 (Minn. App. 1990). And the appropriate remedy for a rule 26.01, subdivision 2(b), violation is to remand for further findings. *See State v. Taylor*, 427 N.W.2d 1, 5 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988).

Here, the district court made detailed essential findings of fact on the record. The district court also noted, without objection from appellant, that it intended to use these detailed oral findings as written findings by attaching them to its order.

Appellant cites to *State v. Taylor* to support his position. But appellant's reliance on *Taylor* is misguided for several reasons. In *Taylor*, this court remanded the case back to the district court because the district court failed to make written findings of fact to allow for appropriate appellate review. *Id*. In the instant case, the district court's oral findings on the record explained the reasons for the general finding of guilt and addressed each element of the crime and the facts pertaining to each element in detail. Therefore, unlike in *Taylor*, the district court provided a sufficient written record to allow appellate review.

Furthermore, Minnesota caselaw supports the conclusion that the district court complied with Minn. R. Crim. P. 26.01, subd. 2(b). *See*, *e.g.*, *id.* (suggesting, in dicta, that had the district court put its oral findings in writing, it would have satisfied Minn. R. Crim. P. 26.01, subd. 2(b)); *Scarver*, 458 N.W.2d at 168 (findings may be "gleaned from comments from the bench" so long as the comments "afford a basis for intelligent appellate review" (quotation omitted)). Therefore, the district court's extensive oral findings attached to its order in transcribed form are sufficient for us to review its findings with respect to appellant's guilt. Accordingly, there is no need for us to remand for further findings.

II. Appellant has failed to demonstrate that he received an unfair trial due to bias by the district court.

Appellant next argues that he did not receive a fair trial because the district court demonstrated bias toward him at the sentencing hearing. We disagree.

"Due process requires that a judge have no actual bias against a defendant or an interest in a case's outcome." *State v. Sailee*, 792 N.W.2d 90, 95 (Minn. App. 2010) (citing *Bracy v. Gramley*, 520 U.S. 899, 904-05, 117 S. Ct. 1793, 1797 (1997)), *review denied* (Mar. 15, 2011). The Sixth Amendment of the United States Constitution establishes a criminal defendant's right to be tried by an impartial fact-finder. *See also* Minn. Const. art. 1, § 6. This principle has long been recognized as applying to bench trials. *See, e.g.*, *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 3105 (1986); *see also Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) ("[I]mpartiality is the very foundation of the American judicial system."). We review claims of judicial bias de novo. *Dorsey*, 701 N.W.2d at 249.

"There is the presumption that a judge has discharged his or her judicial duties properly." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). "[A]dverse rulings by a judge, without more, do not constitute judicial bias." *Id.* The party alleging bias has the burden to present evidence sufficient to overcome this presumption. *See McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Appellant argues that "[t]he district court's comments at sentencing fell far short of the applicable canons of judicial conduct and demonstrated bias, negative stereotyping, and suggested connections between race and crime." At the sentencing hearing, while arguing for a downward departure, appellant noted that he had a tough life growing up in Chicago

and that he was involved in criminal activity from a very young age. The presentence investigation (PSI) report also established appellant's difficulties growing up in foster care and when he was later adopted by his grandmother. The district court stated that appellant had, "grown up on the streets of Chicago where it's the tough guys who stay alive and the weak ones that get killed." Contrary to appellant's suggestion, the district court did not make its comments as a result of bias or stereotype against appellant but in response to appellant's remark and the PSI.

Appellant next contends that the district court used information outside of the record because it mentioned not seeing anyone who could be appellant's brother during trial to support him and referenced the possibility of one of appellant's brothers being involved in the assault. "An impartial trial requires that conclusions reached by the trier of fact be based upon the facts in evidence . . . and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." *Dorsey*, 701 N.W.2d at 249-50. "[A] reviewing court should place great confidence in a judge's ability to follow the law and should not assume that evidence was considered for an improper purpose without a clear showing." *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (quotation omitted).

Here, the record demonstrates that the district court relied on the evidence in finding appellant guilty. Appellant has failed to overcome the presumption that the district court arrived at its finding of guilt or sentencing improperly because the record supports the district court's finding of guilt. Accordingly, we conclude that the district court's

comments about appellant's history and his brother do not support appellant's contention that the district court demonstrated bias toward him.

III. The evidence at trial was legally sufficient to sustain appellant's conviction and disprove his self-defense claim.

Appellant next argues that the evidence presented was insufficient to prove beyond a reasonable doubt that he was not acting in self-defense. We disagree.

"When reviewing the sufficiency of the evidence leading to a conviction, we view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Hayes*, 831 N.W.2d 546, 552 (Minn. 2013) (quotation omitted). 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 the defendant was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

To support appellant's conviction, the state must disprove appellant's claim of self-defense beyond a reasonable doubt. *State v. Spaulding*, 296 N.W.2d 870, 875 (Minn. 1980). The four elements of self-defense are:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of . . . great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Basting, 572 N.W.2d 281, 285 (Minn. 1997) (citing Minn. Stat. § 609.06, subd. 1(3) (1996)). Additionally, even if a defendant meets the above elements, his self-defense

claim fails if he used unreasonably excessive force under the circumstances. *Id.* at 286; *see also State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001) ("To find that a defendant acted in self-defense, a jury must . . . find that the defendant reasonably believed that force was necessary."). The factfinder makes the reasonableness determination. *Glowacki*, 630 N.W.2d at 403. On appeal, the record must demonstrate that the state disproved at least one of the elements of self-defense. *Basting*, 572 N.W.2d at 286.

Appellant testified that R.G. attacked him right outside of the shelter and began choking him while appellant was on the ground. Appellant further testified that he stabbed R.G. because appellant was afraid he was going to lose consciousness and was afraid for his life. None of the witnesses who testified on appellant's behalf personally observed the incident. The district court found that appellant's use of force was not reasonable and that appellant's use of a weapon against R.G. was unwarranted. Additionally, the district court found that appellant acknowledged that he had a duty to retreat, but did not do so. We conclude that the district court, as the fact-finder, did not clearly err in finding that the state proved that appellant's use of force was not reasonable and that appellant failed to fulfill his duty to retreat. Accordingly, sufficient evidence exists to uphold appellant's conviction.

IV. Appellant's other arguments do not entitle him to relief.

Appellant raises a number of arguments in his pro se supplemental brief. Appellant challenges the conviction, alleging improper bias against him and insufficient evidence, both of which are addressed above.

Appellant next argues that the district court abused its discretion when it failed to order the state to return his cell phone. We note that appellant does not cite any authority to support his argument in his principal brief, supplemental brief, or reply brief.

Minnesota law provides that "[a]fter the trial for which the property was being held as potential evidence, and the expiration date for all associated appeals, the property or thing shall, unless otherwise subject to lawful detention, be returned to its owner or any other person entitled to possess it." Minn. Stat. § 626.04 (b) (2014). Here, the district court found that appellant is not entitled to the release of his cell phone until he has exhausted his appeals process. Appellant has not yet exhausted his appeals process. Therefore, the district court did not abuse its discretion in refusing to order return of his cell phone.

Finally, appellant's principal brief included an attached document that was not part of the district court record. Appellant's principal and pro se supplemental brief contain references to this document. The record on appeal consists of "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any." Minn. R. Civ. App. P. 110.01; *see also Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992) ("The court will strike documents included in a party's brief that are not part of the appellate record.") *aff'd*, 504 N.W.2d 758 (Minn. 1993). The state submitted a motion to strike, and we now grant the state's motion striking this document and any references to it. *See AFSCME, Council No. 14 v. Cty. of Scott*, 530 N.W.2d 218, 222-23 (Minn. App. 1995) (noting that court may disregard and strike portions of brief that improperly refer to evidence outside of record), *review denied* (Minn. May 16, June 14, 1995).

Affirmed, motion granted.