STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1858

State of Minnesota,
Respondent,

vs.

Elton James Curtis,
Appellant.

Filed November 20, 2017
Affirmed
Ross, Judge

Cass County District Court
File No. 11-CR-14-2002

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Barbara J. Harrington, Cass County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna M. Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

While Elton Curtis faced trial for repeatedly sexually abusing his daughter, the district court judge viewed in camera confidential records about the child to determine if

they contained any information relevant to Curtis's defense. The judge asked Curtis whether he thought her reading the records presented a potential conflict of interest precluding her from serving as the fact-finder at Curtis's bench trial. Curtis maintained that no conflict existed. He was convicted of multiple counts of criminal sexual conduct and now argues that the judge was required to recuse herself. Because rule 26.03 of the Rules of Criminal Procedure did not require the district court judge to sua sponte recuse herself, we affirm.

FACTS

The state charged Elton Curtis with six counts of criminal sexual conduct after Curtis's teenage daughter, M.M., was hospitalized for suicidal behavior and reported that Curtis had sexually assaulted her when she was seven years old. Many of M.M.'s county, facility, and school records were confidential. Curtis filed a "*Paradee* motion," asking the district court to examine the confidential records in camera and disclose any that were relevant to Curtis's defense. *See State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987) (ruling that criminal-sexual-conduct defendants may seek in-camera examination of confidential records and provide any relevant records to the parties). The district court granted Curtis's motion and examined the confidential records, turning some, but not all, over to the parties.

Curtis informed the court that he intended to waive his right to a jury and proceed to a bench trial. The district court judge commented about her in-camera examination of M.M.'s records: "It does raise the question whether or not a *Paradee* review raises a conflict for me to be the fact finder. I don't think it's a direct conflict, but it's at least a

potential one and is worth considering before we set the trial date." Curtis responded that the district court's access to the confidential information did "[not] preclude the Court from hearing a court trial." The judge agreed that she was not precluded.

Curtis expressly waived his right to a jury trial the following month. The district court confirmed that Curtis understood that waiving his right to a jury trial meant that the judge alone would find whether he was guilty. The district court reconfirmed that Curtis understood that the judge had seen the confidential records, and Curtis assured the court that he had had ample opportunity to discuss with his attorney the advantages and disadvantages of waiving his right to a jury trial.

The case proceeded to a bench trial, during which M.M. testified that Curtis forced her to engage in vaginal or oral sex with him on three occasions when she was seven years old. The state introduced a therapist's letter revealing that Curtis had admitted during his hospitalization for suicidal behavior that he had twice fondled M.M.'s breasts and vagina when she was three years old. The district court found Curtis guilty of two counts of criminal sexual conduct in the first degree and two counts in the second degree. It sentenced him to 234 months in prison. Curtis appeals.

D E C I S I O N

Curtis challenges his conviction and seeks a new trial on the theory that the district court judge had a duty to recuse herself after she saw M.M.'s confidential records. He argues this for the first time on appeal, so we review the judge's allegedly erroneous failure to recuse only for plain error. *See State v. Schlienz*, 774 N.W.2d 361, 365 (Minn. 2009). In a plain-error review, the appellant must establish that an error occurred, that the error was

plain, and that the error affected his substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If he meets each of these elements, we will decide whether reversal is necessary to ensure the fairness and integrity of the judicial proceedings. *Id.* Curtis's challenge fails on the first element because he does not establish that his trial was infected with any error.

The error here, Curtis contends, was the district court judge's failure to remedy her supposed partiality by recusing herself. A judge must disqualify herself from any proceeding in which her "impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A); Minn. R. Crim. P. 26.03, subd. 14(3) (prohibiting a judge from presiding over a trial "if [that judge is] disqualified under the Code of Judicial Conduct"). We review de novo whether a judge has violated the Code of Judicial Conduct. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). Curtis argues that procedural rule 26.03, which incorporates judicial code 2.11(A), required the judge to recuse herself after she conducted her records examination in response to Curtis's *Paradee* motion. The argument lacks force.

We begin on the presumption of judicial impartiality. That is, we presume, among other things, that the district court judge "will set aside collateral knowledge and approach cases with a neutral and objective disposition." *Dorsey*, 701 N.W.2d at 248–49 (quotations omitted). This presumption must exist because judges who administer bench trials often examine and then reject evidence on the ground that it is unduly prejudicial to the defendant. The presumption shoulders Curtis with the burden to point to evidence of the judge's favoritism or antagonism. *See State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008).

The judge's exposure to records that she deemed irrelevant and inadmissible—records fairly described as collateral knowledge—therefore cannot by itself require her sua sponte recusal. And as a practical matter we add that, if this were not so, any criminal-sexual-misconduct defendant could effectively disqualify the presiding judge on the eve of trial simply by bringing a *Paradee* motion and waiving his right to a jury. Curtis must point to something more than the judge's exposure to irrelevant records that she observed during her *Paradee* records examination.

Curtis argues that the district court's initial comments regarding her *Paradee* review rebut the presumption of her impartiality. We reject the argument because we believe that Curtis misreads the import of the judge's comments. The context informs us that the judge was contemplating the procedural and ethical rules when she raised the potential concern about her presiding at a bench trial after having seen the confidential information not disclosed to either party. If, as Curtis implies, the judge was suggesting that she could not serve as an impartial fact finder because the information biased her against him, the judge would have been bound to disqualify herself sua sponte under those rules. But the judge did not disqualify herself, and she emphasized instead that this is not a case requiring her "automatic preclusion." In the judge's own words, she was merely "rais[ing] the question" of preclusion. In context, the comments inform us that the district court intended only to invite the parties to address the legal question of recusal in this procedural setting. And the record reveals that, at this invitation, both counsel assured the district court with analogies to similar procedural situations that her recusal was unnecessary. We see no legal error.

We are not persuaded otherwise by Curtis's urging that the district court judge "repeatedly" stated her supposed concerns about her alleged impartiality. Curtis cites to one other portion of the record, the discussion when Curtis waived his right to a jury trial. Again context defeats Curtis's argument. The district court raised the matter this second time only to test the validity of Curtis's jury-trial waiver, not to declare that a bench trial would be tainted by judicial partiality. A defendant's waiver of his right to a jury trial must be knowing, intelligent, and voluntary. *State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011). A defendant may waive his right to a jury only after being advised of the right and after having had an opportunity to consult with counsel. Minn. R. Crim. P. 26.01, subd. 1(2)(a) (2016). In the portion of the record cited by Curtis, the district court sought to confirm that Curtis had ample opportunity to consult with counsel about a bench trial particularly in light of the district court's viewing of confidential records. The district court was simply confirming that Curtis's waiver of his right to a jury trial was knowing, intelligent, and voluntary.

We are satisfied that the district court judge did not call her impartiality into question or exhibit any favoritism or antagonism toward either party. Curtis has failed to identify any error by the district court's presiding over his bench trial.

Affirmed.