**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-0568**

State of Minnesota,
Respondent,

vs.

Stanley Paul Wenell-Jack,
Appellant.

**Filed May 11, 2020**
**Affirmed**
**Bratvold, Judge**

Koochiching County District Court
File No. 36-CR-17-592

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Bryan, Judge.

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

**BRATVOLD**, Judge

In a direct appeal from his final judgment of conviction for third-degree controlled-substance possession, appellant argues that the district court abused its

discretion when it denied his motions to reopen the omnibus proceedings based on the state's late disclosure of evidence. Appellant also raises two other challenges in his pro se supplemental brief. Because the district court did not abuse its discretion in denying appellant's motions to reopen, and because appellant's other challenges lack merit, we affirm.

## FACTS

In August 2017, law enforcement obtained a warrant authorizing a search of appellant Stanley Wenell-Jack, room 11 in an International Falls motel, and a 1998 black Honda Civic. The warrant application included information about the suspected sale and use of methamphetamine at the motel from concerned citizens, law enforcement surveillance, and two confidential reliable informants (CRI), among other sources.

Upon executing the search warrant and entering room 11, law enforcement encountered Wenell-Jack inside the room. During their search, police discovered an "open and unlocked" safe containing (a) $3,914 in cash, (b) the Honda Civic's title, and (c) two baggies containing almost four grams of a substance later tested and found to be methamphetamine. Also during the search, police seized (d) packaging material, (e) drug paraphernalia, (f) a digital scale, (g) a baggie of marijuana, (h) two tablets of Lorazepam, a controlled substance, (i) the keys and title to a 2001 Pontiac Grand Am, (j) the keys to a 1993 Lincoln Continental, and (k) a third baggie containing about ten grams of a substance later tested and found to be methamphetamine. The state charged Wenell-Jack with second-degree controlled-substance sale (count one), in violation of Minn. Stat. § 152.022,

subd. 1(1) (2016), and fifth-degree controlled-substance possession (count two), in violation of Minn. Stat. § 152.025, subd. 2(1) (2016).

Wenell-Jack moved to dismiss the complaint, challenging probable cause, and he moved to suppress evidence seized during the execution of the search warrant, arguing that the warrant was vague, that no nexus existed between Wenell-Jack and room 11, the search exceeded the scope of the warrant, and the search was otherwise "illegal." Wenell-Jack also moved to suppress statements he made to law enforcement after his arrest, arguing that police had interrogated him without giving a *Miranda* warning.

At the September 2017 omnibus hearing, the state conceded that police had taken Wenell-Jack's statements in violation of *Miranda* and agreed the statements should be suppressed. The parties offered no evidence at the omnibus hearing and later filed written submissions on the remaining issues. At an October 2017 hearing, Wenell-Jack asked to discharge his public defender. After inquiring, the district court discharged the public defender and granted Wenell-Jack's motion to proceed pro se. Later that month, Wenell-Jack filed new motions, often in detailed handwritten letters to the district court, raising additional issues and challenging the warrant on grounds like those raised in his initial omnibus motions.

In December 2017, the district court issued two orders. First, the district court appointed Wenell-Jack advisory counsel. Second, the district court denied Wenell-Jack's motions to dismiss and suppress evidence, and upheld the search warrant. Then, in early January 2018, Wenell-Jack filed new motions to dismiss, to suppress evidence, and raised two discovery-related issues. Wenell-Jack also moved for a hearing in the same filing,

relying on *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978).[1] Wenell-Jack argued that police obtained the search warrant in "bad faith" because the supporting affidavit contained "material misrepresentations, falsehoods, and omissions of fact."

The district court considered Wenell-Jack's new motions in a third written order in early January. The order denied the two discovery motions and reserved all other challenges.[2] In late January, the district court issued a fourth order, denying Wenell-Jack's motion for a *Franks* hearing because it was untimely and lacked any supporting affidavits showing law enforcement obtained the search warrant under false pretense. The late January order also considered and denied all other pending motions in Wenell-Jack's correspondence to the court, after determining that the district court had addressed the issues in previous orders.

In April 2018, Wenell-Jack moved to suppress evidence, to compel the state to disclose the identities of two CRIs, for other discovery related to the search warrant, for in limine rulings, and for reconsideration of omnibus rulings. In late April, the district court denied all of these motions.

At a May 2018 hearing, Wenell-Jack, with help from advisory counsel, waived his right to a jury trial and agreed to submit the charges in a stipulated-facts trial so that he

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[1] The Minnesota Supreme Court has held that "[w]hen a defendant seeks to invalidate a warrant, the two-prong *Franks* test requires a defendant to show that (1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination." *State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (quotation omitted).

[2] The district court denied Wenell-Jack's discovery motions to (1) return personal property being held as evidence, and (2) disclose the identity of one CRI.

could obtain appellate review of the district court's omnibus rulings. *See* Minn. R. Crim. P. 26.01, subd. 4. As part of the stipulated-facts trial, the state agreed to dismiss count two, fifth-degree controlled-substance possession, and to proceed only on count one, second-degree controlled-substance sale, with a lesser-included offense of third-degree controlled-substance possession, Minn. Stat. § 152.023, subd. 2(a)(1) (2016). On June 21, the district court issued a written order finding Wenell-Jack guilty beyond a reasonable doubt and convicting him of second-degree controlled-substance sale.

Wenell-Jack moved for a new trial. At a July 17 hearing on the motion, Wenell-Jack claimed that the state had included evidence in its stipulated-evidence submission that it had not disclosed before, specifically, three supplemental police reports. After a long discussion on the record, the district court said, "We don't know as a matter of fact [the reports] were ever disclosed to the defense," although it was "likely they were, but we don't know that at this point." The court then acknowledged that a stipulated-facts trial requires that "both parties, in particular the defendant, agree to what is being submitted to the Judge," and "not just agree that it's going in on stipulated evidence."[3] Because the parties disagreed about the submitted evidence, the district court granted Wenell-Jack's motion for a new trial. After the hearing, the district court confirmed its oral ruling in a written order that vacated the conviction, ordered the state to disclose discovery, and reset the case for a pretrial conference before a different judge.

[3] During the same hearing, Wenell-Jack asked the district court to reopen omnibus proceedings, but the district court reasoned that it had previously determined the search-warrant issues and denied this request on the record.

While awaiting a new trial, Wenell-Jack moved to compel the state to provide discovery; in response, the state disclosed 64 pages of written discovery on the same day Wenell-Jack filed his written motion. The district court denied Wenell-Jack's discovery motion as moot three days later, and stated that, if Wenell-Jack found additional grounds to compel discovery, he should file a new motion describing the discovery he believed to be missing.

Wenell-Jack filed another discovery motion about three weeks later. During a hearing in September, Wenell-Jack challenged the search warrant again, while also claiming that he was missing discovery from the state, without describing or identifying what he believed was missing. The district court ultimately took the search-warrant challenges and the newly raised discovery issues under advisement. In an October 2018 written order, the district court found that the state had corrected any discovery violations, and Wenell-Jack had not been prejudiced because the trial date had been continued. The district court also found that the state's late-disclosed evidence did not "negate the validity of the search warrant" and ruled the search-warrant application and the warrant itself were valid. Finally, the order clarified that the district court had addressed all other requests in previous orders and reaffirmed the denial of any repeat motions.

At the pretrial hearing in December 2018, Wenell-Jack waived his right to a jury trial, and the parties again agreed to submit the case to the district court in a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4, on the amended charge of third-degree

controlled-substance possession under Minn. Stat. § 152.023, subd. 2(a)(1).[4] In a written order filed January 10, 2019, the district court found Wenell-Jack guilty beyond a reasonable doubt and convicted him of third-degree controlled-substance possession. At a sentencing hearing, the district court imposed a 45-month executed prison sentence.

Wenell-Jack appeals. Although the state did not file a brief, the appeal proceeds on the merits under Minn. R. Civ. App. P. 142.03.

## D E C I S I O N

### I. The district court did not abuse its discretion when it denied Wenell-Jack's motions to reopen the omnibus proceedings after the state disclosed additional discovery.

We review a district court's decision on whether to reopen omnibus proceedings for an abuse of discretion. *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002). Reopening omnibus proceedings "is justified in order to give [a party] a full and fair opportunity to meet its burden of [proof]," for example, when a party raises new issues after the hearing. *State v. Needham*, 488 N.W.2d 294, 296-97 (Minn. 1992) (concluding that reopening omnibus proceedings was necessary so state could present additional evidence because it lacked notice of defendant's challenge to adequacy of *Miranda* warning).

During Wenell-Jack's first stipulated-facts trial, the state included three supplemental police reports in its submission that Wenell-Jack claimed had never been disclosed to him. Wenell-Jack's new-trial motion challenged the state's discovery

[4] The state dismissed count two, fifth-degree controlled-substance possession, at the onset of the first stipulated-facts trial.

violation, leading the district court to vacate his conviction and grant a new trial. Before the second trial began, the state disclosed additional discovery. During these proceedings, Wenell-Jack twice moved to reopen the omnibus proceedings, making arguments similar to those he made before the first stipulated-facts trial. The district court denied Wenell-Jack's motions to reopen and Wenell-Jack now argues that the district court abused its discretion.

Despite our careful review of the record, we cannot determine what new issue Wenell-Jack sought to raise during reopened omnibus proceedings, or on what basis Wenell-Jack claims the late-disclosed evidence affected the earlier omnibus rulings. It is true that the state must disclose "[a]ll material and information to which a party is entitled . . . in time to afford counsel the opportunity to make beneficial use of it." Minn. R. Crim. P. 9.03, subd. 2(a). And if a party violates a discovery rule, the district court "may, on notice and motion, order the party to permit the discovery, grant a continuance, or enter any order it deems just in the circumstances." *Id.*, subd. 8.

We conclude that the district court did not abuse its discretion in denying Wenell-Jack's motions to reopen for three reasons. First, the district court remedied any discovery violations after the first trial and before the second trial. The district court vacated Wenell-Jack's first conviction, granted a new trial, and continued the second trial date to give Wenell-Jack time to review the state's additional discovery. Second, Wenell-Jack has not shown that he was prejudiced by the state's discovery violations in any way not remedied by the district court. We will reverse a conviction based on a discovery violation, but only if appellant shows resulting prejudice from that violation. *State v. Jackson*, 770 N.W.2d

470, 479 (Minn. 2009). Third, the district court found that the state's late-disclosed evidence is not relevant to the issues raised at Wenell-Jack's omnibus hearing. The record supports the district court's determination, and Wenell-Jack does not challenge this determination on appeal. We affirm the district court's denial of Wenell-Jack's motions to reopen the omnibus proceedings.

## II. Wenell-Jack's pro se arguments lack merit.

In his pro se appellate brief, Wenell-Jack contends that the state's discovery violations were both a *Brady* violation and prosecutorial misconduct. He also argues that the prosecuting attorney made statements amounting to unprofessional conduct. We consider each issue in turn.

### A. *Brady* violation

Wenell-Jack argues that the state's discovery violation included the failure to disclose exculpatory evidence. The state has an affirmative duty in criminal cases to "disclose evidence that is favorable and material to the defense" and a failure to do so is often called a "*Brady* violation." *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963); *State v. Williams*, 593 N.W.2d 227, 234 (Minn. 1999). To establish a *Brady* violation, appellant must show:

> (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching;
> (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and
> (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

*Zornes v. State*, 903 N.W.2d 411, 417 (Minn. 2017) (quotation omitted). "Because a *Brady* materiality analysis involves a mixed question of law and fact, [appellate courts] review a district court's materiality determination de novo." *Id.* (quotation omitted).

While Wenell-Jack has shown that the state withheld evidence, he has *not* shown that the state withheld evidence favorable or material to the defense. Wenell-Jack's brief to this court fails to identify specifically which part of the late-disclosed evidence he contends is favorable or exculpatory and we cannot discern it. But, as discussed above, the state's discovery violations were remedied; thus, even if we assume that the state disclosed exculpatory evidence late, Wenell-Jack received the evidence before his second trial. Therefore, we conclude that Wenell-Jack's *Brady*-violation claim fails.

**B. Prosecutorial misconduct**

Wenell-Jack appears to argue that the prosecuting attorney made prejudicial statements and therefore committed prosecutorial misconduct. When an appellant has not objected during trial, we review a claim of prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The appellant bears the burden of establishing plain error. *Id.*

Wenell-Jack's brief to this court does not identify which of the prosecuting attorney's statements or acts amounted to misconduct. Instead, he generally claims that the state "did engage in unprofessional conduct." An appellant forfeits an assignment of error that is based on "mere assertion" and unsupported by argument or authority "unless prejudicial error is obvious upon mere inspection." *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015); *see also State v. Beaulieu*, 859 N.W.2d 275, 278 (Minn. 2015) (holding

an appellant forfeits an alleged error when failing to timely assert it). We discern no obvious errors based on our review. If Wenell-Jack is again referring to the state's late discovery, we have addressed that issue above.

**Affirmed.**