STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0143

State of Minnesota,
Respondent,

vs.

Steven Edward Hansmann,
Appellant.

Filed December 27, 2022
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-CR-20-1419

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

Michael O. Freeman, Hennepin County Attorney, Anna R. Light, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

John L. Lucas, Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from the judgment of conviction for possession of a firearm by an ineligible person, appellant raises the following three arguments: (1) the trial evidence was insufficient to support his conviction because his stipulation of prior conviction did

not establish that his prior conviction was for a crime of violence; (2) the prosecutor committed misconduct by eliciting improper testimony from its witness and referring to the testimony in closing arguments; and (3) the district court erred in concluding that there was probable cause to issue a search warrant for appellant's residence. We affirm.

FACTS

Appellant Steven Edward Hansmann was charged with three counts of possession of a firearm or ammunition by an ineligible person and one count of fifth-degree controlled substance possession after a warrant was executed on his residence. Investigating law enforcement officers received information from a concerned citizen who suspected that Hansmann was selling methamphetamine from his residence. Officers examined the trash left for collection outside the residence and recovered two plastic bags containing methamphetamine residue, a vape cartridge containing THC, and mail addressed to Hansmann. The next day officers sought and obtained a search warrant for the residence. Officers executing the warrant located and retrieved methamphetamine, boxes of ammunition, and multiple firearms from the residence. Specifically, in the basement of the residence, law enforcement officers recovered boxes of ammunition from on top of a green safe along with several firearms and ammunition from inside the green safe. In the garage area of the basement, law enforcement officers recovered a small amount of methamphetamine hidden inside a bolt.

Sergeant Michael Teneyck from the City of New Hope Police Department conducted a *Mirandized* interview of Hansmann. During the interview, Hansmann admitted to sleeping in an upstairs bedroom and on a couch in the basement of the

residence. Hansmann also admitted to past methamphetamine use and that the methamphetamine found inside the bolt belonged to him. Hansmann described each of the firearms recovered from inside the safe and stated that he owned three of the firearms. He further stated that he had moved the green safe knowing it contained firearms and that he was aware of the ammunition on the top of the safe. Hansmann admitted that he was prohibited from possessing firearms or ammunition.

Hansmann filed a motion to suppress the evidence obtained from the search, arguing that the search warrant lacked probable cause. The district court denied the motion to suppress. At a pretrial conference, Hansmann stipulated to an essential element of the charged offense, agreeing that on all relevant dates he was ineligible to possess a firearm:

> THE COURT: Okay. All right. Let's start with the stipulation. Let me explain. Okay. Mr. Hansmann, you are charged with possessing ammunition or a firearm while ineligible. What I do at the beginning of the case is I read a summary of the complaint. And that charge alleges that on or about January 14, 2020, in Hennepin County, Minnesota, Steven Edward Hansmann possessed ammunition or a firearm. And Steven Edward Hansmann has been convicted or adjudicated delinquent in this state or elsewhere of a crime of violence for which the sentence expired on or after August 1, 1993.
>
> Now, in order to -- typically defendants do not want the jury to know that you have a previous conviction. Okay? So the way that it has been handled in the past is that the parties stipulate to your previous conviction so that the jury doesn't hear it. If you stipulate to your previous conviction, I will -- instead of saying -- or describing the charge as possessing ammunition or a firearm conviction or adjudicated delinquent for crime of violence, I would just describe the charge as possessing a firearm or ammunition while ineligible. Okay?
>
> Now, the stipulation would say, "On all relevant dates defendant was ineligible to possess a firearm or ammunition,

> and defendant was convicted of ineligible person in possession of a firearm on June 16, 2016, in Stearns County, Court File Number 73-CR-13-7926." And that way the jury will not be told that you have a previous conviction for a crime of violence. And I would only say that you were -- the charge was that you were possessing a firearm or ammunition while ineligible. Is that something that you want to do? Enter into the stipulation?
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> THE DEFENDANT: Yes, Your Honor.

Hansmann also stated he had discussed the stipulation with his attorney, and the district court continued with the following waiver of Hansmann's right to a jury trial on the stipulated element of the offense:

> THE COURT: And, Mr. Hansmann, do you give up your right to have a jury decide whether or not you have had a prior conviction of possessing a firearm or ineligible – while ineligible?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay. And you also give up the right to have the State prove the prior conviction; correct?
>
> THE DEFENDANT: Yes.

The case proceeded to trial and the state presented photographs depicting the items recovered and their location as well as testimony regarding the investigation and execution of the search warrant. The state also elicited testimony from Teneyck regarding the *Mirandized* interview with Hansmann. Specifically, Teneyck stated that Hansmann asked him "who set me up?" Hansmann objected to this answer, but the district court overruled the objection. In the closing argument, the prosecutor referenced this answer before concluding that Hansmann knowingly possessed the ammunition and firearms:

> He's charged with one count of possessing a firearm and two counts of possessing ammunition. He had 40 boxes and 10 firearms. You just need to find him guilty of one of those firearms and two of those counts of ammunition. Lastly, I want to remind the jury what [Hansmann] told Sergeant Teneyck: Who turned me in? [Hansmann] knew he possessed these 10 firearms and 40 boxes of ammunition. This is a very straightforward case. And, for those reasons, I'm asking you to convict [Hansmann] of all four counts. Thank you.

In addition, at one point during the rebuttal argument, the prosecutor referenced this answer once again:

> And, lastly, I want to remind you—[Hansmann] was cooperative. He was cooperative because he was caught. He was caught with 10 firearms and 40 boxes of ammunition in the place he resided. He was cooperative. He said, yeah, three of those guns, I own; six were from my father; one was from my niece. And that is my green safe. And, at the end of the interview, you heard him—
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> DEFENSE COUNSEL: Your Honor, I object and ask to approach.
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> THE COURT: No. You may continue.
>
> PROSECUTOR: Thank you, Your Honor. He indicated that someone had set him up. That's how [Hansmann] ended his interview. [Hansmann] possessed ten firearms in that green safe. I would submit to you—he certainly had access to that safe. But, even if you believe he didn't, even if you believe, yep, he gave the access code to his mom and brother, and he was trying to do the right thing—that's still not—possession. It's irrelevant.

Hansmann, through his attorney, moved for a mistrial based on alleged prosecutorial misconduct. The district court denied the request for a mistrial, and the jury found Hansmann guilty of all four counts.

At sentencing, the district court sentenced Hansmann to an executed sentence of 60 months for unlawful possession of a firearm and an executed sentence of 21 months for fifth-degree possession of a controlled substance, to be served concurrently. The district court did not address counts two or count three because it determined that these convictions involved the same behavioral incident as the conduct in count one. Hansmann appeals.

DECISION

I. Sufficiency of the Evidence Regarding Hansmann's Prior Conviction

Hansmann challenges the sufficiency of the evidence to establish proof that he had a prior crime of violence. We conclude that because Hansmann stipulated to this essential element, he is unable to challenge the sufficiency of the evidence presented to establish that element.[1]

To establish guilt for the felony charged at count one, unlawful possession of a firearm under Minnesota Statutes section 624.713, subdivision 1(2) (2022), the state must prove that the defendant was previously convicted of a crime of violence and that after the conviction for a crime of violence, the defendant possessed a firearm. "[A] prior conviction is an element which the state must prove at trial and which defendant has a right to have a jury decide." *State v. Kuhlmann*, 806 N.W.2d 844, 849 (Minn. 2011) (quotation omitted); *see also State v. Gilbert,* A20-0530, 2021 WL 668011, at *3 (Minn. App. Feb. 22, 2021), *rev. denied* (May 18, 2021) (analyzing the prior conviction for a crime of violence as a

[1] Hansmann makes no argument that he did not actually have a prior conviction for a crime of violence, that the facts contained in the stipulation were otherwise inaccurate, or that the jury instructions were erroneous.

distinct element). A defendant, however, "may agree to waive a jury determination of a particular element of the offense by stipulating to it." *State v. Hinton*, 702 N.W.2d 278, 281 (Minn. App. 2005), *rev. denied* (Minn. Oct. 26, 2005). We review de novo the nature and operative effect of these stipulations and waivers. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *rev. denied* (Minn. June 18, 2002).[2]

Before trial, Hansmann agreed to stipulate that he had a prior conviction for a crime of violence. Hansmann also agreed that the statement regarding this stipulation that would be read to the jury would not specify that his prior conviction was a crime of violence so that the jury would "not be told that [Hansmann had] a previous conviction for a crime of violence." Hansmann now argues that the statement regarding his stipulation that was provided to the jury contained insufficient facts to support his conviction because the stipulation made no reference to a crime of violence. We are not convinced by this argument. Once Hansmann stipulated to having a previous conviction for a crime of violence and that the jury would not be informed of this prior crime of violence, the element of proof in question was removed from the case; the state had no burden to present evidence relating to this element. *E.g.*, *State v. Berkelman*, 355 N.W.2d 394, 397 n.2 (Minn. 1984) ("By judicially admitting the existence of the element of the prior conviction, the defendant

[2] Hansmann directs us to cases regarding sufficiency of trial evidence, which we typically review under a deferential standard. *See, e.g.*, *State v. Wright*, 679 N.W.2d 186, 189 (Minn. App. 2004) (noting that we "view the evidence in the light most favorable to the conviction," and limit our review "to a careful analysis of the evidence to determine whether the jury . . . could reasonably find defendant guilty"), *rev. denied* (Minn. June 29, 2004). This deferential standard of review does not apply here because Hansmann's argument concerns the nature and effect of the stipulation, not sufficiency of evidence.

removes that issue from the case.") Given the nature and operative effect of the stipulation, Hansmann cannot now challenge the sufficiency of the evidence presented to the jury regarding this element.[3]

II. Assertion of Prosecutorial Misconduct

Hansmann argues that the state committed misconduct by eliciting inadmissible testimony and referencing this testimony during closing arguments. We conclude that, assuming without deciding that the prosecutor committed misconduct, any errors were harmless beyond a reasonable doubt.

When, as here, defense counsel objects to the alleged instances of misconduct, appellate courts have applied one of two standards of prejudice, depending on the severity of the asserted misconduct. *See State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974) (holding that for claims of serious prosecutorial misconduct, appellate courts determine whether the misconduct was harmless beyond a reasonable doubt, but for less serious

[3] We acknowledge that the waiver accompanying the stipulation did not comport with Minnesota Rules of Criminal Procedure 26.01 because it did not include all of Hansmann's trial rights. However, we do not construe Hansmann's argument as challenging the validity of the waiver accompanying the stipulation. Moreover, we observe that such an argument would not prevail given that the state could have easily proved the prior conviction for a crime of violence and because Hansmann understood how he would benefit from the stipulation, made no objection at the time of the stipulation, concedes the existence of the prior conviction for a crime of violence, and does not explain how any error regarding the accompanying waiver affected his substantial rights. *See, e.g.*, *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998) (concluding that the appellant bears the "heavy burden" of persuasion on the issue of whether an error affected the appellant's substantial rights); *Kuhlmann*, 806 N.W.2d at 844, 853 (concluding that the district court's failure to obtain a personal waiver of the defendant's jury trial rights when accepting the defendant's stipulation of prior conviction did not amount to plain error because it did not affect the defendant's substantial rights).

prosecutorial misconduct, appellate courts determine whether the misconduct likely played a substantial part in influencing the jury to convict). Since *Caron*, however, the Minnesota Supreme Court decided *State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006), and *State v. Swanson*, 707 N.W.2d 645, 658 (Minn. 2006). As a result, the "continued viability of the two-tiered approach set forth in *State v. Caron* . . . remains to be decided." *State v. McCray*, 753 N.W.2d 746, 754 n.2 (Minn. 2008); *see also State v. Whitson*, 876 N.W.2d 297, 304 n.2 (Minn. 2016) (listing cases questioning whether the two-tiered standard "remains viable"); *State v. Graham*, 764 N.W.2d 340, 348 (Minn. 2009) (noting that the Minnesota Supreme Court has "yet to decide whether the two-tiered approach for objected-to prosecutorial misconduct as set forth in *State v. Caron* remains viable").

In deciding the impact of the challenged conduct, this court considers "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it." *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002); *see also State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003) (holding that a statement did not amount to misconduct because "[t]he improper statement was only two sentences in a closing argument that amounted to over 20 transcribed pages."); *State v. Glaze*, 452 N.W.2d 655, 662 (Minn. 1990) (holding that alleged prosecutorial misconduct in closing arguments did not require a new trial because "the remarks were isolated and not representative of the closing argument when reviewed in its entirety"); *State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (concluding that alleged prosecutorial misconduct was not prejudicial in part because the jury was properly instructed that remarks made by the attorneys in closing were not evidence). Assuming

without deciding the presence of misconduct, we conclude that the state has established that the misconduct was harmless beyond a reasonable doubt.[4]

Hansmann first argues that it was improper for the state to elicit testimony from Teneyck that during an interview with Hansmann after the search warrant was executed, Hansmann asked Teneyck "who set [him] up?" Assuming without deciding that this questioning constitutes misconduct, it was harmless. The state spent a majority of its time questioning Teneyck about other statements Hansmann made during the interview, and the examination of Teneyck comprises more than 100 transcribed pages. The state also presented testimony from other witnesses besides Teneyck, and Hansmann's counsel had the opportunity to counter this question and answer through cross-examination of Teneyck and through presentation of other evidence. We also observe that there was nothing out of the ordinary regarding the manner in which the state asked this question during the examination of Teneyck. Finally, Hansmann did not object to and makes no assertion of error on appeal regarding the other incriminating admissions that Hansmann made during this interview, also testified to by Teneyck. For example, Hansmann admitted to staying at the residence in question, knowing that the green safe contained each of the firearms recovered from inside the safe, moving the safe while it contained firearms, and being aware of the ammunition found on the top of the safe. For each of these reasons, the admission of evidence that Hansmann asked Teneyck "who set me up" was harmless beyond a reasonable doubt.

[4] Given this determination, we need not address the continued viability of the two-tiered approach.

Hansmann also argues that the prosecutor committed misconduct in its closing arguments by referencing the fact that Hansmann asked this question. Again, we are not convinced. The prosecutor mentioned Hansmann's question in a few lines towards the conclusion of a lengthy closing argument, and at one point in the middle of the rebuttal argument. The manner in which the reference was made was not out of the ordinary and given the balance of the arguments, it was not highly emphasized by the prosecutor. In addition, Hansmann's counsel had the opportunity to counter the prosecutor's statement during defense counsel's closing argument. Finally, as noted above, given the other evidence admitted at trial that Hansmann does not challenge, we conclude that the state established that any errors in closing arguments were harmless beyond a reasonable doubt.

III. Denial of Hansmann's Motion to Suppress Evidence

Hansmann argues that the search warrant in this case lacked probable cause because the affidavit contained vague and stale information. We conclude that the issuing court had a substantial basis to determine that probable cause existed.

When determining whether a search warrant is supported by probable cause, we do not engage in a de novo review. *State v. Papadakis*, 643 N.W.2d 349, 355 (Minn. App. 2002). Rather, giving great deference to the issuing judge's finding of probable cause, we limit our review to ensuring that the issuing judge had a substantial basis for concluding that contraband or evidence of a crime will be found in the location to be searched. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001); *see also State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999); *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995); *Papadakis*, 643 N.W.2d at 355. Reviewing courts look for "a direct connection, or nexus, between the

alleged crime and the particular place to be searched, particularly in cases involving the search of a residence for evidence of drug activity." *State v. Souto*, 578 N.W.2d 744, 747-48 (Minn. 1998). Moreover, the information upon which a search warrant is based "must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time," *Id.* at 750 (citing *Sgro v. United States*, 287 U.S. 206, 210 (1932)), although courts decline to adopt rigid timelines to determine whether search warrant has grown stale, *State v. Jannetta*, 355 N.W.2d 189, 193 (Minn. App. 1984), *rev. denied* (Minn. Jan. 14, 1985).

In this case, the affidavit accompanying the warrant application detailed the affiant's surveillance of the residence, a tip provided by a concerned citizen, efforts that the affiant undertook to verify the information received by the concerned citizen, Hansmann's prior criminal history, and the results of a search of trash obtained from the residence. The trash included a plastic bag, which tested positive for methamphetamine, a vape cartridge which tested positive for THC, and a piece of mail addressed to Hansmann.

Furthermore, based on the nature of the information obtained from the informant and the efforts to corroborate it, investigating officers believed that Hansmann engaged in ongoing criminal conduct: selling drugs from his residence. The examination of trash from the residence occurred one day before Teneyck signed the search warrant affidavit. Given the nature of the suspected criminal conduct and the timing of the submission of the warrant application, this evidence is sufficient to support the issuing court's probable cause determination. *See Papadakis*, 643 N.W.2d at 356 (affirming denial of a suppression motion on the basis that the search warrant affidavit stated that within 72 hours of signing

the affidavit, investigating officers recovered trash containing cocaine residue); *State v. Dyer*, 438 N.W.2d 716, 719 (Minn. App. 1989) (affirming denial of a suppression motion because, according to the search warrant affidavit, law enforcement officers suspected ongoing narcotics sales based on information obtained nine days before the affidavit was signed), *rev. denied* (Minn. June 9, 1989).

Finally, the information voluntarily provided by the concerned citizen is presumed reliable, and when investigating officers verify the information, it can establish probable cause. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004); *State v. McGrath*, 706 N.W.2d 532, 541-42 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006). Here, portions of the information voluntarily provided by the concerned citizen were verified by investigating officers.

For these reasons, the affidavit accompanying the search warrant application provides a fair probability that evidence of a crime would be found at the residence, and the district court did not err by denying Hansmann's suppression motion.

Affirmed.