STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1037

State of Minnesota,
Respondent,

vs.

Peter Michael Schissel,
Appellant.

Filed April 19, 2011
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CR0928407

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and Crippen, 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

STONEBURNER, Judge

Appellant appeals from his conviction of stalking, arguing that the conviction was obtained by an invalid, unauthorized procedure that violated his constitutional right to trial. We affirm.

FACTS

Appellant Peter Schissel was charged with two counts of felony stalking his ex-wife. He agreed to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3. Schissel waived certain rights associated with trial as required by the rule, and the parties submitted written stipulated facts and three stipulated exhibits to the district court. The prosecutor informed the district court that the parties had agreed on a probationary sentence if the district court found Schissel guilty. The district court found Schissel guilty of one count of stalking in violation of Minn. Stat. § 609.749, subd 2(a)(6) (2008). The district court stayed imposition of sentence and placed Schissel on probation for three years. This appeal followed.

D E C I S I O N

On appeal, Schissel does not challenge the validity of his waiver of rights as required by Minn. R. Crim. P. 26.01, subd. 3, and does not allege ineffective assistance of counsel. Schissel notes that, on the record, he stated that he would like to have "all of the facts" presented to the district court, but on appeal does not claim that any relevant facts were omitted from the stipulated facts. Because one of the facts that he stipulated to was that the complaining witness's testimony "would be persuasive and could constitute proof

beyond a reasonable doubt," Schissel now claims that instead of a stipulated-facts trial, what actually occurred was a modified guilty plea in a form not authorized by the rules of criminal procedure, that deprived him of his constitutional right to a trial.

We review de novo the district court's interpretation of the Minnesota Rules of Criminal Procedure. *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). The rules of criminal procedure explicitly provide for a stipulated-facts trial. Minn. R. Crim. P. 26.01, subd. 3. An agreement to a stipulated-facts trial is not the same as a guilty plea. *State v. Mahr*, 701 N.W.2d 286, 291 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). In a stipulated-facts trial, a defendant does not concede guilt and may appeal from a judgment of conviction, raising any issues on appeal "as from any trial to the court." Minn. R. Crim. P. 26.01, subd. 3(e); *see also State v. Riley*, 667 N.W.2d 153, 157–58 (Minn. App. 2003) (comparing stipulated-facts trials under subdivision 3 with provision of subdivision 4 for trial on stipulation of the prosecution's case limited to obtaining review of a dispositive pre-trial ruling). The rule does not preclude a defendant from stipulating that a state's witness's testimony would be persuasive and could constitute proof beyond a reasonable doubt. And Schissel does not argue that he failed to understand any aspect of the proceeding or the import of the stipulations.

Schissel relies on *State v. Dalbec*, 781 N.W.2d 430, 436–37 (Minn. App. 2010), *review granted* (Minn. July 20, 2010), as support for his claim that his trial was not adversarial and therefore not constitutionally valid. But *Dalbec* did not involve a stipulated-facts trial and is distinguishable. *Id.* Dalbec's appeal asserted ineffective assistance of counsel that constituted structural error, based on his attorney's failure to

submit a closing argument after a bench trial. *Id.* at 433. The trial included circumstantial evidence of criminal sexual conduct, and this court concluded that sufficiency of the evidence could have been effectively argued in closing. *Id.* at 434–35. We held that, in the specific circumstances, counsel's failure to submit a final argument deprived Dalbec of legal representation at a critical stage of the trial and constituted structural error. *Id.* at 435. We specifically noted that the decision "should not be taken to suggest that counsel may never waive final argument." *Id.* In contrast, Schissel stipulated to waiver of final argument, and he does not claim ineffective assistance of counsel. His reliance on *Dalbec* is misplaced.

Schissel also cites *Brookhart v. James*, 384 U.S. 1, 6–7, 86 S. Ct. 1245, 1248 (1966), as authority for his argument that he was deprived of his constitutional right to a fair trial. But *Brookhart* involved an Ohio proceeding called a "prima facie trial," which only required the state to make a prima facie showing of guilt, while a defendant could not offer evidence or cross-examine the state's witnesses and did not require a defendant's personal waiver of rights associated with trial. *Id.* Minn. R. Crim. P. 26.01, subd. 3, adopted after *Brookhart*, does not reduce the state's burden of proof and specifically requires a defendant's personal waiver of certain rights. *See* Minn. R. Crim. P. 26.01. The holding in *Brookhart* is not applicable to and does not invalidate proceedings under rule 26.01.

Although the parties informed the district court that they had agreed on a sentence in the event of a finding of guilt, the district court explained to Schissel that it would not determine guilt until it examined the facts and applied the law. Schissel stated

unequivocally that he understood the process. The district court took the matter under consideration and issued a detailed order with specific findings on each element of the charge. We find no merit in Schissel's assertion that he did not have the type of trial authorized by Minn. R. Crim. P. 26.01, subd. 3.

Affirmed.