STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1835

State of Minnesota,
Respondent,

vs.

Nordame Williams,
Appellant.

Filed November 25, 2008
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 06049919

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Jean E. Burdorf, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Sara Lynne Martin, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Worke, 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

KLAPHAKE, Judge

Appellant Nordame Williams was convicted of possession of a firearm by an ineligible person after the district court denied his motion to suppress evidence and his case was then submitted to the court on stipulated facts under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). Appellant argues that the conviction should be vacated based on insufficient evidence to support the conviction. Because appellant stipulated to the facts supporting his conviction only to obtain appellate review of a pretrial ruling, he cannot challenge the sufficiency of the evidence to support his conviction, and we therefore affirm.

D E C I S I O N

This appeal results from the parties' apparent confusion over whether the district court treated proceedings on March 23, 2007 as a *Lothenbach* proceeding or a court trial on stipulated facts under Minn. R. Crim. P. 26.01, subd. 3. Appellant concedes that he intended that the case be submitted under *Lothenbach*, but he argues that the district court appeared to treat this case as a stipulated facts trial by including findings that stated the matter was "tried to the court based on testimony and evidence previously submitted at a Rasmussen Hearing . . .[,]" and by referring to rule 26.01 in determining timing issues.

In *State v. Riley*, 667 N.W.2d 153, 157-58 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003), this court held that a defendant's submission of his case under *Lothenbach*, precludes further review of sufficiency of evidence issues. There, we observed, however, that "continuing confusion [exists] over the distinction between a

stipulated-facts trial under Rule 26.01 and a stipulated-facts trial under *Lothenbach.*" *Id.* at 158. Following a trial on stipulated facts under rule 26.01, a defendant may raise any issue on appeal that is allowed from *any trial to the court*. Minn. R. Crim. P. 26.01, subd. 3. At the time of the *Riley* decision, the reach of this rule had not been specifically determined, and a comment to the rule referred to *Lothenbach*, possibly suggesting an interrelationship between the two types of proceedings. *See* Minn. R. Crim. P. 26.01 cmt. (stating that under the rule a denial of a motion to suppress evidence or other pretrial order may be preserved, referring to *Lothenbach*).

An amendment to rule 26.01, which took effect on April 1, 2007, just days after the proceeding at issue here, specifically addressed *Lothenbach* proceedings. The rule now provides that after a defendant waives the right to a jury trial, stipulates to the evidence, and concedes to a finding of guilt on that evidence, the defendant must also acknowledge that appellate review will be of the pretrial issue, "but *not of the defendant's guilt, or of other issues that could arise at a contested trial*." Minn. R. Crim. P. 26.01, subd. 4 (emphasis added).

We conclude that the proceedings here were consistent with a *Lothenbach* proceeding. The trial transcript shows that (1) appellant was advised both by his counsel and the court as to the rights he was waiving; (2) appellant acknowledged and agreed to the waiver; (3) appellant's attorney specifically advised him on the record that "it is assumed the court would be finding [him] guilty" of the charged offense and that the only dispositive issue that would remain was whether or not the police properly searched the vehicle; (4) appellant's attorney advised him that the appellate court would review only

the issue of whether police violated his constitutional rights in searching the vehicle; and (5) the district court advised appellant that the issue for the appellate court to address was the lawfulness of the vehicle search and explained that the *Lothenbach* trial would preserve that issue for appeal.

We also conclude that the law in effect at the time of appellant's conviction supports that he received a *Lothenbach* proceeding. Minnesota courts recognized a distinction between the *Lothenbach* procedure and a stipulated-facts trial under rule 26.01, even before the amendment of the rule. *Riley*, 667 N.W.2d at 158; *see In re Welfare of R.J.E.*, 642 N.W.2d 708, 711 (Minn. 2002). An appellant is not allowed to challenge the sufficiency of the evidence after a *Lothenbach* submission on stipulated facts because the *Lothenbach* procedure is used specifically to submit a case to the district court while "preserving pretrial issues for appeal." *Riley*, 667 N.W.2d at 157 (quotation omitted). The rationale for *Lothenbach* is to avoid the expense of a trial when facts are not in dispute, but a trial is necessary to obtain appellate review of a pretrial ruling. We conclude that appellant was convicted under *Lothenbach* for the sole purpose of preserving a pretrial search-and-seizure issue, which precludes our review of appellant's claim of insufficient evidence.

Affirmed.