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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1367**

State of Minnesota,
Respondent,

vs.

Spencer Joseph Cullen,
Appellant.

**Filed June 25, 2012
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CR-10-34772

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

Susan L. Segal, Minneapolis City Attorney, Jennifer Saunders, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Chutich, Judge; and
Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Spencer Joseph Cullen challenges his conviction of gross-misdemeanor harassment in violation of Minn. Stat. § 609.749, subd. 2(a)(2) (2008), arguing that his stipulated-facts trial was invalid under Minn. R. Crim. P. 26.01 and that his constitutional right to a fair trial was violated. We affirm.

DECISION

We review constitutional questions and interpretation of the rules of criminal procedure de novo. *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009) (reviewing de novo questions of constitutional law); *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005) (reviewing de novo interpretation of the rules of criminal procedure).

Minn. R. Crim. P. 26.01 specifically provides for a trial on stipulated facts:

The defendant and the prosecutor may agree that a determination of defendant's guilt . . . may be submitted to and tried by the court based on stipulated facts. Before proceeding, the defendant must acknowledge and personally waive the rights to: (1) testify at trial; (2) have the prosecution witnesses testify in open court in the defendant's presence; (3) question those prosecution witnesses; and (4) require any favorable witnesses to testify for the defense in court. The agreement and the waiver must be in writing or be placed on the record.

Minn. R. Crim. P. 26.01, subd. 3(a), (b).

Appellant argues that his stipulated-facts trial was invalid under Minn. R. Crim. P. 26.01, because it was, in effect, a guilty plea. Appellant concedes that he waived his right to a jury trial and the trial rights enumerated in rule 26.01, subdivision 3(a), and

concedes that he stipulated to the facts proffered by the state. But appellant argues that because the state's evidence "satisfied every element of the charged offense," it was conclusive of his guilt. We disagree.

A stipulated-facts trial under rule 26.01, subdivision 3, is not the equivalent of a guilty plea. *State v. Johnson*, 689 N.W.2d 247, 252-53 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005); *see also State v. Mahr*, 701 N.W.2d 286, 291 (Minn. App. 2005) (explaining that a *Lothenbach* proceeding, in which the district court told the appellant there was a "substantial likelihood" that he would be found guilty, was not the equivalent of a guilty plea), *review denied* (Minn. Oct. 26, 2005). In a stipulated-facts trial, a defendant does not concede guilt. *See* Minn. R. Crim. P. 26.01, subd. 3(a). The district court must give "due regard for the presumption of innocence" and may enter a guilty verdict if the evidence shows beyond a reasonable doubt that the defendant is guilty of the offense. *State v. Eller*, 780 N.W.2d 375, 380 (Minn. App. 2010), *review denied* (Minn. June 15, 2010). The defendant may appeal from a judgment of conviction after a stipulated-facts trial, raising any "issues on appeal as from any trial to the court." Minn. R. Crim. P. 26.01, subd. 3(e).

Appellant did not make an admission of guilt and therefore his trial was not the equivalent of a guilty plea. The district court determined that the evidence to which the parties stipulated demonstrated that appellant was guilty of harassment beyond a reasonable doubt. The state was required to offer evidence to prove every element of the charged offense to secure a conviction. We conclude that the strength of the state's

evidence does not invalidate a stipulated-facts trial or convert the proceeding into a guilty plea.

Appellant further argues that his constitutional right to a fair trial was violated because his stipulated-facts trial was not adversarial. We disagree.

A criminal defendant has a constitutional right to a fair trial. U.S. Const. amend. XIV § 1; Minn. Const. art. I, § 7. Appellant cites *Strickland v. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063 (1984), in which the United States Supreme Court stated that “a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal.” Appellant argues that the evidence was not subject to adversarial testing. But appellant voluntarily waived his right to a jury trial and elected to proceed with a stipulated-facts trial, and he stipulated to the state’s exhibits. Additionally, appellant’s counsel assisted him in submitting an exhibit on his own behalf that tended to challenge the state’s evidence.

Appellant contends that “the record contains no argument . . . by [his] attorney that . . . [he] was not guilty of the charged offense.” But the record establishes that the parties submitted written closing arguments after trial. Specifically, the record indicates that the parties agreed at trial to submit written closing arguments. And in its order finding appellant guilty of the charged offense, the district court stated that the parties had submitted written closing arguments and referenced arguments made by appellant’s counsel. Although the written closing arguments were erroneously omitted from the district court record, the record may be corrected to reflect that written closing arguments were submitted to the district court. *See* Minn. R. Civ. App. P. 110.05 (providing that the

appellate court may, on its own initiative, direct that an omission in the record be corrected).

Moreover, the written closing arguments are not the only evidence of advocacy. The record indicates that appellant's counsel assisted appellant in submitting an exhibit that explained appellant's response to the state's exhibits.

Appellant also cites *Brookhart v. Janis*, 384 U.S. 1, 6-7, 86 S. Ct. 1245, 1248 (1966), as authority for his argument that he was deprived of his right to a fair trial. *Brookhart* involved a "prima[-]facie trial" procedure in which the state was only required to make a prima-facie showing of guilt. *Id.* The defendant could not offer evidence or cross-examine the state's witnesses and the prima-facie trial did not require a defendant's personal waiver of trial rights. *Id.*

But a stipulated-facts trial under rule 26.01, subdivision 3, does not reduce the state's burden of proof and specifically requires a defendant's personal waiver of certain trial rights. Appellant was permitted to offer evidence on his own behalf. We conclude that appellant's stipulated-facts trial is distinguishable from the prima-facie trial struck down in *Brookhart* and that appellant has failed to establish that his right to a fair trial was violated.

Affirmed.