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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1676**

State of Minnesota,  
Respondent,

vs.

Leonard Gus Nauman,  
Appellant.

**Filed July 2, 2012  
Affirmed  
Ross, Judge**

Hennepin County District Court  
File No. 27-CR-08-25059

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Muehlberg,  
Judge.\*

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

## UNPUBLISHED OPINION

**ROSS**, Judge

Aeren Nauman's father and business partner, Leonard Nauman, forged two general power of attorney authorizations enabling him to open bank accounts in his son's name and steal more than \$20,000. On appeal from his conviction of two counts of theft by swindle, Leonard Nauman argues that his stipulated-facts trial was invalid because it was held on disputed rather than undisputed facts and because the district court made credibility determinations without testimony. Although the stipulated-facts trial was more accurately a stipulated-documents trial requiring fact finding, the error was in description only and harmless because Leonard Nauman received a valid court trial on stipulated documentary evidence. He also waived his right to present or challenge witness testimony and the district court is not prohibited from determining credibility and finding facts on documentary evidence. We therefore affirm.

### FACTS

In December 2003 Aeren Nauman had concluded active duty with the United States Army and begun working with his father, Leonard Nauman, in Ten Mile Investments, LLC. Ten Mile Investments is a real estate investment company owned by Leonard Nauman's longtime girlfriend, Mary Ann Saindon, and managed by Leonard Nauman. In addition to working for Ten Mile Investments, Aeren Nauman also enlisted in the Minnesota National Guard.

In October 2005 Aeren Nauman's National Guard unit was deployed to Mississippi to train for service in Iraq. Leonard Nauman and Saindon visited him in

Mississippi in March 2006. According to Leonard Nauman, during the visit Aeren Nauman executed a general power of attorney in his father's favor, which Saindon notarized. Aeren did so supposedly because he wanted to build a personal credit history, so he authorized Leonard Nauman to establish a credit line in Aeren's name at various banks. But according to Aeren Nauman, he did not sign or authorize a general power of attorney.

In February 2007, Aeren Nauman executed a special power of attorney in favor of Leonard Nauman for the purpose of purchasing a home while he was deployed in Iraq. Aeren Nauman also signed another power of attorney document while on leave in the spring of 2007 at Saindon's realty office. According to Aeren Nauman, this was supposed to be a limited power of attorney for real estate purposes. He alleged that this document was used instead to create a second fraudulent general power of attorney on April 4, 2007.

Aeren Nauman returned from Iraq in the summer of 2007 and noticed a problem with his credit score. He investigated and found that seven bank accounts had been opened in his name by Leonard Nauman—five at Wells Fargo Bank and two at Bremer Bank. One of the Wells Fargo accounts had two checks totaling \$9,000 written on it. The checks were made payable to Ten Mile Investments, signed by Leonard Nauman under power of attorney, and notated, "Loan." Two checks totaling \$12,000 were also drawn on a Bremer Bank account with the same designations. Both accounts had outstanding balances for slightly more than the entire amount of the checks drawn. Aeren Nauman reported the circumstances to the Wayzata police department, whose investigators found

that all of the funds had been transferred into Ten Mile Investments' bank account and were used by Leonard Nauman to pay various personal bills and expenses.

The state charged Leonard Nauman with five counts of felony aggravated forgery, four counts of felony identity theft, two counts of felony theft by swindle over \$1,000, and two counts of felony theft by swindle over \$2,500, violating the following sections of the Minnesota Statutes: 609.625, subdivision 3 (2006), 609.527, subdivision 2 (2006), and 609.52, subdivision 2(4) (2006).

Leonard Nauman waived his right to a jury and agreed to a "stipulated-facts" trial. In exchange, the state dismissed all of the counts except one count of felony theft by swindle over \$1,000 and one count of felony theft by swindle over \$2,500. The parties did not stipulate to one set of facts for the district court to consider in making its decision, but instead each submitted a packet of documentary evidence without objection. The state submitted a 300-page binder containing the complaint, police reports, investigation notes, and witness statements. Leonard Nauman submitted nine exhibits and a document entitled "Stipulation." The state explained that it did not generally agree to the contents of Leonard Nauman's "Stipulation" document, but that it agreed that the document's first numbered paragraph was true. As to the remaining paragraphs, the state acknowledged that the identified witnesses would testify according to the document but did not agree that the facts represented in the document were necessarily accurate.

The district court considered the parties' written submissions and found Leonard Nauman guilty on both counts.

Leonard Nauman appeals his conviction.

## DECISION

Leonard Nauman argues that his stipulated-facts trial was invalid under Minnesota Rules of Criminal Procedure 26.01, subdivision 3, because the parties did not really stipulate to the facts and the trial was held on disputed facts. We review the interpretation and application of the rules of criminal procedure de novo. *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). We strictly construe rule 26.01. *State v. Halseth*, 653 N.W.2d 782, 784 (Minn. App. 2002).

Nauman correctly identifies the misapplication of the rule. Rule 26.01 states that “[t]he 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.” Minn. R. Crim. P. 26.01, subd. 3(a). “If the court finds the defendant guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.” *Id.*, subd. 3(e). We recently held that this rule does not allow the “parties, unable to reach an agreement, [to] thrust a body of evidence on the district court to determine the truth of the facts.” *Dereje v. State*, 812 N.W.2d 205, 210 (Minn. App. 2012), *pet. for review filed* (Minn. Apr. 30, 2012). But the error of conducting a purportedly stipulated-facts trial on disputed evidence under rule 26.01, subdivision 3 is subject to a plain-error analysis, and the error does not affect the defendant’s substantial rights if he nevertheless received a fair court trial in which the disputed evidence was received by stipulation, as allowed by rule 26.01, subdivision 2. *Id.* at 210–11.

The parties submitted documentary evidence for the district court to consider and critical facts were in dispute. Nauman therefore did not receive a stipulated-facts trial under rule 26.01, subdivision 3. Under a plain-error assessment, we conclude that Nauman's substantial rights were not affected because rule 26.01, subdivision 2 permits a court trial based on the parties' stipulation to a body of disputed documentary evidence. *See Dereje*, 812 N.W.2d at 211; *State v. Mahr*, 701 N.W.2d 286, 292 (Minn. App. 2005) ("In a court trial, under rule 26.01, subd. 2, the court hears and decides disputed facts; in a stipulated-facts trial under rule 26.01, subd. 3, the facts are not disputed, but the court determines if the defendant's guilt is proved beyond a reasonable doubt.").

Nauman also argues that his trial was invalid because the district court was required to evaluate witness credibility, and this can occur only after observing the witnesses testify. But there are other means to weigh evidence. And by agreeing to submit to a stipulated-facts trial, Nauman specifically waived his right to present or challenge any in-court testimony. *See* Minn. R. Crim. P. 26.01, subd. 3. Nauman knew that the evidence was disputed and that the district court would decide fact disputes without live testimony. Nauman cites to substantial authority establishing the value of in-court determinations of witness credibility, but he provides no authority for the proposition that a factfinder can make credibility determinations *only* after hearing in-court testimony. And we have held that a district court's findings of fact on documentary evidence will not be set aside unless they are clearly erroneous—the same standard we apply to findings based on oral testimony. *See State v. Christiansen*, 515 N.W.2d 110, 112 n.1 (Minn. App. 1994), *review denied* (Minn. June 15, 1994). The parties agreed to

the body of documentary evidence available to the district court and implicitly agreed that the district court would serve as factfinder and choose between the conflicting factual accounts. The district court acted within its authority when, in finding facts, it credited some written evidence over other.

**Affirmed.**