STATE OF MINNESOTA
IN COURT OF APPEALS
A11-634

State of Minnesota,
Respondent,

vs.

Manoucher Rostamkhani,
Appellant.

Filed April 9, 2012
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-10-31700

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

Mark Schneider, Francis J. Rondoni, Elizabeth Chase Henry, Chestnut & Cambronne PA, Minneapolis, Minnesota (for respondent)

William Ward, Chief Public Defender, Peter W. Gorman, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

COLLINS, Judge

Appellant Manoucher Rostamkhani challenges his petty-misdemeanor conviction of operating a vehicle without insurance, arguing that the district court erred by (1) presiding over the bench trial without obtaining appellant's waiver of a jury trial, (2) finding that the violation was proved beyond a reasonable doubt, and (3) failing to make findings adequate for this court's review. Appellant also asserts, for the first time on appeal, that the initial stop of his vehicle was unlawful. We affirm.

FACTS

On April 1, 2010, in the afternoon, a state-patrol trooper stopped appellant's vehicle, which was traveling on a highway with three lanes in the same direction, for failing to move over when passing a parked emergency vehicle. During the traffic stop, the trooper discovered that appellant's insurance had been cancelled in January 2010 and that his vehicle was not insured.

Respondent State of Minnesota charged appellant with count 1, driving without insurance, a misdemeanor in violation of Minn. Stat. § 169.797, subd. 3 (2008), and count 2, failing to move over for an emergency vehicle, a petty misdemeanor in violation of Minn. Stat. § 169.18, subd. 11(a) (2008).[1] At his arraignment on August 4, 2010, a public defender was appointed to represent appellant. Further pretrial hearings were held on September 8, October 20, and December 8, 2010. According to the court minutes, as

[1]On the first day of trial, count 2 was amended to failing to move over for a parked construction vehicle with its warning lights activated, in violation of Minn. Stat. § 169.18, subd. 12(b) (2008).

recorded on the "blues" sheet from the December 8 hearing, count 1 charging appellant with misdemeanor driving without insurance was amended and "certified petty."

On February 23, 2011, the first day of the two-day bench trial, the trooper testified that she was on patrol on April 1, 2010. The trooper observed a vehicle in the right lane of traffic, eight to ten car lengths in front of her, approaching some "work vehicles" with flashing lights stopped on the right shoulder with people outside of them. She watched the vehicle in front of her "to see if it was going to move over." The vehicle had "room to move over," but it passed the work vehicles without doing so. The trooper stopped the vehicle for this offense.

During the traffic stop, the trooper asked the driver, identified as appellant, for his proof of insurance. Appellant eventually found his insurance card and gave it to the trooper. The trooper telephoned the insurance agency and was told that the policy had been cancelled three months earlier, in January 2010. The trooper testified that when she confronted appellant with this information, he admitted that he did not have valid insurance.

On March 23, 2011, the second day of the trial, appellant testified that as soon as he saw the construction vehicles on the shoulder of the highway, he signaled and attempted to move into the left lane. He stated that he saw a vehicle in his side mirror and did not believe he could move over without cutting the vehicle off. He realized that the vehicle was a state-patrol car when it was alongside of him.

Appellant testified that during the stop, he called his girlfriend who told him that she had cancelled the insurance because she was looking for a better deal. He testified

that he did not know his insurance had been cancelled and that he never received the cancellation notice sent to him by his insurance agent because his girlfriend was picking up his mail. But appellant acknowledged that he and his girlfriend were not seeing each other during the time the cancellation notice was mailed to him, that she was no longer collecting his mail at that time, and that she had returned the vehicle to him at about that time and was no longer using it. Appellant also admitted that the cancellation notice, which was dated January 20, 2010, was sent to his correct mailing address.

Appellant's girlfriend testified that appellant had originally obtained the insurance policy and that premiums were supposed to be paid from his checking account. She was using the car at the time, and she assisted appellant with his financial affairs by making deposits to his checking account to pay his expenses, for which appellant was supposed to reimburse her. After asking appellant several times for reimbursements to no avail, she cancelled the policy and returned the car to him. She testified that she had not told appellant that she had cancelled the policy until he called her during the traffic stop. Because the two were separated when the insurance-cancellation notice was mailed, she was not collecting appellant's mail and she never saw the notice.

At the end of the trial, the district court acquitted appellant of failing to move over for a construction vehicle, but found him guilty and imposed a fine of $100 on the offense of driving without insurance. This appeal followed.

D E C I S I O N

1. Waiver of jury trial.

Appellant argues that the district court erred in presiding over a bench trial of a misdemeanor without appellant's personal waiver of a jury trial, as required by Minn. R. Crim. P. 26.01, subd. 1(1)(a). We disagree. The rule provides that "[a] defendant has a right to a jury trial for any offense punishable by incarceration." *Id.* Appellant insists that the record reveals no waiver of his right to a jury trial, there is no evidence that he consulted with counsel about a waiver, and there is no written waiver in the district court file. Appellant argues that because the district court heard this misdemeanor-level insurance offense in a bench trial, without an oral or written waiver by appellant before or during the trial, his conviction and sentence must be reversed. *See, e.g.*, *State v. Knoll*, 739 N.W.2d 919, 921-22 (Minn. App. 2007) (reversing and remanding to allow defendant to proceed to jury trial or provide express waiver of his rights); *State v. Tlapa*, 642 N.W.2d 72, 75 (Minn. App. 2002) (reversing and remanding where defendant's jury-trial waiver did not comply with rule 26.01), *review denied* (Minn. June 18, 2002).

The district court record provided to this court, however, includes the "blues" sheet from the December 8, 2010 pretrial hearing, with a note on the reverse side stating that count 1 is "certified petty."[2] The record also includes the "blues" sheets for the two

[2] In his reply brief, appellant's counsel explains how he "obtained a copy of the district court file from the suburban division administrator" and "examined the computerized MNCIS printouts over and over to see if there was any reference to a jury waiver" or any certification. Counsel reiterates that he found nothing in the record to support the state's claim that the matter was certified as a petty misdemeanor prior to trial. But the district court file provided to this court includes the original documents filed in the district court.

days of trial on February 23 and March 23, 2011, characterizing both counts as "PMD," commonly understood in context to mean "petty misdemeanor."[3]

A defendant is not entitled to a jury trial if charged with a misdemeanor that is certified as a petty misdemeanor. *See State v. Johnson*, 514 N.W.2d 551, 553 (Minn. 1994) (discussing certification process by which misdemeanor is treated as petty misdemeanor under Minn. R. Crim. P. 23.04 and Minn. Stat. § 609.131). Because the record shows that the insurance charge was certified as a petty misdemeanor, the right to a jury trial did not attach. *See* Minn. Stat. § 609.131 (2008); Minn. R. Crim. P. 23.04.

Had appellant not consented to the certification, the charge would have remained a misdemeanor and he would have been entitled to a jury trial. *See State v. Weltzin*, 630 N.W.2d 406, 409-10 (Minn. 2001). But nothing in the record provided to this court shows that appellant did not consent to the certification. For purposes of this appeal, appellant's counsel ordered transcripts from the court reporter of the "motion, trial and sentencing proceedings before [the district court judge] on February 23 and March 23, 2011." Appellant did not order a transcript of the December 8, 2010 pretrial hearing at which count 1 was certified as a petty misdemeanor, nor did he file a notice of intent to prepare a statement of the proceedings. *See* Minn. R. Civ. App. P. 110.02, .03.

Appellant had the burden to provide an adequate record for appeal. *See State v. Barnes*, 713 N.W.2d 325, 337 (Minn. 2006) (concluding that issue involving jury selection is deemed waived, where arguments are not supported by record provided by

[3]*See* Minn. R. Civ. App. P. 110.01 (providing that record on appeal consists of papers filed in trial court, exhibits, and transcript of proceedings, if any).

appellant, who failed to order transcript of jury selection or to obtain stipulation of facts from state). The record before us shows that the misdemeanor-insurance charge was certified as a petty misdemeanor at a pretrial hearing at which appellant was present with his attorney, and nothing suggests that appellant objected or withheld his consent to the certification. We therefore reject appellant's arguments on this issue. *See id*.

2. Adequacy of findings.

Appellant argues that the district court's findings are inadequate for appellate review. We disagree. In a misdemeanor or petty misdemeanor case, a district court must make specific, written findings regarding the facts essential to the general finding of guilt within seven days after the filing of a notice of appeal. Minn. R. Crim. P. 26.01, subd. 2(c). But "an appealing misdemeanant must expressly advise the trial judge of the need to provide a full set of written factual findings." *State v. Oanes*, 543 N.W.2d 658, 663 (Minn. App. 1996). Because appellant offers nothing to show that he informed the district court of the need for more complete findings, he cannot complain that the findings are inadequate for appeal under rule 26.01. *See id.*

The district court made the following findings on the record at the end of the trial:

> THE COURT: Okay. So, with regard to the charges that I have heard in this trial, the first charge has to do with no insurance and on that charge, I do find Defendant guilty beyond a reasonable doubt.
>
> It is unreasonable for him to - when he is broken up with his girlfriend, he doesn't check his bank account apparently. He doesn't check to make sure that she is paying the insurance.
>
> I don't know why he would think she would continue to pay insurance on a car that she is not driving.

> I just find that utterly unreasonable and irresponsible and so, on that Count I do find you guilty.
>
> On the second one. The trooper testified that she thought you could move over safely. You testified that you saw her in the - - in your rear view mirror and didn't think you could move over safely.
>
> I find that one not proven beyond a reasonable doubt.

It appears that the district court also made notations on the March 23, 2011 "blues" sheet, setting out the elements of the insurance charge and underlining a clause drawn from the third element, "knows or has reason to know." These findings are adequate for appellate review. *See Oanes*, 543 N.W.2d at 663 (stating that if district court omits essential finding, rule 26.01 provides that reviewing court must imply finding consistent with district court's determination of guilt).

3. Sufficiency of the evidence.

The statute under which appellant was convicted makes it a crime for any person to operate a vehicle upon a public highway "who knows or has reason to know that the owner does not have [insurance] . . . in full force and effect." Minn. Stat. § 169.797, subd. 3 (2008). Proof of knowledge, whether actual or reason to know, may be made by circumstantial evidence. *State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007).

Appellate review of the sufficiency of evidence to support a conviction is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [court] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). When applying this standard in a case involving circumstantial evidence, the reviewing court need not consider conflicting facts and inferences rejected by the fact-finder, but only the

evidence and inferences drawn from the circumstances proved and accepted by that fact-finder. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In assessing the inferences to be drawn from the "circumstances proved," the court examines whether there are "no other reasonable, rational inferences that are inconsistent with guilt." *Id.* at 330 (quotation omitted).

The trooper testified that she called the insurance agency and was informed that appellant's policy had been cancelled, and when she confronted appellant with this information he admitted that he had no insurance. In addition, it is undisputed that the insurance agency sent a cancellation notice to appellant's correct home address in January 2010, informing him that his policy was "terminated Jan 15, 2010." The required notice was given, from which we infer that appellant had reason to know about the cancellation. *See* Minn. Stat. § 65B.18 (2008) (providing that "[p]roof of mailing of notice of cancellation . . . to the named insured at the address shown in the policy, shall be sufficient proof that notice required herein has been given").

While appellant insists that he did not know his insurance had been cancelled, the evidence supports a finding that he knew or had reason to know that he did not have insurance on the vehicle. Appellant explained that his girlfriend had taken care of the premiums and picked up his mail, but he acknowledged that in January 2010 they were not seeing each other, she had relinquished the vehicle to him, and she was not collecting his mail. The district court found that once appellant's girlfriend was no longer using the vehicle, it was unreasonable for appellant to not open and read his mail, or to not check his bank account or make sure that his insurance premiums were being paid. Although

this finding could be more specific, coupled with the district court's finding of guilt it is apparent that the court simply found appellant to be not credible in critical respects. *See Oanes*, 543 N.W.2d at 663. Viewing the evidence in the light most favorable to the conviction, as we must, the inference is reasonable that appellant knew or had reason to know that he was driving the vehicle without insurance.

4. Legality of stop.

Appellant argues on appeal that evidence of his insurance status should be suppressed because the initial stop of his vehicle was unlawful. Appellant did not challenge the traffic stop in the district court, and did not move to suppress the evidence derived from the stop. Appellant was represented by counsel throughout the proceedings in the district court and had his due opportunity to assert his challenges there. Because appellant is raising this issue for the first time on appeal, we decline to address it. *See State v. Sorenson*, 441 N.W.2d 455, 459 (Minn. 1989).

Affirmed.