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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1590**

State of Minnesota,  
Respondent,

vs.

Joseph Benjamin Stuckey,  
Appellant.

**Filed September 3, 2013  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CR-11-39109

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges his conviction of third-degree sale of a controlled substance pursuant to Minn. Stat. § 152.023, subs. 1(1), 3(b) (2010), on the grounds that (1) he is

entitled to a new trial because one of the jurors revealed during deliberations that she had not understood much of the proceedings due to difficulty with the English language and (2) the state failed to prove that he was the individual who sold drugs to an undercover police officer. Because the district court did not abuse its discretion by allowing deliberations to continue and the evidence is sufficient to support the verdict, we affirm.

### **FACTS**

On October 29, 2011, Minneapolis police conducted an undercover operation in response to community complaints about street-level drug dealing in the Stevens Square neighborhood of Minneapolis. A man wearing a black jacket and baseball cap approached Undercover Officer Sara Metcalf and asked, “Are you looking for something?” Officer Metcalf told him that she was “looking for a 20.” The man sold her two rocks of crack cocaine in exchange for a \$20 bill with a pre-recorded serial number. Based on Officer Metcalf’s description of the man, uniformed officers stopped and searched an individual a short distance away. The man was identified as appellant Joseph Benjamin Stuckey. The police recorded the serial number of the \$20 bill in his front pocket, but did not seize the \$20 bill or tell Stuckey why they had stopped him. He was then released.

One and one-half months later, Stuckey was charged with third-degree controlled-substance crime. He pleaded not guilty and demanded a jury trial. At trial, he testified that on October 29, two officers stopped him while he was walking home from a friend’s house. But he testified that he had never seen Officer Metcalf before and did not sell her crack cocaine.

Officer Metcalf identified Stuckey as the individual who sold her crack cocaine, and testified that she watched the uniformed officers stop him after the buy. An audio recording of the sale was admitted into evidence. Officers Hung Do and Deb Hubert positively identified Stuckey as the individual they stopped based on Officer Metcalf's description. Officer Hubert identified the serial number of the \$20 bill they found in Stuckey's possession as matching the bill used by Officer Metcalf in the buy.

During deliberations, the jury sent a note to the district court that stated, "A jury member has revealed just now that she has not understood much of the proceedings over the past day due to English language issues. How do we proceed?" Both the prosecutor and defense counsel believed that they knew the identity of the juror in question, because only one potential juror identified English as a second language. At defense counsel's suggestion, the district court repeated a portion of the jury instructions addressing the duty of jurors to deliberate and discuss the case with each other. The district court concluded, "You are the jury, the 12 of you, and so we need you to continue working with those instructions in mind toward trying to reach a verdict."

The jury found Stuckey guilty. The district court sentenced him to 30 months in prison. This appeal follows.

## **DECISION**

### **I.**

Stuckey argues that the district court erred by allowing deliberations to continue after learning that one of the jurors had not understood some of the proceedings due to

difficulty with the English language. He contends that he is entitled to a new trial because this error deprived him of his right to a 12-member jury and a unanimous verdict.

A defendant charged with a felony is entitled to a jury of 12 people. Minn. Const. art. I, § 6. In order to convict a criminal defendant, all 12 jurors must agree that the prosecution has met its burden of proof beyond a reasonable doubt. Minn. R. Crim. P. 26.01, subd. 1(5). In order to be qualified to serve on a jury, a potential juror must be “[a]ble to communicate in the English language.” Minn. R. Gen. Pract. 808(b)(4). “A juror should be able to understand the evidence, the arguments of counsel, and the instructions of the district court; and a juror should be able to deliberate with other jurors.” *State v. Berrios*, 788 N.W.2d 135, 140 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Because the district court is in the best position to assess a juror’s ability to understand the English language, this court reviews a district court’s factual determinations on this issue for clear error. *Id.* We review a district court’s decision whether to remove a juror for abuse of discretion. *Id.*

In the event that a juror becomes unable to serve during trial, the district court must replace that juror with an alternate. Minn. R. Crim. P. 26.02, subd. 9. But if a juror becomes unable to serve after deliberations have begun, the district court must declare a mistrial unless the parties agree to continue with a lesser number of jurors. *Id.* A defendant’s waiver of his or her right to a 12-member jury must be made personally, in writing, or on the record. Minn. R. Crim. P. 26.01, subd. 1(4).

During voir dire, one potential juror stated that English was not her native language. In response to the defense attorney’s question, “[D]o you think you can listen

to everything that's said in the courtroom from the witnesses and the lawyers and the judge throughout the trial?" she replied, "Not 100 percent." When asked what made listening difficult, she replied, "Understanding, you know, when speaking I don't know everything." The defense attorney asked if she had had "difficulty understanding any of the words that have been used so far," and she said that she had.

She stated that she was employed, had lived in the United States for eight years, and first began learning English after moving to the United States. She rated her English as "[v]ery good," and said that she did not have any problems understanding English in her day-to-day life. But she said that some of the words used in court were difficult to understand. Neither attorney moved to strike her for cause or exercised a preemptory challenge.

When the district court received the note, it promptly brought the note to the attention of the attorneys. Neither attorney moved to dismiss the juror or for a mistrial. The prosecutor stated that there "was nothing that really disqualified her from [serving] and we ask that essentially [the jury] take the time to communicate and try to get through . . . the verdict with the people they have." The prosecutor noted that the alternative juror had been dismissed and stated, "We don't really have another choice at this point."

The defense attorney agreed, stating:

There was nothing . . . on its face that disqualified the juror if it's the juror we think it is from sitting as a juror on the case. I did ask her about her English. She qualified it as being excellent or very good but said she had some—didn't understand some of the legal terms. I think that was a normal answer from someone who has English as a second language. Might also be a normal answer for someone who has English

as a first language coming into the unfamiliar court proceeding.

I don't know there's really that much that can be done at this point. I think she'll have to sit and other jurors have to work with her to the best of their ability.

At the request of defense counsel, the district court repeated the following instruction to the jury:

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdicts must be unanimous. You should discuss the case with one another and deliberate with a view to reaching agreement if you can do so without violence to your own individual judgment. You should decide the charge for yourself but only after you have discussed the charge with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your own views and change your opinions if you become convinced they are erroneous. You should not surrender your honest opinion simply because other jurors disagree or merely in order to reach a verdict.

The district court then instructed the jury to continue deliberating.

Stuckey argues that the district court should have made findings regarding the “demonstrated ability of the jurors to communicate in the English language,” or inquired as to the “identity of the juror in question, the nature of the juror’s comprehension problem, and the juror’s ability to continue deliberating.” He contends that the district court committed plain error by failing to offer a mistrial or to obtain the defendant’s personal waiver to proceed without that juror.

But Stuckey’s only support for the proposition that the district court’s actions constitute error are two cases from foreign jurisdictions: *State v. Carlson*, 661 N.W.2d

51 (Wis. 2003), and *State v. Gallegos*, 542 P.2d 832 (N.M. Ct. App. 1975). Both cases are distinguishable. The first involved a more severe language deficiency and a clear error in preliminary jury screening, and the second involved a different standard of review, as the appeal arose out of the district court's denial of a motion for a mistrial by defense counsel. And neither case is precedential.

Here, the judge discussed the issue with the attorneys both on and off the record. Defense counsel questioned the juror regarding her English-language skills during voir dire and was satisfied with her answers. Neither attorney believed that there had been a reason to dismiss the juror during voir dire, and this impression did not change after they read the note from the jury. The defense attorney made the strategic decision to request that the district court repeat an instruction rather than to ask for an alternative remedy. And after the jury delivered its verdict, the district court polled the jurors, and all agreed to the verdict. On this record, the district court did not abuse its discretion by instructing the jury to continue deliberating.

## II.

Stuckey argues that the prosecution failed to prove beyond a reasonable doubt that he was the individual who sold drugs to Officer Metcalf. This court's review of a sufficiency-of-the-evidence claim is "limited to a careful analysis of the record to determine whether the evidence, when viewed in the light most favorable to the verdict, was sufficient to permit the jury to reach a guilty verdict." *Berrios*, 788 N.W.2d at 141. We will "assume that the jury believed the evidence supporting the verdict and disbelieved any evidence to the contrary" and will not disturb the verdict if, acting with

due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, the jury could reasonably conclude that the defendant is guilty of the charged offense. *Id.* Witness credibility is the exclusive province of the jury. *Id.* at 142.

Stuckey argues that Officer Metcalf's identification of Stuckey was "dubious" because the transaction was brief and took place on a dark street. He argues that the uniformed officers who stopped him could have stopped the wrong individual because they only had Officer Metcalf's "very general physical description" to rely on. And he contends that the evidence that he possessed the buy money was "unconvincing" because the police did not confiscate the money. Instead Officer Hubert "claimed" that she wrote down the serial number of the \$20 bill found in Stuckey's possession and that it matched the serial number of the buy bill.

Stuckey also asserts that the recording of the transaction indicated that the seller was carrying a laptop computer and a cell phone, but neither Officer Do nor Officer Hubert testified to finding either of these items during their search of him. And he argues that the fact that he did not possess drugs at the time that he was searched is inconsistent with the theory that he was selling drugs.

Stuckey's arguments amount to a challenge to the jury's credibility determinations. Officer Metcalf identified Stuckey as the individual who sold her the drugs, and we presume that the jury found this testimony credible. In addition, Officer Hubert testified that the serial number on the \$20 bill in Stuckey's possession matched the bill that Officer Metcalf used for the buy. The fact that the officers did not testify that Stuckey was carrying a laptop or cell phone is irrelevant. Only Officer Do was asked if

he recalled whether Stuckey had a cell phone, and neither officer was asked if Stuckey was carrying a laptop.

Because the jury believed the state's witnesses, and the evidence was sufficient to convict Stuckey, his sufficiency-of-the-evidence claim fails.

**Affirmed.**