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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0684**

State of Minnesota,
Respondent,

vs.

Chris Marquis McMorris,
Appellant.

**Filed May 6, 2019
Affirmed; motion granted
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-16-21960

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Ira W. Whitlock, Whitlock Law Office, LLC, Champlin, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of second-degree murder, arguing that he is entitled to a new trial because the district court judge was partial and biased and the

prosecutors intimidated defense witnesses. Appellant also argues that the district court erred when it admitted his statements to police officers in violation of *Miranda* and that his counsel was ineffective. Because appellant has failed to demonstrate that (1) the district court judge was partial, (2) the prosecutors employed impermissible intimidation tactics, and (3) his trial counsel was ineffective, and because the district court did not err in admitting his statements to the police officers, we affirm.

FACTS

In 2016, appellant Chris Marquis McMorris called 911 to report that his girlfriend's daughter was not breathing. An ambulance arrived and transported the seven-month old infant to the hospital where she was pronounced dead. Paramedics and hospital staff noticed bruising on the child, and an autopsy revealed multiple rib fractures and a lacerated liver. The cause of death was determined to be blunt force trauma to the abdomen and the manner of death was homicide. Appellant was subsequently charged in the infant's death with three counts of felony second-degree murder—without intent. Appellant was tried and the jury found him guilty on all three counts.

On appeal, appellant requests that this court grant him a new trial on the grounds that (1) the district court judge was not impartial and demonstrated clear bias in her rulings, which deprived him of his due process right to present a complete defense, (2) the prosecutors engaged in impermissible intimidation tactics with defense witnesses that prevented him from putting forth a complete defense, (3) his trial counsel was ineffective, and (4) the district court erred when it allowed into evidence statements that violated his

Miranda rights. The state also filed a motion to strike portions of appellant's brief and addendum that are not part of the record on appeal. The motion was deferred to the panel.

D E C I S I O N

I. Motion to strike

"The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. "[This] court will strike documents included in a party's brief that are not part of the appellate record." *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993). The disputed sections in appellant's brief concern matters outside the record. Neither the affidavits of Patrice Whitlock, dated December 14, 2018, nor the email sent to Ira Whitlock, dated November 18, were filed with the district court. Consequently, these documents are not part of the record on appeal. This court will not consider these sections of appellant's brief and appendix in reaching its decision. See *Griese v. Kamp*, 666 N.W.2d 404, 408-09 (Minn. App. 2003) ("Because the district court did not consider [defendant's] . . . affidavit, we grant respondent's motion to strike it from the appellate record.").

II. There is absolutely no evidence in the record demonstrating judicial bias.

Appellant argues that he is entitled to a new trial because the district court judge showed clear bias in her rulings, which interfered with his right to present a complete defense and receive a fair trial. Due process entitles a defendant to an impartial and disinterested tribunal. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Consequently, “a judge must have no actual bias against the defendant.” *Id.* (quotation omitted).

Appellant has failed to put forth any evidence of actual bias on the part of the district court judge in this case. Instead, his contention focuses on a few adverse evidentiary rulings. However, appellant does not argue how the district court judge’s evidentiary rulings were erroneous. Moreover, we apply a “presumption that a judge has discharged his or her judicial duties properly.” *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). And “prior adverse rulings by a judge, without more, do not constitute judicial bias,” even if they are “erroneous.” *Id.*

No more serious allegation can be raised against a trial judge than bias against a party. After careful consideration, it is absolutely clear from the record that the district court judge carefully considered all of appellant’s motions and made rulings, many of which were favorable to him. Accordingly, appellant was not denied the right to a fair trial, and he has shown no judicial bias.

III. There is no evidence in the record demonstrating that prosecutors intimidated defense witnesses.

Appellant argues that the state intimidated lay and expert defense witnesses during its prosecution of the case. Both claims are unsupported by the record.

First, to support his claim that he is entitled to a new trial on the grounds that the prosecutors intimidated his expert witness, appellant relies extensively on *State v. Beecroft*, 813 N.W.2d 814, 849-50 (Minn. 2012). In *Beecroft*, the Minnesota Supreme Court granted a defendant a new trial when it concluded that the prosecution worked to prevent expert

witnesses from testifying on behalf of the defendant. *Id.* However, in *Beecroft* there was overwhelming evidence that the prosecution interfered with the defendant's case. *Id.* But here, there is no evidence in the record that state actors intimidated witnesses or interfered with appellant's defense. Second, appellant claims that the state intimidated his girlfriend from testifying favorably for the defense, but there is no evidence of appellant's accusations in the record. Consequently, there is no support for appellant's challenge.

IV. Appellant was not deprived of his right to effective assistance of counsel.

Appellant argues that he was deprived of his right to effective assistance of counsel. "An ineffective assistance of counsel claim is an alleged violation of the right to reasonably effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (citing *Strickland v. Washington*, 466 U.S. 668, 684-85 104 S. Ct. 2052, 2063 (1984)).

Appellant argues that he received ineffective assistance of counsel because his trial counsel—who is also representing appellant on appeal—failed to demand the name and findings of a forensic pathologist who confirmed and agreed with his expert's findings and conclusions in his case. Appellant argues that his trial counsel chose not to press his expert to reveal the name and findings of the forensic pathologist because his counsel was fearful that too much pressure could result in his expert withdrawing from the case.

Counsel's decision not to pressure his expert falls within the realm of defense strategy. The Minnesota Supreme Court has consistently held that courts will not review an attorney's trial strategy. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). Thus, this court is "in no position to second-guess counsel's decision to focus his strategy on

other defenses” instead of pressuring his expert to reveal colleagues who may share her opinion of the case. *Id.* Because appellant only challenges his counsel’s pretrial decision not to put too much pressure on his expert witness, this court has no basis to find his counsel ineffective.

V. The district court did not err by failing to suppress appellant’s statements to the police.

The district court admitted, over appellant’s objection, statements made to police officer’s immediately following the 911 call. Appellant argues that the district court erred by concluding that these statements did not violate the Fifth Amendment to the United States Constitution, which protects a suspect’s right to be free from compelled self-incrimination. *State v. Sterling*, 834 N.W.2d 162, 168 (Minn. 2013). To protect this right, statements made by a suspect during a “custodial interrogation” are inadmissible unless the police provide a *Miranda* warning prior to the statements being made. *Id.* at 167-68; *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612 (1966).

The question of whether a “suspect is ‘in custody’ and therefore entitled to a *Miranda* warning presents a mixed question of law and fact qualifying for independent review.” *Sterling*, 834 N.W.2d at 167 (quotation omitted). An interrogation is custodial if, based on all the facts, “a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quotation omitted).

The Minnesota Supreme Court has stated that, while no factor alone is determinative, factors that may indicate a suspect is in custody are: (1) the interview taking

place at a police station, (2) the officer telling an individual that he is the main suspect, (3) the suspect's freedom of movement is restrained by officers, (4) a suspect making a significantly incriminating statement, (5) the presence of multiple officers, and (6) a gun pointed at a suspect. *Id.* Factors that may indicate a suspect is not in custody are

questioning taking place in the suspect's home; police expressly informing the suspect that he or she is not under arrest; the suspect leaving the police station at the close of the interview without hindrance; the brevity of questioning (fifteen minutes); the suspect's freedom to leave at any time; a nonthreatening environment; and the suspect's ability to make phone calls.

Id.

After reviewing these factors, it is clear to us that appellant was not subject to a custodial interrogation. Appellant was interviewed at his home, not the police station, immediately after reporting the medical emergency. The officers never told appellant he was a suspect or that he was under arrest. Appellant's movement within his home was also not restricted; he was not in handcuffs. While it is true that an officer told appellant to wait at the house for a detective to arrive, and the officer testified that he was not going to let appellant leave until the detective talked with him, it is also true that the detective was there to gather "information about what [was] going on with [the child] medically or what had been the circumstances that she was found nonbreathing." And when appellant pressed the detective to let him leave to go to the hospital, the detective "very quickly let him get on his way." *See id.* (noting that a suspect leaving the police station at the close of the interview without hindrance supports the conclusion that there was not a custodial arrest).

Consequently, the fact that the officer initially told appellant he needed to stay in the house until the detective arrived does not transform the interview into a custodial interrogation. A reasonable person under the circumstances would not have believed that he or she was in police custody of the degree associated with formal arrest. *Id.* Because appellant can only establish that his freedom of movement was briefly limited, and because no other factor suggests that appellant was in custody, the district court did not err in admitting appellant's statements to the officer as evidence at trial.

Affirmed; motion granted.