

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0003**

State of Minnesota,
Respondent,

vs.

Marcus Dupree Jamison,
Appellant.

**Filed March 22, 2021
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-18-29033

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his conviction for unlawful possession of a firearm on the grounds that (1) the district court erred by denying his motion to suppress, (2) the jury

instructions were plainly erroneous, and (3) he is entitled to relief on the merits of his pro se claims. We affirm.

FACTS

On November 24, 2018, at around 11:20 p.m., appellant Marcus Dupree Jamison was standing outside the Mayo Clinic Square Building, a private building in Minneapolis. Mayo hires security guards through Allied Universal Security Services (Allied), a privately held security company. An Allied employee smelled “a strong odor of marijuana” coming from appellant and saw that appellant was rolling a marijuana cigarette in his hands. The employee reported his observations to two of Allied’s security guards.

The security guards located appellant on a live-feed security camera and confirmed that he was using marijuana on the building’s property. Mayo has a “[zero] tolerance policy for illegal activities around the building,” and Allied’s security guards generally issue trespass notices to people violating this policy. The security guards approached appellant outside the building to issue a trespass notice to appellant. The security guards placed appellant in handcuffs and took him to the security office inside the building. It is standard practice for the security guards to perform “a simple pat down for officer safety” any time they escort someone to their office. During the search, the security guards found a firearm in appellant’s front jacket pocket.

A Minneapolis police officer was providing off-duty security for Allied at the building on November 24. The police officer does not typically get involved in security matters at the building unless the security guards request his assistance. The police officer was not involved in the initial interaction between the security guards and appellant outside

the building, and was not involved in the pat-down search. The police officer was in the security office when he “saw them pull a gun” off appellant. The police officer called the Minneapolis Police Department to request police assistance.

Respondent State of Minnesota charged appellant with possession of a firearm or ammunition by a prohibited person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2018). Appellant moved to suppress the evidence on the ground that the security guards did not have authority to conduct a citizen’s arrest. The district court denied the suppression motion and the matter proceeded to a jury trial.

Appellant testified in his own defense at trial. Appellant stated that he was downtown with his brother, who originally had the firearm. Appellant testified that he persuaded his brother to give him the firearm and was on his way to the public safety building to turn in the firearm to an officer. Appellant stated he was near the Mayo building because he was trying to get internet access on his tablet. Appellant testified that he did not speak with the security guards about the trespass notice before they grabbed him and detained him.

Following witness testimony, the district court provided final instructions to the jury. The district court instructed the jury that the parties had stipulated that appellant was ineligible to possess a firearm, and that this element of the offense was satisfied. The jury found appellant guilty of the offense and the district court imposed sentence.

This appeal follows.

DECISION

I. The district court did not err in denying appellant's motion to suppress.

Appellant argues that the district court erred by denying his motion to suppress evidence of the firearm because the security guards were acting as agents of the state when they searched him. When reviewing a pretrial order denying a motion to suppress evidence, we independently review the facts and determine whether, as a matter of law, the district court erred in not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. But these constitutional protections apply only to state action and do not apply to searches conducted by private persons. *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 1656 (1984). Ordinarily, the state may use evidence obtained through a private search. *State v. Dexter*, 941 N.W.2d 388, 394 (Minn. 2020). But if a private person acts as an agent of the state when conducting a search, then the protections of the Fourth Amendment apply. *State v. Buswell*, 460 N.W.2d 614, 618 (Minn. 1990) (“If in the light of all the circumstances of the case the private individual must be regarded as having acted as an instrument or agent of the state when conducting the search, the search is subject to Fourth Amendment constraints.” (quotation omitted)).

Whether a person acts as a state agent must be decided on a “case-by-case basis after consideration of all the facts and circumstances relative to the search.” *Id.* Minnesota

courts consider two factors in a state-agency analysis: (1) “whether the government knew of and acquiesced in the search,” and (2) “whether the search was conducted to assist law enforcement efforts or to further the private party’s own ends.” *Id.* “If the government does not know of and acquiesce in the search, the search cannot be attributed to the government and the inquiry ends.” *State v. Jorgensen*, 660 N.W.2d 127, 131 (Minn. 2003). Whether a private person acts as a state agent is a question of fact for the district court. *Id.*

Here, the district court found that there was “no involvement of [the police officer] prior to [the security guards] finding the firearm” on appellant. The police officer was off-duty and was working as a part-time Allied employee. The district court noted that the police officer did not instruct the security guards to conduct a citizen’s arrest, and did not instruct the security guards to perform a pat-down search of appellant in the security office. The police officer was not involved in the initial interaction with appellant outside the building, and he did not take part in the search. Based on these findings, the district court found that the two *Buswell* factors were not satisfied because the government did not know of or acquiesce to the search, and the search was not conducted to assist law-enforcement efforts.

The record supports the district court’s findings, which are not clearly erroneous. *See id.* (noting that district court’s factual findings are reviewed for clear error). The security guards testified that they are not licensed peace officers and are not employed by any police jurisdiction. The security guards do not carry deadly weapons and, for that reason, typically perform a pat-down search to check for weapons when they bring a person into the security office. While the security guards receive “standard Minnesota protective

training” through Allied, they are not specially trained as peace officers. The security guards approached appellant after they located him on their security feed and saw him using drugs on their property. There is no evidence that the police officer instructed the security guards to approach appellant. The security guards brought appellant to their office and found a firearm in his jacket pocket during the pat-down search. The police officer was sitting nearby when he saw the security guards remove the firearm from appellant’s jacket pocket. The police officer, who was off-duty at the time, called a Minneapolis police officer to transport appellant to the county jail and secure the firearm. These facts support the conclusion that the government did not know of or acquiesce to the search. Thus, the first *Buswell* factor is not satisfied.

Nor is there any evidence in the record showing that the search was conducted to assist law-enforcement efforts, rather than to further the private party’s own ends as required by the second *Buswell* factor. The security guards provide security services for Allied, a private company. The security guards do not carry deadly weapons and, for their own safety, perform a pat-down search any time they bring someone into their office. There is no evidence that the security guards searched appellant to assist law enforcement and the second *Buswell* factor is not satisfied.

The facts in the record support the district court’s factual findings that the police officer was not involved in the detention and search, and that the security guards were not acting as agents of the state during their interactions with appellant. Therefore, the constitutional protections do not apply. Because the security guards were not acting as

state agents when they searched appellant, the district court did not err in denying his motion to suppress.

II. The district court did not err in its instructions to the jury.

Appellant argues that the district court erred by directing a verdict on an element of the offense. Appellant did not object to the district court's jury instructions. While a defendant's failure to propose specific jury instructions or object to instructions generally constitutes a forfeiture of that issue on appeal, *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998), we may review the jury instructions for plain error, *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). Under the plain-error test, we examine the instructions to determine whether there was (1) an error, (2) that was plain, and (3) that affected appellant's substantial rights. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012). If these elements are satisfied, we will reverse if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

We determine that the district court did not err. Appellant was charged with unlawful possession of a firearm by a prohibited person, in violation of Minn. Stat. § 624.713, subd. 1(2). Section 624.713 provides that certain people are ineligible to possess a firearm, including those who have been convicted of a "crime of violence." *Id.* "Crime of violence" is defined as a "felony conviction" of an offense listed "and an attempt to commit any of these offenses." Minn. Stat. § 624.712, subd. 5 (2018). False imprisonment constitutes a crime of violence. *Id.* Before trial, appellant stipulated that he is prohibited from possessing a firearm because of a conviction in Wisconsin for felony

false imprisonment. Given this stipulation, respondent did not present evidence of appellant's false-imprisonment conviction at trial.

Appellant argues that despite his stipulation, the district court erred by instructing the jury that an element of the offense was established beyond a reasonable doubt. To obtain a conviction, the state must prove each element of the crime beyond a reasonable doubt. *State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015). But a defendant may stipulate to an element of the offense, “thereby removing the issue from the case.” *State v. Berkelman*, 355 N.W.2d 394, 397 (Minn. 1984). By stipulating to an element of an offense, a defendant “waives the right to a jury trial on that element and removes unduly prejudicial evidence from the jury’s consideration.” *State v. Wright*, 679 N.W.2d 186, 191 (Minn. App. 2004), *review denied* (Minn. June 29, 2004). When a defendant waives the right to a jury trial on an element of the offense, the district court may instruct the jury of that fact. *State v. Perkins*, 353 N.W.2d 557, 561 (Minn. 1984) (noting that district court may direct a verdict on an element of an offense when there has been “a judicial admission by the defendant”); *Lamere v. State*, 278 N.W.2d 552, 557 (Minn. 1979) (recognizing that if a defendant “actually admits certain elements, then the court properly may so instruct the jury”).

Here, appellant expressly waived his right to have the jury consider an element of the offense. Before trial, appellant signed a stipulation stating that “The parties hereby stipulate that [appellant] has the following conviction[] that makes him prohibited to possess a forearm under Minn. Stat. § 624.713: . . . False Imprisonment.” The parties agreed that “[t]his stipulation satisfies the element requiring the State to prove that

[appellant] is a prohibited person in the sole Count of the Complaint. [Appellant] waives his right to a jury determination that he is a prohibited person pursuant to this stipulation.” The parties also agreed on jury instructions about the stipulation. During the pretrial hearing, the district court read the stipulation into the record and appellant agreed that he was prohibited from possessing a firearm. And in its final instructions to the jury, the district court stated that:

[Appellant] was ineligible from possessing a firearm or ammunition by law. The Court instructs you that you are bound by the stipulation agreed to by the parties that the defendant was ineligible [] under Minnesota law from possessing a firearm on the relevant dates in question.

In other words, the second element of the offense; that the defendant was ineligible to possess a firearm has been proven beyond a reasonable doubt. You are not to speculate about why the defendant was ineligible from possessing a firearm.

These jury instructions mirror the parties’ stipulation and appellant’s waiver of his right to have a jury determine this element of the offense. Appellant signed a stipulation acknowledging that he was prohibited from possessing a firearm under the statute because of his false-imprisonment conviction.

Appellant relies on *Dereje v. State*, for the proposition that the jury should have been free to weigh and balance the evidentiary value of the stipulation along with all of the other evidence. 837 N.W.2d 714 (Minn. 2013). *Dereje* involved a stipulated-facts trial and is not relevant here. *Id.* at 718. Appellant also argues that the district court erred because it should not have directed a verdict on an element of the offense, but Minnesota caselaw does not support this argument.

Because appellant waived his right to a jury trial on an element of the offense and the district court provided a jury instruction consistent with the parties' stipulation and appellant's on-the-record waiver, the district court did not err. Having determined that the district court did not err, we need not address the remaining two factors. *See State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (noting that if "any one of the requirements" of the plain-error test is not satisfied, we "need not address any of the others" (quotation omitted)).

III. Appellant is not entitled to relief on the merits of his pro se claims.

Appellant raises additional arguments in his pro se supplemental brief. Appellant argues that (1) he was unlawfully stopped and detained by the security guards, (2) the district court erred in denying his suppression motion because the security guards were acting as state agents, and (3) the witness testimony was inconsistent. We reject appellant's argument about the suppression motion for the reasons discussed above. We address the remaining two issues below.

A. Unlawful Detention

Appellant argues that the security guards did not have the right to perform a citizen's arrest. A private person may arrest another "for a public offense committed or attempted in the arresting person's presence." Minn. Stat. § 629.37(1) (2018). "Arrest means taking a person into custody that the person may be held to answer for a public offense." Minn. Stat. § 629.30, subd. 1 (2018). "'Arrest' includes actually restraining a person or taking into custody a person who submits." *Id.* Before a private person may make an arrest, the person must have probable cause to believe that the other person has violated the law.

Keane v. Comm’r of Pub. Safety, 360 N.W.2d 357, 359 (Minn. App. 1984). “Probable cause to arrest exists where the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000) (quotation omitted).

An Allied employee informed the security guards that appellant was engaging in drug use on the property. The security guards located appellant on their live-feed security cameras and confirmed that he was smoking marijuana on Mayo’s property. The security guards brought appellant to their security office to issue a trespass notice. The district court considered this issue at the pretrial stage and determined that the citizen’s arrest was “allowed under the plain language of Minn. Stat. § 629.30, subd. 1,” because the security guards personally observed appellant using marijuana on their private property and got into an altercation with appellant when he refused to leave. We are satisfied that a person of ordinary care and prudence would entertain an honest and strong suspicion that appellant violated the law by engaging in drug use on private property and refusing to leave. Because probable cause existed to believe that appellant violated the law, the detention was lawful.

B. Inconsistencies in Witness Testimony

Appellant argues that the witness testimony was inconsistent. For example, appellant argues that the Allied employee testified that he saw appellant rolling a marijuana cigarette and smelled an “odor of marijuana” on appellant. But appellant argues that the security video does not capture appellant actually lighting the marijuana cigarette or engaging in drug use on Mayo property. Appellant also claims that the security guards did

not adequately explain to appellant that he was being trespassed. Appellant argues that the security guards placed him in handcuffs before allowing him to leave the Mayo building's property.

“In a criminal jury trial, it is the solemn duty of the jury, and the jury alone, to assess the credibility of all declarants, to weigh the evidence, and to decide whether or not the evidence truly supports the charges brought by the state.” *State v. Holl*, 949 N.W.2d 461, 473 (Minn. App. 2020), *review granted in part, denied in part* (Minn. Nov. 17, 2020). The jury heard testimony from the Allied employee, the security guards, the police officer, and appellant. The jury also viewed the security video of the incident. It is the sole province of the jury to weigh conflicting evidence and determine whether the evidence presented supports the charge. If there were inconsistencies in witness testimony, then those credibility issues were for the jury to resolve. The jury evidently found respondent's witnesses more credible than appellant, and it is not the role of this court to reassess those credibility determinations on appeal. Appellant is not entitled to reversal of his conviction on the basis of inconsistent witness testimony.

Affirmed.