STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1009

State of Minnesota,
Respondent,

vs.

Abulla Cham,
Appellant.

Filed June 24, 2008
Affirmed
Worke, Judge

Olmsted County District Court
File No. K3-05-3729

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Mark A. Ostrem, Olmsted County Attorney, Julie L. Germann, Assistant County Attorney, 151 SE Fourth Street, Rochester, MN 55904 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Worke, 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

WORKE, Judge

On appeal from a conviction for felony violation of a harassment restraining order, appellant argues that the district court erred when it failed to make written findings following a court trial. We affirm.

D E C I S I O N

Appellant Abulla Cham argues that his conviction for violation of a harassment restraining order must be reversed or remanded because the district court failed to comply with Minn. R. Crim. P. 26.01, subd. 2. "Construction of a rule of procedure is a question of law subject to de novo review." *State v. Nerz*, 587 N.W.2d 23, 24-25 (Minn. 1998)

Under Minn. R. Crim. P. 26.01, subd. 2, a district court must, when presiding over a court trial, make a general finding of guilty or not guilty within 7 days after the completion of the trial. In felony and gross-misdemeanor cases, the court must also within 7 days after making a general finding of guilty or not guilty, "specifically find the essential facts in writing on the record. . . . If the court omits a finding on any issue of fact essential to sustain the general finding, it shall be deemed to have made a finding consistent with the general finding." Minn. R. Crim. P. 26.01, subd. 2. Findings may also be "gleaned from comments from the bench" as long as they "afford a basis for intelligent appellate review." *State v. Scarver*, 458 N.W.2d 167, 168 (Minn. App. 1990) (quotation omitted). The purpose of requiring written findings is twofold, to allow the court to take the matter under advisement and "to aid the appellate court in its review." *Id.* And the purpose of the rule is satisfied when the district court issues extensive oral

findings on the record immediately after trial. *See Nyberg v. R.N. Cardozo & Brother, Inc.*, 243 Minn. 361, 366, 67 N.W.2d 821, 824 (1954) (determining that when the record shows that all evidence was presented and considered, remand for written findings "would serve no useful purpose").

Here, a sheriff's deputy personally served appellant with a harassment restraining order that prevented him from having any contact with M.N. After being served with the order, appellant read a booklet about restraining orders that he obtained from Legal Aid. Appellant understood that he could not have any contact with M.N., but believed that if M.N. contacted him he would not be in violation of the order. Several months later, an officer received a report that M.N. was at appellant's place of employment. Appellant was no longer at his place of employment when the officer arrived, so the officer drove to appellant's address. Appellant told the officer that M.N. had given him a ride home, but denied that she was in his apartment. Appellant indicated that he was aware of the restraining order, but that he did not agree with it. The officer arrested appellant because he violated the order by having contact with M.N. Appellant then admitted that M.N. was in his apartment. Appellant told the officer that he was in love with M.N. and that the restraining order was not going to keep him from her.

Immediately following the court trial, the district court found appellant guilty and stated:

> I think all that's been stated here is mitigation. I would not have found [appellant] guilty if all that had happened was that [M.N.] had come to [his place of employment] and that was the end of it. Clearly he had no control over what she did. But where he did have control and why I am finding him

> guilty is that he elected to go with her to his apartment and do whatever it was that they were doing there, looking for school supplies or whatever it was. It doesn't really matter. The point is, is that he had control over that, and he went with her someplace where he should not have gone with her. It's to me as simple as that, so I'm going to find him guilty.
>
> All the rest of this stuff to me is mitigation, and I don't know that there's really much of an issue about any of this stuff in terms of the elements. I guess the thing that was at question might have been element number 2 as to whether or not he violated a term, and I say that by accompanying her from [his place of employment] to his apartment it's at a point that the condition of no contact was violated, and thus I'm finding him guilty.

There were no further written findings made by the district court in support of its verdict. Appellant argues that this case is similar to *State v. Taylor*, in which this court remanded for written findings when the district court failed to make specific findings. 427 N.W.2d 1, 5 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988). In *Taylor*, the record contained no written findings. *Id.* at 4. Following a court trial, the district court merely pronounced the defendant "guilty." *Id.* at 5. At sentencing, Taylor complained that he had not been treated fairly and the district court replied that the witnesses "gave sufficient facts on the record to substantiate each and every element" of the offense. *Id.* This court determined that the "oral statements made at sentencing could, if put in writing at the conclusion of the testimony, form the basis for compliance with [rule 26.01, subd. 2]." *Id.* But this court held that in the context in which the statements were made—in response to a question posed by Taylor at his sentencing—the statements did not substitute for written findings. *Id.*

In this case, in order to find appellant guilty, the state was required to prove that: (1) a harassment restraining order existed; (2) appellant violated the order; (3) appellant knew about the order; and (4) the act took place on a particular date in a particular county. 10 *Minnesota Practice*, CRIMJIG 13.63 (2006). Proof of the first, third, and fourth elements is undisputed. The state showed that the order existed and that appellant was personally served with the order. The state also showed that on September 17, 2005, M.N. was at appellant's apartment in Olmsted County. Addressing the second element, the district court expressly found that appellant violated the harassment restraining order when he decided to go to his apartment with M.N.

Taylor is distinguishable for at least three reasons. First, the district court made the general finding of guilt and findings supporting the verdict at the time it announced the verdict, *immediately* following the court trial. Second, the district court made its findings without any prompting from appellant. Finally, the district court made its oral findings on the record, explaining the reason for the general finding of guilty and specifically addressing an element of the offense. Although the findings in this case are scant, they do support the general verdict. Therefore, we conclude that no useful purpose is served by remanding for further findings by the district court.

Affirmed.