STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1344

State of Minnesota,
Respondent,

vs.

Lamario Deonte Charles,
Appellant.

Filed May 18, 2010
Affirmed
Larkin, Judge

Dakota County District Court
File No. 19HA-CR-08-3486

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

James C. Backstrom, Dakota County Attorney, Vance B. Grannis, III, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Marie L. Wolf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Toussaint, Chief 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

LARKIN, Judge

Appellant claims that the district court erred by refusing to suppress his statement to the police, arguing that the police should have provided him with a *Miranda* warning and recorded his statement. Appellant also claims that the district court abused its discretion by sentencing him to serve 108 months in prison. Because appellant's statement was not made in response to interrogation, and because the sentence imposed was within the district court's discretion, we affirm.

FACTS

On August 29, 2008, appellant Lamario Deonte Charles was involved in an altercation at a bar. He was removed from the establishment, only to have another confrontation outside of the bar. Security officers wrestled Charles to the ground, and one of the security officers saw Charles throw a bag out of his pants pocket. A second witness also saw Charles throw the bag out of his pocket. Burnsville police officers Jared Kasper and Dallas Moeller arrived on the scene and recovered the bag. Because Officer Moeller suspected that the bag contained a controlled substance, he arrested Charles.

While being transported to the jail, Charles asked Officer Moeller what he was being charged with. In response, Officer Moeller stated that Charles would be charged with second-degree possession of a controlled substance. Charles became upset and started screaming that possession is 95% of the law. Charles was subsequently charged with one count of second-degree controlled-substance possession.

The case was tried to a jury. Charles failed to appear for the final day of trial, and the district court issued a warrant for his arrest. The jury returned a verdict of guilty. Charles was arrested approximately 22 days after the verdict, and he appeared before the district court for sentencing. The probation department recommended that the district court sentence Charles to serve 98 months in prison. The presumptive-sentence range under the sentencing guidelines was 84 to 117 months. The district court sentenced Charles to serve 108 months. The district court stated that it added 10 months to the 98-month sentence recommended by probation because Charles "fled from [his] trial." This appeal follows.

D E C I S I O N

I.

Charles claims that the district court erred by not suppressing his statement, arguing that his *Miranda* rights were violated.[1] The district court found that Charles's statement was spontaneous and not the result of interrogation. The district court therefore concluded that a *Miranda* warning was unnecessary. When reviewing an order on a

[1] It does not appear that Charles made this argument in the district court. Charles objected to the admission of his statement solely on hearsay grounds. Therefore, the *Miranda* issue is arguably waived. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating generally, an appellate court will not consider matters not argued to and considered by the district court). The district court, however, determined both that Charles's statement was not inadmissible hearsay and that a *Miranda* warning and *Scales* recording were unnecessary because Charles's statement was spontaneous. *See State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) ("[A]ll custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs in a place of detention."). Because the district court did consider the *Miranda* and *Scales* issues, even though they were not asserted by Charles, we will consider these issues.

motion to suppress evidence, an appellate court "may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Miranda v. Arizona provides procedural safeguards to protect an individual's Fifth Amendment privilege against self incrimination. 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630 (1966). "Statements made by a suspect during custodial interrogation are generally inadmissible unless the suspect is first given a Miranda warning." *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). There is no dispute that Charles was in custody when he made the statement at issue here. Thus, the sole inquiry is whether or not the statement was made during interrogation.

The United States Supreme Court has defined interrogation as "express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689 (1980). "That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301, 100 S. Ct. at 1689-90 (footnotes omitted). "'Subtle compulsion' or the mere possibility that a question will elicit an incriminating response is insufficient to trigger the *Miranda* doctrine." *State v. Tibiatowski*, 590 N.W.2d 305, 310 (Minn. 1999). However, "[a] volunteered statement made by a suspect, not in response to interrogation, is not barred by the Fifth Amendment and is admissible with or without the giving of *Miranda* warnings." *State v. Williams*, 535 N.W.2d 277, 289 (Minn. 1995).

Here, Charles asked Officer Moeller a question regarding the charges that he would face. The officer answered the question, and Charles began screaming that possession is 95% of the law. Charles's statement was voluntary and spontaneous; it was not made in response to interrogation. Thus, no *Miranda* warning was required, and the district court did not err by refusing to suppress the statement.

Charles argues that "[s]ome courts have found an interrogation to have occurred when the police, in booking a suspect, merely advised him of the charges and then described the evidence against him." The cases that Charles cites for this proposition are from other jurisdictions and not precedential. Furthermore, Officer Moeller did not describe the evidence against Charles; he merely answered Charles's question regarding the potential criminal charges. Charles concedes that Officer Moeller's statement "does not describe the evidence against him in any detail" but nonetheless asserts that "the addition of the words 'second-degree' and 'possession' provide enough specifics that it was foreseeable that a defendant would react with an incriminating response." Charles does not provide any legal citation to support this assertion, which would significantly expand the definition of "interrogation" for *Miranda* purposes. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

Charles also argues that his statement should have been recorded. "[A]ll *custodial interrogation* including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when

questioning occurs in a place of detention." *Scales*, 518 N.W.2d at 592 (emphasis added). The question of whether there was a "substantial violation" of the *Scales* recording requirement is a legal question subject to de novo review. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

The district court correctly found that Charles's statement was spontaneous and not in response to interrogation. Because there was no custodial interrogation, the *Scales* recording requirement is inapplicable. And, contrary to Charles's assertion, the purpose of the recording requirement is not to resolve factual issues regarding whether an officer's conversation with a suspect constitutes a custodial interrogation. Rather, the purpose of the *Scales* recording requirement is to determine whether a *Miranda* warning was provided prior to custodial interrogation and whether the *Miranda* rights were waived. *Scales*, 518 N.W.2d at 592; *see also State v. Inman*, 692 N.W.2d 76, 81 (Minn. 2005) ("Had [appellant] claimed at the omnibus hearing that a *Miranda* warning was not given or that he had not waived his *Miranda* rights, the dispute created by his allegations would have gone directly to the stated purpose of the *Scales* requirement . . . ."). Finally, Charles presents no authority to support his contention that we should extend the *Scales* recording requirement beyond custodial interrogations to every interaction between a suspect and the police, and we decline to do so. *See Tereault*, 413 N.W.2d at 286 ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."). The district court did not err by refusing to suppress Charles's statement.

II.

Charles argues that the district court abused its discretion by imposing a 108-month prison sentence. Sentences imposed by the district court are reviewed for an abuse of discretion. *State v. Ford*, 539 N.W.2d 214, 229 (Minn. 1995). "Presumptive sentences are seldom overturned." *State v. Andren*, 347 N.W.2d 846, 848 (Minn. App. 1984). Only in a "rare" case will a reviewing court reverse imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). A reviewing court will generally not exercise its authority to modify a sentence within the presumptive range "absent compelling circumstances." *State v. Freyer*, 328 N.W.2d 140, 142 (Minn. 1982).

Based on his criminal history score and the severity level of his offense, Charles faced a presumptive executed sentence of 84 to 117 months under the Minnesota Sentencing Guidelines. "[A]ny sentence within the presumptive range for the convicted offense constitutes a presumptive sentence." *State v. Delk*, ___ N.W.2d ___, ___, 2010 WL 1753290, at *2 (Minn. App. May 4, 2010); *see also* Minn. Sent. Guidelines II, IV (noting that the presumptive sentence is determined by locating the appropriate cell of the sentencing-guideline grid containing ranges of months "within which a judge may sentence without the sentence being deemed a departure"); *State v. Jackson*, 749 N.W.2d 353, 359 n.2 (Minn. 2008) ("All three numbers in any given cell constitute an acceptable sentence . . . ."). The district court sentenced Charles to 108 months in prison, which was well within the presumptive range.

Charles argues that "the Sentencing Guidelines do not allow a judge to manipulate [the] guidelines to justify a sentence arrived at by the court for reasons not related to the

current offense." The record does not support the assertion that the district court "manipulated" the sentencing guidelines. Charles's sentence falls within the presumptive-sentence range, and the district court was not required to provide a justification for this sentence. Charles contends that "[t]he Minnesota Supreme Court has rejected what it has characterized as the 'ratcheting up' of sentences based on improper considerations." The cases Charles cites as support involve sentencing departures. There was no sentencing departure in this case. In apparent realization of this fact, Charles states that "other cases have made it clear that sentencing courts should not consider factors unrelated to the actual offense even in non-departure cases," and cites to cases dealing with immigration consequences. But immigration consequences were not an issue in this case.

Charles also finds fault with the legislature's expansion of the presumptive-sentence ranges in recent years. *See* Minn. Stat. § 244.09, subd. 5(2) (2008) ("The guidelines shall provide for an increase of 20 percent and a decrease of 15 percent in the presumptive, fixed sentence."). This expansion was the legislature's prerogative. Our function "is limited to identifying errors and then correcting them." *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (citations omitted). Because Charles fails to establish any sentencing error, there is no basis for this court to provide relief. The district court did not abuse its discretion by sentencing Charles to serve 108 months in prison.

Charles also raises numerous arguments in his pro se supplemental brief, including that he does not understand the appeals process because the appellate courts do not look at the police reports; the drugs did not belong to him; cameras should have shown, and

the police should have seen, him throw the plastic bag; the bag should have had his fingerprints on it; he was framed; the security guards did not make a statement at the scene; his attorney did not provide effective assistance; and he was not given a fair trial. Charles's pro se brief contains no argument, no citations to the record, and no legal authority to support his allegations. Therefore, these arguments are deemed waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) ("The [pro se supplemental] brief contains no argument or citation to legal authority in support of the allegations and we therefore deem them waived.").

Affirmed.

Dated:

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Judge Michelle A. Larkin