STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1077

State of Minnesota,
Respondent,

vs.

Lavel Montae Tyler,
Appellant.

Filed June 27, 2011
Reversed and remanded
Toussaint, Judge

Hennepin County District Court
File No. 27-CR-09-25717

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

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

TOUSSAINT, Judge

Appellant Lavel Montae Tyler challenges his conviction, following a bench trial, of aiding and abetting first-degree burglary and assault with a dangerous weapon. Because the district court committed plain error affecting appellant's substantial rights when it failed to rule on appellant's motion for judgment of acquittal, we reverse and remand for a new trial.

D E C I S I O N

Appellant argues that the district court erred by not ruling on his motion, made at the close of respondent State of Minnesota's case, for judgment of acquittal. The court took the motion under advisement but never ruled on it. Appellant complains that he was forced to testify without any determination that respondent had met its burden of proof during its case in chief and that this error prejudiced him and entitles him to a new trial.

Respondent argues that appellant cannot "have it both ways" and that appellant's failure to object to the court's reservation of his motion for judgment of acquittal constitutes a waiver of his right to now challenge the reservation on appeal. *See State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000) (stating that "trial counsel cannot have it both ways: failing to raise a specific objection at trial for its own reasons of trial strategy, then claiming the admission of such evidence as error on appeal."). Respondent emphasizes that this was a bench trial, not a jury trial, and that the court is presumed capable of considering only properly admitted evidence. *See State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (holding that distinction between jury trial and bench trial is important and

that risk of unfair prejudice is reduced because there is comparatively less risk that a judge would use *Spreigl* evidence for improper purpose). Respondent reasons that, given the district court's findings of guilt on all counts, there is no doubt that the court implicitly denied the acquittal motion and would have done so explicitly had it been asked to make a ruling.

But unobjected-to error may be reviewed for plain error. *State v. Schlienz*, 774 N.W.2d 361, 365 (Minn. 2009). Under a plain-error analysis, there must be error that is plain, and the error must affect substantial rights. *State v. Simion*, 745 N.W.2d 830, 843 (Minn. 2008). If these elements are present, we then consider whether a new trial is necessary to ensure fairness and the integrity of the judicial proceedings. *Id.*

An error is plain if it "contravenes case law, a rule, or a standard of conduct." *Schlienz*, 774 N.W.2d at 366 (quotation omitted). Minn. R. Crim. P. 26.03, subd. 18(2) (2010), specifically provides: "If the defendant's motion [for judgment of acquittal] is made at the close of the prosecution's case, the court *must rule* on the motion."[1] (Emphasis added.) Thus, the district court's decision to reserve appellant's motion for judgment of acquittal and its failure to rule on the motion at all constitutes plain error

[1] The 2010 version of the criminal rules applies to this February 2010 trial. *See* Order Promulgating Amendments to the Minnesota Rules of Criminal Procedure, C1-84-2137 (Minn. Oct. 27, 2009) (ordering that amendments shall apply "to all actions or proceedings pending on or commenced on or after" January 1, 2010). By contrast, the former version of the rule stated: "If the defendant's motion [for judgment of acquittal] is made at the close of the evidence offered by the prosecution, the court *may not reserve* decision of the motion." Minn. R. Crim. P. 26.03, subd. 17(2) (2009) (emphasis added). The distinction between the phrase "may not reserve decision on the motion" in the 2009 version of the rule and the phrase "must rule on the motion" in the 2010 version is slight, but clear: the court is required to rule on the motion at the close of the state's case.

because that decision is directly contrary to the rules of criminal procedure. *See State v. Penkaty*, 708 N.W.2d 185, 208 (Minn. 2006) (stating that "if a motion for judgment of acquittal is made at the close of the state's case, it is error for the district court to reserve its ruling on the motion").

In addition, we believe that the district court's plain error in failing to rule on appellant's motion for judgment of acquittal affected appellant's substantial rights. "An error affects substantial rights if it is prejudicial and affects the outcome of the case." *Schlienz*, 774 N.W.2d at 366 (quotation omitted). The Minnesota Supreme Court has recognized the rationale against reserving ruling on a motion to acquit. *State v. Slaughter*, 691 N.W.2d 70, 75 (Minn. 2005). The court explained: "Given the presumption of innocence and the state's burden to prove the offense, a defendant has no obligation to present any evidence and should not be put at risk of producing evidence that fills gaps in the state's case."[2] *Id.*

Appellant asserts that he was prejudiced because the district court failed to consider or rule on the merits of respondent's case *without* any of the evidence offered by the defense. The court did not consider the merits of the case against appellant until it had heard appellant's testimony; the court then used its disbelief of that testimony to buttress its conclusion that respondent had proven its case against appellant beyond a

[2] Interestingly, since 1994, the federal rules have allowed for reservation of a motion for judgment of acquittal made at the close of the state's case. Fed. R. Crim. P. 29(b). But the federal rule also requires the court to eventually "decide the motion on the basis of the evidence at the time the ruling was reserved." *Id.* Prior to 1994, the federal rule was similar to the Minnesota rule and prohibited reservation of a motion for judgment of acquittal made at the close of the state's evidence.

reasonable doubt. Indeed, the court relied heavily on its assessment of the credibility of the witnesses and on its rejection of appellant's credibility. The court's failure to evaluate the merits of respondent's case and rule on the motion for judgment of acquittal before appellant testified prejudiced appellant's case and affected his substantial rights.

Having found plain error affecting appellant's substantial rights, we must consider whether the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Simion*, 745 N.W.2d at 843 Given the district court's clear, if possibly inadvertent, violation of rule 26.03 and the possibility that this violation affected appellant's decision to testify, we conclude a new trial is necessary to ensure fairness and the integrity of judicial proceedings. We therefore reverse and remand for a new trial.

Appellant also challenges the district court's decision to allow one witness to provide an in-court identification of appellant as one of the men who broke into her home. The court's decision on this issue was made at the end of trial, which was held before the same district court judge who presided at the *Rasmussen* hearing. *See In re J.P.L.*, 359 N.W.2d 622, 625 (Minn. App. 1984) (noting the dangers, at least in juvenile cases, of allowing the same judge to preside at trial on the merits after that judge has suppressed evidence at *Rasmussen* hearing). Following the *Rasmussen* hearing, the court granted appellant's motion to suppress statements he made to police following his arrest but denied his motion to suppress identification evidence. Following trial, the court reconsidered its ruling on the identification evidence and concluded that the out-of-court identifications were inadmissible but that one witness's in-court identification was admissible.

A district court is free to reconsider its pretrial. Thus, before any retrial, the parties should be allowed to seek reconsideration of the district court's rulings on the suppression issues. *Cf. State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977) (noting that district court is free to reconsider its rulings upon proper application of parties made at appropriate time during course of trial).

Reversed and remanded.