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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0878**

State of Minnesota,
Respondent,

vs.

Johnny Frank Logan, III,
Appellant.

**Filed June 18, 2018
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-15-7861

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

During a pretrial hearing for first-degree assault and domestic-abuse charges, appellant Johnny Logan expressed dissatisfaction with his appointed counsel and requested substitute counsel. The district court provided Logan with an opportunity to explain why he was entitled to substitute counsel, but Logan only asserted vague allegations. Logan again requested substitute counsel at a later pretrial hearing, coupled with more vague allegations. This time, however, the district court did not permit an explanation and denied the request for substitute counsel. Logan then opted to terminate his counsel and proceed pro se. Following his conviction, Logan appeals and argues the district court erred by not fully considering his request for substitute counsel, in addition to numerous pro se arguments. We affirm.

FACTS

Appellant Johnny Logan and J.F., the victim, were in a tumultuous on-and-off again relationship for approximately 15 years. During the relationship, Logan physically and verbally abused J.F., but the specific events leading to this case started on June 17, 2015. While much is unclear about what exactly occurred on this date, it is clear that J.F. and Logan had an argument. J.F. told Logan that she did not feel well and that she may have to leave work early. But Logan argued that J.F. needed to stay at work and continue earning money. J.F. was unable to do so, and she was sent home by her supervisor due to a bad cough and raspy voice.

J.F.'s mother called her that afternoon and became concerned when she heard J.F. speak—her words were “garbled” and difficult to understand. Additionally, J.F. failed to call her mother back, which was unusual. Around this time, one of J.F.'s friends came to her house, but was greeted at the door by Logan. The friend attempted to see J.F., but Logan explained that she was not feeling well. The next morning, June 18, the friend again tried to see J.F., but Logan stated she was still sick. J.F. did not show up for work that day or personally notify her supervisor that she would miss work. During these few days, J.F. was at home and Logan observed her health deteriorate.

On June 19, Logan took J.F. to the hospital. When they arrived, Logan informed medical staff that he believed J.F. took “pills” following a “really big argument” between them. When J.F. was evaluated at the hospital, the medical staff discovered that the left side of her brain was deprived of blood flow. They determined that J.F. had suffered a stroke, and expert testimony would later establish that the stroke occurred within 48 hours before admission to the hospital. Doctors ordered special tests on J.F. to determine its cause because a stroke for someone of J.F.'s age is very uncommon. Doctors learned that J.F.'s carotid artery¹ had blood clots in it and that trauma to the neck—such as strangulation—was the most likely cause. Medical personal at the hospital noticed numerous injuries on J.F.'s body, including scratches and bruises on her neck and bruises on the rest of her body. With this combination of possible trauma to the neck and bruises

¹ The carotid artery is located on the left side of the neck.

throughout J.F.'s body, doctors believed domestic abuse was a possible cause for the blood clot, which ultimately caused the stroke.

Similar to the medical staff, J.F.'s mother believed that her daughter was a possible victim of domestic abuse. She notified law enforcement that J.F. was in the hospital following a stroke and that she suspected Logan was the cause. After consulting with doctors at the hospital and examining J.F.'s injuries, officers determined the injuries were consistent with domestic abuse. Officers attempted to interview J.F., but she was unable to communicate coherently. After a month, officer's again talked to J.F., who provided Logan's name when asked who hurt her.

In October 2015, officers charged Logan with first-degree assault² and felony domestic assault.³ During a pretrial hearing in December 2015, Logan asked the district court for substitute counsel, stating that he did not believe he was "getting represented right" by his court-appointed counsel. The district court explained that his counsel was highly experienced and competent, and then gave Logan the opportunity to explain why new counsel should be appointed. Logan stated it was "[b]ecause of my, because of the circumstances, excuse my tongue, because of the things that have happened up to this point. She has told me she was going to do things that she didn't do."

The district court then stated there were no grounds for substitute counsel and asked Logan if he wished to terminate his counsel, but cautioned that this would result in Logan representing himself or needing to obtain new counsel on his own. Logan agreed to

² In violation of Minnesota Statutes section 609.221, subdivision 1 (2014).

³ In violation of Minnesota Statutes section 609.2242, subdivision 4 (2014).

proceed with his current counsel. Logan’s counsel explained that she believed the friction between her and Logan was due to Logan wanting the case dismissed for a lack of probable cause, despite the fact that the issue of probable cause had already been determined in favor of the state.

Logan was persistent with his probable-cause argument—that the charging complaint was based on lies—throughout the next pretrial hearing in January 2016. At this hearing, Logan’s counsel again expressed Logan’s frustration with the probable-cause finding. The district court then explained to Logan that the probable-cause determination in this case was “not a close call” and that it would not grant a request for a *Florence* hearing to determine probable cause.⁴

At the next pretrial hearing in February 2016, Logan’s unhappiness with his counsel peaked. At the start of this hearing, Logan stated “I don’t want her to represent me,” in reference to his counsel. After a short recess where defense counsel consulted with Logan, he again requested substitute counsel and stated, “I have some really serious allegations and I have proof here of—it’s—it’s clear proof of shoddy police work and lies on the part of [my attorney] and on the part of the state and as far as my paperwork and the pictures.” The district court explained that it would not consider the evidence and stated that Logan would not get substitute counsel. Then, despite the district court cautioning against it, Logan discharged his counsel and proceeded pro se. The court explained the difficulty and challenges of pro se representation and the serious nature of the charges, but Logan signed

⁴ A *Florence* hearing is held “to determine whether there [is] sufficient probable cause to support the charges.” *State v. Koenig*, 666 N.W.2d 366, 370 (Minn. 2003).

a waiver indicating he wanted to represent himself and proceed pro se. Logan requested, and the judge agreed to appoint, advisory counsel to assist him.

On the morning the case was to proceed to a bench trial, the district court explicitly raised the issue of Logan wearing his orange jumpsuit during the bench trial. The court explained that it would not make any adverse inferences regarding Logan wearing the jail clothes, and Logan stated that he did not have any concerns about the jail clothes affecting the judge's ability to decide the case. After this explanation, Logan still asked to change out of his jail clothes and noted that the clothes may impact how witnesses view him. The court replied that it did not believe witnesses would be affected. The court asked if it was all right to proceed with the jail clothes and Logan stated "okay."

During this same time, Logan informed the district court that he was having problems accessing evidence on computers. He explained that at first he did not have the disk containing the evidence, and then when he received it, he had difficulties locating a working computer. The court heard arguments about Logan's access to evidence and found credible the state's testimony that Logan had access to the evidence for a long period of time.

The case then proceeded to a one-week bench trial where Logan represented himself with the assistance of advisory counsel. Throughout the trial, Logan often consulted with his advisory counsel, and the advisory counsel assisted Logan with exhibits and communicating with the court. The state's evidence showed that the injuries J.F. suffered were consistent with abuse and that these injuries led to the dissection of her carotid artery—which caused her stroke. Logan argued that he did not assault J.F., and that her

health issues were the result of drugs, while the bruises were caused by her falling down stairs. During trial, Logan attempted to introduce the medical records from the first seven days of J.F.'s stay at the hospital. However, the district court did not admit the evidence because of a lack of foundation and because there was no available expert testimony to help interpret the records.

Testimony of the seriousness of J.F.'s injuries was prevalent throughout trial. Medical experts testified that J.F.'s injuries would likely have a lasting impact on her body for the rest of her life. Experts believed J.F. would experience permanent cognitive deficiencies in regards to her written and oral communication. And testimony established that J.F. would likely continue to have difficulty moving the right side of her body, resulting in trouble walking and completing daily activities.

After the trial concluded, the district court found Logan guilty of first-degree assault and felony domestic assault. The court found that Logan assaulted J.F., which caused her stroke. The court rejected Logan's alternative explanations for the sources of J.F.'s injuries: drugs; a fall down the stairs; or surgical procedures. The court then held a *Blakely* trial with a jury. See *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016). (“[A] *Blakely* trial considers whether aggravating sentencing factors exist.”). Logan opted to have an attorney appointed to him for the *Blakely* trial. The jury determined aggravating factors existed, and the court sentenced Logan to 240 months of incarceration on the first-degree assault, finding the victim was subject to particular cruelty.

Logan appeals.

DECISION

On appeal, Logan contends that the district court erred by failing to determine if exceptional circumstances existed to justify appointment of substitute counsel. Additionally, in a supplemental pro se brief, Logan raises three separate issues: (1) there was insufficient evidence to support his conviction for first-degree assault; (2) the district court admitted hearsay statements in violation of his right to confrontation; (3) and a catch-all argument listing numerous errors he alleges the district court made.⁵ We address each issue in turn.

I. The district court did not err by failing to determine whether exceptional circumstances existed to justify appointing substitute counsel.

Logan's primary argument on appeal is that when he requested substitute counsel, the district court erred by failing to conduct a *searching inquiry* to determine whether exceptional circumstances existed to justify appointing substitute counsel. This court reviews a district court's decision whether to appoint substitute counsel for an abuse of discretion. *State v. Gilliam*, 629 N.W.2d 440, 449 (Minn. 2001).

⁵ In his pro se brief, Logan also contends that he was denied effective assistance of counsel. However this argument primarily restates his argument regarding substitute counsel. He argues that that his original counsel constantly told him she was going to do things that she never did, that she did not produce documents to him, and that she was going to go to trial without any witnesses. He also argues that his attorney's failure to promptly investigate the case resulted in an inability to present a complete defense. But none of these assertions are supported by the record. Therefore, assuming an ineffective-assistance-of-counsel analysis applies to the limited pretrial conduct in this case, Logan is unable to establish that his attorney's conduct fell below an objective standard of reasonableness—a requirement of the analysis. See *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

Defendants in criminal trials have a constitutional right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. But while defendants have this right to counsel, an indigent defendant does not have an “unbridled right to be represented by counsel of his own choosing.” *State v. Fagerstrom*, 286 Minn. 295, 299, 176 N.W.2d 261, 264 (1970). Instead, requests for substitute counsel are granted only in exceptional circumstances that call into question counsel’s “ability or competence to represent the client.” *Gilliam*, 629 N.W.2d at 449. The decision whether to appoint substitute counsel should “be based on the facts and circumstances surrounding the request.” *Fagerstrom*, 286 Minn. at 299, 176 N.W.2d at 264.

In *State v. Munt*, the Minnesota Supreme Court established the district court’s scope of duties when faced with a substitute-counsel request. 831 N.W.2d 569, 586 (Minn. 2013). In *Munt*, during a pretrial hearing, the defendant accused the police of committing crimes against him and complained that his attorney did not represent his interest, did not pursue his objectives, and was ineffective. *Id.* at 586-87. The Minnesota Supreme Court determined the district court’s failure to further investigate these allegations, referred to as a searching inquiry, was not an error because none of “his statements constituted serious allegations of inadequate representation that would have triggered the district court’s duty to further inquire and determine whether it needed to appoint substitute counsel.” *Id.* at 587.⁶ The court explained that a searching inquiry should be conducted when a defendant

⁶ Similarly, in *State v. Benniefeld*, the defendant terminated his public defender after a disagreement over representation. 668 N.W.2d 430, 433-34 (Minn. App. 2003), *aff’d*, 678 N.W.2d 42 (Minn. 2004). Subsequently, the defendant asked for a new attorney, but the district court declined to provide one. *Id.* This court determined that there were no

“voices serious allegations of inadequate representation.” *Id.* at 586 (quoting *State v. Clark*, 722 N.W. 2d 460, 464 (Minn. 2006)).

Logan argues that the district court committed reversible error by both failing to conduct a searching inquiry upon the substitute-counsel request and failing to even allow Logan to adequately voice his concerns. We disagree. The record shows that Logan was given the opportunity to voice his concerns regarding his attorney—and why he needed substitute counsel—but failed to establish that exceptional circumstances were present.

At the first pretrial hearing where Logan first voiced his concerns and requested substitute counsel, the district court asked, “why would I appoint another attorney?” With this opportunity, Logan answered, “because of the things that have happened up to this point. She has told me she was going to do things that she didn’t do.” This vague answer does not establish exceptional circumstances that call into question counsel’s ability to represent Logan—the threshold that must be met to grant substitute counsel. *Gilliam*, 629 N.W.2d at 449. And similar to *Munt*, the district court was under no duty to conduct a searching inquiry as Logan did not state anything that could trigger the need for substitute counsel. 831 N.W.2d at 586-87. The district court did not abuse its discretion at this hearing by failing to look further into Logan’s request.

This did not change at subsequent pretrial hearings, where Logan again requested substitute counsel. There, Logan stated he wanted substitute counsel and explained, “I

exceptional circumstances that would warrant the appointment of substitute counsel and that the defendant’s dissatisfaction with his original attorney was insufficient. *Id.* at 434-35.

have some really serious allegations and I have . . . clear proof of shoddy police work and lies on the part of [my attorney].” The district court stated it would not appoint substitute counsel or consider the evidence. Again, these allegations did not give rise to exceptional circumstances needed for substitute counsel, nor were they sufficient to warrant the district court having an obligation to conduct a searching inquiry. *See Munt*, 831 N.W.2d at 586-87 (determining that vague allegations of an attorney failing to properly represent a defendant’s interest and of police misconduct were not sufficient to trigger the district court’s duty to conduct a searching inquiry).

Furthermore, we note that the district court’s decision whether to appoint substitute counsel should “be based on the facts and circumstances surrounding the request.” *Fagerstrom*, 286 Minn. at 299, 176 N.W.2d at 264. The facts surrounding the substitute-counsel requests show that the requests were primarily based on Logan’s unhappiness regarding the probable-cause determination and his belief that the charging complaint was based entirely on lies. At the first two pretrial hearings, where Logan expressed dissatisfaction with his counsel, Logan focused on this issue of probable cause. This was despite the district court repeatedly explaining that probable cause was not a close issue. And at the third hearing, Logan again requested substitute counsel and again started to explain that he had evidence proving the state’s case was based on lies. With this understanding of the circumstances, it was reasonable for the district court to decline to entertain the evidence or substitute-counsel request—it was a repeat of the probable-cause argument.

Because Logan never coupled his substitute-counsel request with an explanation of exceptional circumstances that gave rise to concerns his attorney was inadequately representing him, despite being provided the opportunity to explain, the district court did not abuse its discretion by failing to conduct a searching inquiry into the matter. This is further supported by the persistent backdrop that Logan's underlying complaint was that he believed there was a lack of probable cause and that he was unhappy with his counsel for failing to successfully challenge it.

II. The district court did not err by determining there was sufficient evidence to support the conviction for first-degree assault.

In a pro se argument, Logan contends that the evidence presented to the trial court failed to prove beyond a reasonable doubt that he assaulted J.F. and caused her stroke. He instead argues that J.F. fell down the stairs when they moved into their apartment.

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

When the conviction is based on entirely circumstantial evidence, as was the case here, the circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). In applying the circumstantial-evidence standard, the reviewing court uses a two-step analysis: “[t]he first step is to identify the circumstances proved. . . . In identifying the circumstances proved, we defer ‘to the [factfinder]’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.’” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). “The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotations omitted).

For the first step, we identify the circumstances proved. The court found, in a detailed order, that the evidence proved Logan had a history of assaulting J.F. and that he assaulted her on June 17, 2015, which ultimately led to J.F.’s stroke. Our analysis of the record shows that these findings are entirely supported. Furthermore, to be charged with first-degree assault, there must be great bodily harm. Minn. Stat. § 609.221, subd. 1 (2014). Great bodily harm is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2014). The district court determined that J.F.’s injuries, which caused a stroke with permanent cognitive and physical

deficiencies, constituted great bodily harm. This, too, is supported by the record. With this understanding of what the circumstances proved, we turn to step two.

Under the second step of *Silvernail*, this court examines whether the facts proved are consistent with the finding of guilt and inconsistent with any rational explanation but guilt. 831 N.W.2d at 599. While the circumstances proved are consistent with guilt, Logan contends the facts proven also give rise to alternative explanations inconsistent with guilt. We are not persuaded. Logan argues that J.F. fell while they were moving on the weekend prior to June 17, and injuries from that fall caused the stroke. But this theory is inconsistent with the expert testimony that the stroke was caused by trauma such as strangulation within 48 hours before the hospital visit. Furthermore, the district court determined that Logan's testimony was not credible and was inconsistent with prior statements. In sum, the scenarios that could absolve Logan of guilt are not reasonable. Because there is no reasonable explanation other than that Logan assaulted J.F., the circumstances proven are consistent with a guilty verdict. The district court did not err by determining there was sufficient evidence to support the conviction for first-degree assault.

III. Logan's evidentiary arguments do not constitute error.

Logan makes an additional pro se argument that the district court erred by making several evidentiary rulings.⁷ The district court's evidentiary rulings will generally not be reversed absent a clear abuse of discretion. *State v. Flores*, 595 N.W.2d 860, 865 (Minn.

⁷ Logan frames these arguments as a violation of his Sixth Amendment right to confrontation. But because none of his arguments implicate the right to confront a witness, we decline to apply the confrontation-clause analysis to these arguments.

1999). Logan makes three distinct contentions: (1) he should have had access to J.F.'s phone; (2) he was unable to access evidence on computers in the jail; and (3) he should have been allowed to introduce all of J.F.'s medical records as evidence. We address each argument in turn.

First, Logan contends he should have had access to J.F.'s cellphone to examine it for evidence. But the record shows that all the evidence regarding the phone that the state had in its possession was disclosed to Logan, including a complete forensic examination of the cell phone. Second, Logan argues that his lack of access to computers while in jail hindered his ability to provide a complete defense. This, too, is unsupported as the record shows Logan had access to evidence well before trial started and because he fails to provide any legal authority that his limited access to computers while incarcerated constitutes an error. Third, Logan contends that the court erred by not allowing him to enter all of J.F.'s medical records, which the state disclosed to him at the trial. Here, the district court did not abuse its discretion, as Logan was unable to establish foundation to admit the records, and he did not have an expert to interpret the technical information contained in the medical reports.

Because the district court acted within its discretion with its evidentiary rulings, Logan is not entitled to a new trial.

IV. Logan's remaining pro se arguments do not constitute prejudicial errors.

Logan asserts a laundry list of issues under a "cumulative error" heading. It includes: lack of probable cause, lack of evidentiary hearings, failing to stick with the pretrial order, making the appellant wear his jail clothes at trial, failure to give notice of an

aggravated sentence, violation of his right to a speedy trial, admission of hearsay evidence, and that J.F. was not competent to testify. But each of these arguments, with the exception of the one regarding jail clothes, fails to contain legal citations or any legal arguments. Because these arguments lack any legal substance, we determine they are waived. See *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that pro se claims that do not include analysis or legal authority are waived).

The one argument with legal support is the question of whether the district court's decision to have Logan appear in jail clothes during the bench trial was an error.⁸ Minnesota Rule of Criminal Procedure 26.03, subdivision 2(b), requires that during a trial a defendant "must not appear in court in the distinctive attire of a prisoner." The law does not distinguish what clothes are appropriate on the basis of whether the trial is a bench trial or a jury trial. *State v. Hazley*, 901 N.W.2d 452, 455 (Minn. App. 2017), *review denied* (Minn. Nov. 14, 2017). This court has stated that a district court requiring a defendant to wear jail clothes in open court is a due-process violation. *State v. Lehman*, 749 N.W.2d 76, 85 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). However a due-process violation does not require a new trial if the state can show beyond a reasonable doubt that the error was harmless. *Id.* And the state may meet this burden by showing the verdict was "surely unattributable" to the error. *Id.*

⁸ The state contests whether the district court "forced" Logan to wear the jail clothes, as the record shows that the district court sought permission from Logan to have him wear his jail clothes. However, because we determine this error was harmless, we do not reach this argument.

Here, the district court's requirement that Logan wear jail clothes was an error. A new trial however is not appropriate because the error was harmless. First, there is no indication that Logan's garments affected any witness's testimony or the district court's verdict. Furthermore, the state is able to meet its burden that the error was harmless in light of the substantial amount of evidence it put forth at trial against Logan. *See State v. Robinson*, 427 N.W.2d 217, 225-26 (Minn. 1988) (stating that an error was harmless when the amount of evidence of appellant's guilt was overwhelming). This included expert testimony establishing that J.F. suffered a stroke due to trauma resembling domestic abuse and that Logan was the only individual around J.F. at the time of her injury. Because any error regarding Logan's attire was harmless, a new trial is not appropriate.

Affirmed.