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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1878**

State of Minnesota,
Respondent,

vs.

David Devon Bryant,
Appellant.

**Filed December 16, 2019
Affirmed
Bratvold, Judge**

Steele County District Court
File No. 74-CR-18-1440

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

Daniel A. McIntosh, Steele County Attorney, Laura E. Isenor, Assistant County Attorney,
Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica Surges, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this appeal from final judgment of conviction for misdemeanor trespassing, appellant argues that he did not validly waive his right to counsel. Because the law and the record support the district court's implicit determination that appellant voluntarily waived his right to counsel with full knowledge and understanding of his rights, we affirm.

FACTS

In Owatonna on August 3, 2018, C.H. woke up at about 3:00 a.m. and went to the kitchen. He found his neighbor, appellant David Devon Bryant, passed out and lying face down on the floor. C.H. called 911. The state charged Bryant with misdemeanor trespassing in violation of Minn. Stat. § 609.605, subd. 1(b)(4) (2018).

On September 11, 2018, Bryant appeared self-represented for two hearings, which were scheduled for the same time: an arraignment for the trespassing charge, and an omnibus hearing for an unrelated felony charge. Although this appeal concerns what happened during Bryant's trespassing arraignment, the felony hearing provides important context.

The district court first called the felony case and began by considering Bryant's written petition to proceed pro se. The district court informed Bryant of the statutory maximum sentence for the felony charge, and Bryant said he understood. The district court asked Bryant about his mental and physical health, then discussed his right to an attorney, his right to appointed counsel, the possible consequences of representing himself at trial, and whether he had sufficient time to think about his decision to represent himself. Bryant

said that he had been “through the system in the last fifteen years,” had previously been represented by public defenders, had spoken to two law firms about serving as his advisory counsel, and that he understood he would be held to the same standard as a lawyer throughout the proceedings.

Bryant stated that he was “fairly confident in [his] decision” to proceed without counsel. When the district court asked whether he had any questions, Bryant responded that he was “perfectly comfortable”; Bryant also agreed he did not feel pressured into waiving his right to counsel. The district court did not expressly grant Bryant’s petition, but stated that Bryant could sign and date the petition and file it with the court, which Bryant did. The district court then stated it would grant Bryant’s request to appoint advisory counsel. Bryant requested a continued omnibus hearing in the felony case, which was scheduled for October 5.

When asked if he had other issues for the district court, Bryant raised three issues. First, Bryant asked for a competency evaluation under Minn. R. Crim. P. 20.02, which the district court granted. Second, Bryant asked the district court for a furlough from jail to participate in treatment. When Bryant was not able to provide documentation about the treatment plan, the district court stated Bryant could resubmit his request when he had the information. Third, Bryant challenged his bail on several grounds, referring to his need for mental-health treatment, his constitutional rights, and his inability to pay the bail previously set. The state opposed modifying bail and the district court denied Bryant’s motion, stating that mental-health treatment was available at the jail.

After finishing the hearing on Bryant’s felony case, the district court called Bryant’s misdemeanor case. The district court informed Bryant of the maximum statutory sentence for misdemeanor trespass and described his trial rights, including that he had the right to an attorney, an attorney would be appointed if he could not afford one, and he was entitled to a six-juror trial. After Bryant said that he understood those rights, the district court asked, “And do you want to have an attorney represent you on this case?” Bryant responded, “No.”

The district court asked Bryant to enter a plea, to which he responded, “Not guilty.” When asked if he wanted a jury trial, Bryant responded, “No. Trial by judge.” The district court then set a trial date. The two hearings together lasted a total of about four minutes.

About one month later, Bryant represented himself at the misdemeanor trial. The state presented testimony from C.H. and one of the responding officers. Bryant cross-examined both witnesses, and then testified himself that he was drunk on the day of his arrest but passed out somewhere else—not C.H.’s home. The district court found Bryant guilty and sentenced him to the statutory maximum of 90 days in jail with credit for time served. Bryant appeals.

D E C I S I O N

The United States and Minnesota Constitutions guarantee criminal defendants the right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The right to self-representation is implicit in the Sixth Amendment. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). The Minnesota Supreme Court has held that a defendant can waive the right to counsel in three ways: (1) express waiver, (2) waiver by conduct, or (3) forfeiture. *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009).

To be valid, a defendant's waiver of the right to counsel must be "knowing, intelligent, and voluntary." *Id.*; see also Minn. R. Crim. P. 5.04, subd. 1(3). "Whether a waiver of a constitutional right was knowing, intelligent, and voluntary depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused." *Rhoads*, 813 N.W.2d at 884. We review a district court's finding of a valid waiver for clear error. *Jones*, 772 N.W.2d at 504. But when the facts are undisputed, "the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo."¹ *Rhoads*, 813 N.W.2d at 885.

In misdemeanor criminal cases, district courts must obtain a waiver on the record of the defendant's right to counsel, and the waiver may be written or oral. See Minn. Stat. § 611.19 (2018); see also Minn. R. Crim. P. 5.04, subd. 1(3) ("Defendants charged with a misdemeanor . . . who wish to represent themselves[] must waive counsel in writing or on the record"). "The court must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights." *Id.*

Before accepting a defendant's waiver of counsel in a felony case, district courts must "fully advise the defendant by intense inquiry regarding the nature of the charges, the possible punishment, mitigating circumstances, and all facts essential to a broad

¹ The state argues that there are disputed facts concerning the district court's reading of Bryant's rights during the misdemeanor arraignment. We disagree. The parties do not dispute what was said during the hearing, which is reflected in the transcript. Instead, the parties make different legal arguments based on the same facts. We therefore review the validity of Bryant's waiver de novo.

understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.” *Jones*, 772 N.W.2d at 504 (quotation omitted). An invalid waiver of counsel is a structural error that requires automatic reversal. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

At the outset, we note that the district court did not explicitly follow the requirements of rule 5.04, subd. 1(3) with respect to Bryant’s waiver of his right to counsel during the misdemeanor arraignment. Bryant did not expressly waive his right to counsel in writing or orally. The district court did not expressly find that it was satisfied that Bryant’s waiver was made “with full knowledge and understanding of [his] rights.” *See Minn. R. Crim. P. 5.04, subd. 1(3)*. But Bryant told the district court he did not want an attorney. And the district court implicitly accepted Bryant’s waiver of his right to counsel when it allowed Bryant to represent himself, enter a plea of not guilty, waive his right to a jury trial, and then proceed to trial.

We examine the facts and circumstances of Bryant’s case to determine whether his waiver was valid. *See Rhoads*, 813 N.W.2d at 884. During Bryant’s felony hearing, the district court thoroughly covered Bryant’s history of mental illness, his mental health at the time of the hearing,² the nature of the felony charge, the maximum sentence for the felony

² Bryant has a history of mental illness. Bryant told the district court during the felony hearing that he had recently started taking medication that made him “a little cloudy and a little tired.” Bryant also told the district court while arguing his motion for a rule 20.02 competency evaluation that he saw a psychologist twice a week, had been civilly committed in the past, and suffered from post-traumatic stress disorder. On appeal, Bryant does not argue his waiver is invalid due to incompetency or mental illness and does not cite any legal authority for such an argument. Indeed, Bryant acknowledged during the felony hearing that his mental health did not interfere with his ability to proceed. Bryant

charge, the consequences of waiving the right to counsel, the services that advisory counsel could provide, his trial rights, and other circumstances about the felony prosecution. Bryant told the district court that he was “fairly confident” and “perfectly comfortable” with his decision to represent himself. The district court then turned to Bryant’s misdemeanor arraignment and informed him of the nature of the misdemeanor charge and the statutory maximum punishment for that charge. When the district court asked Bryant whether he wanted an attorney to represent him in the misdemeanor case, Bryant said, “No.”

Both the felony and misdemeanor colloquies occurred within the span of about four minutes with the same district court judge. Taken as a whole, the record supports the district court’s implicit determination that Bryant voluntarily waived his right to counsel with full knowledge and understanding of his rights. Thus, under the particular facts and circumstances in this case, we conclude that Bryant validly waived his right to counsel in the misdemeanor case.

Bryant argues that we should not consider what happened during the felony hearing when determining whether his waiver of counsel for the misdemeanor charge was knowing, intelligent, and voluntary. Bryant relies on *Rhoads*, in which a defendant waived his right to counsel in writing at a pretrial hearing for second-degree burglary. 813 N.W.2d at 883. Later, the state amended the complaint to include a new charge for first-degree burglary. *Id.* On the first day of trial, the defendant renewed his waiver of counsel, but the district court did not discuss the more severe sentence for first-degree burglary with the defendant.

also states in his brief to this court that he validly waived his right to counsel in his felony case.

Id. at 883-84. The defendant was found guilty of both burglary charges. *Id.* at 884. The supreme court held that the renewed waiver on the first day of trial was invalid because there was “no evidence” that the defendant understood the significance of the amended charge. *Id.* at 889. The supreme court concluded that the renewed waiver was not knowingly and intelligently made, and, therefore, reversed and remanded the defendant’s conviction for first-degree burglary. *Id.*

Bryant’s reliance on *Rhoads* is misplaced. First, *Rhoads* is distinguishable from this case in several respects. *Rhoads* concerned a renewed waiver after an initial waiver was validly made. *Id.* at 883. Here, Bryant agrees he validly waived his right to counsel in the felony case, but argues he did not do so in the misdemeanor case. *Rhoads* turned on the district court failing to inform the defendant of the maximum sentence for a new charge. *Id.* at 889. Here, the district court informed Bryant of the statutory maximum sentence for misdemeanor trespassing and the state did not amend the complaint. And nearly six months passed between the initial and renewed waivers in *Rhoads*. *Id.* at 883. Here, the felony and misdemeanor waivers were minutes apart.

More fundamentally, *Rhoads* held that a district court’s failure to follow required procedures “does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver.” *Id.* at 889. *Rhoads* therefore does not limit our review to what happened during Bryant’s misdemeanor arraignment. Because we must assess “the particular facts and circumstances of the case,” we consider the entire discussion between Bryant and the district court, starting with Bryant’s felony hearing. *See id.*

Bryant's familiarity with the criminal justice system strengthens our conclusion that his waiver was valid. *See State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998) (concluding a defendant's familiarity with the criminal justice system is a relevant factor in determining voluntary waiver of right to counsel). Bryant told the district court that he had previously been represented by the public defender's office, been "through the system in the last fifteen years[,] and contacted two law firms about serving as his advisory counsel in the felony case. And Bryant argued two motions during his felony hearing: one for a competency evaluation, and one for bail modification that the district court denied. Bryant thus demonstrated that he understood motion and trial procedures. Bryant's familiarity with the criminal justice system shows he understood what was required of him in proceeding pro se and understood the consequences of waiving his right to counsel.

In sum, we conclude that Bryant validly waived his right to counsel under the particular facts and circumstances of this case.

Affirmed.