

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1388**

State of Minnesota,
Respondent,

vs.

Michael Ryan Tverberg,
Appellant.

**Filed November 23, 2020
Affirmed
Jesson, Judge**

Itasca County District Court
File No. 31-CR-19-675

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

Matti R. Adam, Itasca County Attorney, Rachel A. Evenson, Assistant County Attorney,
Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

JESSON, Judge

While awaiting trial on charges of disorderly conduct and obstruction of legal
process, appellant Michael Ryan Tverberg twice discharged his public defender. After

each dismissal Tverberg requested the appointment of advisory counsel. The district court allowed him to discharge his public defender on both occasions—and even reappointed his public defender after he reconsidered his choice—but did not grant his requests for advisory counsel, finding it unnecessary because the issues presented were not complex. Tverberg alleges that the district court’s denial was an abuse of discretion and resulted in an unfair trial. We affirm.

FACTS

Officers were called to the Itasca Coin & Laundry after the owner reported the presence of two men, neither of whom were paying customers, in the laundromat.¹ Upon arrival, Sergeant Carlson and Officer Norris found one man unconscious on the floor and another, appellant Michael Ryan Tverberg, locked in a bathroom, refusing to come out. When Tverberg exited the bathroom a few minutes later, Sgt. Carlson told him that he needed to leave. Tverberg became upset, yelling and cursing at the owner, yet then did as instructed and left the laundromat. But once outside Tverberg threw something at the window. Sgt. Carlson then placed Tverberg under arrest.

Upon arrival at the Itasca County Jail, Tverberg was searched. Uncooperative during the search, Tverberg clenched his fists to keep jailers from taking items out of his hands and pressed himself against the patrol car to keep jailers from searching his front pockets. When jailers completed the search and attempted to lead Tverberg upstairs and

¹ These facts are a summary of those established at trial.

into the jail, he resisted and stated “F--k you.” Jailers then carried Tverberg inside and placed him into a restraint chair.

After two hours in the chair, jailers told Tverberg that he needed to change into jail clothing. Tverberg agreed to comply and was taken out of the restraint chair. But when Tverberg was released he refused to change his clothes. Jailers tried multiple times to convince Tverberg to change clothes himself, but eventually decided to do it themselves. While jailers restrained Tverberg, he managed to free a leg and kick two jailers in the groin. A Taser was used on Tverberg twice before jailers changed Tverberg’s clothing and placed him back in the restraint chair.

Tverberg’s conduct at the laundromat resulted in one count of misdemeanor disorderly conduct,² while his altercation with jailers and officers at the jail led to two counts of gross misdemeanor obstructing legal process.³ A public defender was appointed to represent Tverberg.

Tverberg’s public defender represented him at three pretrial hearings. During his representation, the public defender successfully sought the dismissal of one count of gross misdemeanor obstruction of legal process and obtained rule 20.02 and 20.04 psychological evaluations for Tverberg.⁴ The psychological evaluations found that while Tverberg “does have some mental health problems,” they were not severe enough to “grossly impair his

² Minn. Stat. § 609.72, subd. 1(3) (2018).

³ Minn. Stat. § 609.50, subds. 1(2), 2(2) (2018).

⁴ The court dismissed one count of gross misdemeanor obstruction of legal process because there was insufficient probable cause to support the charge that Tverberg’s actions immediately upon arrival at the jail “were accompanied by such force or violence necessary to rise to a gross misdemeanor level.”

judgment, behavior, or capacity to recognize reality.” As a result, the evaluator determined that Tverberg was competent to stand trial.

Twice during these pretrial proceedings Tverberg requested to discharge his public defender. The court granted Tverberg’s first request after confirming that Tverberg understood the consequences of his decision. When Tverberg then requested advisory counsel, the court initially granted the request, but the state objected, citing the simplicity of the trial and the cost of advisory counsel to the county. Tverberg then withdrew his request, agreeing that the trial could be completed in one day and saying of the charges, “it’s not that big of a deal.”

But one week later, during another pretrial hearing, Tverberg requested the reappointment of a public defender. The court granted the request. After Tverberg met with his reappointed counsel, he again requested to discharge his public defender, this time because of a scheduling conflict. Tverberg was not willing to move his scheduled trial so that the public defender could attend and represent him at a later date.⁵ After confirming Tverberg’s wishes and ensuring that he understood the consequences of his actions, the court granted the request and dismissed the public defender. Tverberg again requested advisory counsel. Citing the state’s previous objections, the court stated that the matters “aren’t that difficult” and denied the request for advisory counsel.

⁵ When asked about moving his trial date, Tverberg stated: “I want to move forward next week because I know I want to get it over with and have whatever’s going to happen happen.”

A jury trial commenced the following week. At trial, the state introduced testimony from eight witnesses, including the laundromat owner, Sgt. Carlson, and five jailers who saw Tverberg's actions at the jail. The state also introduced—without objection—three videos that captured much of Tverberg's behavior while in the jail.

Tverberg, appearing pro se, attempted to introduce evidence related to claims of self-defense, voluntary intoxication, and mental illness.⁶ But Tverberg had not notified the court or the state of his intent to introduce such evidence.⁷ As such, the court barred Tverberg from introducing that evidence or asking questions on cross-examination that related to those defenses.

Another issue arose when the court asked Tverberg if he was going to testify. Although Tverberg answered in the affirmative, when directed to begin giving his testimony, Tverberg said “I think I misunderstood what you meant by this.” The court called a recess for the day so that Tverberg could think about his decision to testify overnight and conduct further research if necessary.

The next day, Tverberg decided not to testify. But during closing arguments, Tverberg again tried to assert facts in support of his mental-illness defense. When the state objected and the court sustained the objections, Tverberg responded by saying,

⁶ Tverberg also tried to introduce his mother as a witness, but was barred from doing so because he did not provide the requisite notice to the court or the state.

⁷ Prior to any of the hearings before the court, the state requested Tverberg disclose all defenses and witnesses he intended to present at trial, pursuant to Minnesota Rules of Criminal Procedure 9.02, 9.03, and 10.3. Under those rules, Tverberg was required to disclose that information prior to the omnibus hearing, which took place more than two months before the trial.

“Okay. F--k it. I’m guilty.” After deliberating, the jury found Tverberg guilty on both counts. Tverberg appeals.

DECISION

Tverberg appeals his convictions on the premise that the district court abused its discretion when it denied his requests for advisory counsel. To evaluate this claim, we turn to the Minnesota Rules of Criminal Procedure which state that “[t]he court may appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel.” Minn. R. Crim. P. 5.04, subd. 2. The primary purpose of appointing advisory counsel is to ensure fairness, promote judicial efficiency, and “preserv[e] the appearance of judicial impartiality” by helping a defendant navigate courtroom procedures at trial. *State v. Clark*, 722 N.W.2d 460, 468 (Minn. 2006); *see also State v. Jones*, 772 N.W.2d 496, 507 (Minn. 2009) (explaining the role of advisory counsel). Though rule 5.04, subdivision 2, does not identify factors that a district court is required to address when making its determination on a request for advisory counsel, it does provide elements that the court should consider. Therefore, when a district court is especially concerned about the “fairness of the process[.] . . . delays in completing the trial, . . . or the complexity or length of the trial,” the court should appoint advisory counsel and note their concerns in the record. Minn. R. Crim. P. 5.04, subd. 2(1), (2).

In reviewing the district court’s actions for an abuse of discretion we address in turn each consideration outlined in rule 5.04, subdivision 2.

Fairness of Proceedings

In reviewing the fairness of the proceedings, we begin with the pretrial process, then move to the trial itself. Prior to trial, the court reappointed Tverberg's public defender at his request. By reappointing counsel, the court ensured that the pretrial process remained fair to Tverberg, despite his previous discharge of the public defender. With a similar eye toward fairness, the court granted the public defender's request for a psychological evaluation. In sum, the district court took concrete steps to ensure the fairness of the pretrial proceedings before making a final decision on whether to grant advisory counsel.

We now turn to consider the fairness of the trial as it proceeded. During trial, Tverberg repeatedly violated evidentiary and procedural rules when he sought to introduce evidence and witness testimony related to claims of self-defense, voluntary intoxication, and mental illness. Each time Tverberg did so, the court explained why such evidence could not be admitted. For example, when Tverberg asked the court whether his psychological evaluations were adequate support for his mental-illness defense, the court clarified that "[j]ust the fact you have those evaluations and you have this diagnosis is not enough to be able to have those things admitted if you haven't provided notice." When Tverberg tried once again to assert his voluntary intoxication and mental-illness defenses during cross-examination of one of the state's witnesses, the court reminded him that "any questions that relate to any of that, the Court has ruled are not admissible. That means you can't ask questions [that] go to those issues." Given these explanations of what Tverberg could and could not introduce and why, Tverberg was not unfairly uninformed about the proceedings.

Similarly, when it came to Tverberg's decision not to testify, the district court provided guidance regarding procedures. Although Tverberg initially chose to testify, it became clear that he did not understand the implications of choosing to do so. In the interest of fairness, the court gave him until the next day to conduct additional research and consider his choice. In sum, we conclude that the district court, as reflected by its pretrial decisions and explanations during trial, considered fairness concerns raised by Tverberg's request for advisory counsel.⁸

Despite this, Tverberg tries to argue that the proceedings were unfair because he would have benefited from the assistance of advisory counsel. With that help, Tverberg argues he would have been able to adequately prepare for trial, especially with regard to the procedural notice requirements for his defense claims and his desire to introduce his mother as a witness. But by the second time Tverberg requested advisory counsel, the deadline for disclosing defenses and witnesses intended to be introduced at trial had already passed more than two months earlier.⁹ This fact limits the purported benefit of an advisory counsel appointment.

Potential for Delay

Tverberg made his desire for a speedy trial known early on in the proceedings. During his arraignment hearing, Tverberg requested that the next pretrial hearing take place

⁸ We observe that through its actions during trial, the district court fulfilled one of the primary roles of advisory counsel by “explain[ing] and enforc[ing] basic rules” of the courtroom and trial proceedings. Minn. R. Crim. P. 5.04, subd. 2 cmt.

⁹ The second request for advisory counsel is the pivotal one since Tverberg withdrew his first request.

the following week, rather than on the originally scheduled date three weeks later. In fact, Tverberg was so concerned with reducing delay that he discharged his public defender a second time based solely on a scheduling conflict that would have delayed his trial by at least one month. As Tverberg stated, his main concern was “to get it over with and have whatever’s going to happen happen.” It is clear from the record that by granting Tverberg’s scheduling requests, the court considered the potential for delay when denying the request for advisory counsel.

Complexity of the Issues and Length of Trial

Tverberg was charged with two crimes: one count of obstruction of legal process and one count of disorderly conduct. There were no material factual disputes about what happened at the laundromat or jail, and the state intended to introduce video evidence from the jail. Nor were expert witnesses to testify. The court, the state, and Tverberg all anticipated that the trial would only take one or two days to complete because the issues were not complicated. In fact, when the district court stated that the issues “aren’t that difficult,” Tverberg himself agreed, saying of his charges, “it’s not that big of a deal.” Based on these facts, the court’s determination that the issues were not complex was not an abuse of discretion.

Nor was Tverberg’s trial lengthy. The trial took two days, consistent with what Tverberg, the state, and the court anticipated. The bulk of the proceedings occurred on the first day, while the second day primarily consisted of the court reading the jury instructions, the parties providing their closing arguments, and the jury delivering its verdict.

In sum, the court’s decision to deny Tverberg’s request for advisory counsel was based on the correct review of the relevant law and was supported by both logic and the facts in the record. *See State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (a district court abuses its discretion when the decision in question is “based on an erroneous review of the law or is against logic and the facts in the record”). The relevant law, Minnesota Rule of Criminal Procedure 5.04, subdivision 2, allows, but does not require, courts to appoint advisory counsel. And, as the record shows, the district court adequately considered fairness, the potential for delay, and the complexity of the issues throughout the proceedings.

To attempt to persuade us otherwise, Tverberg first points out that his request for advisory counsel was timely made and clear. But nothing in rule 5.04 requires a district court to appoint advisory counsel upon a timely request. Minn. R. Crim. P. 5.04, subd. 2. Nor do the cases Tverberg cites support his argument on timeliness, as they do not reflect rule 5.04, subdivision 2 as it exists today. In *Clark*, 722 N.W.2d at 465, and *State v. Worthy*, 583 N.W.2d 270, 275 (Minn. 1998), the court only considered the timeliness of the appellants’ requests with regard to the requests for substitute counsel, not advisory counsel.¹⁰ And in *State v. Lande*, the decision involved an old version of the rule

¹⁰ Advisory counsel is “fundamentally different from the role of counsel generally,” and is generally limited to assistance. *State v. Richards*, 552 N.W.2d 197, 207 (Minn. 1996). Substitute counsel is typically sought when a defendant still wants representation by general counsel, but wants that representation to come from a different attorney. *See Clark*, 722 N.W.2d at 463 (“Clark informed the trial court that he wanted another attorney because his assigned public defender was ‘not representing [his] interests in this case.’”); *Worthy*, 583 N.W.2d at 279 (“[Defendants] told the trial court they wanted new counsel because they felt they were not being properly represented.”).

which did not feature the discretionary language included in the rule today. 376 N.W.2d 483, 485 (Minn. App. 1985).

Finally, Tverberg argues that district courts are “strongly encouraged” to appoint advisory counsel when a defendant chooses to proceed pro se. But Tverberg supports this assertion with language from *Lande*, which applied a previous version of rule 5.04, subdivision 2 that was compulsory, not discretionary. *Id.* And while the supreme court has acknowledged that appointment of advisory counsel has been “long encouraged,” it has also confirmed in its most recent decisions that the district court’s determinations on the matter are ultimately discretionary. *Clark*, 722 N.W.2d at 469; *see Jones*, 772 N.W.2d at 507 (“The appointment [of advisory counsel] is discretionary for a district court . . .”).¹¹

The district court acted within its wide discretion here, and its decision was supported by relevant law and the facts in the record. The decision to deny Tverberg’s requests for advisory counsel was not an abuse of discretion.

Affirmed.

¹¹ Furthermore, as Tverberg himself acknowledges, there is no federal or state constitutional right to advisory counsel.