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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0908**

State of Minnesota,
Respondent,

vs.

Lorenzo Thomas Sims,
Appellant.

**Filed July 31, 2023
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Carlton County District Court
File No. 09-CR-19-466

Keith Ellison, Attorney General, Lydia Villalva Lijo, Assistant Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for two fourth-degree-assault charges, arguing first that the prosecutor engaged in misconduct at trial by introducing an order detailing his civil commitment as a sexually dangerous person and second that the evidence was

insufficient to sustain the jury's finding of guilt on the second assault charge. As to the first conviction, although the commitment order was clearly inadmissible, it did not significantly affect the verdict given the existence of video evidence depicting that assault. We therefore affirm in part. But because the circumstantial evidence does not sustain the jury's guilty verdict on the second assault charge, we reverse appellant's conviction for that offense and remand for the district court to vacate that judgment of conviction and sentence.

FACTS

In 2009, the district court committed appellant Lorenzo Thomas Sims to the Minnesota Sex Offender Program (MSOP) for an indeterminate period as a sexually dangerous person. In 2018, while residing at the MSOP facility in Moose Lake, Sims punched a staff member, WG. Another staff member, JA, attempted to restrain Sims and suffered a neck injury while doing so. The state charged Sims with two counts of fourth-degree assault: one charge was based on the harm to WG, and the other charge was based on the harm to JA.

Sims informed the district court that he wanted to discharge his court appointed attorney and represent himself at trial, but there were concerns regarding his competency. After the district court ruled that Sims was competent, he petitioned the district court to proceed pro se. The district court granted his petition, and the charges were tried to a jury.

At trial, WG testified that he worked at the MSOP facility in Moose Lake, a secure facility where Sims was a "client." According to WG, on December 30, 2018, Sims left his unit without permission. WG directed Sims to "stop and return to his unit." According

to WG, Sims approached him in an aggressive manner. WG put his hand up to maintain a safe distance, and Sims walked into WG's hand, despite a rule prohibiting clients from touching staff.

According to WG, Sims was directed to turn around and place his hands behind his back. Sims did not comply. Instead, Sims walked away. MSOP staff surrounded Sims, who was "very escalated in his behavior." WG reached out to secure Sims's left arm, and Sims punched WG in the face and punched him a second time near his ear. MSOP staff then brought Sims to the ground and placed him in restraints. Videos of the incident and photographs of WG's injuries were received as evidence.

JA testified that he worked at the MSOP and assisted four other staff members to "takedown" Sims. JA testified that he made "physical contact" with Sims during the takedown and that there was a "scuffle to the ground." JA testified that "at some point the side of [his] head made a point of contact with something that lacerated [his] skin" and caused him to bleed. JA suffered an injury to his neck, but he was unsure what caused the injury. When asked if he recalled what "specifically" hit his neck, he responded: "No, I do not. My head was turned in the opposite direction as I braced for the impact originally."

During the testimony of SB, a Department of Human Services (DHS) employee, the state offered a certified copy of an order indeterminately committing Sims to the MSOP as a sexually dangerous person. Sims objected to the exhibit on the grounds of foundation, and the district court overruled that objection.

Sims testified that when he punched WG, he was acting in self-defense. The district court instructed the jury on the elements of self-defense, but the jury found Sims guilty as

charged. The district court entered a judgment of conviction for each offense and sentenced Sims to serve concurrent prison terms of 366 days for each conviction.

Sims appeals.

DECISION

I.

Sims argues that the prosecutor engaged in plain prosecutorial misconduct by introducing his commitment order into evidence. He argues that the order contained highly prejudicial character and prior-bad-acts evidence, which was “irrelevant to any material issue” and inadmissible under Minn. R. Evid. 404(b).

Rule 404(b) provides that evidence of another crime, wrong, or act is generally not admissible to show action in conformity with a person’s character, and although such evidence may be admissible for other purposes, the prosecutor must give notice of his or her intent to offer such evidence. Evidence of prior bad acts is commonly referred to as *Spreigl* evidence. See *State v. Scruggs*, 822 N.W.2d 631, 643 (Minn. 2012) (stating that rule 404(b) “sets forth the requirements for admissibility of *Spreigl* evidence”); *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965) (acknowledging the dangers inherent in evidence of prior offenses).

Sims was convicted under Minn. Stat. § 609.2231, subd. 3a(b)(1) (2018), which provides, in relevant part, that whoever, “*while committed under chapter 253D*, Minnesota Statutes 2012, section 253B.185, or Minnesota Statutes 1992, section 526.10,” assaults an employee “who provides care or treatment at a secure treatment facility while the person is engaged in the performance of a duty imposed by law, policy, or rule” and “inflicts

demonstrable bodily harm” is guilty of fourth-degree-assault. (Emphasis added.) Thus, Sims’s commitment was an element of the offense, and it was necessary for the state to prove that element.

At a March 2022 pretrial hearing, while Sims was still represented by counsel, his attorney sought to limit evidence regarding Sims’s commitment and to stipulate to the fact that Sims was committed to the MSOP facility. In discussing the admission of Sims’s commitment orders, Sims’s attorney argued that the “[s]tate’s already stipulated they don’t intend to enter *Spreigl*, and yet, here we have a whole bunch of veiled *Spreigl* that they do intend to admit.” Despite the *Spreigl* concerns noted by Sims’s attorney, Sims did not stipulate to the existence of his commitment order, no formal *Spreigl* objection was made to the order at issue, and Sims ultimately objected pro se to the admission of that order only on foundational grounds.

Sims concedes that he did not raise a *Spreigl* objection in district court. An objection must be specific as to the grounds for a challenge to preserve an issue for appeal. *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993); *see State v. Bakken*, 871 N.W.2d 418, 422 (Minn. App. 2015) (stating that litigants are bound on appeal by the theory or theories raised below), *aff’d*, 883 N.W.2d 264 (Minn. 2016). An appellate court normally does not review errors that were not preserved for appeal. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that the court had “discretion” to review unobjected-to jury instructions). But an appellate court may elect to review an unobjected-to error under the plain-error standard. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). Under that standard, a defendant must show: (1) error, (2)

that was plain, and (3) that affected his substantial rights. *Id.* If those three conditions are satisfied, we then determine “whether it is necessary to address the error to ensure the fairness and integrity of the judicial proceedings.” *Id.*

“An error is plain if it was clear or obvious,” which is usually established if the error contravenes case law, a rule, or a standard of conduct. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). To establish that an error affected the defendant’s substantial rights, the defendant has the “heavy burden” of proving a reasonable likelihood that the error had a significant effect on the verdict. *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted). As to the fourth prong, “an appellate court may correct the error only when it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

Sims frames his challenge to the admission of the commitment order as a challenge to unobjected-to prosecutorial misconduct. We review unobjected-to prosecutorial misconduct under a modified plain-error standard, which shifts the burden of proof on the third part of the plain-error test to the state. *Ramey*, 721 N.W.2d at 302. In determining whether prosecutorial misconduct occurred, we assess whether the prosecutor’s acts “have the effect of materially undermining the fairness of a trial.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). “A prosecutor engages in prosecutorial misconduct when [the prosecutor] violates ‘clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state’s case law.’” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quoting *Fields*, 730 N.W.2d at 782)). Sims argues that the prosecutor elicited clearly inadmissible evidence—the commitment order—in violation of

accepted standards of conduct. *See Ramey*, 721 N.W.2d at 300 (identifying the elicitation of inadmissible evidence as prosecutorial conduct).

Because the fact of Sims's commitment was an element of the offense, the commitment order was relevant. However, the unredacted order contained information that went far beyond establishing the fact of Sims's commitment.

For example, the order discussed allegations that Sims had engaged in threatening and assaultive behavior at a MSOP facility as follows:

3. Further, while not totally discounting that [Sims] may have a new attitude generally, his actions at MSOP leading to his revocation belie his claimed dedication to a better way of thinking and behaving. According to the records, *[Sims] was placed on Administrative Restriction at MSOP on March 21, 2009[,] for the following reasons:*

Mr. Sims is under investigation for violations of his conditions of release. Mr. Sims has been strong arming other patient [sic] on Paxton 1 North and last night a peer reported being physically threatened by him.

Exhibit 1.

4. Underlying the investigation were Progress Notes from 3-3-09 which state:

(SW) [Sims] denies there have been problems on the unit. When asked why other peers may be sharing their concerns about [Sims] being assaultive, [Sims] stated "Who? I don't believe you." He denied trying to get other patients to band together to work against staff, and denied ever *stating that he'd like to punch staff.*

(11:46 a.m.) This writer & the unit B.A. went and prompted [Sims] to keep his distance from some pts that have *stated they're being threatened by [Sims].* [Sims] became argumentative with staff saying this writer is

being aggressive [sic]. This writer informed [Sims] Staff weren't being aggressive & must follow staff prompts.

5. As a result of the investigation and subsequent hearing, [Sims] was revoked and returned to the Department of Corrections, MCF-Rush City, on April 16, 2009. *[Sims] told this Court that he was falsely accused and that he did not do anything wrong. However, the Court finds that the record of the revocation speaks for itself.*

(Emphasis added.)

The order also refers to Sims's "adult sexual assault and criminal history" and quotes a psychologist's opinion that Sims's condition had not changed since his commitment and that "there is no new information that would suggest his risk to the community has diminished since the initial commitment." The order also quotes the psychologist's conclusion that Sims remains a danger to the public as follows:

[H]is risk for future dangerous behaviors directed at others remains a significant concern. One of the strongest predictors of future dangerousness is past dangerousness. His past behavior includes numerous instances of sexually inappropriate behavior and there is no strong indication such behavior will cease without appropriate intervention. Historical factors pertinent to Mr. Sims' future risk include his history of violence, personality disorder, prior noncompliance with supervision, poor judgment, failure to complete sex offender treatment, and impulsivity.

(Emphasis added.) The commitment order further quotes the psychologist's conclusion that Sims's prognosis is "guarded to poor" and that he "is in need of long-term comprehensive sex offender specific treatment."

Finally, the commitment order contains the district court's conclusion of law stating that "[t]here continues to be clear and convincing evidence that, as a result of his past

course of harmful sexual misconduct, his mental disorders, and the resulting impairment of his ability to control his sexual impulses, it is highly likely that [Sims] will engage in further harmful misconduct if not civilly committed and that he is dangerous.”

In sum, the commitment order contains the opinions of a psychologist and the conclusion of the district court that based on Sims’s history of dangerous behavior, it is likely that he will engage in similar conduct in the future. That is precisely the type of evidence that is restricted by Minnesota Rule of Evidence 404(b), under which, evidence of another crime, wrong, or act is generally not admissible to show action in conformity with a person’s character.

“[I]n *Spreigl*, [the supreme court] addressed the use of evidence under Minn. R. Evid. 404(b) and stated clearly that such evidence is not to be received unless certain safeguards are met.” *Fields*, 730 N.W.2d at 784. Specifically, (1) the state must give notice of its intent to admit the evidence; (2) the state must indicate what the evidence will prove; (3) there must be clear and convincing evidence that the defendant committed the prior act; (4) the evidence must be relevant and material; and (5) the probative value of the evidence must not be outweighed by its potential prejudice. *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006).

In this case, there is no indication that the state attempted to satisfy those requirements. Thus, we cannot condone the prosecutor’s introduction of the commitment order. A prosecutor “is a minister of justice whose obligation is to guard the rights of the accused as well as to enforce the rights of the public.” *State v. Cabrera*, 700 N.W.2d 469, 475 (Minn. 2005) (quotations omitted). The prosecutor’s duty “to see that justice is done

on behalf of both the victim and the defendant” overrides any individual or governmental interest in winning cases. *State v. Penkaty*, 708 N.W.2d 185, 196-97 (Minn. 2006). Under those standards, as well as the clearly established requirements limiting the admissibility of prior-bad-acts evidence, we conclude that the prosecutor engaged in misconduct by offering the commitment order as evidence without attempting to comply with the requirements of rule 404(b).

We also cannot condone the district court’s failure to ensure application of rule 404(b) in this case. Although Sims failed to object to the admission of the commitment order based on rule 404(b) at trial, his attorney had generally raised that issue at a pretrial hearing, arguing that admission of the commitment evidence was problematic because the “[s]tate’s already stipulated they don’t intend to enter *Spreigl*, and yet, here we have a whole bunch of veiled *Spreigl* that they do intend to admit.” The same judge presided over that pretrial hearing and the trial, so the district court was aware of the potential application of rule 404(b). A cursory review of the commitment order reveals that its contents trigger application of rule 404(b) and are inconsistent with the purpose of the rule: preventing the jury from convicting a defendant based on prior bad acts. *See State v. Smith*, 940 N.W.2d 497, 503 (Minn. 2020) (“The general prohibition against *Spreigl* evidence protects defendants from the possibility that the fact-finder will use this evidence for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime.” (quotation omitted)); *Spreigl*, 139 N.W.2d at 172 (noting that the danger of such evidence is that “a jury may convict because, though guilt of the crime charged is not proved, it is satisfied to convict because of other crimes” (quotation omitted)).

In sum, this is not a case in which there was never an objection to the challenged evidence or one in which it was not clear that the evidence triggered application of rule 404(b). *See State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001) (stating that because a witness’s “testimony was an ambiguous description of what may or may not have been a separate *Spreigl* incident and . . . no objection was made to that testimony, any error resulting from the [district] court’s decision not to intercede was not plain”). Moreover, the commitment order was highly prejudicial given that Sims was accused of punching a staff member and the order discussed an allegation that Sims stated that “he’d like to punch staff” and also said that Sims’s history of violent behavior indicated a high likelihood that he would engage in future harmful conduct. *See State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (concluding that admission of evidence was plain error because that evidence “was clearly irrelevant and highly prejudicial” under Minn. R. Evid. 403).

Because the district court was put on notice of the potential application of rule 404(b) to the commitment order at the pretrial stage and because the supreme court has clearly mandated that rule 404(b) evidence may not be received unless there has been compliance with the relevant procedural safeguards, the district court erred by failing to *sua sponte* consider application of rule 404(b) before admitting the commitment order. Thus, in addition to constituting prosecutorial misconduct, the admission of the commitment order was error, and it was plain.

We next consider whether the error affected Sims’s substantial rights. *See Manthey*, 711 N.W.2d at 504. Given our conclusion that the prosecutor engaged in misconduct, we apply the modified plain-error standard and require the state to show that the misconduct

did not affect Sims's substantial rights. *See Ramey*, 721 N.W.2d at 302. And, given our conclusion in section II of this opinion that the evidence was insufficient to sustain the jury's finding of guilt on the assault charge involving JA, we limit our analysis to the assault charge involving WG.

An error affected a defendant's substantial rights if there is a reasonable likelihood that the error had a significant effect on the verdict. *Sontoya*, 788 N.W.2d at 872. We consider, among other things, "the strength of the evidence against the defendant." *State v. Fraga*, 898 N.W.2d 263, 277 (Minn. 2017) (quotation omitted). Sims argues that "the verdict hinged on whether the jury believed the MSOP staff members' version of events or Sims[']s claim of self-defense" and that knowing that a district court had previously made findings regarding Sims's relationship with MSOP staff likely affected the jury's credibility determination.

In Minnesota, a person may act in self-defense if he reasonably believes that force is necessary and uses only the level of force reasonably needed to prevent the bodily harm feared. *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). A defendant bears the burden of producing evidence to support a claim of self-defense. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). If the defendant meets that burden, the state has the burden of disproving one or more of the following self-defense elements beyond a reasonable doubt: (1) the absence of aggression or provocation by the defendant; (2) the defendant's actual and honest belief that he was in imminent danger of bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

The jury received a video of the incident, which showed Sims strike WG in the head two times with a closed fist in what appears to be an unprovoked attack. And Sims acknowledged during his testimony that he acted on “impulse,” that he “made a mistake,” and that he “didn’t really want it to go as far as it did.” Sims does not explain, and we do not discern, how a credibility determination could negate the video evidence showing that Sims acted aggressively and provoked the confrontation. Thus, the video evidence undisputedly refuted a necessary element of Sims’s self-defense claim: the absence of aggression or provocation by Sims. In light of the video evidence, we cannot say that the commitment order—prejudicial as it was—had a significant impact on the verdict.

We have no doubt that the jury’s receipt of the commitment order in this case without application of the mandatory procedural safeguards was a significant error. But unlike the supreme court, this court cannot reverse in the interests of justice or as a prophylactic measure. *See State v. Beecroft*, 813 N.W.2d 814, 846 (Minn. 2012) (acknowledging that the supreme court’s power to reverse “prophylactically or in the interests of justice” comes from its power to supervise trial courts (quotation omitted)); *Ramey*, 721 N.W.2d at 302 n.6 (stating that the court of appeals does not exercise supervisory powers that are reserved for the supreme court). If we had such power, we would exercise it here. And were it not for the video evidence, which clearly refutes Sims’s self-defense claim, we would not hesitate to reverse and remand for a new trial under the plain-error standard. Instead, we urge the state and the district court to exercise greater care when proffering and receiving exhibits that are clearly subject to Minnesota’s jurisprudence governing evidence of a defendant’s prior bad acts.

In sum, although the commitment order was clearly inadmissible, the state has shown that there is no reasonable likelihood that the error significantly affected the verdict on the assault charge involving WG. We therefore affirm that conviction.

II.

Sims argues that his conviction for the assault of JA must be reversed because the state failed to prove that he inflicted JA's neck injury. Again, to establish the charged offense involving JA, the state had to prove that Sims "inflict[ed] demonstrable bodily harm." Minn. Stat. § 609.2231, subd. 3a(b)(1). "Demonstrable bodily harm" has been defined as bodily harm that is capable of being perceived by a person other than the victim. *State v. Backus*, 358 N.W.2d 93, 95 (Minn. App. 1984).

A finding of guilt can be based on direct or circumstantial evidence. Circumstantial evidence is "evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotations omitted). Smith contends that the state relied on circumstantial evidence to prove his guilt. The state counters that it proved Sims's guilt with direct evidence because the video of the incident shows Sims "making contact" with JA and because JA's testimony supports a conclusion that Sims stuck him in the neck.

Although the video shows JA rushing in to assist with Sims's "takedown" and making physical contact with Sims, the video does not reveal the cause of JA's resulting neck wound. The video simply shows JA assisting four other MSOP staff members as they

forced Sims to the ground. And although JA testified that he made physical contact with Sims, he repeatedly testified that he was unsure who or what caused his neck injury. He testified, “I was unable at the time to pinpoint exactly what had hit me.”

In sum, despite the video evidence and JA’s testimony, the jury was still required to make an inference to conclude that Sims made contact with JA in a way that caused JA’s neck wound. We therefore review the sufficiency of the evidence to sustain the jury’s guilty verdict using the standard of review applicable to convictions proved with circumstantial evidence.

If the state relied on circumstantial evidence to prove an element of an offense, an appellate court applies a heightened standard of review. *See Harris*, 895 N.W.2d at 601-03 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that “the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence”). Under the circumstantial-evidence standard of review, an appellate court first determines the circumstances proved, disregarding evidence inconsistent with the verdict. *Harris*, 895 N.W.2d at 601.

Next, the appellate court determines “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). The appellate court does not defer to the fact-finder’s choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). And an appellate court will not reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

The circumstances proved are as follows. WG and three other MSOP staff members surrounded Sims. Sims punched WG two times. WG and the three other MSOP staff members attempted to force Sims down to the ground. JA rushed in to assist WG and the other three staff members. JA suffered a demonstrable injury to the left side of his neck during the incident. At least one MSOP staff member came within close proximity of JA's neck while assisting in the takedown of Sims. JA was unsure of who or what made contact with his neck.

Those proven circumstances support a reasonable inference of guilt. Sims argues that they also support a reasonable inference that the injury to JA's neck was accidentally inflicted by one of the MSOP staff members during the struggle. We agree. Although we will not set aside a verdict based on speculation, a defendant is not relying on conjecture or speculation if the defendant points to evidence in the record that is consistent with a rational theory other than guilt. *Al-Naseer*, 788 N.W.2d at 480. The physical struggle depicted on the video and JA's frank testimony that he does not know who or what caused his neck injury reasonably support the hypothesis that JA's injury was accidentally inflicted by another staff member and not by Sims.

Because the circumstances proved support a reasonable inference other than guilt, the evidence is insufficient to sustain the jury's guilty verdict on the assault involving JA. We therefore reverse Sims's conviction for that offense.

III.

Sims raises several arguments in a pro se supplemental brief. We address each in turn.

Self-Representation

Sims argues that the district court erred by denying his right to proceed “in propria persona” or pro se. *See Ledden v. State*, 686 N.W.2d 873, 878 (Minn. App. 2004) (concluding that pro se and in propria persona “mean essentially the same thing”), *rev. denied* (Minn. Dec. 22, 2004). Under the Sixth and Fourteenth Amendments to the United States Constitution, a criminal defendant has the right to defend himself in a state criminal proceeding. *Faretta v. California*, 422 U.S. 806, 818-19 (1975). “[A] defendant’s request for self-representation should be granted where it is clear, unequivocal, and timely and the defendant knowingly and intelligently waives his right to counsel.” *State v. Christian*, 657 N.W.2d 186, 191 (Minn. 2003) (quotations omitted).

During the criminal proceedings, Sims repeatedly expressed a desire to represent himself, but there were concerns regarding Sims’s competency, and Sims refused to engage in a competency evaluation. *See* Minn. R. Crim. P. 20.01, subds. 1, 2 (providing that a defendant must not be allowed to waive counsel, plead, be tried, or be sentenced if he is not competent). The district court ultimately held an evidentiary hearing to determine Sims’s competency and concluded that he was competent to proceed. After which, Sims repeatedly moved to discharge his attorney. The district court denied those requests because Sims failed to provide a knowing, voluntary, and intelligent waiver of his right to counsel. *See* Minn. R. Crim. P. 5.04, subd. 1(4) (“The court must ensure that defendants charged with a felony who . . . wish to represent themselves, enter on the record a voluntary and intelligent . . . waiver of the right to counsel.”). In March 2022, Sims petitioned the

district court to proceed pro se and for the first time proffered an intelligent waiver of his right to counsel. The district court granted his petition and appointed advisory counsel.

On appeal, an appellant has the burden to show error and prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). Although Sims generally asserts that the district court erred by denying his motions to proceed pro se, he does not assign specific error to any aspect of the district court's process or its ultimate decision to allow him to proceed pro se with advisory counsel. Indeed, the district court was appropriately cautious in ruling on Sims's request to represent himself at his jury trial. Sims has not established an error justifying relief.

Speedy Trial

Sims argues that he was denied his right to a speedy trial. The United States and Minnesota constitutions protect a criminal defendant's right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The following factors are used to evaluate whether a defendant's right to a speedy trial was vindicated: (1) length of delay; (2) reason for delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The record indicates that Sims's first on-the-record request for a speedy trial occurred on the first day of trial and that prior delays were largely attributable to concerns regarding Sims's competency and his unwillingness to engage in a competency evaluation. This record does not suggest a speedy trial violation.

MSOP Residency

Sims argues that the state failed to prove that he was a resident of the MSOP facility at Moose Lake. The state introduced evidence that in 2009 Sims was indeterminately

civily committed to the MSOP. Trial witnesses, including Sims's roommate at the MSOP facility, testified that Sims was a resident at the time of the charged offenses, and surveillance video showed Sims in the facility. That evidence was sufficient to prove Sims's residency at the MSOP.

Defense Witnesses

Sims argues that the district court violated his rights by refusing to permit him to call witnesses. "Because a defendant has a constitutional right to present a defense, it follows that the defendant also has a right to offer the testimony of witnesses that supports the defendant's position." *State v. LeDoux*, 770 N.W.2d 504, 513 (Minn. 2009). We review a district court's evidentiary ruling for an abuse of discretion. *State v. Graham*, 764 N.W.2d 340, 351 (Minn. 2009).

Sims asserts that the district court erred by preventing him from calling JJ, an officer named in the underlying criminal complaint. Sims asserts that JJ's testimony was relevant regarding whether there was sufficient probable cause for the charges. A probable-cause determination is made at an omnibus hearing prior to trial, and not at trial. *See* Minn. R. Crim. P. 11.01 (describing pretrial timing of omnibus hearing), 11.04, subd. 1(a) ("The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it."). Thus, the issue of probable cause was not relevant at trial, and "[e]vidence which is not relevant is not admissible." Minn. R. Evid. 402. Moreover, the complaint identified JJ as a Moose Lake police officer. There is no indication that JJ witnessed the charged offenses. Thus, the district court essentially

limited Sims's witnesses to those with first-hand information regarding the assaults. The district court did not abuse its discretion by imposing that limitation.

Sims also argues that the district court erred by not permitting him to call Minnesota Attorney General Keith Ellison as a witness to testify regarding "whether or not the Minnesota Constitution is actually up and thriving" and the constitutionality of the charging statute. The district court reasoned that Ellison's testimony was not relevant. The district court did not abuse its discretion.

DHS Policy

Sims argues that the district court erred by refusing to permit him to admit evidence regarding a DHS policy concerning the investigation of alleged criminal activity. The state objected to the policy being admitted as substantive evidence, in part because the policy took effect after the incident at issue. The district court sustained the state's objection. Once again, the district court did not abuse its discretion.

We have thoroughly reviewed Sims's remaining pro se arguments and conclude that none provides a basis for relief.

In conclusion, we emphasize that Sims's unredacted civil commitment order should not have been offered or received as evidence at the jury trial in this case. But because Sims's substantial rights were not affected, we affirm Sims's conviction for the assault of WG. As to the assault charge involving JA, because the circumstantial evidence was insufficient to sustain the jury's guilty verdict, we reverse and remand for the district court to vacate that judgment of conviction and sentence, and to amend the warrant of commitment. *See State v. Harris*, 533 N.W.2d 35, 36 n.1 (Minn. 1995) ("If a defendant

obtains a reversal because of the insufficiency of the evidence as a matter of law, then the double jeopardy clause clearly precludes further prosecution.”).

Affirmed in part, reversed in part, and remanded.