STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1109

State of Minnesota,
Respondent,

vs.

Pariss Demond Wright,
Appellant.

Filed June 26, 2023
Affirmed
Worke, Judge

St. Louis County District Court
File No. 69DU-CR-21-3685

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

Kimberly J. Maki, St. Louis County Attorney, Victoria Wanta, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his criminal-sexual-conduct conviction, arguing that his jury-trial waiver was invalid. We affirm.

FACTS

In December 2021, respondent State of Minnesota charged appellant Pariss Demond Wright with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(d) (2020). Wright was appointed a public defender. His omnibus hearing was scheduled for just under one month later. Before the omnibus hearing, Wright requested that the public defender be discharged. At the omnibus hearing, the district court discharged the public defender and Wright proceeded pro se. When asked whether he was "asking . . . for . . . advisory counsel," Wright responded, "Not at this time, no."

Wright then argued to dismiss the charge. The district court understood Wright as arguing that he "didn't do this" and that the victim was "making this up." The district court denied Wright's motion, explaining that those were trial issues. Afterward, Wright mentioned "bring[ing] his own subpoenas" and acknowledged that the "[j]ury trial [was] coming up."

At the next pretrial hearing, the parties and court discussed the jury questionnaire and trial procedures. Wright then reiterated his motion to dismiss, stating that a trial was unnecessary because he filed affidavits that should be enough for dismissal. The court informed Wright that it would reconsider his motion by the next hearing.

The prosecutor noted that Wright had asked about advisory counsel. Wright stated that he did not "mind the assistance" but would decline advisory counsel to avoid delaying trial. The prosecutor also noted that Wright had questioned the difference between a court trial and a jury trial. The district court explained to Wright that he had the right to a jury trial "with 12 people" deciding his "guilt or innocence." The district court stated that the

jury's verdict must be unanimous, explained why some defendants prefer a jury trial, and stated that Wright could alternatively choose to have a judge decide his guilt or innocence.

When asked if he wanted a jury trial or "a judge trial," Wright stated that he "want[ed] to go with" his "affidavit" and that "the jury trial would be fine." The district court told Wright that he could wait to decide until the morning of trial if he "want[ed] a judge trial or a jury trial." Wright replied that he was "just trying to make it more . . . convenient for the courts to find [him] innocent" rather than going through a jury trial.

At the next pretrial hearing, the district court and the parties discussed the results of the jury questionnaire and the jury-selection process. Wright expressed concern about the number of prospective jurors who had been victims of sexual abuse, knew someone who had been a victim, or who had been accused of sexual misconduct. Wright asked the district court to dismiss those prospective jurors. The district court explained that the prospective jurors at issue would be questioned individually about whether they could remain impartial. Wright then inquired about what questions he could ask the prospective jurors. After that, the prosecutor and Wright discussed which witnesses would testify. Wright stated that he planned on "cross-examining" the state's witnesses.

Returning to his motion to dismiss, Wright argued for dismissal based on witness credibility. The district court denied Wright's motion, explaining that whether a witness was credible would be up to the jury. Wright protested that the district court was improperly denying his motion by relying on the jury rather than its own judgment. The district court replied that if Wright "want[ed] a court trial—that is, with a judge," then

Wright could waive his jury-trial right and the court trial would begin the next day. Wright replied, "Right."

The district court reiterated that a jury would consist of 12 people whose guilty verdict must be unanimous and beyond a reasonable doubt. Wright replied that the victim's accusations were "not a reasonable doubt." The court replied, "I agree . . . . [A]s I look at you, I presume innocence. And I would tell the jury that as well[.]" Wright responded, "You presume me innocent right now . . . . That means . . . we don't need any further hearings, motions, or any of that." The district court attempted to clarify Wright's confusion, stating, "I presume you're innocent, just as a jury would. But then we have to hear the evidence." The court explained that no trial evidence had yet been offered.

The district court asked if Wright wanted "a judge trial or jury trial." Wright protested that witnesses were unnecessary and that he did not understand why the district court would hear testimony from an untruthful witness. The district court asked again: "Do you want a jury trial or do you want to start tomorrow with just me?" Wright responded, "Yes, Your Honor, . . . you can start tomorrow." Wright then began speaking in apparent frustration, stating that he asked for a jury trial but did not want any jurors who had or knew someone with experience related to sexual misconduct. The district court took a break to give Wright a "chance to cool down."

After returning from the break, the district court again explained to Wright that the presumption of innocence "just says that every person is innocent until they're proven guilty," and that "whether it's a jury or a court trial," the state would be required to prove Wright's guilt at trial. Wright insisted that the district court already had the evidence to

decide the case. The court again explained that witnesses, documents, and other sources of evidence would need to be presented at trial before deciding the case.

The district court provided Wright a written jury-trial waiver. But Wright returned to his motion to dismiss, asking the district court, "[W]hy would you even ask me why it should be dismissed if it's not your call?" The court answered, "The motion to dismiss was my call." Wright continued expressing frustration at already having argued his case without a decision.

The district court stated that it would assume Wright wanted a jury trial. Wright stated, "I'm choosing a judge trial then," asserting that although the court stated that it would review the case, it nonetheless denied his motion to dismiss because of the jury's absence. Wright then stated that he "would like a judge trial" before finally signing the waiver. Wright read aloud from the waiver: "If I waive a jury, the judge will determine my guilt or innocence." The district court explained that this meant the court would decide whether the state had proven its case, including the credibility of witnesses. The waiver also stated, "I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the issue of guilt."

A bench trial started the next day. The district court found Wright guilty as charged and sentenced him to 117 months in prison. This appeal followed.

DECISION

Jury-trial waiver

Wright challenges the validity of his jury-trial waiver. Criminal defendants have a constitutional right to a jury trial. U.S. Const. amend. VI; Minn. Const. art. 1, §§ 4, 6. But

"with the approval of the court," a defendant "may waive a jury trial on the issue of guilt" if, among other conditions: "the defendant does so personally, in writing or on the record . . . after having . . . an opportunity to consult with counsel"; and the waiver is "knowing" and "intelligent." Minn. R. Crim. P. 26.01 subd. 1(2)(a); *State v. Little*, 851 N.W.2d 878, 882 (Minn. 2014). "[S]trict compliance" with these elements is required. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *rev. denied* (Minn. June 18, 2002). We review de novo whether a defendant validly waived a jury trial. *State v. Kuhlmann*, 806 N.W.2d 844, 848-49 (Minn. 2011).

Opportunity to consult with counsel

Wright first argues that his jury-trial waiver was invalid because "it is unclear when [he] would have had the opportunity to consult with counsel" given that he previously discharged the public defender, the district court "never clarified" whether he had such an opportunity, and Wright did not have advisory counsel. Wright's argument is addressed by *State v. Johnson*, 354 N.W.2d 541 (Minn. App. 1984).

In *Johnson*, this court held that a pro se defendant had sufficient opportunity to consult with counsel even though he never actually consulted with counsel. 354 N.W.2d at 543. Although we observed that the defendant "was eligible for the public defender," the record did not show that he applied for one before sentencing. *Id.* This court noted that the defendant's jury-trial right was explained to him off the record by the prosecutor and again on the record by the district court. *Id.* At trial, the district court gave the defendant another opportunity to request a jury. *Id.* Under those facts, we held that the defendant "could have consulted with counsel at any time before trial." *Id.* That the

defendant "was acting pro se did not deprive him of the opportunity to consult with counsel before waiver of jury trial." *Id.*

Under *Johnson*, Wright had sufficient opportunity to consult with counsel. Wright was appointed a public defender at his first appearance. He had opportunity to consult with that counsel for almost a month before discharging counsel and proceeding pro se. The district court asked Wright whether he wanted advisory counsel—once at the omnibus hearing and once at a pretrial hearing. Further, the district court repeatedly asked Wright whether he wanted a jury trial and told him he could request one up until trial began.

Wright cites no caselaw requiring district courts to ask pro se defendants whether they had an opportunity to consult with counsel to comply with the rule. No such inquiry is evident in *Johnson*. "And district courts are discouraged from the sort of inquiry that could determine whether a defendant actually discussed the waiver with counsel." *State v. Rewitzer*, No. A18-1921, 2019 WL 4746151, at *3 (Minn. App. Sept. 30, 2019) (citing *State v. Ross*, 472 N.W.2d 651, 654 (Minn. 1991) (stating that courts should avoid inquiry into attorney-client communications when evaluating validity of jury-trial waiver)); Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding . . . but may be cited . . . as persuasive authority"). In any event, by his written and personal waiver, Wright stated that he had an opportunity to consult with counsel. We conclude that Wright had sufficient opportunity to consult with counsel regarding his jury-trial waiver.

Knowing and intelligent waiver

Wright also argues that his jury-trial waiver was invalid because it was not knowing and intelligent. "Whether a waiver of a constitutional right was knowing [and] intelligent . . . depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused." *Little*, 851 N.W.2d at 882. "The focus of the inquiry is on whether the defendant understands the basic elements of a jury trial." *Ross*, 472 N.W.2d at 654. To ensure that jury-trial waivers are knowing and intelligent, defendants should be informed "that a jury trial is composed of 12 members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous, and that, if the defendant waives a jury, the judge alone will decide guilt or innocence." *Id.*; *see also* Minn. R. Crim. P. 26.01, subd. 1(2)(a) (allowing defendant to waive jury "in writing . . . after being advised by the court of the right to trial by jury").

Here, Wright's written waiver informed him of these elements. The district court also informed Wright of these elements in detail on the record. Beyond the basic elements, the district court explained why some people prefer jury trials and discussed jury selection at length, including the jury questionnaire, its results, and each side's ability to question prospective jurors for bias. Wright participated in this and other discussion about the jury, inquiring about what he could ask prospective jurors and even requesting the court to strike all prospective jurors who had or knew someone with experience related to sexual misconduct. *State v. Pietraszewski*, 283 N.W.2d 887, 890 (Minn. 1979) (per curiam)

(holding that defendant validly waived jury in part because district court "commented on his ability to express himself and participate in the proceedings").

Moreover, the district court told Wright twice that a jury consists of 12 people whose guilty verdict must be unanimous. The district court also explicitly told Wright twice that a court trial, or "judge trial," is with the judge "as the only factfinder" deciding guilt. On the record, Wright read aloud the part of his written waiver stating that the judge alone would decide guilt. Wright is also "not unfamiliar with the judicial system," as his sentencing worksheet shows three prior felony convictions and five prior misdemeanor or gross-misdemeanor convictions. *See Ross*, 472 N.W.2d at 654 (noting defendant's prior convictions as indicating that he understood jury-trial right).

Wright nonetheless argues that his waiver was not knowing or intelligent because the record reflects his belief that "if he waived . . . a jury trial, the district court would be free to believe his affidavits and grant his motion to dismiss." The record does not support this assertion. It seems clear that Wright did not fully appreciate the difference between deciding a pretrial motion to dismiss and a trial deciding guilt. But the record shows his understanding that a trial would require the jury or the district court to consider "all the evidence," including the victim's testimony, before deciding guilt. Indeed, Wright demonstrated at least some knowledge of subpoenas and cross-examining witnesses.

The record suggests that Wright attempted and failed to persuade the district court to acquit him based on his affidavit. Apparently, when Wright had to decide on a jury trial or bench trial, he chose a bench trial due to concern about prospective jurors who had or knew someone with experience related to sexual misconduct. This supports the validity of

his jury-trial waiver. *Pietraszewski*, 283 N.W.2d at 890; *State v. Hansen*, No. A11-2260, 2013 WL 599139, at *3 (Minn. App. Feb. 19, 2013) (concluding that defendant had sufficient knowledge of basic jury-trial elements in part because he "gave valid reasons for preferring a bench trial to a jury trial"), *rev. denied* (Minn. Apr. 30, 2013). We conclude that Wright's jury-trial waiver was valid. Any misunderstanding about deciding a pretrial motion to dismiss versus a trial deciding guilt did not invalidate the waiver.

Pro se brief

In a pro se supplemental brief, Wright seems to dispute the weight of the trial evidence. This contention fails because the district court was "the exclusive judge of witness credibility and . . . the weight of the evidence." *See State v. Meldrum*, 724 N.W.2d 15, 23 (Minn. App. 2006), *rev. denied* (Minn. Jan. 24, 2007).

Similarly, Wright seems to argue that the evidence was insufficient to prove that the victim was "physically helpless" when Wright committed the offense. When reviewing the sufficiency of the evidence, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty" of the charged offense beyond a reasonable doubt. *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We view the evidence "in the light most favorable to the verdict" and assume that the fact-finder disbelieved any contradictory evidence. *Id.* (quotation omitted).

"A person who engages in sexual penetration with another person is guilty of" third-degree criminal sexual conduct if "the actor knows or has reason to know that the complainant is . . . physically helpless." Minn. Stat. § 609.344, subd. 1(d) (2020). A

person who is "[p]hysically helpless" includes a person who is "asleep." Minn. Stat. § 609.341, subd. 9 (2020).

Here, the victim testified that she "woke up to" Wright with his "fingers in [her] vagina." And when rendering its verdict, the district court expressly found the victim "very credible." Thus, the evidence of physical helplessness was sufficient. *See State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) (stating that "a conviction may rest on the testimony of a single credible witness").

Wright's additional pro se claims are "unsupported by either arguments or citation to legal authority." *See State v. Montano*, 956 N.W.2d 643, 650 (Minn. 2021) (quotation omitted). We generally do not consider such claims unless "prejudicial error is obvious on mere inspection." *Id.* at 650-51. On mere inspection of the record, no prejudicial error is obvious. Therefore, Wright has forfeited his claims.

Affirmed.