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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1177**

State of Minnesota,
Respondent,

vs.

Dominic Junior Barry,
Appellant.

**Filed April 1, 2024
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-20-14993

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

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Alexander H. De Marco, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Frisch, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions for theft of a firearm and unlawful possession of a firearm, arguing that (1) the district court erred by accepting his waiver of counsel, (2) the district court failed to provide him sufficient guidance in proceeding pro se, (3) the

district court erred by denying his motions to dismiss and suppress evidence, and (4) the evidence was insufficient to prove his guilt beyond a reasonable doubt. We affirm.

FACTS

On February 14, 2020, P.W., a security officer, returned home after work and put his handgun on a table. P.W.'s roommate, S.B., was sitting at the table. Appellant Dominic Junior Barry arrived with P.W.'s sister. Barry stood by the table. Barry poured a drink, went to the bathroom, returned, and said he was leaving. Nobody else visited the apartment that night. The next morning, P.W. could not find his handgun. He called the police and reported that his handgun was missing.

On February 28, 2020, an officer responded to a ShotSpotter activation, which is a sound surveillance system that pinpoints gunfire. The officer noticed a vehicle traveling away from the activation sight. With nobody else in the area, the officer focused on the vehicle. The vehicle parked in front of a residence and the officer parked behind it. The driver, a male wearing a "multicolored jacket" and pink pants, exited the vehicle and walked toward the residence. The officer told the driver to stop. The driver ran away. A K-9 unit tracked the driver to an alley. The driver was no longer wearing a jacket. The officer arrested the driver, Barry, for fleeing. Officers located a jacket and a handgun in the alley where Barry was found. The handgun was the handgun P.W. had reported missing after Barry had been at his apartment. Respondent State of Minnesota charged Barry with theft of a firearm and unlawful possession of a firearm. *See* Minn. Stat. §§ 609.52, subd. 2(a)(1), 624.713, subd. 1(2) (2018).

Barry was appointed a public defender. At a hearing in October 2020, Barry's public defender indicated that Barry planned to proceed pro se. The district court scheduled another hearing at which a supervisor from the public defender's office would guide Barry through a petition to proceed pro se. At that hearing, the district court addressed Barry:

I have to make sure that you're making a decision that's knowing and intelligent. Ultimately, it's your decision. You know, you can represent yourself if you'd like. But we want to make sure that you've been fully advised of what that means and what's going to be expected of you and what other possible options either may or may not be there once this is done.

Barry agreed that he had gone through the petition "word for word" with counsel and wanted to represent himself. Barry refused to sign the petition, but the district court noted that Barry's signature was not required. And Barry agreed that he would follow through with the contents of the petition. The district court stated to Barry: "[O]nce you make this decision to discharge the public defender, you don't have the right to say, 'I want somebody back.' You may ask me to appoint [a]dvisory [c]ounsel, but you can't count on me doing that." The district court also stated: "And what you're saying [is] . . . you're . . . doing the job that a trial lawyer has to do. Because I can't really give you breaks if you represent yourself. . . . It's a big step you're taking." Barry indicated his understanding.

In January 2021, Barry sent an email requesting, among other things, to dismiss and suppress evidence. Following a hearing, the district court denied Barry's motions, concluding that probable cause existed and there was no basis to suppress the evidence.

At a hearing in December 2021, the district court reminded Barry that there are "[r]ules of [c]ourt that everybody's expected to follow. . . . [E]ven pro se litigants." The

court offered Barry instructions on how to properly subpoena witnesses and prepare a witness list. Barry continued to ask questions about trial procedure and the district court stated: “I’m just going to keep reminding you [that you] should really have a lawyer.”

At a pretrial hearing in December 2021, Barry attempted to reargue his motions to suppress and dismiss. The district court stated that it would not relitigate those issues and encouraged Barry to retain an attorney. Barry became argumentative. The district court stated: “I’m asking [Barry] to cooperate with the [c]ourt. He is representing himself pro se. I’ve offered him an attorney if he cannot afford one. We can certainly appoint one for him. And if there needs to be standby attorney, he can certainly have standby attorney to assist him.”

At a hearing on December 15, 2021, Barry indicated that his family hired an attorney. The district court stated:

We’ve talked about this a bunch of times. You always have a right to an attorney. Mr. Barry, you have a right to not have an attorney. . . . You know, if we’re going to go to trial, you have to understand that there’s rules that you have to follow. . . . If you want to have a lawyer to help guide you through that process, then we can talk about that, as well.

Barry stated that he wanted a public defender appointed until he met with his new attorney. The district court indicated that it would look into reappointing a public defender.

At a hearing five days later, an attorney appeared with Barry. Barry stated that he had a conflict with his attorney. The district court granted a continuance to allow Barry to hire a different attorney. But when Barry’s jury trial began on January 31, 2022, Barry appeared pro se.

The jury found Barry guilty as charged. The district court sentenced Barry to 48 months in prison for his ineligible-possession-of-a-firearm conviction and to a concurrent 21 months in prison for his theft conviction. This appeal followed.

DECISION

Waiver of counsel

Barry first argues that his waiver of counsel was invalid. We review the finding of a valid waiver of counsel for clear error. *State v. Bonkowske*, 957 N.W.2d 437, 440 (Minn. App. 2021). “A finding is clearly erroneous when there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). Because a criminal defendant has a constitutional right to counsel, an invalid waiver resulting in the denial of this right is a “structural” error requiring reversal. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009); *see* U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6.

A waiver of the right to counsel must be knowing and intelligent. *Rhoads*, 813 N.W.2d at 884. To ensure a knowing and intelligent waiver of the right to counsel, a district court must follow a procedure to obtain a valid waiver. Minn. R. Crim. P. 5.04, subd. 1(4). A defendant charged with a felony who wishes to represent himself must “enter on the record a voluntary and intelligent written waiver of the right to counsel.” *Id.*; *see also* Minn. Stat. § 611.19 (2022) (stating that a waiver must “be made in writing” and “signed by the defendant” unless defendant refuses to sign).

Here, the district court accepted Barry’s written waiver of counsel and his request to proceed pro se. Barry went through the petition with counsel “word for word.” Although

Barry did not sign the petition, he agreed that he would “follow through with [everything] that [counsel] went through.”

Barry acknowledges that he completed the petition but argues that the district court should have obtained a renewed waiver of counsel before trial began. Not only did Barry complete the petition, but a supervisor from the public defender’s office went through the petition with Barry. With assistance from that counsel, Barry also did an extensive on-the-record waiver of counsel. And although the district court did not formally renew Barry’s waiver, it frequently discussed with Barry the decision to proceed pro se. Because nothing material had changed between Barry’s written waiver and the time of trial other than Barry hiring and discharging counsel, the district court was not required to renew the waiver. *See Rhoads*, 813 N.W.2d at 888 (stating that renewed waiver was necessary when state amended charges and defendant faced double punishment).

Sufficient guidance in proceeding pro se

Barry also argues that, while he did complete the written waiver, the form is insufficient, and a district court should be required to explain court processes and provide resources to pro se defendants. We note that Barry cites no legal authority to support this claim, and we could decline to consider it. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating that claims deemed forfeited when brief contains no citation to legal authority in support of the claims). In considering the claim, however, the record shows that the district court was helpful in guiding Barry through the proceedings. The district court 1) instructed Barry on how to subpoena witnesses and prepare a witness list; 2) explained jury selection; 3) described how the trial would begin with jury instructions;

4) explained an opening statement; and 5) explained the reasons why some defendants stipulate to elements of an offense. The district court also explained how Barry could move for a directed verdict. And after the state rested, the district court prompted Barry: “[T]hat time where I told you [that] you can . . . make a motion to dismiss and tell me the reasons for it, that’s the time to do it now So any motions you’d like to make . . . you go right ahead.”

The district court often reminded Barry that there are rules that even pro se defendants are expected to follow. The district court stated: “Mr. Barry, you have a right to not have an attorney. . . . [But] you have to understand that there’s rules that you have to follow.” The district court accurately described the law. *See State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006) (“Pro se litigants are generally held to the same standards as attorneys.”), *rev. denied* (Minn. Jan. 24, 2007); *State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988) (“A defendant who elects to represent himself must still comply with all procedural rules. The rules of procedure apply the same to all litigants whether represented by counsel or not. No extra benefits will be given to pro se litigants.” (Emphasis omitted.)), *superseded on other grounds by rule*, Minn. R. Crim. P. 28.02, subd. 5(17)-(19). The record shows that the district court provided Barry with more assistance than is required by law.

Motions to dismiss and suppress

Barry next challenges the district court’s pretrial denials of his motions to dismiss for lack of probable cause and to suppress because of an unreasonable seizure. Barry cannot, however, challenge the probable-cause determination at this stage. *See State v.*

Henderson, 890 N.W.2d 739, 740 (Minn. App. 2017) (“Since appellant was tried and convicted, his probable cause challenge is not relevant on appeal.”), *aff’d*, 907 N.W.2d 623 (Minn. 2018). In reviewing Barry’s challenge to the district court’s pretrial suppression order, we review the district court’s factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Generally, evidence obtained during an unconstitutional search or seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

A police officer may “temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity.” *Id.* (quotation omitted). Reasonable suspicion exists when an officer has specific, articulable facts that provide an “objective basis for suspecting the seized person of criminal activity.” *Id.* at 842-43 (quotation omitted). The reasonable-suspicion standard is “not high,” but does require more than a “hunch of criminal activity.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). When determining whether reasonable suspicion exists, we consider the totality of the circumstances, including seemingly innocent factors. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

Barry argues that he was seized—was not free to leave—when the officer stopped behind his parked vehicle and activated his emergency lights. “[T]he use of a squad car to block a parked vehicle generally constitutes a seizure.” *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005). But “a seizure occurs only when the officer actually positions his

squad car so as to prevent the other vehicle from leaving.” *Illi v. Comm’r of Pub. Safety*, 873 N.W.2d 149, 152 (Minn. App. 2015). And “[a] person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions.” *See State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999); *Klotz v. Comm’r of Pub. Safety*, 437 N.W.2d 663, 665 (Minn. App. 1989) (stating the same), *rev. denied* (Minn. May 24, 1989).

Here, the officer testified that in investigating the ShotSpotter activation, he noticed a vehicle traveling away from the pinpointed area. It was the only vehicle in the area, so the officer focused on it. The vehicle parked. The officer then activated his vehicle’s emergency lights as he pulled up behind the vehicle. The officer did not block the vehicle in, he merely parked behind it. The district court determined that no stop or seizure occurred because the vehicle was stopped when the officer stopped behind it. But considering the totality of the circumstances, the officer had reasonable suspicion to suspect the occupants of the vehicle of criminal activity because it was the only vehicle in the area, and it was traveling away from the ShotSpotter activation sight. Even if the officer’s actions did constitute a stop, the totality of the circumstances supported a stop. The district court did not err by denying Barry’s suppression motion.

Sufficiency of the evidence

Finally, Barry argues that the evidence was insufficient to sustain his convictions. Essentially, he claims that because nobody saw him take or discard the handgun, there is no evidence that he stole and possessed it. But even though nobody saw Barry take or discard the handgun, his convictions can be sustained with circumstantial evidence.

In considering a claim of insufficient evidence, this court determines whether the evidence, when viewed in the light most favorable to the verdict, is sufficient to allow the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Ordinarily, this court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

When reviewing the sufficiency of circumstantial evidence, we apply a two-step standard of review. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, we identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In this step, “we defer to the jury’s acceptance of the proof of these circumstances” and “assume that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotations omitted). Next, we determine if the proved circumstances, viewed “as a whole,” are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *Id.* at 599 (quotation omitted). At this stage, we do not defer to the jury’s choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). The circumstantial evidence “must form a complete chain that . . . leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

The jury found Barry guilty of theft. The state had to prove that Barry “intentionally and without claim of right [took] . . . possession of [a handgun] . . . of another without the

other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(1).

The circumstances proved show that P.W. owned a handgun; on February 14, P.W. set his handgun on a table; S.B. sat at the table; Barry and P.W.'s sister arrived at the apartment; P.W.'s sister did not leave the entryway of the apartment; S.B. saw Barry by the table; Barry poured a drink and went to the bathroom; Barry returned from the bathroom and left abruptly; nobody else entered the apartment that night; the next morning, P.W. could not find the handgun; the handgun was found in an alley two weeks later; and Barry was in the alley where the handgun was found. Based on these circumstances proved, it is reasonable to conclude that Barry took P.W.'s firearm without consent and with the intent to permanently deprive P.W. of the handgun.

Barry's proposed rational hypothesis to defeat this conclusion is that somebody else took the handgun and discarded it. But this does not explain Barry's connection to both locations—the handgun was missing when Barry left the apartment, and Barry was found near the same handgun that was discarded in the alley in which he was found. Based on the circumstances proved, any hypothesis that Barry did not steal the handgun is unreasonable.

The jury also found Barry guilty of being an ineligible person in possession of a firearm. The state had to prove that Barry was convicted of a crime that made him ineligible to possess a firearm and that he possessed a firearm. *See* Minn. Stat. § 624.713, subd. 1(2). Barry does not argue that he was ineligible to possess a firearm; he argues only that the state did not prove that he possessed the firearm.

The circumstances proved show that when Barry left P.W.'s apartment, P.W.'s handgun was missing; approximately two weeks later, officers responded to a call of a ShotSpotter activation; driving to the activation sight, an officer observed a vehicle traveling away from the activation sight; nobody else was in the area; the vehicle parked; Barry exited the vehicle wearing a jacket; Barry fled; a K-9 unit tracked Barry to an alley; Barry was no longer wearing his jacket; and officers found P.W.'s handgun and a jacket in the alley. Again, Barry's only other reasonable hypothesis is that it was somebody else who discarded the firearm. But this does not account for the fact that Barry is connected to the same firearm in two separate locations. The circumstances are consistent with Barry's guilt and inconsistent with any rational hypothesis of innocence, and so the evidence sufficiently supports Barry's convictions.

Affirmed.