

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1677**

State of Minnesota,
Respondent,

vs.

Anthony Treymane Weston,
Appellant.

**Filed August 21, 2023
Affirmed
Florey, Judge***

Carlton County District Court
File No. 09-CR-21-1012

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Florey, Judge.

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this direct appeal from the judgment of conviction for threats of violence, domestic-assault strangulation, and third-degree assault, appellant argues (1) the evidence was insufficient to prove his guilt for threats of violence, (2) his conviction for third-degree assault must be vacated, and (3) his waiver of counsel was invalid. We affirm.

FACTS

In March 2021, J.N. attempted to end a romantic relationship with appellant Anthony Tremayne Weston. The two had an argument around this time in appellant's vehicle. J.N. described appellant's body language during this argument as "aggressive, angry, [and] intimidating[.]" and testified that during the argument appellant "hover[ed] over" and "lung[ed] at" her. When J.N. attempted to leave the car, appellant "leaned over" her and shut the vehicle's door, preventing J.N.'s escape. During this argument, appellant held a gun and made gestures threatening to hit J.N. in the head with it. Appellant threatened to kill J.N. and her children. J.N. eventually escaped the vehicle, fled to her own vehicle, and did not see appellant again until June 2021.

In June 2021, appellant called J.N. and requested a ride because his vehicle had broken down. J.N. picked up appellant and they returned to J.N.'s residence where appellant spent the night. When J.N. picked up appellant, appellant did not have a change of clean clothes, so J.N. washed appellant's clothes for him the next morning. When she went to place the washed clothes in the dryer, she discovered empty sandwich bags in appellant's pockets, which J.N. identified as previously containing drugs. J.N. immediately

began to cry and returned to her bedroom where appellant was sleeping to wake him and tell him what happened. Appellant became angry and accused J.N. of destroying the drugs intentionally. J.N. protested that it was an accident and the interaction escalated to a yelling match between the two as they stood next to J.N.'s bed. Appellant, while repeatedly accusing J.N. of intentionally destroying his drugs, reached inside his backpack which was lying on the bed "as if . . . grabbing" a gun.¹ Having previously seen appellant keep a gun in the backpack, J.N. began to "freak out." J.N. thought appellant was going to kill her and screamed, "Are you going to kill me? You are going to leave me here like that and have my kids find me." Appellant put his hands around J.N.'s neck, lifted her several inches off the ground, and threw her onto the bed while continuing to choke her. J.N.'s leg and shoulder hit the bed frame when appellant threw her onto the bed. J.N. heard "cracks and pops" while being choked, which she attributed to her windpipe being crushed. J.N. could not breathe, saw stars, and believed she was going to die. J.N. estimated the assault lasted around one minute, after which appellant released her.

J.N. sustained several injuries from the assault, including "[f]ingerprint bruising around [her] neck" and bruising on her leg that was so severe she experienced difficulty walking after the assault and took blood thinners to address blood clots in her leg. J.N. did not initially report the assault to police because she believed she and appellant were

¹ J.N. testified at appellant's trial that although she did not see the butt of a gun, appellant reached inside his backpack on the bed and "had his hands . . . as if . . . grabbing" a gun. When the state asked J.N. how she inferred the backpack contained a gun, she explained that it was "how he had his hand inside of his bag, like he kept it there, like, you know, trying to conceal something."

“working through it.” Several days later, however, appellant refused to return J.N.’s vehicle which he had borrowed, and J.N. reported the missing vehicle and the assault.

On June 10, 2021, the state charged appellant with threats of violence, Minn. Stat. § 609.713, subd. 1 (2020), third-degree assault, Minn. Stat. § 609.223, subd. 1 (2020), and domestic-assault strangulation, Minn. Stat. § 609.2247, subd. 2 (2020). The record does not indicate the date on which the district court appointed counsel for appellant, but appellant was represented by a public defender as of January 31, 2022.² On May 5, 2022, appellant filed a petition to proceed pro se, asking to discharge his appointed public defender. However, appellant withdrew this petition at a hearing on May 9, 2022, after he learned that a different public defender would be representing him. Appellant then filed a second signed petition to proceed pro se on May 16, 2022, which stated that he: (1) had discussed with his newly-appointed counsel his desire to proceed pro se, (2) understood he would be responsible for preparing his case for trial and trying his case, (3) understood he would be held to the same rules as an attorney, and (4) understood he would be bound by any mistakes that resulted from his unfamiliarity with the law. At a hearing on May 19, 2022, the district court confirmed with appellant that he: (1) had “an opportunity to review the entirety of” the petition to proceed pro se, (2) “had a chance to talk this [decision to proceed pro se] through with” appointed counsel, (3) was making the decision with a clear mind and judgment, (4) understood he would be held to the same standards as an attorney,

² On this date, appellant’s first appointed counsel filed a demand for disclosure.

(5) understood the charged offenses and their maximum possible sentences, and (6) wished the district court to appoint advisory counsel. The district court then told appellant:

It's a really bad idea for you to represent yourself, generally speaking. You're emotionally involved. You don't understand the law, the rules, how things work in a courtroom. And it's generally a disadvantage for a defendant to represent themselves. . . . I'm just going to be honest about that, sir. Okay.

So I really want you to think long and hard about whether or not this is a good road for you to go down. I've generally not seen people who represent themselves do a very good job. Yes, you have the right to represent yourself, but I'm going to—I also want you to really think this through before I discharge the Public Defender's office.

And while you may have disagreements in how things are going to be handled in trial with [both appointed counsel], they're both qualified and very competent attorneys and have tried cases in front of this Court and know what they're doing and have done a good job for people. So if they're telling you that they can't do something you want them to do, you understand it . . . likely is for a very good reason because they think either it's a bad idea from their training and experience, or it's something that they know is against the rules and then they cannot bring that motion or bring those issues up before the Court. So I really want you to think about your decision here. Have you had enough time to consider it? Are you dead set on representing yourself?

Appellant replied, "Absolutely." The district court found appellant validly waived his right to counsel, granted appellant's request to proceed pro se, and appointed advisory counsel.

Almost one month later, on June 7, 2022, appellant filed a handwritten motion to obtain services other than counsel, pursuant to Minn. Stat. § 611.21 (2022). The motion stated:

[Appellant] petitions the court for funding to obtain an expert witness, investigator, and transcripts. I need the investigator to see if similar drivers were stopped by Officer Hansen and identify if they were treated the same, an expert witness opinion to re-test the controlled substances, and copies of my transcripts. In order to proper[ly] evaluate what has been said on the record. I ask that the court provide me with all communications related to my case such as all emails, texts, and other conversations between my previous public defenders, prosecutors, and judges.³

The district court addressed this motion at a hearing on June 9, 2021. After confirming again that appellant wished to proceed pro se, the district court denied the request for services other than counsel, stating that:

You can request and talk that over with advisory counsel, and if advisory counsel and you determine that that's something you'd like to apply for . . . then you're certainly welcome to do that . . . but . . . the statute only allows attorneys to be asking the Court for the granting of those types of funds.

Later during the same hearing, the district court addressed appellant's request that J.N.'s physician appear as an expert witness. The district court informed appellant that if he wanted the physician to testify, the proper procedure was to subpoena the witness and to arrange for the physician to come to the courthouse to testify. Appellant replied, "Yes, ma'am."

Appellant represented himself at a jury trial held July 5 through July 7, 2022. The jury returned guilty verdicts for all three charged offenses. The district court convicted appellant of all three offenses and sentenced him to 30 months' imprisonment for threats

³ As addressed at Part III, *infra*, it is unclear whether appellant's requests pertained to the file underlying the instant appeal or another of two criminal files pending against appellant at the time.

of violence, concurrent with 27 months' imprisonment for third-degree assault, and did not impose a sentence for domestic-assault strangulation.

Appellant appeals directly from his convictions.

DECISION

I. Sufficient evidence established appellant's guilt of threats-of-violence.

Appellant argues his conduct did not constitute threats of violence under Minn. Stat. § 609.713, subd. 1. When considering challenges to the legal sufficiency of evidence, we first consider what conduct the relevant statute prohibits and then turn to whether the state's evidence proved appellant's guilt of the charged offense. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996); *State v. Smith*, 825 N.W.2d 131, 135 (Minn. App. 2012).

A. The threats-of-violence statute prohibits appellant's conduct.

"Whether a defendant's conduct is prohibited by the statute he is charged under is an issue of statutory interpretation" that we review de novo. *Smith*, 825 N.W.2d at 136.

Any person who "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror or inconvenience[,]" is guilty of making threats of violence. Minn. Stat. § 609.713, subd. 1. A threat is the communication of an intent to harm another or his property through an unlawful act. *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975). When viewed in context, the communication must have a "reasonable tendency to create apprehension that its originator will act according to its tenor." *Id.* (quotations omitted). The threat need not be verbal or written and may be communicated by physical acts. *Murphy*, 545 N.W.2d at 916. In addition, the threat must be to commit a crime of violence in the future. *Id.* A

victim's reaction to the threat is not an essential element of the offense but is circumstantial evidence relevant to the element of intent. *State v. Marchand*, 410 N.W.2d 912, 915 (Minn. App. 1987), *rev. denied* (Minn. Oct. 21, 1987).

Appellant disputes sufficiency only regarding the threat element, arguing that because his threats constituted a threat of *imminent* rather than *future* harm, the state failed to prove his conduct constituted threats of violence.

Smith controls and disposes of this claim. In *Smith*, we considered the conduct of a man, Smith, who waved a pocketknife at his victim from a distance of about four feet while demanding money during “an ongoing confrontation.” 825 N.W.2d at 135-36. Smith argued that because the threat was made during an ongoing altercation, he threatened the victim with imminent harm, and therefore his conduct did not constitute a threat to commit a future act of violence. *Id.* This court concluded the threats-of-violence statute prohibited this conduct because the supreme court “has never defined a specific amount of time that must pass before a threat of immediate violence becomes a threat of future violence.” *Id.* (citing *Murphy*, 545 N.W.2d at 916). Additionally, this court noted that “*Murphy* states that ‘[i]t is the future act threatened, as well as the underlying act constituting the threat, that the statute is designed to deter and punish.’” *Id.* (quoting *Murphy*, 545 N.W.2d at 916). Therefore, the fact that appellant reached into his backpack during an ongoing altercation does not prevent his conduct from threatening future violence. *See id.*

Appellant also analogizes second-degree assault caselaw to argue his conduct did not threaten a future act of violence. However, these cases are distinguishable. In those cases, threats of immediate harm were found where weapons were held at a close proximity

to the victim, or the threatening gesture was accompanied by verbal threats of imminent violence. *State v. Soine*, 348 N.W.2d 824, 825 (Minn. App. 1984) (describing appellant who shook a buck knife “about six or seven inches from [victim’s] face and chest”), *rev. denied* (Minn. Sept. 12, 1984); *State v. Andrews*, No. A11-2200, 2012 WL 5834450, at *1 (Minn. App. Nov. 19, 2012) (describing appellant who pulled out a gun while in a vehicle, pointed it at the vehicle’s dashboard, and instructed driver-victim to “take me where I need to go . . . I’ll make sure you take me”), *rev. denied* (Minn. Aug. 19, 2014).⁴ And in any case, the dispositive question is not whether, counterfactually, *if* the state had charged appellant with second-degree assault, appellant *could* have been convicted for that offense. The dispositive question is whether the threats-of-violence statute prohibits appellant’s conduct. Pursuant to *Smith*, the answer is yes. 825 N.W.2d at 135-36.

B. Sufficient evidence proved appellant’s guilt of threats of violence.

When reviewing the sufficiency of the evidence, we conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). A reviewing 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

⁴ See Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, *res judicata* or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Here, appellant reached into a backpack and held his hand in a way that suggested he was holding a gun. Appellant did this while repeatedly accusing J.N. of intentionally destroying his drugs. J.N. thought that appellant was going to kill her because he had threatened her with a gun before and she had previously seen him store a gun in the backpack. J.N.’s reaction is circumstantial evidence that appellant intended to kill her, *Marchand*, 410 N.W.2d at 915, and, in context, appellant’s conduct had a “reasonable tendency to create apprehension” that appellant would “act according to [the threat’s] tenor.” *Schweppe*, 237 N.W.2d at 613.

Therefore, the state’s evidence sufficiently proved a threat of future violence.

II. The district court did not err in convicting appellant of third-degree assault and domestic-assault strangulation because third-degree assault is not an included offense of domestic-assault strangulation.

Appellant argues his conviction for third-degree assault should be vacated because it is an included offense of domestic-assault strangulation.

Under Minnesota law, a criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2020). “An included offense may be . . . a crime necessarily proved if the crime charged were proved.” *Id.*, subd. 1(4). Whether an offense is necessarily proved by proof of another offense is a question of law which we review de novo. *State v. Degroot*, 946 N.W.2d 354, 364 (Minn. 2020). To determine whether an offense is an included offense falling under Minn. Stat.

§ 609.04, subd. 1(4), we “examine[] the *elements of the offense instead of the facts of the particular case.*” *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006) (emphasis added).

Domestic-assault strangulation is the (1) assault of (2) a family or household member, by (3) strangulation. Minn. Stat. § 609.2247, subd. 2. This statute defines “[s]trangulation” as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” Minn. Stat. § 609.2247, subd. 1(c) (2020).

Third-degree assault is the (1) assault of “another” that (2) “inflicts substantial bodily harm.” Minn. Stat. § 609.223, subd. 1. Section 609.02, subdivision 7a (2020) defines “[s]ubstantial bodily harm” as a “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.”

Appellant argues that when the state proves the “strangulation” element of domestic-assault strangulation, the state necessarily proves the “substantial bodily harm” element of third-degree assault. Appellant emphasizes that when the state proved strangulation “*in this case[,]*” it necessarily proved substantial bodily harm. (Emphasis added). In doing so, appellant loses sight of the offense elements that are the crux of the analysis. *See Bertsch*, 707 N.W.2d at 664. We conclude the structural differences between the substantial-bodily-harm element of third-degree assault and the strangulation element of domestic-assault strangulation preclude the former offense’s status as an included offense of the latter.

First, the strangulation element is binary: either someone “intentionally impeded[es]” the victim’s “normal breathing or circulation[,]” or they do not. *See* Minn. Stat. § 609.2247, subd. 1(c). There is no quantitative threshold to satisfy this element. In contrast, third-degree assault requires “*substantial*” bodily harm. Minn. Stat. § 609.223, subd. 1 (emphasis added).

Second, as this court noted in *State v. Serrano-Santana*, the strangulation element may be satisfied when someone merely blocks the nose or mouth of another person. No. A20-1021, 2021 WL 1962886, at *6 (Minn. App. May 17, 2021), *rev. denied* (Minn. Aug. 10, 2021). An abuser could cover the mouth of a family member with enough pressure that that victim could not breath through their mouth, but insufficient pressure for the victim to sustain any injuries, and could do so in a way that the victim continued to breathe through their nose. Consistent with *Serrano-Santana*, this would constitute strangulation because this conduct would impede the victim’s normal breathing, and that is all the strangulation element requires. *Id.* However, this conduct would not constitute “bodily harm[,]” much less “*substantial* bodily harm” for purposes of third-degree assault, Minn. Stat. § 609.02, subds. 7 (2020), 7a (emphasis added), because the victim sustained no injuries. *See* Minn. Stat. § 609.223, subd. 1 (requiring “substantial bodily harm” for third-degree assault). In such circumstances, the state could prove strangulation for domestic-assault strangulation without proving substantial bodily harm for third-degree assault.

Appellant misplaces reliance on *State v. Jarvis*, 665 N.W.2d 518, 521-22 (Minn. 2003), *Serrano-Santana*, 2021 WL 1962886, at *6, and *In re Welfare of C.A.G.*, No. A17-0348, 2017 WL 3585125, at *4-5 (Minn. App. Aug. 21, 2017).⁵

In *Jarvis*, the supreme court addressed Jarvis’s argument that insufficient evidence supported his conviction for first-degree criminal sexual conduct because the state failed to prove that by drugging his victim, Jarvis caused her “personal injury.” 665 N.W.2d at 521; *see also* Minn. Stat. § 609.342, subd. 1 (2002) (providing elements for first-degree criminal sexual conduct). The supreme court observed that statute defined “personal injury” as “bodily harm, severe mental anguish, or pregnancy.” *Jarvis*, 665 N.W.2d at 521 (citing Minn. Stat. § 609.341, subd. 8 (2002)). It noted the statute in turn defined “bodily harm” as any “physical pain or injury, illness, or *any impairment of physical condition.*” *Id.* (quoting Minn. Stat. § 609.02, subd. 7 (2002)). The supreme court held that under common usage and plain meaning, “any impairment of physical condition’ in Minn. Stat. § 609.02, subd. 7, means any injury that weakens or damages an individual’s physical condition.” *Id.* at 522. While *Jarvis* sets a low threshold for “bodily harm,” it did not address the relationship between the elements of domestic-assault strangulation and third-degree assault.

⁵ The state blurs the legal standard on this issue, arguing that neither crime is an included offense of the other. Appellant does not argue that domestic-assault strangulation is an included offense of third-degree assault. In addition to being nonprecedential, the case the state cites is therefore inapposite. *See State v. Clemmensen*, No. A15-1455, 2016 WL 5640625, at *3 (Minn. App. Oct. 3, 2016) (rejecting appellant’s claim that domestic-assault strangulation is an included offense of third-degree assault).

In *Serrano-Santana*, we addressed Serrano-Santana’s sufficiency-of-evidence argument that because his victim could still breathe when he “grabbed her by the throat and cupped his hand over her mouth . . . his actions did not impede her normal breathing with the meaning of section 609.2247, subdivision 1(c).” 2021 WL 1962886, at *6. We rejected the argument that “a person’s normal breathing must be completely or entirely obstructed to constitute strangulation under Minn. Stat. § 609.2247, subd. 2.” *Id.* We interpreted the phrase “impeding normal breathing or circulation of the blood” from Minn. Stat. § 609.2247, subd. 1(c), and concluded the strangulation statute required only that “a person’s normal course of breathing . . . be hindered.” *Id.* We also noted the strangulation statute expressly provided that strangulation may occur by blockage of the nose or mouth of another person, and that this indicated “a strangulation victim could still be able to breathe even while strangled within the meaning of the statute.” *Id.* While this nonprecedential case concluded the state faced a low bar to prove strangulation, it did not address the relationship of this element, or any other elements of domestic-assault strangulation, to the elements of third-degree assault.

In *C.A.G.*, we considered whether the “temporary impairment of the ability to breathe constitutes egregious harm.” 2017 WL 3585125, at *4. We noted the family law statutes define “egregious harm” as the ““infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care.”” *Id.* (quoting Minn. Stat. § 260C.007, subd. 14 (2016)). We noted that Minn. Stat. § 260C.007, subd. 14(2) incorporates the definition of “substantial bodily harm” from Minn. Stat. § 609.02, subd. 7a, as one form of “egregious bodily harm.” We

concluded that where a child “coughed, had trouble breathing, and his face turned purple[, t]he choking in this case meets the definition of ‘substantial bodily harm’ because it impaired the ability of [the child]’s trachea to carry air to the lungs and caused [the child] to lose the ability to breathe.” *Id.* But we did not conclude that all choking per se falls within the meaning of “substantial bodily harm” under Minn. Stat. § 609.02, subd. 7a, nor did we mention “strangulation” or the domestic-abuse strangulation statute. Thus, the authority appellant relies on is either inapposite or unpersuasive.

Therefore, the district court did not err in entering judgements of conviction for third-degree assault and domestic-assault strangulation because third-degree assault is not an included offense of domestic-assault strangulation.

III. Appellant’s waiver of counsel was valid.

Appellant argues that his waiver of counsel was invalid because the district court’s colloquy was insufficient and because the district court subsequently denied his request for services other than counsel. We consider these arguments in turn.

The right to self-representation in state criminal trials is guaranteed by the Sixth and Fourteenth Amendments of the U.S. Constitution. *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (citing *Faretta v. California*, 422 U.S. 806 (1975)). However, the right of self-representation is not absolute; a district court may refuse a request for self-representation under some circumstances. *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004). “When a criminal defendant asks to represent himself, the court must determine (1) whether the request is clear, unequivocal, and timely, and (2) whether the defendant knowingly and intelligently waives his right to counsel.” *Richards*, 456 N.W.2d at 263.

“We will only overturn a ‘finding of a valid waiver of a defendant’s right to counsel if that finding is clearly erroneous.’” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quoting *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998)). “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). A written waiver of the right to counsel is necessary in felony cases unless the defendant refuses to sign such a waiver. *See* Minn. Stat. § 611.19 (2022). “[B]efore accepting a waiver of the right to counsel,” the district court 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 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).

Appellant argues his waiver of counsel was invalid because there was “essentially no inquiry as to whether and how [appellant] had consulted with his appointed counsel on the waiver decision beyond ‘did [appellant] talk’ to counsel.”

But “[w]hen a defendant has consulted with an attorney prior to waiver, a trial court could ‘reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.’” *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998) (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)). Here, the district court asked appellant if he had “had a chance to talk this [decision

to proceed pro se] through with [appointed counsel]?” Appellant answered, “Yes, ma’am.” Therefore, the district court’s colloquy was sufficient.

Appellant argues that he did not knowingly, intelligently, and voluntarily waive his right to counsel because the district court subsequently and erroneously denied his request for services other than counsel under Minn. Stat. § 611.21(a).

We note at the outset that it is unclear whether appellant requested services other than counsel for the criminal file underlying the instant appeal or another criminal case pending against him at the time. Appellant sought funding to investigate officer conduct related to a traffic stop and to retest controlled substances. Neither issue exists in the file underlying this appeal.⁶ Appellant also challenges the district court’s denial of his request that funds be provided for J.N.’s physician to appear. But the district court notified appellant that the proper procedure to obtain testimony from J.N.’s physician was to subpoena the physician, which appellant never attempted.

Regardless, assuming without deciding that (1) appellant made a request for services other than counsel for the file underlying this appeal, and (2) the district court erroneously denied his request, we conclude appellant validly waived his right to counsel.

In *State v. Woods*, the supreme court affirmed the district court’s finding of a knowing, intelligent, and voluntary waiver of counsel when the district court: confirmed Woods fully read and understood his written petitions to proceed pro se and was of clear

⁶ The district court told appellant at the June 9, 2021, hearing that appellant’s practice of “referring to all three files on all of the filings that [appellant was] doing” had become “really kind of confusing[,]” and “in the future when [appellant was] sending things over, make sure [appellant] put[] the right court file number on there.”

mind and judgment in deciding to proceed pro se; notified Woods of the charges against him and their corresponding punishments; informed Woods that he would be held to the same rules as an attorney; and reviewed the advantages and disadvantages of self-representation with Woods. 961 N.W.2d 238, 241 (Minn. 2021). The supreme court rejected Woods’s argument that his waiver was involuntary because he faced “an ‘unfair and improper choice: either proceed to his first-degree murder trial with the assistance of inadequate counsel or proceed without any counsel at all.’” *Id.* at 247. In addition to noting the foregoing considerations that the district court addressed in its colloquy with Woods, the supreme court noted that Woods “never raised a serious allegation of inadequate representation or any other good cause not to proceed with his former public defenders[.]” and that Woods “failed to act even after the district court provided him an opportunity to file a written motion setting forth any concerns he might have with his former public defenders.” *Id.*

The instant case does not differ materially from *Woods*. Here, the district court confirmed that appellant had reviewed his petition to proceed pro se in its “entirety[.]” that appellant “had a chance to talk through” the decision to proceed pro se with counsel, and that appellant made this decision with clear mind and judgment. The district court apprised appellant of the charges against him and the maximum possible prison time he faced. The district court confirmed appellant understood that he would be held to the same standards as an attorney and extensively reviewed the disadvantages of proceeding pro se, telling appellant that it was a “really bad idea” for appellant to do so. Even after this warning,

appellant responded that he “[a]bsolutely” wanted to discharge his public defender and represent himself.

And just as Woods never informed the district court at the time of waiver that he wished to proceed pro se because of inadequate representation, the instant record contains no indication whatsoever that appellant made his waiver based on any expectation regarding a subsequent request for services other than counsel. *See id.* at 247. Appellant did not make his request for services other than counsel until nearly a month after his waiver. Finally, like Woods, appellant never subsequently had advisory counsel submit the request, despite the district court’s offer that appellant could do so. *See id.*

Therefore, the record leaves us with no “definite and firm conviction” that the district court clearly erred in finding appellant’s waiver of counsel was knowing, voluntary, and intelligent. *Rhoads*, 813 N.W.2d at 885.

Affirmed.