*This opinion is nonprecedential except as provided by Minn.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**
**A24-1976**

State of Minnesota,
Respondent,

vs.

Brandon Marquies Jones,
Appellant.

**Filed September 15, 2025**
**Affirmed**
**Reyes, Judge**

Ramsey County District Court
File No. 62-CR-24-31

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Reyes, Judge.

**NONPRECEDENTIAL OPINION**

**REYES**, Judge

In this direct appeal from his convictions of burglary, felony domestic assault, and fleeing a peace officer, appellant argues that (1) the state failed to present sufficient evidence to support his burglary conviction; (2) the district court violated his right to counsel of his choice by denying his request for a continuance to hire substitute counsel and not informing him of his right to self-representation; and (3) the district court abused its discretion by denying his motion for a downward dispositional departure. We affirm.

## FACTS

Our recitation of the following facts is based on the evidence respondent State of Minnesota presented at appellant's jury trial.[1] On December 30, 2023, T.B. called 911 and informed dispatch that "[s]omebody just kicked in [her] door." The 911 operator testified at trial that she "could hear somebody being punched, and [she] could hear a female voice yelling, Stop." T.B. later identified appellant, with whom she had been in a romantic relationship and had a child, as the individual who kicked in her door.

Upon arriving at T.B.'s residence, an officer observed two people in the backyard who appeared to be in a physical altercation. Appellant ran from the backyard toward his vehicle and fled the residence in his vehicle. Appellant led law enforcement on a high-speed pursuit. T.B. later indicated that she had obtained an order for protection (OFP) against appellant, but appellant had not yet received service of the order.

The state charged appellant with first-degree burglary involving an assault in violation of Minn. Stat. § 609.582, subd. 1(c) (2022); felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2022); and fleeing a police officer in violation of Minn. Stat. § 609.487, subd. 3 (2022). The district court held a jury trial between July 16 and 19, 2024, at which a public defender (trial counsel) represented appellant. On the second day

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[1] Appellate courts view the evidence in the light most favorable to the jury verdict. *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995).

of trial, but before opening statements, appellant's trial counsel informed the district court that appellant, who requested a speedy trial, sought a continuance to hire new private counsel (substitute counsel). Appellant informed the district court that he was "not happy with [his] legal services" and believed that his trial counsel did not represent him "to the best of his ability." He additionally stated that his attorney did not show him any body-camera footage, did not answer his phone calls, and failed to communicate with him outside of court. Appellant added that he "worked out an agreement" with substitute counsel to represent him if the district court granted a continuance. The district court denied the request for a continuance, explaining that appellant's trial counsel has "done a diligent job," appellant had not presented a certificate of representation from the substitute counsel or showed that this substitute counsel was ready to step in, and the request came on the second day of trial after the witnesses were present and prepared to testify.

T.B. provided testimony at trial that contradicted her previous statement that appellant "kicked in [her] door." After trial, the jury found appellant guilty of all counts. Prior to sentencing, appellant moved for a downward dispositional departure and a downward durational departure. The district court denied his departure motions. In denying the motion for a dispositional departure, the district court noted that it had reviewed jail calls that the state presented, in which appellant allegedly spoke with T.B. in violation of a no-contact order (NCO). It further explained that it was "going to deny the motion for a dispositional departure, *irrespective of those calls*, although . . . they do raise additional questions . . . whether [appellant] is amenable given the fact that these calls, I would consider, to be essentially witness tampering with our protected party here prior to sentencing." (Emphasis added.) The district court convicted appellant of all counts and imposed concurrent sentences of 98 months in prison on the burglary count and 30 months on the assault count. This appeal follows.

## DECISION

### I. Sufficient evidence supports appellant's burglary conviction.

Appellant argues that the circumstantial evidence supports a rational hypothesis that he was a lawful possessor of the house because T.B. testified that he was living at the house when the offense occurred and that he had a key to the house. Appellant adds that the OFP did not impact his possessory rights because he had not been served with it and that T.B. did not take any steps to extinguish his present possessory rights in the house. We are not persuaded.

There are two types of evidence at issue in this appeal. Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). In contrast, circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). "Circumstantial evidence always requires an inferential step that is not required with direct evidence." *Id.* Because the question of whether appellant was lawfully present at the residence during the relevant events requires the fact-finder to make inferences, we apply the circumstantial-evidence standard.

Appellate courts subject verdicts based on circumstantial evidence to heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Under this approach, appellate courts first identify the "circumstances proved," deferring to "the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *State v. Alarcon*, 932 N.W.2d 641, 648 (Minn. 2019) (quotation omitted). Put differently, appellate courts, in determining the circumstances proved, "winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict." *Harris*, 895 N.W.2d at 600. Second, appellate courts independently examine the reasonableness of all inferences that may be drawn from the circumstances proved, giving no deference to the fact-finder's choice between reasonable inferences. *Alarcon*, 932 N.W.2d at 648. To sustain a conviction, "the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted).

A conviction of burglary under Minn. Stat. § 609.582, subd. 1(c), requires that the state prove that appellant "enter[ed] [the home] without consent and with intent to commit a crime, or enter[ed] [the home] without consent and commit[ted] a crime while in the building" and "assault[ed] a person within the [home] or on the [home's] appurtenant property." In *State v. Spence*, the supreme court explained that "occupancy or possession of property at the time the offense was committed . . . determines whether one can be liable for burglary." 768 N.W.2d. 104, 110 n.5 (Minn. 2009). It follows from *Spence* that appellant could not be liable for burglary if he was a lawful occupant of T.B.'s home at the time of the offense. Because appellant does not dispute that he assaulted T.B. in or near the home, we focus on whether he lacked the right to possess or consent to enter the home.

The following evidence constitutes the circumstances proved: (1) appellant and T.B. were in a romantic relationship but had broken up in December 2023; (2) T.B. obtained an OFP against appellant but it had not yet been served; (3) T.B. placed all of appellant's belongings outside the home; (4) someone stole T.B.'s doorbell cameras; (5) on December 30, 2023, T.B. called 911 and told the dispatcher that "[s]omebody just kicked in [her] door"; (6) the 911 dispatcher heard "somebody being punched, and [she] could hear a female voice yelling, Stop"; (7) law enforcement observed a male and female in the backyard engaged in a physical altercation; (8) the male, later identified as appellant, fled in a vehicle and led law enforcement on a high-speed pursuit; (9) the doorjamb to the back door had been ripped out of the door with the deadbolt still engaged; and (10) T.B. appeared "shaken" and "in shock" and had red marks on her face.

When considering the circumstances consistent with appellant's guilt of burglary, and disregarding contrary evidence, we conclude that the circumstances proved are consistent with guilt. The circumstances proved show that appellant and T.B. had broken up; T.B. had moved appellant's items out of the home, indicating that appellant no longer lived at the home even assuming that he once did so; someone stole T.B.'s doorbell cameras; appellant forced entry by kicking in the locked door and breaking the doorjamb; the 911 operator heard someone being punched; T.B. showed signs of injury; and appellant fled after the assault. *See State v. Bias*, 419 N.W.2d 480, 485 (Minn. 1988) ("[E]vidence of flight suggests consciousness of guilt."). From these circumstances proved, there is no rational inference inconsistent with nonconsensual entry.

Arguing to the contrary, appellant includes as circumstances proved that (1) T.B. testified that appellant still lived at the residence and had property there during the relevant events; (2) appellant still had a key to the residence; (3) T.B. asked appellant to come to the residence to gather his property; (4) T.B. testified that appellant "just moved the door open"; and (5) T.B. testified that she called 911 to help appellant understand that the relationship was over and to allow service of the OFP. But this evidence is inconsistent with the jury's verdict, and T.B.'s testimony later during trial is inconsistent with calls and statements she made at the time of the incident, such as the 911 call in which she stated that "[s]omebody just kicked in [her] door." Because appellate courts do not consider "evidence that is inconsistent with the jury's verdict" in defining the circumstances proved, *Harris*, 895 N.W.2d at 601, we do not include this evidence as circumstances proved. *See also State v. Hassan*, 977 N.W.2d 633, 640 (Minn. 2002) ("As the sole judge of credibility, the jury is free to accept part and reject part of the testimony of a particular witness." (quotation omitted)). Similarly, we need not address appellant's argument that he had a present possessory right in the home that T.B. could extinguish only through a legal process because the evidence upon which appellant relies for this argument is not part of the circumstances proved. Consequently, we conclude that sufficient evidence supports appellant's burglary conviction.

## II. The district court acted within its discretion by denying appellant's request for a continuance to obtain substitute counsel.

Appellant argues that the district court should have immediately discharged his trial counsel upon learning that he sought to discharge his trial counsel, confirmed how he wanted to proceed after discharging counsel, and then determined whether it was appropriate for him to proceed as requested. Appellant adds that the district court improperly failed to inquire if he wanted to represent himself and that the state would not have been prejudiced by a continuance because the evidence was not at risk of going stale given his assertion of speedy-trial rights and the fact that the jury had not been sworn in. He last contends that, when the district court ignored his request to discharge trial counsel, a conflict arose that rendered trial counsel ineffective, resulting in reversible error. We are unconvinced.

Appellate courts review a district court's denial of a continuance to obtain substitute counsel for an abuse of discretion. *See State v. Courtney*, 696 N.W.2d 73, 82 (Minn. 2005) ("The matter of continuance to permit substitution of counsel is traditionally within the discretion of the [district court]." (quotation omitted)). In evaluating a district court's decision to deny a continuance, appellate courts consider "whether the defendant was so prejudiced in preparing or presenting his defense as to materially affect the outcome of trial." *State v. Vance*, 254 N.W.2d 353, 358-59 (Minn. 1977).

Criminal defendants have the right to assistance of counsel, and "[t]his right includes a fair opportunity to secure counsel of [their] own choice." *State v. Paige*, 765 N.W.2d 134, 138 (Minn. App. 2009). However, this right does not give indigent defendants an "unbridled right to be represented by the attorney of their choice," and "[a] [district] court will grant an indigent[] [defendant's] request for different counsel only if exceptional circumstances exist and the demand is timely and reasonably made." *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998) (quotation omitted). Further, a criminal defendant "may not demand a continuance for the purpose of delay or obtain a continuance by arbitrarily choosing to substitute counsel at the time of trial." *Id.*

Caselaw is instructive in evaluating whether the district court acted within its discretion by denying appellant's request for a continuance. In *Worthy*, for example, the supreme court concluded that the district court acted within its discretion by denying a request for a continuance made on the day of trial because the defendants' trial counsel was competent and prepared, the defendants did not articulate a valid reason for firing them, and they could not provide the court with the name of substitute counsel willing to represent them. *Id.* at 278. Similarly, the supreme court in *Vance* affirmed a denial of a continuance when the defendant had "a competent and able public defender," contended only that he was concerned that his public defender lacked sufficient time to devote to his case and they had a minor trial-strategy disagreement, sought a continuance a few days before trial, and could not be certain of obtaining private representation. 254 N.W.2d at 359. Appellate courts have adopted similar approaches in other cases. *See State v. Caldwell*, 639 N.W.2d 64, 66, 69 (Minn. App. 2002) (explaining that district court acted within its discretion by denying request for continuance to seek substitute counsel made on first day of trial because defendant did not attempt to show that court-appointed counsel provided improper representation, did not make effort to retain them within three months of trial, and did not demonstrate ability to pay for substitute counsel), *rev. denied* (Minn. Mar. 27, 2002); *State v. Ahearn*, 194 N.W.2d 256, 256 (1972) (holding that district court acted within its discretion by denying request for continuance to seek substitute counsel because defendant made request one day before trial and did not show substantial basis for dissatisfaction).

Here, exceptional circumstances did not exist that required the district court to grant appellant's request for substitute counsel because, while appellant alleged that his trial counsel did not communicate with him sufficiently, he did not allege that his trial counsel did not diligently represent him. Nor did appellant make a timely request because appellant made his request on the second day of trial, which is later than in both *Worthy* and *Vance*. Although, unlike in *Worthy*, appellant named an attorney who was purportedly willing to represent him, appellant did not reasonably make this request given the absence of a certificate of representation or any other indication that this substitute counsel's services had been secured.

Appellant relies on *Paige* to argue that the district court was required to discharge his trial counsel immediately upon his request, ascertain how he wished to proceed (i.e., substitute counsel or self-representation), and determine whether it was appropriate to proceed as he requested. But under *Paige*, "when a criminal defendant makes a request to discharge counsel, the district court is required to *first* ascertain how the defendant wishes to proceed after counsel is discharged, and then determine whether it is appropriate for the defendant to proceed as requested." 765 N.W.2d at 139 (emphasis added). *Paige* does not impose a requirement that a district court immediately discharge counsel upon request; indeed, it expressly provides that the decision "does not compel district courts to grant a criminal defendant's request to proceed pro se or with substitute counsel." *Id.* Here, it was unnecessary to clarify how appellant wished to proceed because he expressly indicated his desire to hire substitute counsel.

And even if it was error for the district court not to inform him of the option to proceed pro se, appellant does not show how proceeding with his trial counsel prejudiced him, as is required by *Vance*, 254 N.W.2d at 358-59. Arguing to the contrary, appellant contends that, based on the Supreme Court's decision in *United States v. Gonzalez-Lopez*, he does not need to show prejudice when "the right to be assisted by counsel of one's choice is wrongly denied." 548 U.S. 140, 148 (2006). However, *Gonzalez-Lopez* requires a wrongful denial of the right to counsel of one's choice. *Id.* When there is no showing that the right to counsel of one's choice has been wrongfully denied, as is the case here, *Gonzalez-Lopez* does not apply.

Appellant again relies on *Paige* to argue that, when the district court denied his request to discharge trial counsel based on deficient performance, a conflict arose that rendered trial counsel ineffective, and this conflict accordingly requires that his conviction be reversed without a showing of prejudice. However, *Paige* requires merely that a district court take adequate steps to determine whether a conflict exists after counsel informs the court of a "probable risk of conflict." 765 N.W.2d at 140-41 (quotation omitted). In *Paige*, the defendant requested substitute counsel to assist him with withdrawing his plea before sentencing based on trial counsel providing ineffective assistance. *Id.* at 136-138. *Paige* involved the requisite risk of a conflict because trial counsel (1) stated that his "hands have been tied a little bit in terms of what [he] can and cannot do" and (2) failed to make arguments or file motions on the defendant's behalf at the plea hearing. *Id.* at 137, 141. Here, there is no such indication of a conflict because appellant's trial counsel did not make similar comments nor did appellant show how, despite being unsatisfied with trial counsel's representation, trial counsel provided ineffective assistance. We conclude that the district court acted within its discretion by denying appellant's request for a continuance.

**III. The district court acted within its discretion by denying appellant's motion for a downward dispositional departure.**

Appellant argues that the district court abused its discretion by partly justifying its denial of his motion for a downward dispositional departure based on uncharged jail calls.[2] We disagree.

Appellate courts review a district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). The district court "must order the presumptive sentence provided in the sentencing guidelines unless substantial and compelling circumstances warrant a departure." *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Aug. 29, 1985)); *see also* Minn. Stat. § 609.11, subds. 8, 9 (2022) (applying same standard to offenses, including burglary, with mandatory-minimum sentences). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). A downward dispositional departure is appropriate when a defendant is "particularl[y] amenable to

[2] Appellant's brief broadly challenges the denial of his motion for a "sentencing departure." But the district court made the challenged statements only in reference to its decision denying appellant's motion for a *dispositional departure*. We interpret appellant as primarily advancing an argument challenging the denial of his motion for a downward dispositional departure. In any event, appellant does not separately argue that the district court abused its discretion by denying his motion for a downward durational departure.

individualized treatment in a probationary setting." *Soto*, 855 N.W.2d at 308 (quotation omitted). Only in a rare case will an appellate court reverse a district court's refusal to depart. *State v. Abrahamson*, 758 N.W.2d 332, 337 (Minn. App. 2008), *rev. denied* (Minn. Mar. 31, 2009).

Appellant argues solely that the district court improperly considered uncharged jail calls, which he purportedly made to T.B. in violation of the NCO, as a basis for denying his departure motion. However, the district court's order expressly stated that, although it reviewed the relevant calls and these calls raised questions regarding appellant's amenability to probation, it chose to deny his motion "irrespective of those calls." Because the district court unequivocally stated that it did not consider the jail calls, appellant's argument does not present a basis for relief.

**Affirmed.**