

*This opinion is nonprecedential except as provided by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
A25-1057**

State of Minnesota,
Respondent,

vs.

Anthony Richard Wiley,
Appellant.

**Filed March 30, 2026
Affirmed
Reyes, Judge**

Polk County District Court
File No. 60-CR-22-1764

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Sarah M. Kyte, Kyte Law Office, Grand Forks, North Dakota (for appellant)

Considered and decided by Reyes, Presiding Judge; Harris, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court abused its discretion by disqualifying his counsel pursuant to Minnesota Rule of Professional Conduct 3.7(a), which generally bars an attorney from acting as an advocate in a trial in which the attorney is likely to be a necessary witness. We affirm.

FACTS

Respondent State of Minnesota charged appellant Anthony Richard Wiley with one count of first-degree driving while impaired in violation of Minnesota Statutes section 169A.20, subdivision 1(7) (2022). In its complaint, the state alleged that appellant committed the DWI offense while driving from Arvilla, North Dakota, to East Grand Forks, Minnesota, one weekend in October 2022. Attorney Sarah M. Kyte notified the district court that she would be representing appellant.

The district court scheduled the jury trial to begin Monday, May 12, 2025. On the preceding Friday, the state filed a discovery disclosure concerning a meeting with a witness. The state met with that witness that Friday “to go through her possible trial testimony.” The witness provided the name of another individual and potential witness, C.P., in that meeting. Appellant stated that he did not learn of C.P. as a potential witness until the state filed that disclosure.

On the morning of the second day of trial, appellant filed a notice disclosing C.P. as an additional witness.¹ The notice explained that Kyte spoke with C.P. on the phone the prior day and that C.P. stated that she drove appellant to and from Arvilla on October 29, 2022. The notice did not explicitly identify C.P. as an alibi witness.

When the parties met with the district court later that morning, the state argued that C.P. should not be permitted to testify. Appellant confirmed that he planned to call C.P. as a witness and that only Kyte and appellant were present for the phone call described in

¹ By the start of the second day of trial, the jury panel had been selected but had not yet been sworn in.

the notice. Appellant contended that C.P. would not be an alibi witness because C.P. would testify only about the day before the alleged offense and not appellant's location at the time of the alleged offense. The state disagreed, asserting that C.P. would be an alibi witness. The state argued that Kyte "made herself a witness" by taking a statement from C.P. with only appellant present.

The district court found that Kyte will be a necessary witness in appellant's criminal proceedings. It therefore disqualified Kyte as counsel pursuant to Minnesota Rule of Professional Conduct 3.7(a).

This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by disqualifying Kyte from representing him in his criminal proceedings. We disagree.

"The Sixth Amendment of the United States Constitution and article I, section 6 of the Minnesota Constitution provide that a criminal defendant has the right to the assistance of counsel for his defense, which includes a fair opportunity to secure counsel of [their] choice." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) (quotation omitted). "The right to counsel of choice, however, is not unlimited." *State v. Patterson*, 812 N.W.2d 106, 111 (Minn. 2012). "The right to counsel of one's choice may be overcome by the judiciary's independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *State v. Patterson*, 796 N.W.2d 516, 523 (Minn. App. 2011) (quotation omitted), *aff'd*, 812 N.W.2d 106 (Minn. 2012).

Appellate courts review a district court’s decision to disqualify counsel for an abuse of discretion. *See State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 816 (Minn. 2014). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

Minnesota Rule of Professional Conduct 3.7(a) requires that, subject to enumerated exceptions not applicable here,² “[a] lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness.” An attorney is generally not a necessary witness if the evidence sought from their testimony is (1) “quite peripheral”; (2) “merely cumulative”; or (3) able to be “produced in some other effective way,” such as through “a document admissible as an exhibit” or another witness that could provide the same testimony. *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535, 541 (Minn. 1987).

Here, the district court found that C.P.’s potentially exonerating testimony would be “central to the case,” and that C.P.’s credibility would be “at the heart of the case.” As a result, the statements C.P. made to Kyte during the phone call could be relevant as either prior consistent statements or prior inconsistent statements. *See Minn. R. Evid.*

² These exceptions include advocacy in which the attorney’s testimony concerns “an uncontested issue” or “the nature and value of legal services rendered in the case,” in addition to advocacy if the attorney’s disqualification “would work substantial hardship on the client.” Minn. R. Prof. Conduct 3.7(a)(1)-(3). Appellant does not argue that any of the enumerated exceptions apply. *See Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 199 n.15 (Minn. 2020) (declining to consider “arguments that lack full development in the briefs”).

801(d)(1)(A)-(B) (providing that prior consistent statements and prior inconsistent statements are not hearsay). However, the only individuals present during the phone call with C.P. were appellant and Kyte. Under the United States and Minnesota Constitutions, appellant cannot be “compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V; Minn. Const. art. I, § 7. That left Kyte as the only witness able to testify about C.P.’s statements during the phone call. The district court determined that Kyte would likely be a necessary witness at trial and, as a result, could not advocate for appellant in those proceedings.

The district court’s determination is supported by the record, law, and logic. *See Bender*, 971 N.W.2d at 262. Kyte is likely to be called as a necessary witness to either corroborate or contradict C.P.’s trial testimony in relation to C.P.’s statements during the phone call. This testimony would not be peripheral, cumulative, or able to be produced in another effective way. *See Humphrey*, 402 N.W.2d at 541. First, Kyte’s testimony would not be peripheral because C.P.’s testimony and credibility will likely be central to appellant’s defense. Even if C.P. testifies only about driving appellant around on the day before the alleged offense, that testimony will generally support, or oppose, the appellant’s alibi defense, which is that appellant did not drive on the day of the alleged offense; rather, C.P. drove. Second, as the district court explained, if C.P. testifies differently than her statements during the phone call, the jury will need to determine whether to believe C.P.’s statements from the phone call or C.P.’s testimony at trial. But only Kyte can be called to testify about the substance of the phone call, so her testimony is not cumulative. Third, Kyte’s testimony could not “be produced in some other effective way.” *Id.* The only

record of the substance of the phone call is appellant's notice of additional witness. Appellant made no substantive argument that the notice is "admissible as an exhibit." *Id.* We conclude that the district court did not abuse its discretion by disqualifying Kyte from representing appellant in his criminal proceedings.

Affirmed.