STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1987

State of Minnesota,
Respondent,

vs.

Chris Becerra,
Appellant.

Filed December 17, 2018
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Redwood County District Court
File No. 64-CR-16-96

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jenna M. Peterson, Redwood County Attorney, Rudolph P. Dambeck, Assistant County Attorney, Redwood Falls, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his conviction of second-degree controlled-substance sale, arguing that the district court (1) erred by denying his motion to suppress; (2) erred by

denying his request to represent himself; (3) abused its discretion by prohibiting him from presenting evidence that the controlled substance belonged to someone else; and (4) erred by entering judgment of convictions on both second-degree controlled-substance offenses. Appellant also raised several issues in a pro se supplemental brief. We affirm the district court's denial of appellant's suppression motion but reverse the denial of his request to represent himself and remand for a new trial.

FACTS

In February 2016, Deputy Matt Seifkes received information that appellant Chris Becerra was at the VFW bar in Redwood Falls. Two days earlier, an armed robbery had occurred at the bar, and police suspected that Becerra was involved in the robbery. Deputy Seifkes went to the bar to assist several other local law-enforcement officers and deputies in investigating the robbery. Deputy Seifkes found Becerra sitting at the bar with another male and assisted in his arrest and escort from the building. As Becerra was led out of the VFW, Deputy Seifkes grabbed Becerra's jacket from the back of his chair. While another officer placed Becerra in the back of a squad car, Deputy Seifkes placed Becerra's jacket on the hood of the car. Becerra caught Deputy Seifkes' attention and told him that his ID card was in his jacket. While locating the ID card in the inside pocket of the jacket, Deputy Seifkes felt a small black bag and believed that the contents felt like powder. Upon further investigation, Deputy Seifkes discovered a white powdery substance that was later identified as approximately 8.5 grams of methamphetamine. Deputy Seifkes also discovered a "large amount of cash" in one of the other jacket pockets.

Respondent State of Minnesota charged Becerra with one count of second-degree controlled-substance possession. Becerra moved to suppress the methamphetamine as fruit of an unlawful search. The district court denied the motion, concluding that the warrantless search of Becerra's jacket did not violate Becerra's Fourth Amendment rights because the search was performed incident to a lawful arrest.

At a hearing on June 21, 2017, after the district court denied his suppression motion, Becerra informed the court that he wanted to represent himself. The court told Becerra "to think about" his desire to represent himself and scheduled another hearing. The state then amended the complaint to include a charge of second-degree controlled-substance sale. At a pretrial hearing on July 11, the court presented Becerra with three choices: (1) proceed with his present attorney; (2) represent himself; or (3) hire a private attorney. Although Becerra again expressed that he wanted to represent himself, the court again told him to "think about it," and that the issue would be revisited the next morning.

On July 12, 2017, Becerra told the district court that "nothing has changed from yesterday," and that he still wanted to represent himself because "that's the only best option I got." The court then questioned Becerra on the record, found that Becerra's waiver was not "a knowing, intelligent, and voluntary waiver to the right to an attorney," and denied Becerra's request to represent himself.

Prior to trial, J.U. informed Becerra's trial counsel and an investigator that the methamphetamine discovered in Becerra's jacket was hers. Becerra moved in limine for the admission of J.U.'s statement under Minn. R. Evid. 804(b)(3). The district court denied

the motion. A jury found Becerra guilty of the charged offenses, and the district court sentenced Becerra to 78 months in prison.

This appeal follows.

D E C I S I O N

Suppression motion

Becerra challenges the district court's denial of his suppression motion. When considering the denial of a pretrial suppression motion, this court reviews the district court's factual findings for clear error and its legal conclusions de novo. *State v. Molnau*, 904 N.W.2d 449, 451 (Minn. 2017). "The State bears the burden of establishing that the challenged evidence was obtained in accordance with the constitution." *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018), *pet. for cert. filed* (U.S. Nov. 19, 2018).

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Evidence seized in violation of the United States or Minnesota Constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 12–13, 88 S. Ct. 1868, 1875 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). A warrantless search is presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). A warrantless search is reasonable only if it falls within an exception to the warrant requirement. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015).

"A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015), *aff'd sub. nom.*; *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). An arrest is

lawful if an officer has probable cause to believe that a person has committed a crime. *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997). The arresting officer may then search (1) the arrestee's person, and (2) the area within the arrestee's immediate control. *Birchfield*, 136 S. Ct. at 2175.

Becerra argues that the district court erred by denying his suppression motion because at the time his coat was searched (1) it was not within the area of his immediate control, and (2) his coat was not immediately associated with his person when Deputy Seifkes searched it incident to his arrest. We agree that Becerra's coat was not within his immediate control at the time that it was searched. A search of the area within the arrestee's immediate control is limited to "the area into which [the] arrestee might reach" in order to gain possession of a weapon or destroy evidence. *Id.* at 2182 (quotation omitted). An officer's authority to search that area terminates "[o]nce law enforcement officers have reduced . . . personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence." *United States v. Chadwick*, 433 U.S. 1, 15, 97 S. Ct. 2476, 2485 (1977), *abrogated by California v. Acevedo*, 500 U.S. 565, 111 S. Ct. 1982 (1991).

Here, a search of Becerra's jacket *at the time of his arrest* may have been warranted since Becerra was a suspect in a previous robbery involving a gun, and Becerra's jacket, which was on the back of his chair, was within the area of his immediate control. But those are not the circumstances here. Instead, when Deputy Seifkes searched Becerra's jacket, it was lying on the hood of the squad car and Becerra was handcuffed in the back of the squad

car. Because the record clearly reflects that Becerra had no access to the contents of his jacket at the time of the search, the search cannot be validated as a search of his immediate area.

Becerra also contends that his jacket was not immediately associated with his person when Deputy Seifkes searched it incident to his arrest. We disagree. The United States Supreme Court has indicted that the search of an arrestee's person incident to arrest is fundamentally different from a search of the area within an arrestee's immediate control. *Birchfield*, 136 S. Ct. at 2175–76. A search of an arrestee's person does not depend on the probability that weapons or evidence may be found. *Id.* at 2176. Rather, "the mere fact of the lawful arrest justifies a full search of the person." *Id.* (quotation omitted). In other words, an officer's authority to search the arrestee's person incident to a lawful arrest is absolute and requires no additional justification. *Riley v. California*, 134 S. Ct. 2473, 2483–84 (2014); *State v. Bradley*, 908 N.W.2d 366, 370 (Minn. App. 2018).

A search of an arrestee's person includes "personal property . . . immediately associated with the person of the arrestee." *Riley*, 134 S. Ct. at 2484 (quotation omitted). For example, "a shoulder purse is so closely associated with the person that it is identified with and included within the concept of one's person." *State v. Wynne*, 552 N.W.2d 218, 220 (Minn. 1996) (quotation omitted). In recognizing the rationale for such a search, the Supreme Court stated that the search of a personal item on an arrestee's person, such as a wallet or a purse, "works no substantial additional intrusion on privacy beyond the arrest itself." *Riley*, 134 S. Ct. at 2488–89.

Because the justification for a search of an arrestee's person arises from the lack of "substantial additional intrusion on privacy beyond the arrest itself," *id.* at 2489, a search of everything that constitutes the arrestee's person can occur without a warrant either during or after the arrest. Applying this standard, the search of Becerra's jacket can be justified because the jacket was part of Becerra's person. The record reflects that Deputy Seifkes knew or had reason to know that the jacket was immediately associated with Becerra because it was on the back of Becerra's chair at the time of his arrest. Under these circumstances, Becerra's jacket remained immediately associated with his person while he was seated in the squad car and it was subject to a search incident to his lawful arrest by the deputy who knew or had reason to know that Becerra had possessed the jacket when he was arrested. *See Bradley*, 908 N.W.2d at 371 (holding that purse in suspected shoplifter's possession when detained was immediately associated with suspect's person, and responding officer could search purse along with suspect incident to lawful arrest when officer knew or had reason to know that suspect possessed purse when detained). The district court therefore did not err by denying Becerra's suppression motion because the search of his jacket was a valid search incident to a lawful arrest.

Self-representation request

Becerra challenges the district court's denial of his request to represent himself. A criminal defendant is guaranteed the constitutional right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A criminal defendant also has a constitutional right to represent himself. *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 2533 (1975); *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). The right to self-representation "embodies

such bedrock concepts of individualism and personal autonomy that its deprivation is not amenable to harmless error analysis." *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990). "'Obtaining reversal for violation of such a right does not require a showing of prejudice to the defense, since the right reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceeding.'" *Id.* (quoting *Flanagan v. California*, 465 U.S. 259, 268, 104 S. Ct. 1051, 1056 (1984)).

But 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 defendant requests to represent himself, the district 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 (footnote omitted).

This court reviews a district court's denial of a self-representation motion for clear error. *State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003). "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." *Rhoads*, 813 N.W.2d at 885. When the facts are undisputed, however, we review de novo whether a waiver of counsel was knowing and intelligent. *Id.*

Becerra argues that his request to represent himself was timely and unequivocal. We agree. The record reflects that Becerra's request was made several weeks before the scheduled trial date, and nothing in the record indicates that Becerra's request was an attempt to delay the trial. Moreover, the record reflects that Becerra communicated his

desire to represent himself at two successive pretrial hearings, on June 21, 2017, and July 11, 2017. At both hearings, the district court told Becerra "to think about" his decision. And at a third successive hearing on July 12, Becerra informed the district court that he still wanted to represent himself. In fact, Becerra clearly stated on the record several times at the July 12 hearing that he wanted to represent himself. Although Becerra stated that he was "going to have to" represent himself because he was not happy with his privately retained attorney and because he did not qualify for a public defender, the "case law is clear that a request to proceed pro se is not equivocal merely because it is an alternative position, advanced as a fallback to a primary request for different counsel." *Richards*, 456 N.W.2d at 264 (quotation omitted). The record reflects that Becerra clearly, unequivocally, and timely asserted his right to self-representation.

And contrary to the district court's finding, the record reflects that Becerra's self-representation request was knowing, intelligent, and voluntary. "A waiver is an intentional relinquishment of a known right or privilege, and its validity depends, in each case, upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." *Id.* (quotation omitted). To determine if a defendant's waiver of his right to counsel is voluntary and intelligent, a district court should "comprehensively examine the defendant regarding the defendant's comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997). The inquiry should focus on whether the defendant is "aware of the dangers and disadvantages of self-representation, so that the record will

establish that he knows what he is doing and his choice is made with eyes open." *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541 (quotation omitted). "It is not necessary that defendant possesses the skills and knowledge of a lawyer to waive the right to counsel and proceed pro se; these attributes are irrelevant to a determination of a knowing and intelligent waiver." *Richards*, 456 N.W.2d at 264.

Here, the record reflects the district court's examination of Becerra about his familiarity with the criminal process, the disadvantages of proceeding without an attorney, and his understanding of the charges against him. Becerra acknowledged that the maximum sentence he could receive was 40 years in prison. He agreed that there were "certain advantages and disadvantages to . . . representing [him]self," stating that one of the "disadvantages" to self-representation was that he would "be expected to make an opening statement, . . . ask questions of all witnesses, [and] make closing statements." And Becerra acknowledged that "the rules of evidence" and "the rules of court procedure" were applicable to his case even if he represented himself. Although a more extensive examination by the court of Becerra's waiver of his right to representation by counsel would have been appropriate, the record reflects that Becerra made his self-representation decision with "his eyes wide open"; the record does not support the district court's finding that Becerra's decision was not knowing and voluntary. *See id.* at 265 (stating that "[w]hile the [district] court did not make as extensive an inquiry into the waiver issue as might have been done, the record more than adequately shows defendant made an informed decision").

Because Becerra's self-representation request was knowing and voluntary, we conclude that the district court erred by denying his request. We therefore reverse and

remand to allow Becerra to represent himself in a new trial. *See id.* at 263 (stating that obtaining a reversal for violation of the right to represent oneself "does not require a showing of prejudice to the defense, since the right reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceedings"). Because we reverse and remand for a new trial, we need not address the remaining issues raised by Becerra, including those raised in his pro se supplemental brief.

Affirmed in part, reversed in part, and remanded.