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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0608**

State of Minnesota,
Respondent,

vs.

Payam Naderipour,
Appellant.

**Filed May 4, 2020
Reversed and remanded
Bjorkman Judge**

Clay County District Court
File No. 14-CR-16-4433

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

Brian J. Melton, Clay County Attorney, Pamela Foss, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Joseph A. Gangi, Farrish Johnson Law Office, Chtd., Mankato, Minnesota; and

Geoffrey Sorkin (pro hac vice), Zulu Ali Law Office, Riverside, California (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for attempted first-degree murder of his parents. He asserts that the district court erred by (1) allowing appellant to discharge his attorneys and represent himself at trial and (2) considering the report of an expert who did not testify at the omnibus hearing. Because appellant did not validly waive his right to counsel, we reverse and remand for a new trial.

FACTS

On December 25, 2016, Moorhead police officers were dispatched to an apartment where appellant Payam Naderipour had doused his parents with gasoline and was trying to set them on fire. In a police interview the following day, he made several bizarre statements, including that his parents were watching him, his mother had voodoo powers and tainted his food, and his phone was bugged. Naderipour's two court-appointed attorneys moved to have his mental competency evaluated pursuant to Minn. R. Crim. P. 20.01 and to establish a mental-illness defense under Minn. R. Crim. P. 20.02.

Two psychologists evaluated Naderipour in 2017. The court-appointed examiner, Dr. Krislea Wegner, met Naderipour in February. She diagnosed Naderipour with major depressive disorder; post-traumatic stress disorder; and alcohol-, methamphetamine-, and cannabis-use disorders. But she concluded Naderipour was competent to proceed to trial and his mental state at the time of the offenses did not negate criminal responsibility. Naderipour retained his own expert, Dr. Paul Reitman, who reviewed his medical records—including Dr. Wegner's report—and examined him in May. Dr. Reitman

diagnosed Naderipour with bipolar affective disorder with manic and psychotic symptoms; generalized anxiety disorder; and alcohol-, methamphetamine-, and cannabis-use disorders. He concluded that Naderipour's mental-health conditions did not affect his competency, stating "because he is on psychiatric medications he is able to assist with his own defense." Based on the two reports, the district court found Naderipour competent to stand trial.

At the October 9 contested omnibus hearing, the district court considered whether Naderipour validly waived his *Miranda* rights before being interviewed by police. Dr. Reitman testified that Naderipour was unable to knowingly and intelligently waive those rights. Dr. Wegner did not testify, but Dr. Reitman considered her previously filed mental-competency report in forming his opinion. Over Naderipour's objection, the district court considered portions of Dr. Wegner's report. The court ultimately concluded that Naderipour validly waived his *Miranda* rights.

Naderipour's attorneys moved for a second rule 20.01 evaluation in March 2018. The district court appointed Dr. Nancy Hein-Kolo, who diagnosed Naderipour with unspecified personality disorder with antisocial and narcissistic traits, unspecified depressive disorder and anxiety disorder, and substance-abuse disorders. Dr. Hein-Kolo opined that he was competent to stand trial. At the beginning of the June competency hearing, defense counsel withdrew his motion, stating that "[a] number of things have changed since we had asked for this hearing and we don't believe that it's necessary at this time."

During an October pretrial settlement conference, Naderipour asked the district court to dismiss his attorneys and allow him to represent himself. He told the court that he did not trust his attorneys, that they did not explain his rights with respect to a letter he received from Homeland Security stating that he was “already convicted of a first-degree murder,” and that he was “just sick and tired of mind games.” Naderipour’s written waiver form stated that he was not currently “receiving treatment for mental or emotional problems,” had received treatment “only in jail,” had not taken any medication in the last 24 hours, and did not have any “psychological disabilities that may affect [his] ability to understand what is happening in court.” The district court asked Naderipour whether doctors had prescribed medications that he was not taking. Naderipour responded, “To be honest with you, Your Honor, I have no idea.” He stated that his decision to represent himself was not coerced, that he had a post high-school education and understood the charges, proceedings, and penalties he was subject to, and that he was aware that he would be held to the same standards as an attorney.

The district court then thoroughly advised Naderipour of his duties in representing himself and told him that the trial would be bifurcated to address his mental-illness defense separately from other trial issues. In granting Naderipour’s request to represent himself, the district court stated, “Fortunately, I don’t have to make a finding that [that] waiver[] [is] intelligent, because, frankly, I don’t know that I’d ever be able to make that finding, especially in very complicated cases like this.” As his first act as a self-represented party, Naderipour waived his mental-illness defense saying he just wanted a “normal” trial.

The jury found Naderipour guilty on both counts of attempted first-degree murder. Naderipour appeals.

D E C I S I O N

Naderipour did not validly waive his right to counsel.

A criminal defendant has a right to counsel under the United States and Minnesota Constitutions. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6. But a defendant also has the right to represent himself so long as his waiver of the right to counsel is voluntary, knowing, and intelligent. Minn. R. Crim. P. 5.04, subd. 1(4) (requiring a defendant facing a felony charge to voluntarily and intelligently waive the right to counsel); *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975); *Burt v. State*, 256 N.W.2d 633, 635 (Minn. 1997).

The district court must ensure that a defendant's waiver is valid. *State v. Bauer*, 245 N.W.2d 848, 858 (Minn. 1976). A defendant is required to submit a written waiver of his right to counsel. Minn. Stat. § 611.19 (2016); Minn. R. Crim. P. 5.04, subd. 1(4). Before accepting the waiver, the court must advise the defendant of the

- (a) nature of the charges;
- (b) all offenses included within the charges;
- (c) range of allowable punishments;
- (d) there may be defenses;
- (e) mitigating circumstances may exist; and
- (f) all other 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.

Minn. R. Crim. P. 5.04, subd. 1(4).

We review for plain error a district court's finding that a defendant validly waived his right to counsel. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). "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." *Id.* When the facts are not in dispute, we review de novo whether the waiver of counsel was valid. *Id.*

Whether a defendant's waiver of counsel satisfies the constitution and was intelligently made "depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused." *Id.* at 884; *see State v. Worthy*, 583 N.W.2d 270, 275-76 (Minn. 1998) (considering "the particular facts and circumstances surrounding [a] case, including the background, experience, and conduct of the accused" in evaluating a request to waive the right to counsel (quotation omitted)). A defendant's competency is one of the circumstances district courts may consider. *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997).¹

Naderipour contends that the district court clearly erred by failing to ensure that his waiver of the right to counsel was intelligent. This argument has merit. Rule 5.04 requires that such waivers be voluntary and intelligent. Minn. R. Crim. P. 5.04, subd. 1(4). And

¹ The parties dispute whether a heightened waiver standard applies when a defendant's mental capacity could affect his ability to validly waive his right to counsel and to represent himself. The United States Supreme Court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Indiana v. Edwards*, 554 U.S. 164, 178, 128 S. Ct. 2379, 2388 (2008). We need not reach this issue because we conclude that the district court did not ensure Naderipour's waiver of his right to counsel was intelligent.

the district court is responsible for “assuring an adequate waiver.” *Bauer*, 245 N.W.2d at 858. Here, the district court provided all of the advisories set out in rule 5.04 and questioned Naderipour at length about his desire to represent himself. But the district court expressly disclaimed any need or ability to determine whether Naderipour’s waiver was intelligent. This is error. The state urges us to view the district court’s statement that “[f]ortunately, I don’t have to make a finding that [that] waiver[] [is] intelligent, because, frankly, I don’t know that I’d ever be able to make that finding,” as inadvertent speech. Given the centrality of legal representation to a fair and impartial trial and the well-documented concerns about Naderipour’s mental status, we are inclined to take the district court at its word, and afford Naderipour a new trial.

This conclusion is further supported by the totality of the facts and circumstances. Naderipour’s competency and potential lack of criminal responsibility due to mental illness figured prominently throughout the proceedings. The district court was well aware of concerns about Naderipour’s mental health, including Dr. Reitman’s opinion that Naderipour “is able to assist with his own defense” because “he is on psychiatric medications.” Yet, Naderipour’s written waiver of his right to counsel stated he was not receiving treatment or medication. And when the district court asked him if there were prescribed medications he was not taking, Naderipour responded, “I have no idea. I haven’t seen a doctor.”²

² Naderipour was released on bail in April 2018; he asked to dismiss his attorneys in October 2018.

The record also provides reason to question Naderipour's knowledge of criminal law and procedure. He had a criminal-history score of zero, wrote "???" next to four items on the waiver-of-counsel form, and acknowledged his legal ignorance when he told the district court that he "d[id]n't want to have not a lawyer, because I don't understand the law." And Naderipour's conduct at the hearing raised substantial concerns about his ability to represent himself. His statements to the district court, some absurd, show dubious reasoning and overall lack of ability to intelligently waive the right to counsel. For example, when he immediately waived his mental-illness defense, Naderipour's stated reason was that he wanted a "regular trial, just like everybody else." He did not apparently appreciate the significance of this waiver, which gave up, arguably, his best—and possibly only—viable defense.

Taken collectively, the facts present a significant question as to whether Naderipour's waiver of his right to counsel was intelligent. This is particularly true when the record shows he was not taking the medications his own expert deemed necessary for Naderipour to even *assist* his lawyers. We are mindful of the unique challenges presented in this case. But we are not persuaded that Naderipour's waiver of his constitutional right to counsel is valid. Accordingly, we reverse and remand for a new trial.³

Reversed and remanded.

³ Because we reverse and remand for a new trial, we need not address the evidentiary issue.