**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0156**

State of Minnesota,
Respondent,

vs.

Mark Franklin, Jr.,
Appellant.

**Filed May 16, 2022**
**Affirmed**
**Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-19-25910

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK**, Judge

Appellant challenges his conviction of two counts of third-degree murder, one count of criminal vehicular homicide, and three counts of criminal vehicular operation, arguing that the district court erred by not finding that his *Miranda* waiver was involuntary and by

not granting his request for substitute representation. He also submits pro se supplemental arguments alleging that there was insufficient evidence to convict him and that improper and falsified evidence was admitted at trial. Because the district court did not err by finding his *Miranda* waiver to be voluntary or by denying his request for substitute representation, and because the pro se issues were not adequately briefed, we affirm.

## FACTS

Appellant Mark Franklin Jr. was convicted of two counts of third-degree murder, one count of criminal vehicular homicide, and three counts of criminal vehicular operation. The state alleged that Franklin smoked phencyclidine (PCP), drove his vehicle the wrong direction down a one-way residential street at a high rate of speed, and crashed into parked cars and an occupied minivan, injuring Franklin, Franklin's passenger, and the minivan's driver and killing the minivan's passenger and her unborn child.

The state presented the testimony of several law-enforcement officers and first responders who were on-scene and observed the crash site. Sergeant J.W. testified that he responded to the accident and observed multiple damaged vehicles and a downed utility pole and wires. His investigation revealed that Franklin's black Lincoln Navigator had been traveling southbound on a residential street in Minneapolis and crashed into a minivan, causing the minivan to spin multiple times so that it hit a parked car and a utility pole and then flipped over.

Officer D.S. testified that he found Franklin's passenger, V.R., seated in the passenger seat of the Lincoln Navigator. Her left leg was stuck in part of the vehicle, and he did not believe she could move without assistance. A paramedic who assisted Franklin

immediately after the accident testified that Franklin admitted to using PCP and driving the Lincoln Navigator when it crashed.

Data taken from the Lincoln Navigator showed that the driver had pushed the gas pedal quickly down as far as possible, causing the car to accelerate rapidly to 89 miles per hour, and that the pedal was held down for 17 to 19 seconds. Forensic analysts testified that blood with DNA matching Franklin's was found on the steering wheel, interior driver's window, driver's seat and headrest, driver's seatbelt, driver's airbag, and passenger's airbag; Franklin's blood tested positive for PCP.

Franklin's passenger, V.R., testified that on the evening of the accident, she and Franklin sat in his vehicle smoking a cigarette dipped in PCP after she got off work. They then drove around, and, after approximately half an hour, Franklin began driving very fast, took off his seatbelt, and put his hands in the air. The car crashed and came to a stop. Franklin attempted to exit the car from the driver-side door, but he was unable to get out, so he climbed over V.R. and exited from the passenger-side door. During her testimony, V.R. recalled that she was unable to move her legs after the vehicle came to a stop because her ankles and legs were broken.

The driver of the minivan testified that he was driving his wife home from her job on the evening of October 17. They were expecting a child to be born in late November. He testified that he was driving down a one-way street when he saw car lights driving in the wrong direction. He stopped so that the oncoming car could turn out of the one-way street, but the car continued driving toward them at high speed. The collision flipped the minivan upside down and trapped the occupants, requiring that the man and his pregnant

wife be pulled out of the wreckage and taken to the hospital. A medical examiner testified that the female passenger of the minivan and her unborn child, who had a gestational age of approximately eight months, both died of blunt-force injuries sustained in the crash.

A woman testified that she was watching television at home when she heard a loud engine and a crash that sounded like a big boom or an explosion. She hurried outside and saw the aftermath of the accident. She saw a man struggling to get out of the black car and a woman sitting in the passenger seat of the same car, screaming about her ankles and legs. The state played surveillance footage from the woman's front porch that recorded the loud noise of the crash, the minivan spinning, and the spark of light from the utility pole falling.

The morning after the accident, Franklin woke up in the hospital where he was being treated for injuries sustained in the crash. He was handcuffed to his hospital bed, and Officer J.A. was guarding him. When Franklin woke up, he asked the officer what happened. Officer J.A. told him there had been a motor-vehicle crash and a person had died. Officer J.A. began recording Franklin on his body-worn camera as Franklin talked about his memory of the night before and asked Officer J.A. questions about the crash. On the video, Franklin told Officer J.A. that he smoked two or three hits of something other than weed and was driving V.R. around. Franklin stated that he should not have been driving. He said that after the accident, someone told him he had been driving at 100 miles per hour, but he did not remember and thought he had been driving at 20 or 30 miles per hour.

Approximately 15 minutes after Officer J.A. activated his body-worn camera, the investigating sergeants entered the hospital room, informed Franklin of his *Miranda* rights,

and began questioning Franklin. Officer J.A. continued recording while the sergeants interviewed Franklin. Sergeant M.H. testified about his interview of Franklin in the hospital room. In Officer J.A.'s video of the interview, Franklin told the sergeants that he remembered driving when he got off work and picking up V.R. Franklin said that V.R. asked to buy PCP to smoke, and Franklin drove her to get it. They both took several hits of a cigarette dipped in PCP. Franklin remembered driving down "Penn and Glenwood" and taking a right turn onto "Fourth," and then the PCP "must've kicked in" because the next thing he remembered was someone telling him to lie down and hearing someone screaming.

Officer J.A. observed and recorded the investigating sergeants as they entered Franklin's hospital room and gave the *Miranda* warnings to Franklin, and as Franklin waived his rights and expressed that he wanted to speak with the investigating sergeants. Officer J.A. described both Franklin and the sergeants as "calm." At an evidentiary hearing that occurred more than three months before the trial, the district court ruled that the video taken in Franklin's hospital room was admissible over Franklin's objection, and the state offered the video as evidence at the trial.

Franklin testified on his own behalf during the trial. Although he admitted that he smoked two or three hits of the cigarette dipped in PCP and that he was driving earlier in the evening, Franklin claimed that he and V.R. switched places before the accident. Franklin testified that while V.R. was driving his vehicle, he fell asleep, and the next thing he remembered was "being thrown toward the dashboard of the truck" as it crashed.

Franklin's case went to a jury trial in September 2020. The jury returned a verdict of guilty on all counts, and Franklin was sentenced to permissive consecutive sentences for each of the four victims, totaling 360 months in prison. Franklin appeals.

## DECISION

### I. The district court did not err by determining that Franklin's waiver of his *Miranda* rights was voluntary.

The United States and Minnesota Constitutions allow individuals to avoid self-incrimination and prohibit the government from compelling people to testify against themselves. U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7; *see also State v. Anderson*, 789 N.W.2d 227, 233 (Minn. 2010). We review "findings of fact surrounding an alleged *Miranda* waiver for clear error, and we review de novo the legal conclusions based on those facts to determine whether the waiver was knowing, intelligent, and voluntary." *Anderson*, 789 N.W.2d at 233.

A criminal suspect in custodial interrogation must be informed of the right to remain silent and the right to consult an attorney. *Id.* The suspect may waive those rights if the waiver is knowing, intelligent, and voluntary. *Id.* The state has the burden of proving the waiver was knowing, intelligent, and voluntary, and the state has met that burden if it shows the *Miranda* warnings were given and "the individual stated that he or she understood those rights and then gave a statement." *Id.* (quoting *State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997)). If the suspect claims that there is "credible evidence that a waiver was invalid, we make a subjective factual inquiry, look at the totality of the circumstances, and consider factors such as the [suspect's] age, maturity, intelligence, education, experience,

ability to comprehend, lack of or adequacy of warnings, the length and legality of the detention, the nature of the interrogation, any physical deprivations, and limits on access to counsel and friends." *Id.* at 233-34.

Franklin claims that his responses to law enforcement after they told him his *Miranda* rights should have been suppressed because the state failed to prove by the totality of the circumstances that Franklin's waiver of his *Miranda* rights was voluntary. To support this argument, Franklin first asserts that he was not in his right mind when investigators approached him in the hospital due to the lingering effects of PCP and medications administered by the hospital. He further argues that the state was required to prove that Franklin's drug use or medications did not prevent Franklin from making a voluntary waiver of his *Miranda* rights and failed to do so. Finally, Franklin argues that he could not voluntarily waive his *Miranda* rights regardless of "his medical condition and PCP intoxication" because he had never received a *Miranda* warning before this time. These arguments are unavailing.

First, Franklin's assertion that "he was not in his right mind" when investigators approached him in the hospital is unsupported by evidence. The district court found that other than speaking quickly, Franklin did not display signs of intoxication or incoherence, and his statements were instead coherent and linear. This finding is supported by video of the interrogation, in which Franklin was obviously concerned and distraught but responded to questions with appropriate, relevant answers.

At the evidentiary hearing, Franklin testified that he woke in the hospital room, was disoriented and confused, and only knew he had been in a car crash. Franklin testified that

he was receiving pain medications at the hospital and still felt the effect of PCP at the time of his interview. He testified that he was confused because he has multiple mental-health diagnoses and felt anxious and overwhelmed. However, he also testified that he was aware that the men who entered his room were armed police officers, that he understood he was under arrest, and that he heard the officers read him his *Miranda* rights.

Investigating Sergeant M.H. clearly identified himself and his partner, told Franklin he was under arrest, advised Franklin of his *Miranda* rights, and asked Franklin if he understood his rights. Franklin responded to the investigating sergeants' statements and questions with answers and reactions to those questions, indicating his ability to comprehend. He repeatedly expressed that he wanted to talk to the sergeants during and after they provided the *Miranda* warning to him.

In its order denying Franklin's motion to suppress his post-*Miranda* statements, the district court found that "[a]lthough [Franklin] was speaking at a quick pace, he was not slurring his speech or otherwise showing signs that he was under the influence or otherwise not in his right mind." The court further found that Franklin's demeanor and manner of speaking remained coherent and linear in his statements. Although he suffers from a mental illness, Franklin was found competent to proceed following a competency evaluation. The district court's findings of fact are supported by the testimony and exhibits that form the record of the evidentiary hearing on Franklin's motion to suppress. Franklin has not demonstrated that the district court's findings were in clear error.

Next, turning to his second argument asserting that his waiver was involuntary, we observe that Franklin does not put forth any legal support for the argument that for the state

to prove a *Miranda* waiver was voluntary, it must present affirmative evidence beyond conversational indicators that a defendant's capacity to waive his *Miranda* rights was not impacted by injuries, medications, or intoxication. Franklin relies on *Ganpat*, *Camacho*, and *Kulseth*, none of which required this type of evidence. *State v. Ganpat*, 732 N.W.2d 232, 240 (Minn. 2007) (holding that even though Ganpat was not given his requested medications, may have been intellectually low functioning, and had no prior experience with the criminal justice system, he voluntarily waived his right to remain silent); *Camacho*, 561 N.W.2d at 169 (holding that evidence of borderline mental deficiency alone does not automatically mandate a finding of incompetence to waive *Miranda* rights); *State v. Kulseth*, 333 N.W.2d 635, 637 (Minn. 1983) (holding that intoxication is only one of many factors to be considered in reviewing whether a waiver was involuntary and in that case, the facts did not "compel the conclusion that defendant was so intoxicated as to be unable to make a valid waiver of his *Miranda* rights"). Franklin's argument that even when a defendant appears coherent, the state must present affirmative evidence that the defendant was not intoxicated when waiving *Miranda* rights is unsupported by law and is therefore unconvincing.

Finally, Franklin argues that if a person has never been interrogated by law enforcement and has therefore never heard their *Miranda* rights, then the person cannot waive their rights. This argument fails. Familiarity with the criminal system is merely one factor among several, and while it can inform the reviewing court of the person's familiarity with their rights, the fact that a person has no prior experience with questioning by police and has not received a *Miranda* warning in the past does not by itself render a

waiver of those rights involuntary. The district court did not err by allowing Franklin's post-*Miranda* statements to be presented to the jury.

Even if the district court had erred, the error was harmless beyond a reasonable doubt because Franklin volunteered many of the same statements to Officer J.A. that he then repeated to the investigating sergeants after they informed Franklin of his *Miranda* rights. Franklin argues that his post-*Miranda* confession that he smoked PCP and was driving the vehicle at the time of the crash was "the most damaging evidence" presented at trial. But Franklin concedes that other lay witnesses testified that Franklin told them he had smoked PCP and that he was driving. Franklin also testified at trial that he had smoked PCP and was driving earlier in the evening before the crash, though he denied driving at the time of the crash. Thus, the statements Franklin made after the *Miranda* warning were repeated and bolstered by the testimony of other witnesses, including Franklin.

## II. The district court did not err by denying Franklin's request for substitute counsel.

The United States and Minnesota Constitutions guarantee criminal defendants the right to an attorney for their defense. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013). Indigent defendants who cannot employ counsel are entitled to appointed counsel, but this right is "not an unbridled right to be represented by counsel of the defendant's choosing." *Munt*, 831 N.W.2d at 586 (quotation omitted). If a defendant complains about their appointed counsel's ineffective representation and requests substitute counsel, the district court must grant the request "only if exceptional circumstances exist and the demand is timely and reasonably made."

*Id.* (quotation omitted). Exceptional circumstances are circumstances that affect the appointed counsel's "ability or competence to represent the client," not the defendant's mere "general dissatisfaction" with their counsel. *Id.* (quotation omitted). The district court should conduct a searching inquiry if a "defendant voices serious allegations of inadequate representation" in order to determine "whether the defendant's complaints warrant the appointment of substitute counsel." *Id.* (quotation omitted). We review "the district court's decision to appoint substitute defense counsel for an abuse of discretion." *Id.*

Franklin argues that the district court erred (1) by failing to conduct a searching inquiry into Franklin's concerns about his attorney's representation during his evidentiary hearing and (2) by erroneously telling Franklin that the court was powerless to appoint new public defenders.[1] Because Franklin's request was untimely and because any error in the court's statement was harmless, the court did not abuse its discretion by denying Franklin's request for substitute counsel, and his argument here fails.

In a pretrial hearing the day before trial was scheduled to start, Franklin told the district court that he did not want to plead guilty and wanted to go to trial. The following afternoon, when his trial was scheduled to begin, Franklin raised his request for new public defenders for a variety of reasons, including that his attorneys advised him to take the plea deal, that he wanted the attorney assigned to him at his initial hearing, that his attorneys

[1] To the extent that Franklin argues his counsel was ineffective, this argument is not properly before this court because it is mere assertion and is not supported by argument or authority. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015).

did not review evidence he gave to them, and that his attorneys did not get evidence he told them to compile. The district court questioned Franklin about each allegation in turn. The court then called the public defenders' supervisor, who had a private conversation with Franklin and then gave the court her opinion that the public defenders were acting properly. The court told Franklin that he could either go forward with his current team or he could represent himself because there were no grounds to substitute new attorneys. Franklin then said that he would represent himself, that he would find a pro bono lawyer, that a previous judge "cursed [him] out," that the system is corrupt, and that he wrote to the Chief Public Defender directly but had not heard back. Franklin said that his attorney "blew it" at his evidentiary hearing because she did not present evidence to the judge that he was taking medication that rendered his *Miranda* waiver involuntary and because she raised arguments about racial harassment.

The district court told Franklin that his options were to go to trial with his current attorneys, to represent himself, or to continue the trial for a few months and attempt to get a different attorney. The state opposed a motion for continuance, arguing that Franklin had had time before the trial to obtain new attorneys and as recently as the day before had said he wanted to go forward with trial. As they reached the end of the day, the court directed Franklin to call potential attorneys while the court recessed to see if he could obtain an attorney. Franklin responded:

> FRANKLIN: You are the judge, you can tell them—order that I can have another new public defender.
> THE COURT: No, sir. I told you, remember, what I said this afternoon. I appoint the Public Defender's office, and they appoint the attorneys. And Ms. [S.] is a supervisor who

> appoints the attorneys, and she and you had a private conversation where she explained that to you. I appoint their office, I do not appoint the attorneys.

The next morning, Franklin said that he would proceed with the assigned public defenders. He confirmed that it was his decision to proceed with them and no one was forcing him to proceed with them, that he believed they were ready to represent him, and that he wanted them to be his attorneys.

It was untimely for Franklin to wait until the day of his trial to raise his concerns about his attorneys' representation at the evidentiary hearing. In *State v. Worthy*, the supreme court found a substitution request was untimely when the defendants requested substitution for their court-appointed attorneys on the morning of trial because even though it was their first court appearance after scheduling the consolidated trial, the defendants had requested the consolidated trial and had both made speedy-trial demands. 583 N.W.2d 270, 278-79 (Minn. 1998); *see also State v. Clark*, 722 N.W.2d 460, 465 (Minn. 2006) (holding that the defendant's request for substitute counsel was untimely when the request was made the morning that trial was to begin, after jury selection had begun, and when the defendant had made a speedy-trial demand).

As in *Worthy*, Franklin raised his request for substitute counsel on the day his trial was set to begin. Unlike in *Worthy*, however, this was not Franklin's first opportunity after his attorney's alleged inadequate representation to raise his request to the court. Not only had the evidentiary hearing in question occurred months earlier, but Franklin had been present at a pretrial hearing the day before trial began and had expressed his desire to continue to trial. A district court is only required to grant a request for substitute counsel

"if exceptional circumstances exist and the demand *is timely and reasonably made*." *Munt*, 831 N.W.2d at 586 (emphasis added). Because Franklin's request was untimely and unreasonably made, the district court did not err by denying Franklin's request for substitute counsel.

Franklin also argues the district court erred by telling him the court was powerless to appoint new public defenders. This misconstrues the district court's statement quoted above that "[the district court] appoint[s] the Public Defender's office, and they appoint the attorneys. . . . I do not appoint the attorneys." In context, this statement was more likely intended to mean that the district court could not assign the specific public defender whom Franklin preferred to his case. The district court does have the power to decide to appoint a substitute attorney, and, to the extent that the district court said that it could not appoint substitute counsel, it was incorrect. However, the transcript as a whole makes it clear that the district court considered whether to appoint substitute attorneys to Franklin's case, investigated his concerns, and found that "exceptional circumstances" did not exist and that the demand was not "timely and reasonably made." *Id.* Thus, to the extent the district court's statement was in error, it was harmless. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

## III. Sufficient evidence supported the jury's verdict, and the evidence was properly admitted.

In Franklin's supplemental pro se brief, he argues that there was insufficient evidence to support his convictions because he did not cause the death of the woman and

her unborn child and because there was improper evidence at trial.[2] "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Andersen*, 871 N.W.2d at 915 (quoting *State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009)). None of the issues raised in Franklin's pro se brief were sufficiently supported by argument or authority, so we need not consider his claims, but they would fail even if we did reach the merits.

Franklin argues that there was insufficient evidence to support a finding that he caused the victims' death, although he does not point to specific evidence or lack of evidence supporting this claim. We evaluate the sufficiency of the evidence by "carefully examin[ing] the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Here, Franklin argues that "a superseding cause did in fact occur, also the District Court . . . [saw] evidence of a superseding cause because it was included in jury instructions." This argument is unavailing. The facts and the record before the jury contained testimony from witnesses

[2] Minnesota courts require pro se criminal defendants to comply with standard rules of court procedure, and "[n]o extra benefits will be given to pro se litigants." *State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988); *see also* Minn. R. Gen. Prac. 1.04. "When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *rev. denied* (Minn. Apr. 13, 1990).

with various perspectives of the crash that supported a finding that Franklin was driving the vehicle that hit the victims' minivan, physical evidence that supported a finding that Franklin was driving, and Franklin's own statements that he had been driving the vehicle. Thus, the facts and legitimate inferences would permit the jury to conclude Franklin was guilty.

Second, Franklin identifies numerous pieces of evidence from the trial as improperly allowed, improperly omitted, or false. He argues that law enforcement's testimony was false and discredited by a video in evidence, that the state and law enforcement gave false information "with the sole intent to obtain a conviction (by any means)," and that the state withheld a picture of his vehicle's damaged passenger-side window and a report on seatbelt use from the crash data recorder. He further argues that the state did not submit all pieces of evidence to the jury. Finally, Franklin asks this court to review the evidence and credit Franklin's testimony that the incident was in fact a high-speed chase in which law enforcement crashed into Franklin's vehicle, causing the crash, and that the victims' minivan was involved in a separate, later crash.

These arguments were not raised at trial, and we generally will not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). To the extent that Franklin asks us to make credibility determinations or to investigate the evidence, that is not within the scope of review on appeal. *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). Thus, the arguments in Franklin's pro se brief are unavailing.

**Affirmed.**