STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1056

State of Minnesota,
Respondent,

vs.

Zaki Malik Saleem,
Appellant.

Filed July 31, 2023
Affirmed
Wheelock, Judge

Hennepin County District Court
File No. 27-CR-20-13643

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Cochran, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the final judgments of conviction for unlawful possession of a firearm, first-degree aggravated robbery, kidnapping, and first-degree burglary, appellant argues that the district court (1) erred by denying his motion to suppress evidence seized

pursuant to a search warrant for historical cell-phone information because the warrant failed to establish probable cause, (2) abused its discretion by denying his requests for substitute counsel, and (3) abused its discretion by denying his request to relinquish self-representation during trial. In a pro se supplemental brief, appellant raises additional evidentiary issues, challenges the sufficiency of the evidence, and argues that the district court erred when it accepted his waiver of counsel. We affirm.

FACTS

In June 2020, respondent State of Minnesota charged appellant Zaki Malik Saleem with one count of illegal possession of a firearm, two counts of first-degree aggravated robbery, two counts of kidnapping, and two counts of second-degree assault. The state amended its complaint to include a count of first-degree burglary, for a total of eight counts. The charges stemmed from the armed robbery of a credit union in Minneapolis on February 7, 2020.

In March 2022, the district court held a jury trial. The state's witnesses included four employees of the credit union, three law-enforcement officers, two forensic scientists, an FBI special agent, and Saleem's niece, D.N. The state presented evidence establishing the following facts.

Two credit-union employees testified that they had closed the credit union on the night of the robbery and were leaving from the rear employee entrance when a man with a gun pushed them back into the building. He instructed them to disarm the building's alarm system, then forced them to crawl to the vault.

The employees crawled through the credit union to the vault room, opened the vault, and loaded bills into a backpack that the man gave to them. The man then forced them to crawl to the bathroom and told them to wait there for 30 minutes. Throughout the robbery, the man continually threatened the employees and twice discharged his weapon near the employees' heads as they were crawling on the floor. A third employee of the credit union testified that the total amount of stolen cash was $215,600 and that Saleem was a member of the credit union at the time of the robbery.

A lieutenant with the Minneapolis Police Department collected and reviewed the credit union's surveillance-camera footage. He testified that the footage depicted a black Chevy Tahoe entering the rear parking lot of the credit union at approximately 6:01 p.m. on the night of the robbery. The vehicle remained in the parking lot with its headlights off for approximately seven minutes before departing, which raised the lieutenant's suspicions. Law enforcement ran the vehicle's license plate and identified Saleem as the owner of the vehicle.

At 6:16 p.m., less than ten minutes after the suspicious vehicle departed, the surveillance cameras captured an individual who entered the alley behind the credit union and jumped over the fence into the rear parking lot. The individual hid behind a dumpster until about 6:31 p.m., at which point he moved to the rear entrance of the credit union and then forced the employees back inside the building at gunpoint. At approximately 6:40 p.m., the surveillance cameras captured the individual leaving the credit union from the rear entrance, jumping over the fence, and continuing down the alley on foot.

The state also introduced evidence of Saleem's prior convictions through the testimony of the lieutenant who reviewed the surveillance-camera footage. The lieutenant testified that Saleem previously had been convicted of two counts of aggravated robbery and one count of kidnapping and that Saleem had confined the victim in a bathroom during the commission of the offenses in that case.

Law enforcement applied for several search warrants in connection with the case, including a search warrant for historical cell-phone data from Saleem's cell-phone provider. An FBI agent performed a historical cell-site analysis of the data obtained from the search warrant. He concluded that Saleem's cell phone was within the service area of a cell-phone tower near the credit union at 4:16 p.m. on the date of the robbery. Saleem's cell phone was then turned off until 6:44 p.m., at which point it reconnected with the network within the service area of a cell-phone tower slightly to the east of the credit union. The cell-phone data indicated that Saleem's phone placed an outgoing call that evening to Saleem's son, M.N., and then traveled to the area of M.N.'s house.

In May 2020, M.N. was arrested on an unrelated charge. During a search incident to the arrest, state patrol found a handgun in M.N.'s car. A forensic scientist with the Minneapolis Police Department compared the discarded cartridge casings (DCCs) that were recovered from the scene of the robbery with test DCCs from the handgun found in M.N.'s car. He concluded that the DCCs were a match, indicating that the handgun was the weapon used in the robbery.

Also in May 2020, Saleem's niece, D.N., contacted law enforcement and spoke with the lieutenant investigating the robbery. At trial, D.N. testified that Saleem reached out to

her in February 2020 and asked her to travel with him to Atlanta. They booked a flight together, and when they arrived at the airport, Saleem asked D.N. to carry about $10,000 with her. Saleem told D.N. that he had robbed a bank and gave her details about the robbery. D.N. relayed these details to the investigating lieutenant, who testified that her statements were consistent with details about the robbery that law enforcement had learned throughout the investigation.

The jury found Saleem guilty of all eight counts. The jury also found the existence of several aggravating factors in a separate *Blakely* proceeding.[1] In April 2022, the district court sentenced Saleem to a total of 324 months in prison.[2]

Saleem now appeals from the judgments of conviction.

DECISION

I. The district court did not err by denying Saleem's motion to suppress the evidence obtained from the search warrant for cell-site location information.

One of the search warrants that law enforcement obtained during the investigation was for historical cell-phone information from Saleem's cell-phone provider. The search-warrant application included a request for disclosure of historical call-detail records and data records for the weeks surrounding the robbery and historical GPS precision

[1] Pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), a jury must find aggravating factors before the district court may impose a sentence greater than that prescribed by the sentencing guidelines.

[2] The warrant of commitment lists all the sentences as concurrent; however, according to the district court's oral pronouncement at the sentencing hearing and the sentencing worksheets in the record, the sentences for counts 1 and 8 are concurrent and the sentences for counts 2, 3, 4, and 5 are consecutive to the sentences for counts 1 and 8. It appears that there is a clerical error in the warrant of commitment.

location information for the week of the robbery. This type of information is known as cell-site location information (CSLI).

In May 2021, Saleem filed a motion to suppress the CSLI evidence obtained as a result of the search warrant. The district court denied his motion to suppress and later admitted the challenged evidence at trial. Saleem argues that the district court committed reversible error by denying his motion to suppress the CSLI evidence obtained from the search warrant because the warrant was not supported by probable cause.

Both the United States and Minnesota Constitutions require that search warrants be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A [search] warrant is supported by probable cause if, on the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015) (quotation omitted). The warrant must allege "specific facts to establish a direct connection between the alleged criminal activity and the site to be searched." *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998).

We review a district court's legal determinations de novo, including a district court's determination of probable cause in a pretrial order on a motion to suppress. *Holland*, 865 N.W.2d at 673. This requires us to "determine whether there was a substantial basis to conclude that probable cause existed," and "[o]ur inquiry is limited to the information presented in the affidavit supporting the warrant." *Id.* We also recognize "that doubtful or marginal cases should be largely determined by the preference to be accorded to warrants." *State v. Fawcett*, 884 N.W.2d 380, 385 (Minn. 2016) (quotations omitted).

Saleem contends that the warrant was not supported by probable cause for two reasons: first, because the warrant failed to establish probable cause that Saleem committed a crime, as required by Minn. Stat. § 626A.42, subd. 2(a) (2022)[3]; and second, because the warrant failed to establish probable cause that evidence of a crime would be found in Saleem's phone records. We address each argument in turn.

A. The search warrant complied with the substantive requirements of Minn. Stat. § 626A.42, subd. 2(a).

Saleem first argues that the search warrant violated state law because it did not comply with the tracking-warrant requirements found in Minn. Stat. § 626A.42, subd. 2(a).[4] Section 626A.42, subdivision 2(a), provides that

> a government entity may not obtain the location information of an electronic device . . . without a tracking warrant. A warrant granting access to location information must be issued only if the government entity shows that there is probable cause the person who possesses an electronic device . . . is committing, has committed, or is about to commit a crime. An application for a warrant must be made in writing and include:
>
> (1) the identity of the government entity's peace officer making the application, and the officer authorizing the application; and
>
> (2) a full and complete statement of the facts and circumstances relied on by the applicant to justify the

[3] The legislature amended Minn. Stat. § 626A.42, subd. 2, in 2020. 2020 Minn. Laws ch. 82, § 15, at 200-01. The 2018 version of the statute was in effect during the time relevant to this case. The amendments do not affect the resolution of this case.

[4] Here, the search warrant did not contain a statement that it was issued under Minn. Stat. § 626A.42 (2022), which Saleem contends is error in itself. However, we note that a warrant may comply with the tracking-warrant statute, including the probable-cause requirement, and be properly issued despite its failure to cite the statute so long at the statute's substantive requirements are met. *See State v. Harvey*, 932 N.W.2d 792, 802 (Minn. 2019) ("[N]otwithstanding the State's failure to cite [Minn. Stat. § 626A.42] in its application, the State complied with the substantive requirements of [the statute].").

> applicant's belief that a warrant should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, and (ii) the identity of the person, if known, committing the offense whose location information is to be obtained.

Saleem argues that the warrant does not comply with the statute's substantive requirements because the warrant does not establish "probable cause that Saleem is committing, has committed, or is about to commit a crime."[5] We disagree.

The search-warrant application complied with Minn. Stat. § 626A.42, subd. 2(a), because it contained "a full and complete statement of the facts and circumstances relied on by the applicant" that established the requisite showing of probable cause that Saleem committed a crime. The application outlined the basic details of the robbery and alleged the following facts to show probable cause:

- The robbery suspect "was described as a black male, approximately 50-60 years old, approximately 5'10" tall, medium build, with a black and grey curly beard." The suspect also "had glasses that were described as square in shape."

- A black Chevy Tahoe with license plate CAU129 pulled into the rear parking lot of the credit union on the night of the robbery and remained there with its headlights extinguished from 6:01 to 6:07 p.m. The vehicle was identified as belonging to Saleem.

[5] The state points out that Saleem did not raise this argument in district court and argues that Minn. Stat. § 626A.42, subd. 2(a), does not apply because the warrant at issue here was not a tracking warrant—rather, it was used to obtain historical data (i.e., where Saleem was) and not where he was going in real time. As to the state's first point, while we agree that he did not raise this argument to the district court, we also acknowledge that Saleem was pro se at the time he filed the motion to suppress the CSLI evidence, and we elect to consider his argument in the interests of justice. *See State v. Henderson*, 706 N.W.2d 758, 759 (Minn. 2005). As to the state's second point, the search warrant at issue here sought the same type of historical CSLI data as the search warrant in *Harvey*, in which the supreme court applied section 626A.42 to historical CSLI. *Harvey*, 932 N.W.2d at 797, 801-03.

- Saleem is a black male, age 57 at the time of the robbery, 5'9" tall, medium build. Saleem was photographed by the St. Paul Police Department under unrelated circumstances in January 2020. He was identified as the person entering the black Chevy Tahoe and had a black and white beard and square glasses.

- Saleem is on probation for convictions for aggravated robbery and kidnapping from 1999.

- Hennepin County Probation confirmed that the phone numbers to which the search warrant applies belong to Saleem.

These facts, when taken together, adequately established probable cause to believe that Saleem committed the robbery. *See Fawcett*, 884 N.W.2d at 385 (noting that appellate courts "consider the totality of the circumstances alleged in the supporting affidavit [of the search-warrant application] and must be careful not to review each component of the affidavit in isolation" (quotation omitted)). These facts established that Saleem's vehicle was in the parking lot of the credit union less than half an hour prior to the robbery, that Saleem matched the description of the robbery suspect, and that Saleem was on probation for the same type of offenses.

"Opportunity to commit a crime can support a finding of probable cause." *Holland*, 865 N.W.2d at 674; *see also State v. Harris*, 589 N.W.2d 782, 789 (Minn. 1999) (identifying opportunity as a nexus that can link a defendant to a crime). The presence of Saleem's vehicle at the location of the robbery shortly before the crime took place indicates that Saleem had an opportunity to commit the crime. Saleem argues that the facts linking Saleem's vehicle to the location of the robbery were not sufficient to support probable cause because "more concrete facts showing a direct connect between Saleem's person . . . and the crime is required." However, as noted previously, this court does not

review the facts alleged in the search-warrant application in isolation. Rather, the presence of Saleem's vehicle at the scene of the crime in combination with the fact that he matched the physical description of the suspect did establish a direct connection between him and the crime. And Minnesota courts have held that a matching physical description supports probable cause in the context of arrests. *State v. Willis*, 269 N.W.2d 355, 357 (Minn. 1978); *State v. Berg*, 383 N.W.2d 7, 9 (Minn. App. 1986).

Saleem's prior convictions for aggravated robbery and kidnapping further bolstered the probable-cause showing in the search-warrant application. Although a defendant's prior convictions cannot independently establish probable cause, a district court may consider a defendant's criminal history "as one factor in the totality of relevant circumstances" necessary to establish probable cause.[6] *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996); *see also State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) ("A person's criminal record is among the circumstances a judge may consider when determining whether probable cause exists for a search warrant.").

In sum, we conclude that the search-warrant application for CSLI evidence complied with Minn. Stat. § 626A.42 because the totality of the circumstances alleged in the application established probable cause that Saleem committed a crime.

[6] Although the prior offenses of which Saleem was convicted occurred 22 years before the instant offense, Saleem was incarcerated for most of the intervening years. Thus, he did not have the opportunity to commit other offenses in more recent years, and his prior convictions are not stale for the purposes of this analysis.

B. The warrant established probable cause that evidence of the robbery would be found in Saleem's phone records.

Saleem next argues that the CSLI evidence was unconstitutionally obtained because the warrant did not establish probable cause that evidence of a crime would be found in Saleem's phone records. Specifically, Saleem contends that the search-warrant application did not allege a nexus between the alleged criminal behavior and the phone to be searched.

To satisfy the probable-cause standard, a search warrant must demonstrate "a direct connection, or nexus," between the alleged crime and the place to be searched. *Souto*, 578 N.W.2d at 747. This nexus requirement ensures "that there is a fair probability that the evidence will be found at the specific site to be searched." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). "[D]irect observation of evidence of a crime at the place to be searched is not required," but rather, courts may infer a nexus "from the totality of the circumstances." *Id.* Courts may draw "normal inferences as to where the defendant would usually keep" the evidence sought. *Id.* at 623. In determining whether probable cause exists to support the issuance of a search warrant, "[t]he issuing judge's task is to make a practical, common-sense decision." *Id.* at 622 (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

In denying Saleem's motion to suppress the evidence obtained from the search warrant, the district court noted the following:

> [I]t is common knowledge that cellphones are ubiquitous in today's society and often never stray far from their owner or their owner's vehicle. It is also known that they collect information that can be used to track the phone's, and thereby the owner's, location. Given defendant's connection to the vehicle, the suspect's path from the direction the vehicle was

> last seen traveling, and his physical similarities with the suspect, the issuing judge had a substantial basis to find that there was a direct connection between the alleged crime and the cellular data that would reveal defendant's location before and after the robbery.

Saleem argues that the district court's statement "is a wholly speculative and conclusory assertion" that does not support a finding of probable cause. However, we are not convinced.

The district court's observation about the omnipresence of cell phones is not speculative or conclusory, but rather a "normal inference" that would support a "practical, common-sense decision" that evidence of participation in the robbery could be found in Saleem's phone's CSLI. *Id.* at 622-23. When a district court assesses whether there is probable cause to support the issuance of a search warrant, it "is not required to ignore . . . familiar facts of normal life." *State v. Wiley*, 205 N.W.2d 667, 673 (Minn. 1973). And the idea that most people carry their cell phones on their person is one such familiar fact of normal present-day life.

As we previously concluded, there was probable cause to believe that Saleem committed the robbery due to his vehicle's proximity to the scene of the crime and the fact that he matched the physical description of the suspect. The search-warrant application alleged these facts in addition to the fact that Saleem possessed a cell phone. It is a reasonable, common-sense inference from the facts alleged in the search-warrant application that Saleem had his cell phone on his person when he committed the robbery and that evidence of the robbery would be found in the phone's CSLI. Therefore, we

conclude that the probable-cause requirement for the search warrant was met, and we affirm the district court's denial of Saleem's motion to suppress.

II. The district court did not abuse its discretion by denying Saleem's requests for substitute counsel.

Saleem next argues that the district court abused its discretion by denying his requests for substitute counsel. He argues that his requests were timely and reasonably made and that his allegations of inadequate representation "warranted at least a searching inquiry to determine whether substitute counsel was appropriate."

Both the United States and Minnesota Constitutions guarantee a defendant's right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const., art. I, § 6. Indigent defendants have the right to court-appointed counsel. *Gideon v. Wainwright*, 372 U.S. 335, 339-45 (1963). Although "[t]he court is obligated to furnish an indigent [defendant] with a capable attorney," the defendant generally "must accept the court's appointee." *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970). The district court will grant a defendant's request for substitute 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).

Exceptional circumstances refer to the appointed counsel's "ability or competence to represent the client." *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). The supreme court has stated that when a defendant raises "serious allegations of inadequate representation before trial has commenced," the district court should conduct a "searching inquiry" before ruling on the request for substitute counsel. *State v. Clark*, 722 N.W.2d

460, 464 (Minn. 2006). Conversely, general dissatisfaction with appointed counsel's representation or personal tension between a defendant and their appointed counsel does not warrant a searching inquiry of a defendant's request for substitute counsel. *See Gillam*, 629 N.W.2d at 449 (citing *Fagerstrom* for the proposition that dissatisfaction with defense counsel does not constitute an exceptional circumstance); *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999) (holding that district court did not err by denying defendant's request for substitute counsel because "personal tension" between defendant and his counsel did not "go to issues of ability or competence" of representation). Appellate courts review a district court's decision regarding the appointment of substitute counsel for an abuse of discretion. *Clark*, 722 N.W.2d at 464; *Gillam*, 629 N.W.2d at 449.

Here, the district court appointed a public defender to represent Saleem in June 2020. Saleem first expressed dissatisfaction with his public defender's representation at an omnibus hearing in September 2020, complaining that his attorney was not adequately communicating with him. At the next omnibus hearing in November 2020, Saleem requested the appointment of a different public defender to his case. A supervising attorney from the Hennepin County Public Defender's Office appeared on the record to inform Saleem that the court did not have the authority to appoint a particular attorney from within the public defender's office.

At that point in the proceedings, Saleem's only allegation was that he was dissatisfied with the public defender's communication regarding the case. Specifically, he alleged that the public defender met with him only twice for about ten minutes each time, did not send an investigator to talk with him, did not provide him with all the discovery

materials, and had not answered some of his calls. These allegations reflect Saleem's general dissatisfaction with the public defender rather than issues with the public defender's ability or competence. Saleem did not allege exceptional circumstances to justify his request for substitute counsel.

At a pretrial hearing in May 2021, Saleem indicated that he wished to fire his public defender and represent himself. The supervising attorney from the public defender's office again consulted with Saleem and assisted him in completing a petition to proceed pro se. The district court found that Saleem made a knowing, voluntary, and intelligent decision to waive his right to counsel, and it accepted Saleem's petition to proceed pro se.

At a pretrial hearing in August 2021, Saleem requested the appointment of advisory counsel. The district court informed Saleem that his advisory counsel would be his original public defender, with which Saleem appeared to disagree. At the next pretrial hearing in September 2021, Saleem stated that he no longer wished to represent himself. The district court reappointed Saleem's original public defender.

On the second day of Saleem's trial in March 2022, Saleem's counsel informed the district court during jury selection that Saleem disagreed with him regarding jury strikes and wanted to fire him. Saleem clarified that he was frustrated with his public defender's representation and did not feel he was receiving effective representation, but he also did not feel that he had the skills to represent himself. He explained:

> [M]e and [the public defender], from 21 months ago, have not been able to come to any kind of understanding about my case or about his representing me. This has been an ongoing issue, just constantly, and for whatever reason, I don't understand

> why this man does not like me or feel that I'm important enough to represent diligently.

He further alleged that the public defender did not perform adequate investigation in his case, did not provide adequate representation during the voir dire process, and did not adequately or respectfully communicate with him. The district court informed Saleem that his options were to represent himself or to have the public defender represent him. Saleem chose to have the public defender continue as his counsel at that time.

On the fourth day of trial, Saleem again discharged the public defender and signed another petition to proceed pro se. The district court reiterated that Saleem's two options were to be represented by the public defender's office or to proceed pro se. The prosecuting attorney made a record that a third option—substitute counsel—was available only in exceptional circumstances, citing *Clark*. The district court found that no exceptional circumstances existed to allow substitute counsel and granted Saleem's request to proceed pro se.

We conclude that the allegations Saleem made in support of his second request for substitute counsel do not rise to the level of serious allegations of inadequate representation. *See Clark*, 722 N.W.2d at 264. Saleem's allegations regarding the public defender's investigation and communication in his case reflect Saleem's general dissatisfaction with the public defender's representation, and his allegation regarding the public defender's performance in voir dire implicates matters of trial strategy for which courts give counsel wide latitude. *See State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013).

We recognize the importance of a searching inquiry when a defendant raises repeated, genuine concerns about their counsel. We note that it is best practice for the district court to err on the side of caution and make a thorough record of the reasons underlying a defendant's request for substitute counsel and the reasons for granting or denying the request. Under the facts of the instant case, we conclude that the district court did not abuse its discretion in denying Saleem's requests for substitute counsel.[7]

III. The district court did not abuse its discretion by denying Saleem's request to relinquish self-representation.

As previously noted, Saleem requested to proceed pro se in the late morning of the fourth day of trial, and the district court granted his request. He represented himself for the remainder of the fourth day of trial. On the morning of the fifth day of trial, he requested to relinquish self-representation and asked the district court to reappoint the public defender. The district court initially denied his request and instead appointed the public defender to serve as advisory counsel, after which the trial continued for approximately thirty minutes. However, Saleem refused to respond to the court's questions or participate in his defense. The district court then found that Saleem's conduct was a delay tactic and was disruptive to the trial and reappointed the public defender as Saleem's counsel. Ultimately, Saleem represented himself for only about one hour after requesting that the district court reappoint the public defender. The district court informed the public defender

[7] Saleem's claim that the district court abused its discretion by denying his request for substitute counsel is distinct from an ineffective-assistance-of-counsel claim. Saleem does not argue that he received ineffective assistance of counsel, and we therefore do not analyze the issue.

that he would receive a transcript of the portion of trial that he missed while Saleem was representing himself. The public defender remained as Saleem's counsel for the remainder of the trial.

Saleem argues that the district court abused its discretion by denying Saleem's request to relinquish self-representation. He alleges that the district court "summarily denied Saleem's request" and "gave no reasons, offered no explanations, and made no findings" on the issue.

A defendant has a constitutional right to self-representation upon the execution of a knowing, voluntary, and intelligent waiver of his right to counsel. *Faretta v. California*, 422 U.S. 806, 835 (1975). Once a defendant has chosen self-representation, however, there is no "absolute right to relinquish" the self-representation. *State v. Richards*, 552 N.W.2d 197, 206 (Minn. 1996). A defendant's request to relinquish self-representation must be "timely, reasonable, and reflect[] extraordinary circumstances." *Clark*, 722 N.W.2d at 469 (citing *Richards*, 552 N.W.2d at 206). A district court's decision to allow a defendant to relinquish self-representation involves balancing the defendant's motion "against the progress of the trial to date, the readiness of standby counsel to proceed, and the possible disruption of the proceedings." *Richards*, 552 N.W.2d at 206-07. Appellate courts review a district court's decision regarding relinquishment of self-representation for an abuse of discretion. *Clark*, 722 N.W.2d at 469.

Here, Saleem made his request five days into a seven-day jury trial. At that point, he had discharged the public defender and completed a waiver of counsel twice during the course of his case. Furthermore, he had refused the appointment of advisory counsel, so

the public defender did not attend the portion of trial during which Saleem represented himself, and the public defender was not prepared to proceed when reappointed. These factors weigh against Saleem's motion to relinquish self-representation. On this record, we conclude that the district court did not abuse its discretion in denying Saleem's motion.

IV. The arguments in Saleem's pro se brief do not merit relief.

Saleem filed a pro se supplemental brief that raises several additional arguments. For the reasons outlined below, none of Saleem's additional arguments warrant reversal. We consider five arguments that Saleem adequately addressed in his pro se brief, and we do not consider the arguments that were not adequately addressed. *See, e.g.*, *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (stating that appellate courts will not consider arguments that are unsupported by the record and devoid of legal authority); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (deeming an issue waived because appellant failed to make and develop an argument in their brief).

A. The district court did not abuse its discretion by admitting evidence of the firearm used in the robbery.

Saleem argues that the district court abused its discretion by admitting evidence of the firearm used in the robbery, asserting that the firearm evidence was not relevant to his case because there was insufficient evidence linking the firearm to Saleem or the commission of the robbery. He also argues that the firearm evidence was unfairly prejudicial and should not have been admitted on that basis.

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable

than it would be without the evidence." Minn. R. Evid. 401. Evidence that is relevant to prove or disprove a crime is generally admissible unless "its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 402, 403. "Evidentiary rulings rest within the sound discretion of the district court" and will not be reversed "absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). It is the appellant's burden to establish that the district court abused its discretion and that the appellant was thereby prejudiced. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Here, the state introduced evidence that the firearm was used in the robbery, including testimony from two forensic scientists that described the process of collecting the DCCs from the scene of the robbery, comparing them to test DCCs that were discharged from the firearm, and concluding that they were a match. The state also introduced evidence connecting the firearm to Saleem: Saleem's appearance matched the witnesses' description of the suspect who held the firearm, Saleem admitted to D.N. that he carried a gun during the robbery, Saleem's CSLI indicated that he traveled to his son's house after the robbery, and the firearm was ultimately found in Saleem's son's car. The evidence therefore linked the firearm to the commission of the robbery, and it was relevant to prove the elements of the charged offenses.

Saleem argues that the firearm evidence was unfairly prejudicial because "it had no probative value" and "created a danger that the jury would unfairly convict [Saleem] because his son possessed a weapon that was allegedly used in the credit union robbery." Saleem also contends that the state should have introduced a photograph of the firearm rather than the firearm itself in order to minimize its prejudicial impact. However, Saleem

does not support his argument with apposite authority. In sum, we conclude that the district court did not abuse its discretion by admitting the firearm evidence at trial.

B. The district court did not abuse its discretion by admitting *Spreigl* evidence of Saleem's prior convictions and his parole status.

Saleem argues that the district court abused its discretion by admitting *Spreigl* evidence of Saleem's prior convictions for aggravated robbery and kidnapping and his parole status because it was admitted for an improper purpose, it was not relevant or material to the state's case, and its probative value was outweighed by the potential for unfair prejudice.

Evidence of a defendant's prior bad acts (*Spreigl* evidence)[8] is generally inadmissible to prove the defendant's bad character or propensity to commit a crime. *See* Minn. R. Evid. 404(b). However, this evidence is admissible to show "motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). The district court employs a five-step process to determine whether to admit *Spreigl* evidence:

> (1) [T]he state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior bad act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

[8] Evidence of other crimes or bad acts is known in Minnesota as "*Spreigl* evidence." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

Id. at 686. Appellate courts review the district court's admission of *Spreigl* evidence for an abuse of discretion. *Id.* at 685.

Here, the district court made detailed findings on each of the five *Ness* factors in its order and memorandum granting the state's motion to admit the *Spreigl* evidence. The district court's findings were consistent with the facts in the record and were not contrary to the law. Therefore, we conclude that the district court did not abuse its discretion in admitting *Spreigl* evidence of Saleem's prior convictions.

Saleem next argues that he did not offer evidence of his good character such that the state was permitted to rebut it with evidence of his parole status. He cites *State v. Loebach* for the proposition that "the character of the defendant cannot be attacked until he himself puts it in issue by offering evidence of his good character." 310 N.W.2d 58, 63 (Minn. 1981) (quoting *City of St. Paul v. Harris*, 184 N.W. 840, 840 (Minn. 1921)). However, *Loebach* also states that "[a] defendant claiming error in the [district] court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *Id.* at 64. And Saleem makes no argument that he was prejudiced by such error. Thus, we need not consider the argument. *See Benton*, 858 N.W.2d at 542.

C. The district court did not err by admitting D.N.'s testimony regarding allegations of assault and kidnapping.

Saleem also argues that the district court abused its discretion by admitting D.N.'s testimony that he struck her and "kidnapped" her daughter. Saleem did not object to this testimony at trial.

When a defendant fails to object to the admission of testimony at trial, appellate courts review the admission under a plain-error standard. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). "The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights." *Id.*

Under the third prong of the plain-error standard, "[s]ubstantial rights are affected when a plain error was prejudicial and affected the outcome of the case." *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010). In other words, this prong requires the defendant to show "a reasonable likelihood that the error had a significant effect on the jury's verdict," and the defendant "bears a heavy burden of persuasion on this prong." *Id.* (quotation omitted). Appellate courts consider "the strength of the State's case, the pervasiveness of the [alleged] error, and whether the defendant had an opportunity to respond to the testimony" to determine whether the alleged error had a significant effect on the jury's verdict. *Id.* at 873. Appellate courts need not consider the other prongs if the defendant fails to establish that the alleged error affected their substantial rights. *Id.*

Here, the state made a strong case and presented ample evidence of Saleem's guilt. The challenged portion of D.N.'s testimony was brief, constituting less than two pages out of a trial transcript that spanned seven days and hundreds of pages. Finally, Saleem had an opportunity to respond to D.N.'s testimony because it occurred early in the trial, prior to Saleem's closing argument. Thus, we conclude that any error in admitting the challenged portion of D.N.'s testimony did not affect Saleem's substantial rights because there is no reasonable likelihood that it affected the verdict.

D. The evidence was sufficient to support Saleem's convictions.

Saleem next argues that the state presented insufficient evidence to prove his guilt beyond a reasonable doubt.

Appellate courts review 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. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). Appellate courts view the evidence "in the light most favorable to the verdict" and will not reverse if "the fact-finder . . . could reasonably have found the defendant guilty of the charged offense." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

The record reflects ample evidence that Saleem committed the offenses: the state presented evidence that Saleem owned the vehicle that was present at the credit union shortly before the robbery took place, and the CSLI from Saleem's cell phone confirmed that his phone was also in the vicinity within the hours before and after the robbery. The CSLI also indicated that Saleem traveled to his son's house following the robbery, and the firearm used in the robbery was later found in Saleem's son's car. Saleem's appearance matches the witnesses' description of the robbery suspect. Saleem's niece testified that he confessed to committing the robbery and asked her to carry a large sum of money when they traveled together. When viewing the evidence as a whole in the light most favorable to the verdict, we conclude that a jury "could reasonably have found" Saleem to be guilty

of the charged offenses, and therefore, the evidence was sufficient to support Saleem's convictions.

E. The district court did not clearly err by determining that Saleem made a knowing, voluntary, and intelligent waiver of his right to counsel.

Saleem next argues that he did not make a valid waiver of his right to counsel. A defendant may waive their right to counsel if the waiver is knowing, voluntary, and intelligent. *Faretta*, 422 U.S. at 835; *State v. Rhoads*, 813 N.W.2d 880, 884-85 (Minn. 2012); *Worthy*, 583 N.W.2d at 275. The validity of a waiver "depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused," and to ensure a valid waiver, district courts "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." *Rhoads*, 813 N.W.2d at 885-86 (quotation omitted). Appellate courts review a district court's finding that a defendant has knowingly, intelligently, and voluntarily waived his right to counsel for clear error. *Id.* at 885. "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.*

Here, the record reflects that Saleem had the opportunity to consult with an attorney from the public defender's office other than his appointed counsel in both instances when he waived his right to counsel and that the district court conducted a comprehensive

examination of Saleem to ensure that the waiver was valid. We conclude that the district court's findings of valid waivers were not clearly erroneous.

Saleem cites *Gilbert v. Lockhart*, 930 F.2d 1356, 1359-60 (8th Cir. 1991), for the proposition that a defendant's constitutional right to counsel is violated when a defendant is offered the choice between proceeding to trial with an unprepared attorney or proceeding pro se. He goes on to argue that his waiver was not voluntary because his only choices were to proceed with incompetent counsel or with no counsel at all and that the district court abused its discretion by failing to determine whether substitute counsel was appropriate.

However, Saleem misstates the holding in *Gilbert*. There, the Eighth Circuit concluded that the defendant's waiver of counsel was not valid because the district court failed to examine the defendant's issues with his counsel and "failed to specifically advise him of the perils of proceeding pro se." *Gilbert*, 930 F.2d at 1360. The district court in *Gilbert* found that the defendant's exposure to the criminal-justice system as a result of his prior convictions gave him "a general knowledge about the system and the dangers of self-representation." *Id.* at 1358. Unlike in *Gilbert*, the district court in the instant case advised Saleem of the rights and responsibilities associated with self-representation. For these reasons, we affirm the district court's finding that Saleem knowingly, voluntarily, and intelligently waived his right to counsel.

Affirmed.