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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0388**

State of Minnesota,
Respondent,

vs.

James Russel Parks,
Appellant.

**Filed December 30, 2013
Affirmed
Smith, Judge**

Benton County District Court
File No. 05-CR-12-1386

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota; and

Karl Schmidt, Acting Benton County Attorney, Foley, Minnesota (for respondent)

Melissa Sheridan, Special Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Smith, Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm appellant's convictions of first-degree burglary and misdemeanor domestic assault because the district court did not (1) misstate the law or abuse its discretion by denying appellant the appointment of substitute counsel or (2) abuse its

discretion by admitting evidence of his being under the influence of a controlled substance at the time of his arrest.

FACTS

Although S.F. had been romantically involved with appellant James Russel Parks, she tried to end the turbulent and sometimes violent relationship in the summer of 2012. S.F. obtained a no-contact order in July 2012, following an incident in which Parks broke her finger. At about 7:15 on the morning of August 5, 2012, Parks showed up outside her workplace, a group home, bearing gifts and seeking reconciliation. Parks asked S.F. to accompany him to a nearby park to talk, but she remained inside the group home and told him to leave. He remained outside, continuing to ask her to talk to him. S.F. retreated to an attached garage to smoke a cigarette. Parks continued attempting to appeal to her through a mail slot located on a service door to the garage. When S.F. refused his requests, Parks broke through the service door. He grabbed S.F., restraining her in a bear hug as she struggled. He released her after she threatened to call the police. S.F. fled to her boss's office, and her boss summoned police.

A police officer responded and took a statement from S.F. S.F. then called her roommate and learned that Parks was at her residence. A sheriff's deputy went to S.F.'s residence to arrest Parks for domestic assault. When the deputy told Parks that he was there to arrest him, Parks became upset. The deputy observed that Parks was sweating, "jittery," and "fidgety," which the deputy believed were indications that Parks was under the influence of a controlled substance. Parks insisted that someone would need to come to get his vehicle, and he moved to retrieve the vehicle's keys from inside the house. The

deputy ordered Parks to stop, but Parks ignored him. The deputy attempted to restrain Parks, and a struggle ensued. Although Parks broke free and fled toward his vehicle, the deputy eventually subdued Parks. Police officers discovered a marijuana pipe in Parks's pants pocket and another in Parks's vehicle.

Police interviewed Parks at a police station, where he claimed that it was S.F., and not him, who had broken the service door on the garage at her workplace. Parks also stated that S.F. had assaulted him and that he had merely defended himself.

At a pretrial hearing, Parks complained about his appointed attorney's "demeanor," alleging, "I'm not even given the chance to ask any kind of legal questions whatsoever." The district court opined that Parks's appointed attorney "does an excellent job" and that it was "sure he is doing all he can for you," concluding to Parks, "I'm going to take [the public defender's] word over yours." The district court also told Parks that he could fire his appointed attorney, but if he did so, he would be required to either retain his own attorney or proceed pro se. Parks stated that he had "no choice at this time" but to retain his appointed attorney, but he asked that the district court confirm on the record that his attorney would meet with him before trial. The attorney promised to meet with Parks before trial, and Parks raised no further complaints about his attorney's attitude or performance.

Before trial, Parks moved the district court to exclude the testimony from S.F. and a non-police witness regarding the drug paraphernalia found in his vehicle. On the day of trial, however, Parks's attorney stated, "I believe the issue has been resolved between the State and myself," and the prosecutor told the court that "the State does not intend to

elicit any testimony regarding the contents of [Parks's vehicle] that was near the Defendant when he was arrested with the possible exception of the arresting deputy [who] did observe a broken glass pipe.” When the arresting deputy testified, the state elicited testimony about drug paraphernalia discovered on Parks's person and in his vehicle during his arrest. Parks objected to the testimony as irrelevant, but the district court overruled his objections.

Parks also testified in his own defense. He claimed that he and S.F. had smoked marijuana together, sharing a bowl through the mail slot of the service door as they talked. He said S.F. had let him into the garage to discuss their relationship problems, but that she became angry and hit him, forcing him to restrain her in self-defense. He testified that he left the garage, slamming the door behind him, and that S.F. then broke the service door.

The jury found Parks guilty of first-degree burglary and misdemeanor domestic assault. The district court sentenced him to 90 months' imprisonment.

D E C I S I O N

I.

The district court did not misstate the law

Parks argues that the district court committed an error of law by implying that it lacked the legal authority to grant his request for the appointment of substitute counsel. It is not clear from the record that Parks even made a request for the appointment of substitute counsel. Rather, it reflects only a single instance where Parks complained about his attorney's attitude and implied that his attorney prohibited him from asking

“any kind of legal questions.” But because the district court appears to have interpreted Parks’s complaint as a request for the appointment of substitute counsel, we defer to its interpretation of his intentions.

“The decision to appoint a substitute attorney is within the discretion of the district court.” *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). Although it is unclear which statements by the district court Parks interprets as a disclaimer of its authority to grant his request, the district court stated that it believed Parks’s then-current attorney was adequate. It said that it would not grant Parks’s request for the appointment of substitute counsel based on its belief that Parks’s attorney “is doing all he can for” Parks and generally “does an excellent job.” The district court also expressed doubt about Parks’s claims of inadequate representation, concluding, “I’m going to take his word over yours.” These are not disclaimers of authority; they are credibility determinations supporting the district court’s denial of Parks’s request. The district court did not misstate the law when declining Parks’s request for the appointment of substitute counsel.

The district court did not erroneously fail to conduct further inquiry

Parks alternatively alleges that the district court erred by failing to respond to his complaint by conducting an inquiry to determine whether exceptional circumstances existed justifying the appointment of substitute counsel. Indigent criminal defendants have the right to appointed counsel. *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). To vindicate this right, the assistance provided by counsel must be effective. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984). The right to effective

assistance of counsel does not, however, include a right to be represented by an attorney chosen by the defendant. *State v. Fagerstrom*, 286 Minn. 295, 299, 176 N.W.2d 261, 264 (1970). Rather, a defendant's request for the appointment of substitute counsel "will be granted only if exceptional circumstances exist and the demand seems reasonable." *Id.* "[E]xceptional circumstances are those that affect a court-appointed attorney's ability or competence to represent the client." *Gillam*, 629 N.W.2d at 449. We review the district court's decision on whether to appoint substitute counsel for an abuse of discretion. *Id.*

Here, Parks did not criticize his attorney's ability or competence. Instead, Parks complained about his attorney's "demeanor," characterizing it as "sarcasm and asking me if I understand how to read English." He cites *United States v. Webster*, which applied the rule that exceptional circumstances justifying the appointment of substitute counsel exist when there is "a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant." 84 F.3d 1056, 1062 (8th Cir. 1996) (quotation omitted). But Eighth Circuit holdings do not bind this court, *State v. Roeschelein*, 776 N.W.2d 480, 485 n.1 (Minn. App. 2009), and the supreme court specifically rejected the *Webster* definition of "exceptional circumstances" when it confirmed the "ability or competence" standard in *Gillam*, see 629 N.W.2d at 449. Even if we were to use the "irreconcilable conflict" standard, as implied in Parks's brief, one-time criticism of his attorney's attitude did not constitute "exceptional circumstances" requiring the district court to appoint substitute counsel.

Parks also argues that even if his complaint at the district court's pretrial hearing did not in itself justify the appointment of substitute counsel, the district court was

obligated to conduct a “searching inquiry” to determine whether such a justification existed. He cites *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006), which holds that a “searching inquiry” may be required “particularly when a defendant voices serious allegations of inadequate representation before trial has commenced.” But Parks did not voice “serious allegations of inadequate representation.” He complained about his attorney’s attitude. His attorney agreed on the record to remedy any lack of communication by meeting with Parks again, and Parks never expressed any complaints throughout the remainder of the proceedings. We therefore conclude that the district court did not abuse its discretion by failing to conduct further inquiries into the basis for Parks’s complaints.

II.

Parks argues that, because testimony from the arresting deputy that Parks possessed drug paraphernalia was inadmissible other-bad-acts evidence, he is entitled to a new trial. Generally, we review evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). The record establishes that Parks’s pretrial motion seeking exclusion of testimony about Parks’s drug paraphernalia sought to exclude such testimony from witnesses other than the arresting police deputy. The motion also referred to evidence found in Parks’s vehicle, not the evidence found on his person. Before trial, Parks’s counsel indicated that “the issue has been resolved between the State and myself,” and the prosecutor explained that he might introduce evidence of Parks’s possession of drug paraphernalia through the arresting deputy.

Parks fails to demonstrate any error in the admission of the arresting police deputy's testimony regarding drug paraphernalia. Parks argues that because the immediate-episode exception does not apply, the testimony amounted to inadmissible evidence of other bad acts or of bad character. He cites *State v. Riddley*, which states that immediate-episode evidence is admissible only when "two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving th[e] other." 776 N.W.2d 419, 425 (Minn. 2009). He also cites *State v. Fardan*, 773 N.W.2d 303, 316-17 (Minn. 2009), to support the argument that evidence of his commission of the crime of possessing drug paraphernalia was not admissible under the immediate-episode exception because "the drug-smoking pipes containing residue that were found in [his] pocket and his car did not facilitate the alleged burglary . . . and assault." But Parks's argument misstates the purpose for which the prosecutor offered the evidence. The prosecutor did not seek to prove that Parks had committed a possession-of-drug-paraphernalia offense on the night of the burglary. Rather, he offered the evidence as "relevant to the deputy's claim that he believed [Parks] was under the influence of [a] controlled substance when he arrested him." The district court's admission of the evidence was not an abuse of its discretion, and Parks is not entitled to relief on this ground.

Affirmed.