

STATE OF MINNESOTA
IN SUPREME COURT

A20-0669

Olmsted County

McKeig, J.

State of Minnesota,

Respondent,

vs.

Filed: June 16, 2021
Office of Appellate Courts

Malcolm Jammal Woods,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. Appellant did not make a valid request for advisory counsel to assume full representation of his defense.

2. The record supports the district court's finding that appellant voluntarily waived his constitutional right to counsel.

3. The district court violated Minn. Stat. § 609.04 (2020), when it entered a conviction for the offense of second-degree intentional murder.

Affirmed in part, reversed in part, and remanded.

OPINION

McKEIG, Justice.

Malcolm Jammal Woods brings this direct appeal after being convicted of first-degree premeditated murder, second-degree intentional murder, and being an ineligible person in possession of a firearm. Woods raises three issues on appeal. First, Woods argues that the district court erred in denying two requests for advisory counsel to assume full representation of his defense. Second, he argues that his waiver of counsel was involuntary. Last, he argues that the district court violated Minn. Stat. § 609.04 (2020) when it entered a conviction for the offense of second-degree intentional murder. We conclude that Woods did not make a valid request for advisory counsel to assume full representation, that the record supports the district court's finding that Woods voluntarily waived his right to counsel, and that the entry of a conviction for the offense of second-degree intentional murder violated section 609.04. We therefore affirm in part, reverse in part, and remand.

FACTS

On September 9, 2018, Rochester police found Woods' grandmother naked and unresponsive in her bedroom. Family members falsely believed that she was drugged and sexually assaulted by her neighbor, Brandon Matthew Arndt. The next day, someone knocked on the back door of Arndt's home. As Arndt opened the door, he was fatally shot. Arndt's mother saw her son fall backwards and called 911. After the investigation into Arndt's death focused on Woods, officers found a handgun in Woods' backpack.

An Olmsted County grand jury indicted Woods for first-degree premeditated murder, second-degree intentional murder, and being an ineligible person in possession of a firearm. *See* Minn. Stat. §§ 609.185, subd. (a)(1), 609.19, subd. 1(1), 624.713, subd. 1(2) (2020). At his first appearance, Woods applied for the services of the public defender. After reviewing his application, the district court appointed two public defenders to represent him. Between October 2018 and June 2019, the public defenders represented Woods at several hearings.

On June 4, 2019, Woods appeared before the district court with his public defenders. After his public defenders informed the court that Woods intended to waive the omnibus hearing, Woods expressed a desire to “remove” the public defenders without identifying any specific dissatisfaction with their representation. When the district court asked if Woods intended to retain private counsel, he replied, “No. I’m planning on doing this myself.” The court continued the hearing to provide Woods more time to consider his decision to waive his right to counsel¹ and time to fill out written petitions² for self-representation.

The next day, Woods appeared before the district court with his public defenders. After one of the public defenders explained that Woods’ request to remove them was motivated by a disagreement over a strategic decision, Woods asked for more time to

¹ Under the Sixth Amendment, Woods is entitled to represent himself. *Faretta v. California*, 422 U.S. 806, 819 (1975); *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012).

² Multiple petitions were necessary because Woods was also a defendant in a separate criminal case that proceeded at the same time as the murder case.

discuss the issue with his public defenders. The court granted Woods' request for additional time and the matter was continued.

When he appeared before the district court the next day, Woods said, "I am removing [my public defenders]," and, "I'm going to take this on my own." Woods then submitted his written petitions to proceed pro se and represent himself. Woods acknowledged that he read the petitions, fully understood them, had no questions about them, and was of clear mind and judgment in making his decision. The court then notified Woods of the advantages and disadvantages of self-representation, the nature of the charges against him and their corresponding punishments, the requirement that he adhere to the rules of criminal procedure and evidence, and his constitutional right to self-representation. Having fully advised Woods, the court asked if he still intended to exercise his constitutional right to self-representation. Woods confirmed that he wanted to waive his right to counsel and represent himself. Finding that Woods' waiver of counsel was knowingly, intelligently, and voluntarily given, the court accepted the waiver, discharged his public defenders, and took the issue of advisory counsel under advisement.

On June 7, 2019, the district court told Woods that it had decided to appoint advisory counsel under Minn. R. Crim. P. 5.04, subd. 2. In explaining its decision, the court said it was concerned about fairness of the process. *See* Minn. R. Crim. P. 5.04, subd. 2(1). The court also expressed concerns about delays in completing the trial, potential disruption by Woods, and the complexity and length of the trial. *See* Minn. R. Crim. P. 5.04, subd. 2(2). The court then appointed Z.B., a Minnesota attorney practicing at a private law firm, to

serve as advisory counsel. When the court asked Woods if he had any questions, Woods engaged in the following colloquy with the court:

Woods: Okay. See, I have a fourth grade reading level so I really don't know how to read or write.

Court: Okay.

Woods: So, you know, the only reason why—I didn't really want to become my own lawyer. The only reason why I fired them is because they wasn't helping me. [My public defenders.] I don't have no education at all to be a lawyer myself.

Court: Right. And that's what I was talking to you about yesterday, Mr. Woods. That's what that was all about. So are you telling me that you want legal representation in this case?

Woods: Yes, I do.

Court: You just don't want the public defenders; is that correct?

Woods: No. They would—no. They wasn't helping me. They wasn't helping me at all. They wasn't—they wasn't informing me about anything, about the court, the cases. They wasn't—they was basically waiving everything without asking me about anything. They wasn't really working with me, Your Honor. I was being—my mother said misrep—I don't know how to say the word. I was being misrepresented.

Advisory counsel interjected at this point, expressing a concern that Woods did not actually want to represent himself. If Woods was actually seeking substitute counsel, advisory counsel stated that he was not prepared to provide that level of representation. Advisory counsel then suggested that the court appoint a public defender to act as advisory counsel.

In response to advisory counsel's concerns, the district court told Woods that if he did not want to represent himself, he would be represented by the public defender's office

and that if he had concerns about his public defender's performance, he would need to discuss those concerns with the supervisor of the public defender. If the supervisor failed to address any serious concerns, Woods could then ask the court to intervene. Woods told the court that he understood the process and that instead of going through that process, he wanted to represent himself with the assistance of advisory counsel. Between June 2019 and October 2019, Woods and his advisory counsel appeared at several hearings.

On October 1, 2019, Woods asked the district court to reappoint the public defender's office to represent him and to discharge his advisory counsel. Woods did not express any concerns about advisory counsel's performance. When Woods asked that his former public defenders not be reappointed, the court reminded him that it did not control public defender assignments and that any assignment concerns would need to be raised with a supervisor at the public defender's office. The court then reappointed the public defender's office and discharged advisory counsel.

On October 31, 2019, 30 days later, Woods appeared before the district court along with his former public defenders and their supervisor. The supervisor told the court that Woods did not want to be represented by his former public defenders and that instead he wanted advisory counsel to assume full representation under Minn. R. Crim. P. 5.04, subd. 2(2)(b). Expressing a concern about "game[] playing," the court said that it was not going to consider any concerns Woods had regarding his former public defenders "on an ad hoc basis" and that Woods would need to file a written motion detailing how his former public defenders were providing ineffective assistance of counsel. Woods never filed a written motion to remove his former public defenders.

When Woods and the supervisor of his former public defenders appeared before the district court two weeks later, on November 15, 2019, the supervisor explained that her office rejected Woods' request for a different public defender because his former public defenders had "provided excellent representation to Mr. Woods." During the hearing, Woods did not express any serious concerns regarding his former public defenders. Instead, he told the court that he again wanted to waive his right to counsel and exercise his constitutional right to self-representation. Woods signed a second set of petitions for self-representation, acknowledged that he read the petitions, fully understood them, had no questions about them, and was of clear mind and judgment in making his decision. The district court again notified Woods of the advantages and disadvantages of self-representation, the nature of the charges against him and their corresponding punishments, the requirement that he adhere to the rules of criminal procedure and evidence, and his constitutional right to self-representation. Finding that Woods' second waiver of counsel was knowingly, intelligently, and voluntarily given, the court accepted the waiver and petitions for self-representation. The court then appointed Woods' former public defenders to serve as advisory counsel.³

The district court held a jury trial. Woods represented himself throughout the trial. His former public defenders were present and available as advisory counsel throughout the

³ Although Minn. Stat. § 611.17(b)(4) (2020), prohibits district courts from appointing public defenders to serve as advisory counsel, appointment of advisory counsel is a procedural matter for "judicial determination" and, thus, our rules regarding appointment of advisory counsel "take[] precedence" over the Legislature's statutory prohibition. *State v. Clark*, 722 N.W.2d 460, 466 (Minn. 2006). In simpler terms, district courts may appoint public defenders to serve as advisory counsel.

proceedings. The State presented numerous witnesses, including Woods' half-brother, his half-brother's girlfriend, and an Olmsted County Deputy. Woods' half-brother testified that Woods admitted to killing Arndt by saying, "I handled what needs to get handled and that the guy was dead." He also testified that Woods threatened to kill him, his family members, and his friends if he told anybody about the shooting. The girlfriend of Woods' half-brother testified that Woods told her that he "put four bullets in this guy's body." An Olmsted County Detention Deputy testified that, as she was walking through the unit where Woods was located in jail, she overheard Woods tell two other inmates, "[T]hat [expletive] killed my grandma. There's no justice system for that so I killed him." In addition, the State introduced a jail call transcript into evidence. In it, responding to the question, "[T]hey got the wrong person?", Woods replied, "No. Come on now, woman, you know they don't."

On the penultimate day of trial, Woods refused to leave his jail cell to attend the remainder of his trial. The district court excused the jurors for the day and held a hearing in the Olmsted County Adult Detention Center beside Woods' jail cell. The district court told Woods, "If you continue to want to stay here at the jail and voluntarily be away from your trial, then at this point the state is seeking to close the record, meaning that there would be no additional evidence." The court also explained that Woods would forfeit his right to present a defense if he chose to remain in his jail cell and not participate in his trial. Woods did not respond to the district court.

The next day, on February 6, 2020, the district court reconvened the trial in the courtroom. When Woods refused to leave his jail cell, the district court determined that

Woods had voluntarily waived his right to testify and present a defense. The jury found Woods guilty of first-degree premeditated murder, second-degree intentional murder, and being an ineligible person in possession of a firearm.

When Woods appeared for sentencing, the district court entered convictions on all three offenses. It imposed a sentence of life without the possibility of release for the conviction of first-degree premeditated murder and a concurrent sentence of 60-months for the conviction of being an ineligible person in possession of a firearm. The court did not impose a sentence for the conviction of second-degree intentional murder.

ANALYSIS

On direct appeal, Woods makes three arguments. First, Woods argues that he is entitled to a new trial because he made two requests for advisory counsel to assume full representation, which the district court erroneously failed to honor. Second, Woods argues that a new trial is warranted because his second waiver of counsel was involuntary and therefore invalid. Last, Woods argues that the district court erred by entering a conviction for the offense of second-degree intentional murder. We consider each argument in turn.

I.

First, we determine whether Woods made a valid request for advisory counsel to assume full representation of his defense under Minn. R. Crim. P. 5.04, subd. 2(2)(b). Woods claims he made such a request on June 7, 2019 and October 31, 2019. For the reasons that follow, we conclude that Woods never made a valid request for advisory counsel to assume full representation of his defense.

“We review the interpretation and application of the rules of criminal procedure de novo.” *State v. Chavez-Nelson*, 882 N.W.2d 579, 586 (Minn. 2016). Rule 5.04, subdivision 2, of the Minnesota Rules of Criminal Procedure allows the appointment of advisory counsel and mandates certain warnings regarding the situations in which advisory counsel will assume full representation, despite the defendant’s earlier assertion of the constitutional right to self-representation. The rule provides in part:

Subd. 2. Appointment of Advisory Counsel. The court *may* appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel.

...

(2) If the court appoints advisory counsel because of concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity or length of the trial, the court must state that on the record.

The court *must then advise* the defendant and advisory counsel on the record that advisory counsel *will assume full representation of the defendant if the defendant:*

...

(b) *requests advisory counsel to take over representation during the proceeding.*

Minn. R. Crim. P. 5.04, subd. 2(2)(b) (emphasis added). As the mandated warning explains, one way a defendant’s self-representation can end is when (1) advisory counsel is appointed based on concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity or length of the trial, *and* (2) the defendant *requests* that advisory counsel assume full representation. In *Chavez-Nelson*, we concluded that the language of Minn. R. Crim. P. 5.04, subd. 2(2), creates a rule-based right to request that an

appointed advisory counsel assume full representation. 882 N.W.2d at 586. We now turn to the two instances in which Woods claims that he made a valid request for advisory counsel to assume full representation of his defense.⁴

A.

Woods claims that he made a valid request for counsel to assume full representation on June 7, 2019, when engaged in the following colloquy with the district court:

Woods: Okay. See, I have a fourth grade reading level so I really don't know how to read or write.

Court: Okay.

Woods: So, you know, the only reason why—I didn't really want to become my own lawyer. The only reason why I fired them is because they wasn't helping me. [My public defenders.] I don't have no education at all to be a lawyer myself.

Court: Right. And that's what I was talking to you about yesterday, Mr. Woods. That's what that was all about. So are you telling me that you want legal representation in this case?

Woods: Yes, I do.

Court: You just don't want the public defenders; is that correct?

⁴ Woods also claims that the district court erred on June 7, 2019, when it stated on the record, and within a written order, that it may deny a request for advisory counsel to assume full representation in the future. The district court's statement was consistent with the language of Minn. R. Crim. P. 5.04, subd. 2(1), which provides that "decisions about the use of advisory counsel may affect a later request by the defendant to allow the advisory counsel to assume full representation." See *Chavez-Nelson*, 882 N.W.2d at 586 n. 3 (observing that, had the district court appointed advisory counsel under subdivision 2(1), rather than subdivision 2(2) of Rule 5.04, the district court may have had more discretion in determining whether advisory counsel would assume full representation of his case). But no such language appears in Minn. R. Crim. P. 5.04, subd. 2(2). Because we conclude that Woods never made a valid request for advisory counsel to assume full representation under Minn. R. Crim. P. 5.04, subd. 2(2), the district court's overly broad description of its discretion does not warrant a new trial.

Woods: No. They would—no. They wasn't helping me. They wasn't helping me at all. They wasn't—they wasn't informing me about anything, about the court, the cases. They wasn't—they was basically waiving everything without asking me about anything. They wasn't really working with me, Your Honor. I was being—my mother said misrep—I don't know how to say the word. I was being misrepresented.

Following this exchange, the district court said, “[I]f you want a lawyer, the lawyer you get is the public defender, and you don't get to fire them and have [advisory counsel] come in just because you want a different lawyer.”

Woods contends that the statements he made during this colloquy constitute a “request” that advisory counsel assume full representation of his defense, and that the district court's final statement was a denial of his request. The State counters that Woods' statements are “hardly [a] . . . request[.]” We agree with the State.

Simply put, the statements Woods points to as indicia of his request do not articulate a “request” for purposes of Minn. R. Crim. P. 5.04, subd. 2(2)(b). Our decision in *Chavez-Nelson* illustrates how a “request” under Rule 5.04, subdivision 2(2)(b), is validly made. In that case, the defendant “direct[ed] the district court's attention to Minn. R. Crim. P. 5.04, subd. 2(2)” and specifically requested that his advisory counsel assume full representation. 882 N.W.2d at 585. The defendant in *Chavez-Nelson* invoked both Rule 5.04, subdivision 2(2), and its substance. That is not the case here.⁵

⁵ At oral argument, counsel for Woods claimed that Rule 5.04, subdivision 2(2)(b), does not require Woods to cite the rule itself or use any particular “magic words” to validly make a request. We agree. But a defendant must invoke the *substance* of the rule to receive its protection, and Woods did not do that here.

Accordingly, we conclude that the statements Woods made on June 7, 2019, were not a valid request, and therefore did not invoke the rule-based right to have advisory counsel assume full representation. The district court's rulings on that date regarding Woods' court-appointed attorneys were not erroneous.

B.

Woods also claims that he made a valid request for advisory counsel to assume full representation of his defense on October 31, 2019. In support of his claim, Woods points to the following statements made by the supervisor of his former public defenders:

I did discuss with [Woods], the fact [that] I understand he had advisory counsel prior to this and I asked Mr. Woods if when he was last in court he asked the court as is allowed under the Form 11 petition that he filed number 17i. The court can appoint the advisory counsel to represent him and he indicated to me he was not aware of that fact. I also told him that is covered under Minnesota Rules of Criminal Procedure, 5.04, subdivision 2(2)(b) also allows for appointment of advisory counsel.

My understanding is, and Mr. Woods can correct me if I'm wrong, he still does not wish to be represented [by his former public defenders]. And he would ask the court to appoint advisory counsel pursuant to the form that he signed when he discharged the public defender the first time and pursuant to Minnesota Rule of Criminal Procedure 5.04, subdivision 2(2)(b). I know he did have advisory counsel the last time he was in the court. And, I think, had he been aware of the fact that he could assert the right to have the advisory counsel represent him, he would have done that.

We conclude that the supervisor's statements do not constitute a valid request to invoke the rule-based right to have advisory counsel assume full representation of Woods' defense, but for different reasons than the June 7, 2019, request. On October 31, there was no advisory counsel appointed to assume full representation. As mentioned above, a valid request under the rule-based right requires (1) advisory counsel be appointed based on

concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity or length of the trial, and (2) the defendant requests that advisory counsel assume full representation. Minn. R. Crim. P. 5.04, subd. 2(2). On October 31, 2019, at Woods' request made 30 days prior, there was no longer appointed advisory counsel. Accordingly, Woods fails the first requirement to validly request advisory counsel assume full representation of his defense under the Rule.

We conclude that Woods' Rule 5.04 arguments do not entitle him to a new trial because he never made a valid request to invoke the rule-based right to have advisory counsel assume full responsibility of his defense. The district court's rulings in this regard were not erroneous.

II.

Next, we turn to Woods' argument that he is entitled to a new trial because his second waiver of counsel was involuntary and therefore invalid. Specifically, Woods argues his second waiver of counsel was involuntary because he faced an "unfair and improper choice: either proceed to his first-degree murder trial with the assistance of inadequate counsel or proceed without any counsel at all." The State argues that a new trial is not required because the record supports the district court's finding that Woods voluntarily waived his constitutional right to counsel.

The Sixth Amendment provides criminal defendants the right to an attorney. *Gideon v. Wainwright*, 372 U.S. 335, 344–45 (1963); *State v. Worthy*, 583 N.W.2d 270, 275 (Minn. 1998). A waiver of counsel must be made knowingly, intelligently, and

voluntarily.⁶ *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). A district court must evaluate the totality of the circumstances in determining whether a defendant’s waiver of counsel is voluntary. *State v. Miller*, 573 N.W.2d 661, 672 (Minn. 1998). “A defendant’s refusal without good cause to proceed with able appointed counsel constitutes a voluntary waiver of that right.” *State v. Krejci*, 458 N.W.2d 407, 413 (Minn. 1990) (citation omitted) (internal quotation marks omitted).

We will overturn a district court’s finding that the defendant voluntarily waived his right to counsel only if that finding is clearly erroneous. *Jones*, 772 N.W.2d at 504. “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.” *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012).

After a detailed review of the record in this case, we conclude that the district court’s finding that Woods voluntarily waived his right to counsel is not clearly erroneous. Woods never raised a serious allegation of inadequate representation or any other good cause not to proceed with his former public defenders.⁷ Instead, the record suggests that Woods was simply upset because his former public defenders failed to provide him advance notice of

⁶ Woods does not allege that his waiver of counsel lacked knowledge or intelligence; he argues only that his waiver of counsel was *involuntary*.

⁷ Because Woods failed to allege “serious allegations of inadequate representation,” the district court was not required to engage in a “searching inquiry” before refusing to appoint new public defenders. *State v. Munt*, 831 N.W.2d 569, 586 (Minn. 2013) (citation omitted) (internal quotation marks omitted) (explaining that a searching inquiry is required only when the defendant raises serious complaints about the effectiveness of appointed counsel’s representation).

their strategic decision to waive the omnibus hearing. In addition, Woods failed to act even after the district court provided him an opportunity to file a written motion setting forth any concerns he might have with his former public defenders. Because the district court fully advised Woods of the consequences of waiving counsel, and Woods refused without good cause to proceed with able appointed counsel, we conclude that his waiver of counsel was voluntary and, thus, valid.⁸

III.

Finally, we turn to Woods' argument that the district court violated Minn. Stat. § 609.04 when it entered a conviction for the offense of second-degree intentional murder because it was included in the offense of first-degree premeditated murder.

Minnesota law permits a conviction “of either the crime charged or an included offense, *but not both.*” Minn. Stat. § 609.04, subd. 1 (emphasis added). Whether an offense is a lesser-included offense of the charged offense is a legal question, which we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012). We have previously held that a district court errs when it convicts a defendant of first-degree murder *and* second degree-murder. *See, e.g., id.* at 552–53; *State v. Johnson*, 773 N.W.2d 81, 89 (Minn. 2009) (“[T]he State could not convict [the defendant] of both first-degree murder and the lesser-included offense of second-degree murder.”). The remedy for such an error is a remand to the

⁸ Woods also argues that his waiver of counsel was involuntary because the district court denied his requests to invoke his rule-based right to have advisory counsel assume full representation of his defense. This argument is unavailing because, as discussed above, Woods never made a valid request to invoke his rule-based right to have advisory counsel assume full representation of his defense.

district court to vacate the conviction entered on the lesser-included offense while leaving the guilty verdict in place. *See State v. Balandin*, 944 N.W.2d 204, 222 (Minn. 2020). Because the district court committed reversible error when it entered a conviction for the offense of second-degree intentional murder, we remand to the district court to vacate the conviction for second-degree intentional murder, but we leave the other convictions and sentences in place.

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part, and remand to the district court to vacate the conviction for second-degree intentional murder.

Affirmed in part, reversed in part, and remanded.