STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0983

State of Minnesota,
Respondent,

vs.

Markhel D'John Harris-Franklin,
Appellant.

Filed June 23, 2025
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-22-3944

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant argues that his conviction of attempted second-degree murder must be reversed because the district court failed to secure a valid waiver of his right to counsel and the prosecutor committed prejudicial misconduct by introducing inadmissible evidence.

Appellant also filed a pro se supplemental brief in which he argues that he was denied his right to a speedy trial and that the evidence against him was insufficient to support the jury's verdict. We affirm.

FACTS

In July 2022, respondent State of Minnesota charged appellant Markhel D'John Harris-Franklin with attempted second-degree murder. A hearing was then held on August 8, 2022, at which appellant expressed some dissatisfaction with his public defender. But after the district court explained to appellant that he does not "get to pick and choose between . . . public defenders," appellant agreed to work with his public defender.

In December 2022, appellant's trial counsel informed the district court that appellant "would like to discharge the Office of the Public Defender." After the district court inquired if appellant was "intending on hiring [his] own lawyer," the following exchange occurred:

> APPELLANT: Y'all have to appoint – y'all can do what you want to do, but I'm not working with [trial counsel]. He's not working with me, not assisting me. Or giving me help at any time I ask him . . . .
>
> There's no point working with him if he don't want to work with me.
>
> THE COURT: Well, you have to decide, sir, whether you're going to hire your own lawyer, or I'm going to keep [trial counsel] on the case.
>
> APPELLANT: You can take him off my case.
>
> THE COURT: I know I can. Do you want him off your case? Now, it's not just him. When you remove him, you remove the entire office of the Public Defender's Office.
>
> APPELLANT: That's what y'all say but that's not – must not be my Sixth Amendment right, but that's ok. If that's what you

> want to do, and I exercise that. That's okay. That's . . . what you do up there.
>
> But bottom line is, though, he can get off my case. And yeah, y'all don't have to appoint me anybody else. Y'all do what y'all do. I'll search for another representative, but . . . it's up to whoever else. I'll try to put in to – I'm in the hole right now. . . .
>
> THE COURT: All right. So what I'm going to do is I'm going to keep [trial counsel].
>
> APPELLANT: I don't want him.
>
> THE COURT: All right. I'm going to keep [trial counsel] on until you find your new lawyer . . . .
>
> APPELLANT: I don't want him.
>
> THE COURT: And then you can let the Court know when your new lawyer has arrived. . . . You have a very good afternoon, sir.
>
> APPELLANT: F*ck y'all then. F*ck you talking about, clown. All of you think of your scandalous self, corrupt as hell. Beat it. You have a nice day and a nice life.

In July 2023, respondent amended the complaint to add a charge of second-degree assault with a dangerous weapon. Appellant's attorney's then filed a motion on appellant's behalf demanding that the district court "discharge [appellant's] currently appointed counsel so that he can proceed pro se." The parties appeared on July 24, 2023, for the scheduled jury trial, but instead of starting trial, appellant's public defender attempted to review appellant's petition to proceed pro se:

> COUNSEL: [Appellant], with this decision we have to make a record and so we make the record by answering the question. Yes or no?
>
> APPELLANT: Ask a question. What the f*ck? You're going to do it, do it.
>
> COUNSEL: [Appellant], this is your petition. This is not my petition, so –

> APPELLANT: This ain't my petition. I asked for new representation and y'all not giving me that, so y'all forcing me to go pro se.
>
> COUNSEL: [Appellant], you got appointed the Public Defender's Office –
> APPELLANT: And y'all not assisting me.
>
> COUNSEL: [Appellant], do you want to proceed Pro Se . . . [?]
> APPELLANT: I want new representation.
>
> COUNSEL: You have two choices, sir.
> APPELLANT: No, I don't. My rights – my Sixth Amendment right is representation by my own attorney from the Public Defender's Office, and that's what I qualify for.
>
> COUNSEL: I'm going to ask one more –
> APPELLANT: You can ask a million times.

After this exchange, the district court asked for the petition, to which appellant interjected: "He not even no real Judge. He a actor." Appellant's co-trial counsel then informed the district court that he had reviewed appellant's petition to proceed pro se "line by line with him," but the petition had "not been executed." The following exchange then occurred between the district court and appellant:

> THE COURT: All right. [Appellant], I have a petition here to proceed pro se. I understand that you want to be represented by an attorney, but you don't want these attorneys; is that right?
> APPELLANT: Yeah. We already went over this. You already denied me that.
>
> THE COURT: Right. . . . So I guess you're going to be representing yourself. All right. And I can go through this entire petition, which I suppose I probably should.

The district court proceeded to explain the charges against appellant and that appellant has a right to an attorney. The district court then stated: "but you don't want

these particular lawyers. You want different, lawyers, and I denied you that at the last hearing." The district court also explained that if he granted appellant's petition, appellant would be responsible for trying the case himself and that he would be bound by the same rules as an attorney. And the district court explained appellant's jury-trial rights.

At appellant's request, the district court discharged appellant's public-defenders. The district court also stated that he would appoint appellant advisory counsel. Appellant's unsigned petition to proceed pro se was then filed with the notation that appellant "refused to acknowledge or sign. Read to [appellant]."

At trial, D.W. testified that, on June 27, 2022, she was sitting on the front steps of her apartment building holding her ten-month-old child, when she heard the door open behind her. D.W. testified that she turned around and saw an individual in a "black outfit and . . . ski mask" with "his foot in the door." According to D.W., the individual said, "Die b*tch," and then shot her in the back.

D.W. identified the shooter as appellant. Although the shooter was wearing a ski mask, D.W. testified that she recognized the shooter as appellant because of his eyes, face tattoo, voice, and build. According to D.W., she was familiar with appellant because of "two prior incidences where [she] was face to face with him." Respondent then introduced *Spreigl*[1] evidence of two prior incidents in which appellant engaged in "threatening" behavior toward D.W. that occurred two or three weeks before she was shot. D.W. testified that the first incident involved appellant putting an "object" to her head, which she believed

[1] *See State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

was a gun. And D.W. testified that the second incident involved appellant "flashing a gun" at her and "threating to shoot" her.

D.W. testified that she believed appellant's threatening behavior was related to her relationship with her boyfriend, who is the father of one of her children. D.W. claimed that appellant frequented her apartment building often because his girlfriend lived in the same building. And according to D.W., her boyfriend had an altercation with appellant after he discovered a note that appellant had left on D.W.'s door asking her for sexual favors.

On cross-examination, D.W. acknowledged that she has had "domestic issues" with her boyfriend, which included him threatening her with a gun. But D.W. claimed that she and her boyfriend "were in a good space when [she] was shot." D.W. also testified that her boyfriend has distinctive physical characteristics from appellant because her boyfriend is 6'5" and 300 pounds and has a southern accent. And D.W. testified that appellant's girlfriend's apartment had a window that overlooked the steps on which she was sitting when she was shot.

One of the responding officers testified that, upon arriving at the scene of the shooting, D.W. implicated appellant as the shooter. Respondent also presented evidence that a single 9mm shell casing was found at the scene where D.W. was shot. And evidence was also presented that, when appellant was arrested, police discovered multiple 9mm rounds of live ammunition scattered throughout the vehicle that appellant was driving.

One of the responding officers' body-worn camera video was admitted into evidence and played for the jury. A segment of this video contained a brief conversation between officers that implicated appellant as the shooter, stated that he was "wanted by the

DOC," and indicated that he would serve "[a]nother two years in DOC." After the video was played for the jury, the district court expressed concern about the jury hearing this evidence and ruled that the video must be redacted.

Appellant testified that he could not "recall what happened on this date that this crime was committed because I was not at the scene of the crime." Appellant also claimed that he did not know D.W. or her boyfriend, testified that he never had an altercation with D.W.'s boyfriend, and denied shooting D.W.

A jury found appellant guilty as charged. And after a *Blakely*[2] trial, the jury found the existence of aggravating factors because the offenses were committed in the presence of a child. Appellant was then sentenced to 240 months in prison. This appeal follows.

DECISION

I.

Appellant challenges the validity of the waiver of his right to counsel. When the facts are not disputed, "the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo." *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012).

Criminal defendants have the constitutional right to counsel in "all criminal prosecutions." U.S. Const. amend. VI; Minn. Const. art. I, § 6. But "[a] defendant may

[2] A *Blakely* trial is conducted to determine whether aggravating sentencing factors exist, and "[a] criminal defendant has the right to a trial by jury or by the court." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016) (citing *Blakely v. Washington*, 542 U.S. 296, 301 (2004)); *State v. Henderson*, 706 N.W.2d 758, 762 (Minn. 2005) (applying *Blakely* to Minnesota's career-offender statute).

waive his right to counsel." *State v. Maddox*, 825 N.W.2d 140, 147 (Minn. App. 2013). "The district court has a duty to ensure a valid waiver of the right to counsel." *State v. Gant*, 996 N.W.2d 1, 6 (Minn. App. 2023). The denial of a defendant's right to counsel is a structural error, requiring reversal. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

"Minnesota Rule of Criminal Procedure 5.04, subdivision 1(4), sets forth the procedure that a district court must follow when a defendant charged with a felony wishes to waive the right to counsel." *Gant*, 996 N.W.2d at 7. Generally, a defendant charged with a felony cannot expressly waive a right to counsel unless the defendant completes a written waiver form or provides the waiver on the record. *Id.*; *see also* Minn. R. Crim. P. 5.04, subd. 1(4). But even without a formal waiver under rule 5.04, a defendant's express waiver is still constitutionally valid if the circumstances support that the defendant "knowingly, voluntarily, and intelligently" waived the right to counsel. *Gant*, 996 N.W.2d at 7. For the circumstances to establish a valid waiver, the record must reflect that the defendant waived the right to counsel "with eyes open," meaning that the defendant is aware of the potential consequences of proceeding without representation. *Rhoads*, 813 N.W.2d at 888.

A valid waiver of the right to counsel must include an advisory to the defendant of the "nature of the charges," "all offenses included within the charges," the "range of allowable punishments," the facts that "there may be defenses" and that "mitigating circumstances may exist," and "all other facts essential to a broad understanding of the

consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel." Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f).

Appellant argues that the district court did not obtain a valid waiver of his right to counsel because he "did not sign a written waiver, and the district court did not discuss the Minnesota Rules of Criminal Procedure requirements for waiving counsel." We disagree. Our supreme court has held that "the particular facts and circumstances surrounding [a] case, including the background, experience, and conduct of the accused," may indicate that the defendant validly waived the right to counsel "even though the district court failed to follow a particular procedure." *In re Welfare of G.L.H.*, 614 N.W.2d 718, 723 (Minn. 2000) (quotation omitted).

Two supreme court cases are relevant to the particular facts and circumstances of this case. In *State v. Krejci*, the defendant appealed from his conviction and challenged the validity of his waiver of his right to counsel because the district court did not "advise him of the perils of proceeding pro se and failed to inquire into his reasons for rejecting the public defender." 458 N.W.2d 407, 412 (Minn. 1990). The district court appointed two lawyers to represent the defendant and, due to his continued dissatisfaction, delayed his trial so that he could obtain private counsel. *Id.* The defendant appeared at the next hearing without counsel, refused representation by the public defender's office, and confirmed that "he would be acting pro se." *Id.* The district court "appointed [the] defendant's second public defender to act as standby counsel." *Id.* The supreme court determined that the defendant validly waived the right to counsel based on the "surrounding circumstances." *Id.* at 412-13. The supreme court acknowledged that the district court

"did not make the full, on-the-record inquiry which is normally required to ensure a valid waiver" but noted that "[a]t no time during any of the proceedings did [the] defendant appear in court without counsel" and that "the [district] court and counsel explained to the defendant the nature of the charges, the possible punishments, and the options available to him as a defendant." *Id.*

In *State v. Worthy*, the defendants fired their attorneys the morning of trial and argued on appeal "that their waivers of their right to an attorney were invalid." 583 N.W.2d 270, 274-75 (Minn. 1998). The supreme court noted that the district court's on-the-record inquiry into the defendants' waivers of counsel "did not include a recitation of the charges or potential punishments." *Id.* at 276. But the district court warned the defendants "that[,] if they chose to proceed pro se, they would be held to the same standard as the attorneys." *Id.* And the supreme court observed that the defendants "were familiar with the criminal justice system." *Id.* Therefore, the supreme court determined that the defendants validly waived their right to counsel. *Id.* at 277.

Like *Worthy* and *Krejci*, the particular facts and circumstances show that appellant validly waived his right to counsel with his "eyes open." *See Gant*, 996 N.W.2d at 12 (quotation omitted). The district court partially complied with the rule 5.04 waiver requirements by advising appellant of the charges against him and other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, such as the fact that he would be responsible for preparing his case and that he would be bound by the same rules as an attorney. *See Worthy*, 583 N.W.2d at 276 (recognizing that the district court warned the defendants that, if they chose to proceed pro se, they would be held to the

same standard as attorneys). In addition, the record here reflects that appellant requested, and was granted, standby counsel to provide legal assistance. *See Krejci*, 458 N.W.2d at 412-13 (concluding that waiver of counsel was valid and noting that the district court appointed the defendant's second public defender as standby counsel); *see also Gant*, 996 N.W.2d at 8-9 (considering whether defendant had the benefit of standby counsel when determining validity of waiver). And like the defendants in *Worthy*, appellant has a lengthy criminal history, consisting of nine felony convictions, which suggests that he is familiar with the criminal-justice system. *See Worthy*, 583 N.W.2d at 276.

Moreover, "[w]hen a defendant has previously been represented by counsel, a district court 'can reasonably presume that the benefits of legal assistance and the risks of proceeding without it have been described to [the] defendant in detail.'" *State v. Haggins*, 798 N.W.2d 86, 90 (Minn. App. 2011) (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)). The record here reflects that, before appellant discharged his public defenders, he was represented by the public defender's office for about a year. During this time, trial counsels consulted with appellant and prepared and filed motions on his behalf. In fact, the record specifically reflects that appellant acknowledged that his trial counsels "have had conversations" with him about "what information [he] want[s] to share with the Court in support" of his motion to proceed pro se. As such, we presume that appellant's decision to proceed pro se was made after consultation his with trial counsels.

Finally, although appellant claims that he clearly did not want to represent himself, his conduct throughout the proceedings demonstrates otherwise. The record reflects that appellant's right to counsel was discussed with him during at least three separate hearings,

and appellant's statements on the record demonstrate that he understood that he had a Sixth Amendment right to counsel. Moreover, the record reflects that both trial counsel and the district court attempted to review, on the record and with appellant, his petition to proceed pro se. But the record reflects that appellant was uncooperative and refused to sign the petition, despite his insistence that his public defenders be removed from his case. *See State v. Jones*, 772 N.W.2d 496, 505 (Minn. 2009) (describing waiver by conduct as applying to those defendants who voluntarily engage in misconduct knowing what they stand to lose by voluntarily engaging in misconduct after having been warned that they will lose counsel, even if they profess that they do not want to proceed pro se). In fact, appellant refused to be represented by his court-appointed attorneys, despite being repeatedly told that if he discharged his public defenders, he was discharging the Office of the Public Defender. The record demonstrates that appellant's refusal to cooperate throughout the proceedings left the district court no alternative but to interpret appellant's conduct as a desire to proceed pro se. Accordingly, under the particular facts and circumstances of this case, appellant validly waived his right to counsel.

II.

Appellant contends that the prosecutor committed prejudicial misconduct by introducing into evidence an inadmissible, unredacted version of a police body-worn camera video. But appellant acknowledges that he did not object to the admission of this evidence at trial. When a defendant fails to object to alleged prosecutorial misconduct at trial, we apply the modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, the defendant must show that the prosecutor's conduct constituted

(1) error, and (2) that the error was plain. *Id.* "If the defendant is successful, the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant's substantial rights." *Id.* (quotation omitted). Even if these three prongs are met, we "will not grant relief to correct the error unless [the] failure to do so will cause the public to seriously question the fairness and integrity of [the] judicial system." *Pulczinski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

A prosecutor's actions may amount to error or misconduct if the actions are "violations of clear or established standards," and "have the effect of materially undermining the fairness of a trial." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). "It is generally misconduct for a prosecutor to 'knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention.'" *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quoting *State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012)).

Here, respondent introduced the body-worn camera video of an officer that included a short segment in which several officers spoke in the hallway at the hospital while D.W. was in the emergency room. During the video, an individual walked by a group of officers and asked, "Did they ever catch the guy?" Somebody responded, "Not yet. We know who it is though." The following exchange then occurred:

> INDIVIDUAL: Oh, okay – oh okay.
> FEMALE OFFICER: But don't worry though he's already wanted by the DOC so.
>
> MALE OFFICER: Why didn't he do this last week. Surprising.
> FEMALE OFFICER: And he pointed a gun at her last week so this week he finally shot her.

MALE OFFICER: Wonderful, wonderful. Okay.
FEMALE OFFICER: Another two years in DOC.

Appellant argues that the "prosecutor intentionally introduced" the evidence in question "because it was recorded at the time of the crime and trial took place over a year and a half later." He contends that the prosecutor's actions constitute prejudicial plain error. Respondent "agrees that the prosecutor should have acted to prevent the jury from hearing the portion of the body-worn camera recording that obliquely referred to the [DOC] and the potential for two years' incarceration." But respondent contends "that the error, while plain, was not sufficiently prejudicial to require reversal in this case."

Respondent's argument is persuasive. We presume that the prosecutor viewed the recording before offering it as evidence and was necessarily aware of its substance. Under the circumstances, it is apparent that the prosecutor's conduct constitutes intentional misconduct. *See State v. Bigbear*, 10 N.W.3d 48, 57 (Minn. 2024) (stating that "[w]e expect prosecutors, when seeking admission of a prior consistent statement—and district courts when admitting such evidence—to be vigilant in excising unfairly prejudicial, extraneous material before it is played for the jury," and "[t]hat the State offered this clearly inadmissible portion of the video without redaction in a case alleging sexual assault was a significant misstep"). As such, the misconduct here constitutes plain error.

Nonetheless, respondent has shown that appellant was not prejudiced by the misconduct. Prosecutorial misconduct affects a defendant's substantial rights "if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). To determine

whether there is a reasonable likelihood that the prosecutor's error had a significant effect on the verdict, we "consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Id.* at 682.

Here, the pervasiveness of the misconduct is limited because the statements occurred during only a few seconds of a trial that lasted several days. *See State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (stating that a prosecutor's question that elicited inadmissible testimony was harmless beyond a reasonable doubt because the question was asked only once, and the prosecutor did not again attempt to elicit or refer to the answer). Moreover, the video was later redacted, and the prosecutor did not mention the statements during closing arguments. In short, the statements were never referenced in front of the jury after the video was initially played. *See State v. Epps*, 964 N.W.2d 419, 424 (Minn. 2021) (noting that a prosecutor's alleged improper statement was "brief and not repeated" in determining that the defendant's substantial rights were not affected by the alleged misconduct).

Additionally, appellant had the opportunity to rebut the improper evidence. The record reflects that the district court repeatedly and thoroughly asked appellant how he wanted to proceed and if he wanted a special instruction. The district court informed appellant of the pros and cons of providing an instruction and stated that she did not think the jury knows "what the DOC is," and the "danger" of giving an instruction is "then I'm telling them what they shouldn't have heard in the first place." Appellant ultimately agreed that a cautionary instruction should not be given.

Finally, the evidence against appellant was strong. This evidence included eyewitness testimony from the victim; the victim's testimony that appellant had recently engaged in threatening behavior on two occasions; evidence that a 9mm shell casing was found at the scene of the offense; and evidence that police discovered multiple 9mm rounds of live ammunition scattered throughout the vehicle that appellant was driving when he was arrested. Under these circumstances, respondent has satisfied its burden to show that the prosecutorial misconduct did not have a significant effect on the verdict. Because the first three prongs of the plain-error test have not been satisfied, we need not consider the fourth prong of the test. Accordingly, appellant is not entitled to a new trial.

III.

In his pro se supplemental brief, appellant claims that (A) he was denied his right to a speedy trial; and (B) the evidence was insufficient to support the jury's verdict. But appellant offers no legal support or argument for either assertion. Pro se supplemental-brief claims that are not supported by legal arguments or citations to legal authority are forfeited. *State v. Reek*, 942 N.W.2d 148, 165-66 (Minn. 2020). As such, the claims made in appellant's pro se supplemental brief are not properly before us, and we decline to consider them.

Affirmed.