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NOTICE: THIS DECISION IS NONPRECEDENTIAL EXCEPT AS PROVIDED BY MINN. R. CIV. APP. P. 136.01(1)(C) AND MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Joseph Manasseh JOHNSON, Appellant.

A22-1711
|
Filed October 30, 2023
|
Review Denied January 16, 2024

Freeborn County District Court, File No. 24-CR-22-841

Attorneys and Law Firms

Keith Ellison, Attorney General, St. Paul, Minnesota; and Joel Martin Holstad, Albert Lea City Prosecutor, White Bear Lake, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge [*]

***1** In this direct appeal from the judgment of conviction, appellant Joseph Manasseh Johnson argues that (1) his conviction for depriving animals of nourishment and shelter under Minn. Stat. § 343.21, subd. 2 (2022) should be reversed and remanded because he was denied his right to present a complete defense when his trial continuance requests were denied and because his waiver of his right to counsel was inadequate. Johnson also argues that his conviction for having inadequate enclosures under Minn. Stat. § 343.21, subd. 3 (2022) should be reversed because there was insufficient evidence to prove that the animals were deprived of free change of air. We grant Johnson's motion to strike portions of State of Minnesota's brief that references websites because the websites were not contained in the record on appeal. And because the district court did not clearly err in denying Johnson a trial continuance, Johnson's waiver of his right to counsel was valid, and the record contains sufficient evidence to sustain Johnson's conviction for inadequate enclosures, we affirm.

DECISION

I. Motion to Strike

"The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. This court is "bound to the trial court record." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). The court of appeals "may not base its decision on matters outside the record on appeal and may not consider matters not produced and received in evidence below." *Id.* at 582-83. Johnson is correct that the state relies on several websites in its briefing that were not presented to the district court. The motion to strike portions of the state's brief is granted. This court will not rely on the content of the websites cited in the state's brief in deciding this appeal. The facts of the case will be determined solely through review of the documents and transcripts which constitute the appellate record.

II. Right to a Complete Defense

A. Trial Continuance

Johnson argues that the district court's denial of his continuance requests deprived him of prepared counsel and an opportunity to present a complete defense. [1] Despite being appointed counsel at his arraignment, Johnson directly asked the district court for a pretrial evidentiary "*Rasmussen* hearing." The district court told Johnson to consult with, and make motions through, his lawyer. Johnson then asked for a speedy trial date. A different attorney appeared with Johnson at the pretrial hearing. Over Johnson's objection, defense counsel filed a trial continuance request, "to gather the information [needed] to prepare an effective defense." Counsel noted that he had not "received the information necessary" to make Johnson's requested arguments by trial scheduled the following week, "despite requesting it multiple times." The court denied the continuance request, noting Johnson's speedy trial request. Before trial began, the district

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court again addressed the issue of a continuance when Johnson's counsel stated that Johnson's "main defense in this case" is that "he paid people to take care of animals" but that those people were not on the witness list. Nonetheless, Johnson did not waive or revoke his speedy trial demand and proceeded to trial. During trial, Johnson fired his counsel, noting that he did not know if counsel was ready, but that Johnson was ready for trial. He then asked for a continuance to find new counsel but did not have an idea as to how he would go about doing that. The district court denied the request since it advised Johnson that he could continue the trial after counsel "said he needed more time to prepare ... at least twice, once in writing," but Johnson insisted on proceeding to trial.

***2** The right to counsel guaranteed by the Sixth Amendment to the United States Constitution and by Minn. Const. art. 1, § 6, includes a fair opportunity for a defendant to secure counsel of their choice. *State v. Fagerstrom*, 176 N.W.2d 261, 264 (Minn. 1970). But "[a] defendant may not obtain a continuance by discharging his counsel for purposes of delay or by arbitrarily choosing to substitute counsel at the time of trial." *Id.* Whether to grant a continuance to permit substitution of counsel is within the discretion of the district court, whose "decision is to be based on the facts and circumstances surrounding the request." *Id.* One factor that appellate courts have looked at when determining whether a denial of a motion for a continuance was an abuse of discretion is "whether the defendant was prejudiced in preparing and presenting his defense." *Id.* at 264-65. Thus, a defendant must show he was prejudiced by the denial of the continuance to warrant appellate relief. *See* *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005).

Johnson asserted his speedy trial right at his arraignment and, even after his counsel requested a continuance for more time to prepare for trial, Johnson did not revoke or temporarily waive his right for a speedy trial. The district court empathized with counsel but accommodated Johnson's request by scheduling an out-of-custody speedy trial date. It was not until after Dr. Smith testified at trial that Johnson fired his counsel and requested time to hire a new lawyer. The district court allowed Johnson to try his case but refused to continue the trial because they were in the middle of trial. Johnson insisted on a speedy trial until he was dissatisfied with defense counsel's strategy during trial and fired his counsel. Johnson then tried to stop the trial by asking for a continuance to find new counsel. The district court's denial of Johnson's pretrial continuance requests could not have denied Johnson the right to present a complete defense because it was Johnson who insisted on going forward with his speedy trial demand despite defense counsel requesting more time to prepare. Moreover, the district court's denial of the mid-trial continuance request could not have denied Johnson the right to present a complete defense because after Johnson fired counsel, he proceeded pro se and testified to his main defense that other people were responsible for maintaining the animal enclosures. Thus, the district court did not abuse its discretion in denying Johnson's continuance requests.

B. Waiver of Counsel

Johnson argues that the district court did not ensure that he understood that firing his lawyer waived his right to counsel. More specifically, that the district court's colloquy with Johnson was lacking and cannot show that Johnson knowingly and intelligently waived his right to counsel. We disagree.

After defense counsel cross-examined Dr. Smith, Johnson asked to fire his counsel:

> THE COURT: Counsel, do we need to address anything on the record before we take our recess?
>
> [JOHNSON]: I would like to address something on the record, Your Honor.
>
> THE COURT: And I'm talking to counsel now. If you want to discharge your counsel, you can try your case; if you want your lawyer to represent you, he will be the one talking to the court.
>
> COUNSEL: No, Your Honor.
>
> [JOHNSON]: I want to fire [counsel].
>
> THE COURT: You want to fire [counsel]?
>
> JOHNSON: Yes, sir.
>
> THE COURT: All right. I'm going to give you and [counsel] a moment to talk, and then we will make a record of that. Go ahead and use—
>
> [JOHNSON]: And I want to put on the record that I've asked and fired him. I've asked for a motion of *Rasmussen*; I've asked for a motion of dismissal; I have also asked that he cross-examine the witnesses to a greater extent—which he hasn't—to prove my innocence on the record. [2]

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> THE COURT: All right. So, Mr. Johnson, we are going to go through the process, but I want you and [counsel] to take a moment to talk first. I think that it is prudent, and so we're going to make sure that happens. Go ahead and use the conference room, and then come on back in when you are ready to go.

***3** Johnson and defense counsel took a three-minute recess to talk in the conference room before Johnson renewed his request, the district court discharged counsel, and Johnson proceeded to trial pro se.

A defendant may waive their right to counsel if the waiver is knowing, voluntary, and intelligent. *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998); *State v. Rhoads*, 813 N.W.2d 880, 884-85 (Minn. 2012). The validity of a waiver "depends on the facts and circumstances of the case, including the background, experience, and conduct of the accused." *Rhoads*, 813 N.W.2d at 884. 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." *Id.* at 885-86 (quotation omitted). "When a defendant has consulted with an attorney prior to waiver, a [district] court could 'reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.' " *Worthy*, 583 N.W.2d at 276 (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)). A defendant's history of felony convictions and his familiarity with the criminal process may diminish the need for a detailed, on-the-record colloquy regarding the defendant's choice to waive counsel. *See id.* 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.

Johnson did not sign a written waiver of counsel. *See* Minn. R. Crim. P. 5.04, subd. 1 (3) (stating defendants charged with misdemeanors punishable by incarceration must waive counsel in writing or on the record, and the court must not accept the waiver unless the court is satisfied that it is voluntary). Because of this, Johnson contends that the circumstances surrounding his counsel's discharge do not support the conclusion that Johnson wanted to waive his right to counsel. This argument is unpersuasive.

Whether the waiver of the right to counsel is valid depends on "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Worthy*, 583 N.W.2d at 275-76 (quotation omitted). "When a defendant has consulted with an attorney prior to waiver, a [district] court could 'reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.' " *Id.* at 276 (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)). A defendant's history of felony convictions and his familiarity with the criminal process may diminish the need for a detailed, on-the-record colloquy regarding the defendant's choice to waive counsel. *See id.*

In this case, the district court did not need to appoint Johnson counsel for the limited purpose of advising and consulting with Johnson about the waiver because Johnson already had counsel at the time of the waiver and the court stopped the proceedings so Johnson and his counsel could confer before he discharged counsel. *See* Minn. R. Crim. P. 5.04, subd. 1 (3). After that break, Johnson insisted on firing his attorney and proceeding pro se and the district court could reasonably presume that Johnson discussed with his attorney the risks of proceeding pro se. *See id.* The district court also warned Johnson that if he insisted on firing his counsel, it would not grant a continuance, but instead, that Johnson would have to represent himself and the trial would continue. Nonetheless, Johnson was steadfast in his decision to fire his counsel. Although the district court's colloquy was limited, the fact that the court accepted the waiver suggests that the district court was satisfied that Johnson's choice to fire counsel was voluntary. *See id.* Johnson decided to fire counsel because he was dissatisfied with defense counsel's strategy during cross-examination of a witness. Plus, other circumstances, such as Johnson requesting a pretrial *Rasmussen* hearing and making a speedy trial demand, show Johnson's familiarity and experience with the criminal justice system and procedures such that the need for an extensive on-the-record colloquy regarding his decision to waive his right to counsel was unnecessary. *Worthy*, 583 at 276. As such, the district court did not clearly err in finding that Johnson knowingly and intelligently waived his right to counsel.

III. Sufficiency of the Evidence

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***4** The parties generally agree on the circumstances proved at trial, with one notable exception: that the evidence is consistent with a rational hypothesis of guilt with respect to the animals being deprived of an adequate change of air under Minn. Stat. § 343.21, subd. 3. For the offense of having inadequate enclosures, the state is required to prove that a person kept an animal in an enclosure without providing wholesome exercise and exchange of air. *See id.* The level of scrutiny this court applies when reviewing the sufficiency of the evidence depends on whether the elements of an offense are supported by direct or circumstantial evidence. *See* *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). "[D]irect evidence is evidence that is based on personal knowledge or observation." *State v. Harris*, 895 N.W.2d 592, 599 (quotation omitted). Circumstantial evidence is defined as "evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist." *Id.* "[C]ircumstantial evidence always requires an inferential step that is not required with direct evidence." *Id.*

Johnson argues that the convictions hinge on circumstantial evidence for proof of the fact that the animal enclosures did not have an adequate change of air. We disagree. Multiple witnesses testified to the conditions of the animal enclosures. That testimony constitutes direct evidence, based on their personal knowledge and observations. *Id.* When an element of an offense is supported by direct evidence, this court's review is limited to an "analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). This court assumes that "the jury believed [one party or the other] and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). "[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (citation omitted).

This court will not disturb the jury's verdict because the jury could reasonably conclude that Johnson was guilty of the charged offense based on the direct evidence presented by the officers, humane society volunteers, and veterinarians testifying to the conditions of the enclosures. For example, Dr. Wessling did not think the enclosures provided for wholesome exercise because the length of the dogs' nails when they were found in a small and crowded closet suggested they were not getting enough exercise. The overwhelming smell of urine and feces when entering the building suggests a lack of fresh air that, in Dr. Wessling's expert opinion, could lead to ammonia build-up causing respiratory breathing issues and irritation of the eyes. While Johnson argued that air would have come in through the door to the building or even the open window in the closet where the dogs were found, this argument is undercut by the direct evidence that there was no fresh air throughout the building. Thus, this court assumes that the jury believed the state and disbelieved any evidence to the contrary. *Caldwell*, 803 at 384.

In sum, because the state's brief references websites not contained in the record on appeal, we grant Johnson's motion to strike. And because the record contains sufficient evidence to sustain Johnson's conviction of depriving his animals of adequate enclosures, the district court did not clearly err in denying the trial continuance requests, and Johnson's waiver of his right to counsel was adequate, we affirm.

Affirmed; motion granted.

All Citations

Not Reported in N.W. Rptr., 2023 WL 7122598

Footnotes

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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1 Johnson's counsel argued that the pretrial continuance request was for the purpose of investigating Johnson's requested arguments and possible defenses. Johnson's subsequent pro se trial continuance request only argued that time was necessary to find new counsel, not to craft a complete defense.

2 As the district court noted, under Minn. R. Crim. P. 12.01, the law permits addressing the pretrial motions for a misdemeanor trial on the day of trial. *See* Minn. R. Crim. P. 12.01.

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