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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0566**

State of Minnesota,
Respondent,

vs.

Alan Nordmann,
Appellant.

**Filed March 4, 2008
Affirmed
Connolly, Judge**

Stearns County District Court
File No. K7-06-1569

Lori Swanson, Attorney General, 1800 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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John M. Stuart, State Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant appeals from his conviction of a gross-misdemeanor violation of a harassment order, arguing that his waiver of his right to a jury trial was not knowing, intelligent, and voluntary. Because the record supports the district court's determination that appellant made a valid waiver, we affirm.

FACTS

Appellant Alan Nordmann was charged in district court with a violation of a harassment order on March 27, 2006. Appellant had previously been convicted twice for criminal sexual conduct in the second degree and was worried about the impact those convictions would have on a jury. He appeared at an October 23, 2006 pretrial hearing and waived his right to a jury trial. The following exchange occurred:

THE COURT: This matter is set for jury trial tomorrow. My understanding is that the defendant wishes to waive the jury trial, Mr. Johnson, is that correct?

MR. JOHNSON: Yes, Your Honor. I've been meeting with my client about every other day for the last couple weeks and we've been discussing matters, and today Mr. Nordmann advised me that he'd be more comfortable with a court trial than jury trial because of some of the issues that we're discussing, and we discussed the pros and cons. I advised Mr. Nordmann that he has to make that decision himself personally and, so then I called to make sure that we could do that rather than tomorrow morning so everybody knows.

And so, Mr. Nordmann, you and I have discussed previously your right to a trial by jury by six persons or a court trial?

THE DEFENDANT: Yes.

MR. JOHNSON: And at this point your decision is to waive the jury trial and have a trial by the judge?

THE DEFENDANT: Yes.

MR. JOHNSON: And you're doing that freely and voluntarily?

THE DEFENDANT: Yes.

MR. JOHNSON: And that's actually a question that you brought up to me today and that we hadn't talked about previously anything other than preparing for jury trial?

THE DEFENDANT: Yes.

MR. JOHNSON: And so it's, you understand that this is a final decision and we'll be going forward with the court trial tomorrow morning?

THE DEFENDANT: Yes.

THE COURT: All right. Mr. Nordmann, do you have any questions at all about this?

THE DEFENDANT: No.

THE COURT: Do you feel you fully understand it as explained to you by your counsel?

THE DEFENDANT: Yes.

THE COURT: All right. And you understand that this is not something that you can change your mind about tomorrow morning, you won't have a jury here, and if you change your mind tomorrow I'll deny your request. You understand that?

THE DEFENDANT: I understand that.

THE COURT: Okay. All right. Have a jury trial -- or excuse me, a court trial tomorrow morning.

The following day, immediately prior to the trial's commencement, appellant's counsel reviewed the jury trial waiver with him and this exchange occurred:

MR. JOHNSON: This is Neil Johnson meeting with Alan Nordmann just before we start trial. Alan, two things I want to cover is yesterday you waived the right to a jury trial. That was in part because of yours and my ongoing discussions about the strategy in this case. One of the things that was your idea that I've agreed to go along with on the strategy is that you have prior crim sex convictions, criminal sexual conduct and that convictions we typically would try to keep out of the ears of the jury or judge, but in this case you think that it's part and parcel with the case and you feel your strategy is that it needs to come out and so you understand that I'm going to follow that policy and that information will come out.

THE DEFENDANT: Yes.

MR. JOHNSON: And then -- and because of that strategy as well yesterday you brought up the idea to do just the judge trial rather than a jury trial because of that factor and that's why we're doing it that way today.

THE DEFENDANT: Yes.

Appellant was found guilty after a court trial on October 24, 2006. He now appeals, arguing that he did not properly waive his right to a jury trial. He points to a seven-year-old accident that resulted in his placement on disability as evidence that more was required of the district court to ensure a knowing and voluntary waiver of his jury trial rights.

DECISION

The Minnesota Constitution provides for a jury trial, and for waiver of a jury trial “in the manner prescribed by law.” Minn. Const. art. I, § 4. Under the Minnesota Rules of Criminal Procedure, a

defendant, with the approval of the court may waive jury trial on the issue of guilt provided the defendant does so personally in writing or orally upon the record in open court, after being advised by the court of the right to trial by jury and after having had an opportunity to consult with counsel.

Minn. R. Crim. P. 26.01, subd. 1(2)(a).

“The interpretation of the rules of criminal procedure is a question of law subject to de novo review.” *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). The waiver of the right to a jury trial must be knowing, intelligent, and voluntary. *State v. Ross*, 472 N.W.2d 651, 653 (Minn. 1991). This court has held: “The waiver requirement of Rule 26.01 mandates only a relatively painless and simple procedure to protect a basic right. Just as the police are required to advise an arrested individual of his rights, so must the

court comply with Minn. R. Crim. P. 26.01.” *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002) (quoting *State v. Neuman*, 392 N.W.2d 706, 708-09 (Minn. App. 1986)). A searching inquiry as to why a defendant is waiving his right is not required. *In re Welfare of M.E.M.*, 674 N.W.2d 208, 213 (Minn. App. 2004). However, the district court “must be satisfied that the ‘defendant was informed of his rights and that the waiver was voluntary’” and the required “inquiry may vary with the circumstances of a particular case.” *Ross*, 472 N.W.2d at 653-54 (quoting *State v. Pietraszewski*, 283 N.W.2d 887, 890 (Minn. 1979)).

We are convinced the record demonstrates that appellant’s waiver was knowing, voluntary, and intelligent. Appellant points to an accident that occurred seven years prior to trial as evidence that the district court should have conducted a more searching inquiry, but does not claim that he was incompetent to stand trial. In fact, the record indicates that appellant first raised the idea of a court trial after settling on a trial strategy involving the introduction of his prior criminal-sexual-conduct convictions. This strategic decision by appellant demonstrates that he understood the consequences of his decision and that his waiver was knowing, voluntary, and intelligent. Appellant was also adequately reminded of his rights. The district court explained to appellant that he would not have a jury present as a result of his decision and asked appellant if he had any questions and if he understood what counsel had explained to him. Additionally, the record indicates that appellant had time to, and in fact did, discuss this decision’s ramifications with his counsel.

Finally, appellant is not unfamiliar with the judicial system, as evidenced by his prior criminal convictions. Appellant's familiarity with the criminal justice system is a relevant factor for consideration, and weighs in favor of our determination that his waiver was knowing, voluntary, and intelligent. *See id.* at 654 (referencing a defendant's familiarity with the criminal justice system in considering whether his waiver of a jury trial was knowing, voluntary, and intelligent).

Affirmed.