STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0131

State of Minnesota,
Respondent,

vs.

James Garnett Briggs,
Appellant.

Filed May 26, 2009
Affirmed
Johnson, Judge

Winona County District Court
File No. CR-07-1292

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

Charles E. MacLean, Winona County Attorney, 171 West Third Street, Winona, MN 55987 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Winona County jury found James Garnett Briggs (also known as James Garnett) guilty of three counts of domestic assault, three counts of terroristic threats, and two counts of second-degree assault based on evidence that he threatened his girlfriend and her two children with a baseball bat and physically assaulted them. The district court sentenced him to 99 months of imprisonment. On appeal, Briggs challenges his convictions and sentence on multiple grounds. We affirm.

FACTS

On the evening of April 28, 2007, Briggs argued with his girlfriend, L.E., at her home in the city of Lewiston and threatened to hit her with a baseball bat. When L.E.'s son intervened, Briggs grabbed him by the throat and threw him on a nearby table. Briggs also pushed L.E.'s daughter and threatened to kill all three of them. When police arrived at the house, Briggs was standing in the driveway, intoxicated and holding a baseball bat.

The state charged Briggs with three counts of domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2006); three counts of terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2006); two counts of second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2006); and two counts of harassment in violation of Minn. Stat. § 609.749, subd. 3(a)(5) (2006).

Briggs represented himself at a four-day trial in September 2007. At the conclusion of trial, the jury found him guilty of all counts except the two charges of

harassment. In October 2007, the district court imposed a stayed sentence of 21 months on one of the domestic-assault convictions and consecutive executed sentences totaling 99 months of imprisonment on the remaining domestic-assault convictions. The 99-month sentence is an upward departure from the presumptive guidelines sentence of 66 months, based on a determination that Briggs is a dangerous offender. Briggs appeals.

D E C I S I O N

I. Waiver of Right to Counsel

Briggs first argues that his waiver of the right to counsel is invalid because he was not competent to make a waiver and because his waiver was not made intelligently and voluntarily. A district court's finding regarding the validity of a waiver of the right to counsel will be overturned only if it is clearly erroneous. *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998).

This issue first arose on June 20, 2007, when Briggs moved to waive his right to counsel and to proceed *pro se*. The district court granted his motion five days later after determining that his waiver was intelligent and voluntary. But in the following weeks, the prosecutor became concerned that Briggs was not competent because of decisions he had made that the prosecutor believed hampered his defense. In late July 2007, the prosecutor also learned that in each of three previous criminal trials occurring in 2002 and 2003, Briggs had been examined pursuant to Minn. R. Crim. P. 20 to assess his competence to stand trial. The prosecutor then moved for a rule 20.01 evaluation. *See* Minn. R. Crim. P. 20.01, subd. 2 (requiring counsel to notify court if counsel "has reason

to doubt the competency of the defendant"). At a July 25, 2007, hearing on the motion, Briggs stated,

> I am defending myself . . . because I felt that I could present a better case and cross examine those witnesses better than [defense counsel] could. I'm not taking anything from [defense counsel], he's a damn good attorney, but . . . the only reason that I am doing this is because I feel that I can cross examine them better than [defense counsel] because I was there and I knew what happened, and I know the lies and everything that's going down.

Briggs informed the district court that he was diagnosed with bipolar disorder in 1987 and that he was not taking any medication. After questioning Briggs, the district court acknowledged that he had made decisions that prejudiced his defense and stated, "I think he's incompetent in the law, but I don't see any reason to doubt his mental competency." Nonetheless, in light of Briggs's prior diagnosis, the district court granted the state's request and ordered a rule 20.01 evaluation.

In August 2007, John Johnson, Ph.D., a psychologist, filed a psychological evaluation report in which he concluded that Briggs "is competent and would be able to cooperate with defense counsel. He can understand the criminal proceedings and can participate in his defense." Dr. Johnson based his findings on an examination conducted at the Winona Law Enforcement Center as well as the results of two psychological tests performed at the Hiawatha Valley Mental Health Center. Based on this evidence, the district court found Briggs "competent to proceed."

Criminal defendants have a constitutional right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right implies "the right to self-

representation -- to make one's own defense personally" because the right to defend "is given directly to the accused; for it is he who suffers the consequences if the defense fails." *Faretta v. California*, 422 U.S. 806, 819-20, 95 S. Ct. 2525, 2533 (1975); *see also State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990). In determining whether a defendant's waiver of his right to counsel is valid, the district court must determine (1) that the defendant is "competent" and (2) that the defendant's waiver of his constitutional rights is "'knowing and voluntary.'" *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997) (quoting *Godinez v. Moran*, 509 U.S. 389, 400, 113 S. Ct. 2680, 2687 (1993)). Briggs challenges the validity of his waiver under both prongs.

A. Competence to Waive Right to Counsel

"[T]he legal standard for competence to waive counsel is the same as the legal standard for competence to stand trial." *Camacho*, 561 N.W.2d at 171. In order to be competent to stand trial, a defendant must have "'a rational as well as factual understanding of the proceedings against him.'" *Id.* (quoting *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 789 (1960)). If a district court has reason to doubt a defendant's competence, the court should, if appropriate, order a competency evaluation. Minn. R. Crim. P. 20.01, subd. 2; *see also Camacho*, 561 N.W.2d at 174. If a district court determines that a defendant is competent to stand trial, the district court need not perform a further inquiry to determine whether the defendant is competent to waive counsel. *Camacho*, 561 N.W.2d at 172.

Briggs first contends that he was not competent to waive his right to counsel because he did not understand "the import and requirements of defending himself." But

"'the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.'" *Camacho*, 561 N.W.2d at 172 (quoting *Godinez*, 509 U.S. at 399, 113 S. Ct. at 2687).

Briggs also contends that the district court's determination of competence was inadequate because the Supreme Court's recent decision in *Indiana v. Edwards*, 128 S. Ct. 2379 (2008), requires trial courts to examine competence for purposes of waiving the right to counsel more stringently than competence for purposes of standing trial. We do not construe *Edwards* in the manner urged by Briggs. First, the trial court in *Edwards* had refused to permit the defendant to represent himself. *Id.* at 2383. The issue on appeal was "whether the Constitution *permits* a State to limit that defendant's self-representation right by insisting upon representation by counsel at trial." *Edwards*, 128 S. Ct. at 2385-86 (emphasis added). Here, neither the prosecution nor the district court imposed any such limitations on Briggs. Second, Briggs's argument is in direct conflict with *Godinez*, where the Supreme Court held that trial courts are not required to conduct bifurcated competency evaluations. *See Godinez*, 509 U.S. at 399, 113 S. Ct. at 2686-87. The *Edwards* Court did not purport to overrule *Godinez* and specifically stated that the question before it was different from the issue addressed in *Godinez*. 128 S. Ct. at 2385.

Thus, the district court did not err by determining that Briggs was competent to waive his right to counsel.

B. Intelligence and Voluntariness of Waiver

"[T]o determine whether a waiver of the right to counsel is knowing, intelligent, and voluntary, [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.'" *Worthy*, 583 N.W.2d at 276 (quoting *Camacho*, 561 N.W.2d at 173). A defendant "'should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.'" *Id.* at 276 (quoting *Faretta*, 422 U.S. at 835, 95 S. Ct. at 2541). If a defendant has consulted a public defender before waiving the right to counsel, a court may "reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel." *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978).

At his first appearance in April 2007, Briggs indicated to the district court that he "usually" represents himself in criminal proceedings but that he would accept the assistance of a public defender in this case because he was confused about the nature of some of the charges against him. At a subsequent hearing in May 2007, the district court explained to Briggs the charges against him and his various rights with respect to the prosecution of those charges. At the omnibus hearing in June 2007, Briggs requested that he be permitted to proceed *pro se*. The record indicates that he had discussed his decision to proceed *pro se* with his attorney and that he made the decision to proceed *pro se* for strategic reasons. The district court cautioned Briggs about the disadvantages of proceeding *pro se* and deferred ruling on his request.

At a hearing later in June 2007, Briggs stated that he had carefully considered his decision to proceed *pro se*, that he understood his right to a public defender at no charge,

that he was comfortable proceeding *pro se* based on his previous experiences representing himself in jury trials, and that he understood that the district court would hold him to the same standard as an attorney. He also stated that no one had pressured him or induced him to discharge his attorney. The district court granted Briggs's request and ordered his discharged assistant public defender to serve as stand-by counsel. Briggs acknowledged that stand-by counsel would only advise him about procedural issues and would not be able to take over representation in the middle of the trial.

Based on this record, we conclude that Briggs intelligently and voluntarily waived his right to counsel. *See Worthy*, 583 N.W.2d at 276-77 (upholding waiver of right to counsel of defendant who, being familiar with criminal justice system, unequivocally fired appointed counsel); *Camacho*, 561 N.W.2d at 173-74 (similar).

II. Prosecutorial Error

Briggs next argues that he is entitled to a new trial because of seven instances of prosecutorial error. "For unobjected-to prosecutorial misconduct, we apply a modified plain error test. For objected-to prosecutorial misconduct, we have utilized a harmless error test, the application of which varies based on the severity of the misconduct." *State v. Wren*, 738 N.W.2d 378, 389 (Minn. 2007) (citation omitted).

First, Briggs contends that the prosecutor improperly introduced evidence of prior convictions to prove an element of felony domestic assault without asking Briggs to stipulate to those prior convictions. Briggs relies on caselaw providing that, in certain circumstances, if a defendant offers to stipulate to a prior conviction that is an element of the offense charged, a district court should permit the stipulation, thereby removing the

issue from the case. *State v. Berkelman*, 355 N.W.2d 394, 397 (Minn. 1984); *see also Old Chief v. United States*, 519 U.S. 172, 191-92, 117 S. Ct. 644, 655-56 (1997). But that caselaw applies only if the defendant offers to stipulate; the caselaw does not impose any obligation on the prosecutor to offer a stipulation to a defendant. Thus, the prosecutor did not commit error by not offering to stipulate to Briggs's prior convictions.

Second, Briggs contends that the prosecutor improperly vouched for the credibility of the state's witnesses in his closing argument. The prosecutor stated to the jury: "You also heard from [L.E.'s daughter]. She told you about what she experienced. She also told you about watching as this defendant smashed her brother in the face when she was just ten years old, and she courageously told you what she felt about that." "A prosecutor may not personally endorse the credibility of witnesses." *State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007) (quotation omitted). But the prosecutor's statement about L.E.'s daughter was not an endorsement of her credibility. Briggs was on trial for domestic assault, terroristic threats, second-degree assault, and harassment. The state's theory was that Briggs had an abusive and controlling relationship with his girlfriend and her family. The prosecutor's reference to the daughter's courage in testifying was based on evidence that Briggs had assaulted and threatened the witnesses. Thus, the prosecutor did not commit error. *See State v. McArthur*, 730 N.W.2d 44, 54 (Minn. 2007) (holding that prosecutor did not vouch for credibility of witnesses by referring to "safety risk" in testifying against defendant).

Third, Briggs contends that the prosecutor improperly commented on his character during closing argument by suggesting that his conduct was part of a controlling and

terroristic relationship with the alleged victims. Although a prosecutor's statements may not be "calculated to inflame the passions or prejudices of the jury," *State v. Salitros*, 499 N.W.2d 815, 817 (Minn. 1993) (quotation omitted), closing argument need not be "colorless," *State v. Young*, 710 N.W.2d 272, 281 (Minn. 2006) (quotation omitted). Throughout his closing argument, the prosecutor emphasized that Briggs exerted control over the alleged victims and that he was abusive toward them. The prosecutor's characterization of Briggs's relationship with the alleged victims was a "reasonable inference[] from [the] evidence" presented at trial. *Young*, 710 N.W.2d at 281 (quotation omitted).

Fourth, Briggs contends that the prosecutor "impugned [Briggs's] constitutionally protected right to self-representation." During his opening statement, the prosecutor stated that Briggs was "representing himself, so he can control." Because Briggs did not object, we apply the modified plain error test. Under that test, if the defendant shows error that was plain, the burden shifts to the state to show that the error did not affect substantial rights. *Wren*, 738 N.W.2d at 389.

The general rule is that it is improper for a prosecutor to disparage a defense. *State v. Griese*, 565 N.W.2d 419, 427 (Minn. 1997). Whether the prosecutor's comment is plainly in violation of the rule is a close call. Even if it were, however, we would conclude that the single reference during opening statement did not affect Briggs's substantial rights. Over a period of four days, the jury heard testimony from four individuals who witnessed the alleged assault and threats. The four witnesses' accounts were consistent. The jury also heard an audiorecording of the 911 call in which L.E. told

the dispatcher that Briggs had threatened and assaulted her and her children. In light of the overwhelming evidence, the state has satisfied the third requirement of the plain error test. *See State v. Bashire*, 606 N.W.2d 449, 454 (Minn. App. 2000) (holding that prosecutor's reference to defense as "game" was improper but was only "isolated comment" that did not prejudice defendant), *review denied* (Minn. Mar. 28, 2000).

Fifth, Briggs contends that the prosecutor improperly referred to evidence that was not included in the record. The state introduced audiorecordings of telephone calls placed by Briggs from his jail cell in which Briggs made incriminating statements. In its closing argument, the state played several excerpts of those recordings. Briggs responded during his closing argument by arguing that the jury did not hear the full context of the telephone calls in the recordings played by the prosecution. In rebuttal, the prosecutor stated, "we could sit here and listen to 300 and whatever number of phone calls, but instead we selected the relevant pieces." Briggs relies on caselaw providing that "a prosecutor should not refer to facts not in evidence," *McArthur*, 730 N.W.2d at 53, and argues that the prosecutor's statement "implied that the prosecutor had other, unadmitted-at-trial evidence." We do not construe the statement to refer to telephone calls taped but not admitted into evidence. Rather, the statement is proper rebuttal of Briggs's argument that the prosecutor was withholding evidence.

Sixth, Briggs contends that the prosecutor improperly elicited testimony from a police officer who testified that he recognized the defendant from "prior professional contacts" at the Winona County Detention Center. But the record shows that the police officer gave this testimony in response to questions from Briggs, not the prosecutor.

Seventh and finally, Briggs contends that the prosecutor "us[ed] the prosecutorial charging authority in an abusive manner." Briggs refers to the fact that, while this case was pending, the state filed 24 new complaints against Briggs and stated its intent to offer evidence of the new allegations at trial in this case. Separately, Briggs was successful in persuading the district court to dismiss the charges in the other 24 cases, and the state apparently did not follow through on its plan to offer those allegations into evidence in this case. Thus, there appears to be no tangible impact on Briggs's trial in this case arising from the filing and dismissals of the other charges. Briggs contends that the prosecutor "sought to deny [him] his right to a speedy trial," but Briggs does not contend that such a right was actually violated. Briggs has not cited any caselaw in support of this argument. Thus, we conclude that the prosecutor's actions in the other cases do not constitute prosecutorial error in this case.

In sum, Briggs is not entitled to a new trial on the ground of prosecutorial error.

III. Jury Instruction on Relationship Evidence

Briggs argues that the district court erred by failing *sua sponte* to give a limiting instruction to the jury regarding relationship evidence. During the state's case, L.E. described her relationship with Briggs as being filled with domestic violence. At one point in the direct examination, the prosecutor asked L.E. to describe "the next worst incident that you can recall of domestic violence by the defendant upon you." She described an incident in 2005 in which he hit her in the mouth and another incident on an unspecified date in which Briggs hit her in the eye and hit her son in the mouth. No objection was made, and no limiting instruction was given.

A district court may admit evidence of similar abuse in the past by the accused against the victim or other household members "unless the probative value is substantially outweighed by the danger of unfair prejudice." Minn. Stat. § 634.20 (2006); *see also State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). As a general rule, a cautionary instruction to limit the purpose of evidence "shall" be given "upon request." Minn. R. Evid. 105. If no request is made, we analyze the issue for plain error. Minn. R. Crim. P. 31.02. Under the plain error doctrine, we consider whether there is an error, whether the error is plain, and whether the error affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if it is clear or obvious under current law, *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted), and an error is clear or obvious if it "contravenes case law, a rule, or a standard of conduct," *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the first three requirements of the plain error test are satisfied, we "correct the error only if it seriously affects the fairness, integrity or public reputation of judicial proceedings." *State v. Washington*, 693 N.W.2d 195, 204 (Minn. 2005) (quotation omitted).

The supreme court has "advised" district courts, "even absent a request, to give a cautionary instruction upon the receipt of other-crimes evidence." *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001). But the supreme court consistently has declined to hold that the absence of a *sua sponte* limiting instruction is reversible error under the plain error test. *Id.* at 685; *State v. Williams*, 593 N.W.2d 227, 237 (Minn. 1999); *State v. Frisinger*, 484 N.W.2d 27, 31 (Minn. 1992); *see also State v. Meyer*, 749 N.W.2d 844, 850 (Minn. App. 2008) (holding that absence of *sua sponte* limiting instruction for

relationship evidence, although "preferred practice," was not plain error); *State v. Meldrum*, 724 N.W.2d 15, 21 (Minn. App. 2006) (stating that "precaution of providing a limiting instruction . . . should be applied to relationship evidence"), *review denied* (Minn. Jan. 24, 2007).

Whether a limiting instruction is necessary depends on the facts of a particular case. *Williams*, 593 N.W.2d at 237. The analysis ordinarily incorporates some measure of deference to defense counsel, who may be presumed to consider various strategic considerations when deciding whether to request a limiting instruction. In this case, Briggs was representing himself. The district court had an obligation to consider whether the need for a limiting instruction was "obvious." *See Strommen*, 648 N.W.2d at 688 (quotation omitted). We conclude that the need for a limiting instruction was not obvious. L.E.'s description of the 2005 incident was brief. Briggs, or an attorney representing Briggs, reasonably could have decided not to highlight the evidence with a request for a limiting instruction. In this way, this case can be distinguished from *State v. Word*, 755 N.W.2d 776 (Minn. App. 2008), where the absence of a *sua sponte* limiting instruction triggered both the first and second prongs of the plain error test because the relationship evidence was "extensive" and "dramatic," including one particularly "harrowing incident," which made the evidence so prejudicial that a *sua sponte* limiting instruction obviously was necessary. *Id.* at 784-85.

In sum, Briggs is not entitled to a new trial on the ground that the district court did not *sua sponte* give a limiting instruction regarding the state's relationship evidence.

IV. Right to be Present

Briggs argues that the district court erred by not allowing him to attend an in-chambers conference that was conducted in response to the bailiff's report that a juror may have read a newspaper article about the trial. The district court initially did not permit Briggs to be in chambers for an examination of the juror. The district court asked Briggs's stand-by counsel whether Briggs had agreed to allow stand-by counsel to represent him at the in-chambers conference. Stand-by counsel then consulted with Briggs, who stated that he wished to be present. The conference resumed in the courtroom, where the juror informed the district court that he had not read a newspaper article about the trial. The district court gave Briggs an opportunity to question the juror, but Briggs declined.

A defendant in a criminal case has a constitutional right to "be present at all critical stages of trial." *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005). A defendant also has a right under the rules of criminal procedure to be present "at every stage of the trial." Minn. R. Crim. P. 26.03, subd. 1(1). The supreme court has noted that "the right to be present under the rule is broader than the right to be present under the Federal Constitution." *State v. Ware*, 498 N.W.2d 454, 457 (Minn. 1993). The Minnesota Supreme Court has enforced the right to be present at trial in the context of a defendant's exclusion from an in-chambers conference. *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005) (holding that defendant waived right to attend in-chambers conference by not objecting).

In this case, there is no denial of Briggs's right to be present because the district court did not conduct any meaningful proceedings in chambers in Briggs's absence. Rather, the district court moved the conference to the courtroom in response to Briggs's wish to be present. The discussion that occurred in chambers before moving to the courtroom was entirely administrative in nature as the district court, the prosecutor, and stand-by counsel discussed where the examination of the juror should occur. The juror was not examined outside Briggs's presence. Thus, the district court did not deny Briggs his right to be present at trial.

V. Sentencing Departure

Briggs last argues that the evidence of his prior convictions is insufficient to satisfy the requirements of the dangerous-offender statute under which his sentence was enhanced. On factual findings pertaining to a sentence that are not subject to the *Blakely* requirement of a jury, reviewing courts "independently examine the record to determine if the record contained sufficient evidence to justify departure." *State v. Adell*, 755 N.W.2d 767, 772 (Minn. App. 2008), *review denied* (Minn. Nov. 25, 2008).

The statute under which Briggs was sentenced provides:

> Whenever a person is convicted of a violent crime that is a felony . . . the judge may impose an aggravated durational departure from the presumptive imprisonment sentence [if]:
>
> (1) the court determines on the record at the time of sentencing that the offender has two or more prior convictions for violent crimes; and
>
> (2) the factfinder determines that the offender is a danger to public safety. . . .

Minn. Stat. § 609.1095, subd. 2 (2006). At the sentencing trial, the district court admitted evidence of four prior convictions. The jury returned a special verdict form in which it concluded that Briggs is "a danger to public safety," thus satisfying the second prong of section 609.1095, subdivision 2. With respect to the first prong, the district court found that Briggs had a sufficient number of prior convictions of violent crimes to satisfy the dangerous-offender statute, although it did not specifically identify the convictions on which it relied. The first issue need not be submitted to the sentencing jury because "[p]rior convictions are a well-recognized exception" to the requirement that facts used to increase a defendant's sentence beyond the statutory maximum must be found by a jury. *State v. McFee*, 721 N.W.2d 607, 609 (Minn. 2006) (citing *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004)).

The district court record includes evidence of at least two prior convictions of the type required by section 609.1095, subdivision 2. First, exhibit B3, which was admitted into evidence during the sentencing trial, shows that Briggs was convicted of attempted simple robbery in 2002 in Hennepin County. Simple robbery is expressly designated as a "violent crime." *See* Minn. Stat. §§ 609.1095, subd. 1(d), .24 (2006). Briggs argues that Exhibit B3 is not a certified copy, but we have reviewed the original and have confirmed that, on the back of the document, it is certified and signed by the deputy court administrator.

Second, exhibit 9, which was admitted into evidence during the guilt phase of trial, shows that Briggs pleaded guilty to third-degree assault in 2003 in Hennepin County. Third-degree assault is expressly designated as a "violent crime." *See* Minn. Stat.

§§ 609.1095, subd. 1(d), .223 (2006). When imposing sentence, a district court is free to consider evidence presented during the guilt phase of a trial. *See State v. Terpstra*, 546 N.W.2d 280, 283 (Minn. 1996) (affirming sentence based on evidence presented at trial); *State v. Bendzula*, 675 N.W.2d 920, 924 (Minn. App. 2004) (same).

In sum, the evidence in the district court record is sufficient to support the district court's finding of "two or more prior convictions for violent crimes." Minn. Stat. § 609.1095, subd. 2(1).

Affirmed.