**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1278**

State of Minnesota,
Respondent,

vs.

Danny Kwami Barnes,
Appellant.

**Filed October 6, 2009**
**Reversed and remanded**
**Shumaker, Judge**

Traverse County District Court
File No. 78-CR-07-5

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

Matthew P. Franzese, Traverse County Attorney, 218 Third Avenue East, Suite 102, Alexandria, MN 56308 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Hudson, Judge.

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

**SHUMAKER**, Judge

Appellant challenges his convictions, arguing that his waiver of counsel was constitutionally invalid. Because the record does not reasonably support a conclusion that appellant's waiver was intelligent and knowing, we reverse and remand for a new trial.

## FACTS

Appellant Danny Kwami Barnes was arrested on December 16, 2006, after he head-butted a police officer. He was charged with fourth-degree assault of a police officer for causing demonstrable bodily harm, a felony; fourth-degree assault of a police officer, a gross misdemeanor; and disorderly conduct, a misdemeanor.

Before his trial, Barnes appeared for five hearings before three different judges. At several of those hearings, Barnes was advised that he had a right to an attorney and a right to court-appointed counsel if he could not afford an attorney. Barnes stated that he would represent himself. Aside from reminding him of his right to an attorney, none of the judges made further inquiry as to Barnes's understanding of his rights. Barnes never signed, nor was he asked to sign, a written waiver of counsel at any of these hearings.

On April 3, 2008, Barnes appeared for his trial without an attorney. The judge reminded him that he had a right to appointed counsel and told him that in cases involving serious crimes people usually hire an attorney. Barnes was steadfast in his decision to proceed without an attorney. The judge then asked Barnes whether he had any prior experience representing himself in court. Barnes responded, "I'm a minister of

the gospel. I have the ability to communicate my point. I don't think that I—I'm a lawyer by any means, but I believe that I'm able to—to represent my case as well—as well as anybody." The judge then accepted Barnes's oral waiver of counsel. Barnes also waived his right to a jury trial. Following a bench trial, the district court found Barnes guilty as charged.

Before sentencing, Barnes filed several pro se posttrial motions, one of which claimed that the district court should not have allowed him to proceed to trial without counsel before first "questioning [him] in more depth about the charges and [his] understanding of the case before the court." The district court rejected Barnes's claim that his waiver of his right to counsel was not valid, explaining that Barnes had been advised of his right to counsel and that he had prior experience representing himself in court. The district court then sentenced Barnes to one year and one day, stayed execution of the sentence, and placed Barnes on three years of supervised probation. Barnes appealed.

**D E C I S I O N**

We review a waiver of a defendant's right to counsel to determine whether the "record supports a determination that a [defendant] knowingly, voluntarily, and intelligently waived his right to counsel." *State v. Garibaldi*, 726 N.W.2d 823, 829 (Minn. App. 2007). 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).

Criminal defendants have a fundamental constitutional right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A criminal defendant may waive his constitutionally guaranteed right to the assistance of counsel, but such a waiver must be voluntary, knowing, and intelligent. *Edwards v. Arizona*, 451 U.S. 477, 482, 101 S. Ct. 1880, 1884 (1981); *Worthy*, 583 N.W.2d at 276. Courts consider all of the surrounding facts and circumstances, including the background, experience, and conduct of the accused, when assessing the validity of a waiver of the right to counsel. *Edwards*, 451 U.S. at 482, 101 S. Ct. at 1884; *In re Welfare of G.L.H.*, 614 N.W.2d 718, 723 (Minn. 2000) (citing *Worthy*, 583 N.W.2d at 275-76). Before accepting such a waiver, the district court must be satisfied that the waiver is knowing and intelligent. *State v. Krejci*, 458 N.W.2d 407, 412 (Minn. 1990). "[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 *State v. Camacho*, 561 N.W.2d 160, 173 (Minn. 1997)). "The 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.'" *Camacho*, 561 N.W.2d at 173 (quoting *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975)) (quotation marks omitted).

Minnesota law requires a defendant's waiver of the right to counsel to be in writing. Minn. Stat. § 611.19 (2006); Minn. R. Crim. P. 5.02, subd. 1(4). In addition,

before accepting a waiver of the right to counsel, the district court is required to advise the defendant of

> the nature of the charges, the statutory offenses included within the charges, the range of allowable punishments, that there may be defenses, that there may be mitigating circumstances, 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. 5.02, subd. 1(4).

In *Garibaldi*, we concluded that the defendant's waiver of his right to counsel was not valid. 726 N.W.2d at 831. The district court in *Garibaldi* only briefly questioned the defendant about his decision to represent himself, asking him if he wished to proceed pro se and if he understood that the prosecutor was not his lawyer. *Id.* at 825-26. The district court conducted no further inquiry and did not provide a written waiver form to the defendant. *Id.* at 826. Additionally, no standby counsel was appointed. *Id.*

In the recent case of *State v. Jones*, the Minnesota Supreme Court reiterated that "we require district courts, before accepting a waiver of the right to counsel, to fully advise the defendant *by intense inquiry* regarding the nature of the charges, the possible punishment, mitigating circumstances," and all facts necessary to an understanding of the consequences, advantages, and disadvantages of the waiver. ___N.W.2d ___, ___, 2009 WL 2878113, at *6 (Minn. Sept. 10, 2009) (emphasis added). The supreme court held that it was insufficient for the district court merely to ask the defendant whether he understood that he had a right to an attorney and then to summarize prior proceedings in the case. *Id.* at *6-7.

The inquiry here was even more cursory than the one found lacking in *Garibaldi* and had only slightly more content than that declared insufficient in *Jones*. Here, the district court merely informed Barnes that people charged with serious crimes usually have an attorney and asked if he had ever represented himself. But the district court engaged in no further inquiry to determine whether Barnes understood the consequences of his decision to waive his right to counsel. And as in *Garibaldi*, Barnes was not asked to sign a written waiver of counsel or offered the benefit of standby counsel to assist him before or during the trial.

The state argues that Barnes's waiver is nonetheless valid because other circumstances tended to suggest that Barnes was aware of the advantages and disadvantages of proceeding without an attorney. In support of its position, the state points out that Barnes was represented by counsel on other unrelated matters at the same time that he chose to represent himself in this matter and that Barnes had previously represented himself in a bench trial on assault charges. The supreme court has acknowledged that a waiver may be constitutionally valid, even without a signed document, if the surrounding facts and circumstances show that the defendant waived his right to counsel voluntarily, knowingly, and intelligently. *See G.L.H.*, 614 N.W.2d at 723 (stating that a district court's failure to follow "a particular procedure" does not automatically invalidate a waiver); *Worthy*, 583 N.W.2d at 275-76 (stating that the validity of a waiver "depends upon the particular facts and circumstances surrounding that case") (quotation omitted). Thus, when a district court can infer, from the context and history of a case, that the appellant's waiver was knowing and intelligent, a waiver

may be upheld despite the absence of a thorough, on-the-record inquiry of the defendant. *See Krejci*, 458 N.W.2d at 412-13) (concluding that waiver was knowing and intelligent where the defendant's interactions with numerous judges, letters to those judges, conversations with two public defenders and refusal to accept representation from the public defender's office showed that the defendant was fully aware of the consequences of proceeding pro se, even though the district court should have conducted a more comprehensive examination into defendant's desire to represent himself). But the circumstances of this case do not support such an inference.

The mere fact that Barnes had been involved in other, unrelated criminal matters is not sufficient to support an inference that he made an informed waiver of counsel in this case. The record does not adequately show the particulars of any of the prior cases, what Barnes learned of legal proceedings in those cases, or what legal advice he might have obtained in those matters. As a result, we are thrust into the position of having to speculate about Barnes's legal knowledge and having to assume that he had acquired a sufficient degree of accurate information to carry over to the instant case and to compel the conclusion that his waiver of the fundamental right of representation by counsel was knowing, intelligent, and voluntary.

Furthermore, applying the state's logic, an experienced criminal lawyer charged with a crime would not have to be apprised of the rule 5.02 information because his or her prior legal experience by itself would support an assumption that all of such information was known and understood. There is no authority to support that proposition.

Finally, we cannot discern from this record why the district court failed to follow the clear rules regarding the waiver of counsel. Minn. Stat. § 611.19; Minn. R. Crim. P. 5.02, subd. 1(4). Although there might be exceptional circumstances making the application of those rules impossible, no such circumstance existed here, and nothing in this record provides an explanation for the reason the district court ignored the rules.

Thus, because the record does not show that Barnes knowingly, intelligently, and voluntarily waived his right to counsel, as guaranteed by our constitutions, we reverse his convictions and remand for a new trial.

**Reversed and remanded.**