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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1858**

State of Minnesota,
Respondent,

vs.

Donald Walker Staples,
Appellant.

**Filed November 17, 2009
Affirmed
Wright, Judge**

Hennepin County District Court
File No. 27-CR-07-022031

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

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Marie L. Wolf, Interim Chief Appellate Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Melissa Sheridan, Assistant State Public Defender, 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges his conviction of unlawful possession of a firearm, arguing that the district court erred by (1) denying his request for substitute counsel without determining whether exceptional circumstances existed to justify the substitution and (2) admitting evidence of his outstanding arrest warrants. We affirm.

FACTS

On April 5, 2007, Metro Transit Police Officer Richard Gizzi approached appellant Donald Staples, who was smoking a cigarette in the designated no-smoking area at the Mall of America transit station. Officer Gizzi directed Staples to extinguish the cigarette and asked for his identification. Staples complied with Officer Gizzi's requests. After learning from the police control center that Staples had three outstanding arrest warrants, Officer Gizzi arrested him.

When Officer Gizzi was placing Staples in handcuffs, Staples pulled away his right hand and asked Officer Gizzi for permission to put his medical card into his right front pants pocket. After denying Staples's request, Officer Gizzi handcuffed and transported Staples to the Bloomington police substation. Staples was placed in a holding cell and subsequently searched by Officer Mario Ruberto, who recovered a loaded handgun from Staples's right front pants pocket.

Staples is ineligible to possess a firearm because he was convicted in 1995 of fourth-degree assault. As a result, Staples was charged with unlawful possession of a firearm, a violation of Minn. Stat. § 624.713, subs. 1(b), 2(b) (2006). During pretrial

proceedings, Staples repeatedly informed the district court of his desire to retain private counsel. The district court granted Staples two continuances to permit him to do so. But after granting the second continuance, the district court advised Staples that, if he did not secure private counsel, he would have to proceed to trial either with his court-appointed counsel or pro se. Staples then complained about the failure of the public defender's office to investigate his case, and he inquired about the availability of substitute counsel if he could not secure private counsel. The district court advised Staples that the district court appoints the public defender's office, and he should address his concerns with his lawyer's supervisor. After another continuance, Staples, who was unable to secure private counsel, proceeded to trial with his court-appointed attorney.

At trial, the state elicited testimony that Staples had three outstanding arrest warrants when he was arrested. Staples stipulated to the 1995 conviction and admitted possessing the firearm. But Staples urged the jury to find him not guilty because, after being robbed at gunpoint in August 2005, he needed "to take measures to protect" himself. The jury returned a guilty verdict, and this appeal followed.

DECISION

I.

Staples contends that the district court abused its discretion by (1) failing to inquire into the circumstances leading to Staples's request for substitute counsel and (2) summarily denying his request for substitute counsel without determining whether exceptional circumstances existed to warrant the appointment of new counsel. Whether to grant a motion to substitute counsel rests within the sound discretion of the district

court. *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). Absent an abuse of discretion, the district court's decision will not be disturbed. *Id.*

The United States and Minnesota constitutions guarantee a defendant in a criminal case the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. 1, § 6. "This right includes a fair opportunity to secure counsel of [one's] own choice." *State v. Fagerstrom*, 286 Minn. 295, 298, 176 N.W.2d 261, 264 (1970). Although an indigent defendant has the right to appointed counsel at every stage of the criminal process, the defendant does not have "the unbridled right to be represented by counsel of his own choosing." *Id.* at 299, 176 N.W.2d at 264. Rather, an indigent defendant must accept the district court's appointee. *Id.* A defendant's request for a substitution of counsel will be granted only when exceptional circumstances exist, the demand is reasonable, and the request is timely. *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977). Exceptional circumstances are those that affect a public defender's "ability or competence to represent the client." *Gillam*, 629 N.W.2d at 449 (rejecting more stringent standard adopted in *United States v. Webster*, 84 F.3d 1056, 1062 (8th Cir. 1996)). Exceptional circumstances do not include a defendant's general dissatisfaction or disagreement with counsel's assessment of the case. *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998). Nor do exceptional circumstances include personal tension between the attorney and the client. *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999).

Although Staples argues that the district court erred by failing to inquire into the circumstances resulting in his request for new counsel, a "searching inquiry" is necessary only when a defendant makes *serious* allegations of inadequate representation prior to

trial. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). Our review of the record establishes that there is a dearth of evidence supporting the need for a searching inquiry by the district court in the instant case. Indeed, Staples first explained to the district court, “They just gave me this lawyer.” Because he planned to hire private counsel, Staples advised the district court, “I had told [appointed counsel] all the time, I really didn’t need you.” In response, the district court granted Staples a two-week continuance to secure private counsel.

Two weeks later, after Staples failed to retain private counsel, Staples raised for the first time the adequacy of his appointed counsel’s representation. The district court advised him to notify his appointed counsel’s supervisor of his concerns and granted Staples’s request for another two-week continuance to allow him to hire private counsel or to retain counsel through the Legal Rights Center. Two weeks later, at his next court appearance, Staples advised the district court, “I was over at Legal Rights and they’re pretty booked over there. So I’m ready to go to trial.”

At no time during that hearing, or during the subsequent period of nearly two months before trial commenced, did Staples complain about the effectiveness or adequacy of his court-appointed counsel. Although caselaw does not specify what a defendant must allege to necessitate a “searching inquiry,” on the record before us, we cannot conclude that the district court abused its discretion by declining to grant Staples’s request for substitute counsel.

II.

Staples next contends that the district court committed reversible error by admitting evidence of his prior criminal history. At trial, Officers Gizzi and Ruberto testified that Staples was arrested because he had three outstanding arrest warrants. The state later referred to the reason for Staples's arrest during closing argument. Staples did not object to this testimony or to the state's reference to the arrest warrants in closing argument.

Ordinarily, "[e]videntiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted). But when a defendant fails to object to the admission of evidence, we apply the plain-error standard. *See* Minn. R. Crim. P. 31.02. In doing so, we consider (1) whether there is an error, (2) whether such error is plain, and (3) whether it affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these three factors are established, we then consider whether the error seriously affected the fairness and integrity of the judicial proceedings. *Id.* (explaining that a court may exercise its discretion to correct a plain error only if such error seriously affected fairness, integrity, or public reputation of judicial proceedings).

An error is plain if it is "clear" or "obvious," *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002), or if it "contravenes case law, a rule, or a standard of conduct," *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Evidence of prior bad acts is "not

admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). But such evidence may be admitted for permissible purposes, such as to demonstrate “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* Evidence of existing arrest warrants constitutes evidence of prior bad acts. *See State v. Billstrom*, 276 Minn. 174, 177, 149 N.W.2d 281, 283 (1967) (stating that generally any evidence of unrelated crimes is inadmissible). And it is improper for a prosecutor to ask questions calculated to elicit or insinuate inadmissible and unfairly prejudicial answers. *See State v. Harris*, 521 N.W.2d 348, 354 (Minn. 1994).

We conclude, and the state does not dispute, that evidence regarding Staples’s outstanding arrest warrants was inadmissible under rule 404(b) because it is evidence of prior bad acts that is not admitted for a permissible purpose. Thus, the first two prongs of the plain-error test are satisfied.

We next consider whether this error affected Staples’s substantial rights. A plain error affects substantial rights if it is “prejudicial and affect[s] the outcome of the case.” *Griller*, 583 N.W.2d at 741. Here, we conclude that the erroneously admitted evidence did not affect the outcome of the case for at least three reasons. First, Staples testified that the outstanding warrants were for “a misdemeanor,” thereby mitigating the prejudicial effect. Second, Staples stipulated to the prior conviction, which made him ineligible to possess a firearm, and no evidence of that assault was admitted. And third, Staples admitted possessing the loaded firearm, making the evidence of Staples’s guilt

overwhelming. Reversal of Staples's conviction on this ground, therefore, is unwarranted.

Affirmed.