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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1815**

State of Minnesota,
Respondent,

vs.

Kristofer Adam Menth,
Appellant.

**Filed July 13, 2010
Affirmed
Stauber, Judge**

Wright County District Court
File No. 86CR079228

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Lee R. Martie, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

Robert D. Miller, Robert D. Miller & Associates, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Stauber, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of two counts of second-degree assault and two counts of third-degree assault, following a bench trial, appellant argues that the district court failed to obtain a valid waiver of his fundamental right to a jury trial under Minn. R. Crim. P. 26.01, subd. 1(2)(a). Because appellant's waiver of his right to a jury trial was knowing, voluntary, and intelligent, we affirm.

FACTS

In October 2007, appellant Kristofer Menth was charged with two counts of second-degree assault and two counts of third-degree assault. On the morning of the scheduled jury trial, appellant's attorney told the district court that appellant would waive the jury trial. Before the trial began, the district court confirmed appellant's waiver of a jury trial. The district court subsequently found appellant guilty of the charged offenses.

At the sentencing hearing, appellant moved for a new trial on the ground that his jury-trial waiver was not valid. The court denied the motion noting that appellant was questioned on multiple occasions, had experienced counsel, and "understood that the Court was going to try both the facts and the law and apply the law." This appeal followed.

DECISION

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a jury trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Minn. R. Crim. P. 26.01, subd. 1(2)(a), provides that a defendant may waive his right to a jury trial

personally, in writing, or orally on the record “after being advised by the court of the right to trial by jury and after having had an opportunity to consult with counsel.” The interpretation of the rules of criminal procedure is a question of law, which this court reviews de novo. *State v. Nerz*, 587 N.W.2d 23, 24-25 (Minn. 1998).

A defendant’s waiver of a jury trial must be knowingly, intelligently, and voluntarily made. *State v. Ross*, 472 N.W.2d 651, 653 (Minn. 1991). In accepting a waiver, the district court “should be satisfied that defendant was informed of his rights and that the waiver was voluntary.” *State v. Pietraszewski*, 283 N.W.2d 887, 890 (Minn. 1979). The entire record should be considered when evaluating whether the waiver was valid. *Id.*

Here, the record reflects that on the morning of the scheduled jury trial, appellant’s attorney told the district court that appellant would waive the jury trial. The following exchange then took place between the district court and appellant:

THE COURT: Is that your understanding, [appellant]?

THE DEFENDANT: Yes, ma’am.

THE COURT: So you understand, by waiving a jury trial, the trial will be to the Court alone and the Court will decide both facts and legal issues. Is that - -

THE DEFENDANT: Yes, ma’am.

THE COURT: Is that what you want to do?

THE DEFENDANT: Yes.

Before the trial began, the district court confirmed appellant’s waiver of a jury trial by asking him: “You were set for jury trial today and, [appellant], this morning you waived your right to have a jury trial and agreed to proceed by court trial; correct?” Appellant responded: “Yes, ma’am.”

Appellant argues that the district court's questioning of his jury trial waiver failed to provide a basis for its determination that the waiver was knowing and intelligent. Moreover, he argues that because of his lack of contact with the criminal-justice system, even when looking at the record as a whole, it cannot be deduced that he understood the basic elements of a jury trial.

There is no basic formula or set of questions that must be asked to show that a jury trial waiver is made voluntarily and intelligently. *See Ross*, 472 N.W.2d at 654 (“The nature and extent of the inquiry may vary with the circumstances of a particular case.”). While courts have noted that experience with the criminal-justice system supports the notion that the waiver was valid, they do so in the context of holding that the entire record is ultimately what determines whether the waiver was valid. *See id.* (noting, among several factors, that defendant had multiple criminal convictions); *Pietraszewski*, 283 N.W.2d at 890 (noting defendant's multiple court appearances and finding “sufficient evidence in the entire record” to support a valid waiver). “When defendant has counsel, it may be assumed that . . . important trial rights . . . are being protected.” *State v. Lang*, 432 N.W.2d 478, 480 (Minn. App. 1988); *see State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983) (“it is undisputed that the guilty plea was counseled, a fact that justifies the conclusion that counsel presumably advised defendant of his other rights”).

Here, the record reflects that appellant had no prior contact with the criminal-justice system. But the record also reflects that appellant's attorney was experienced in criminal law. Moreover, appellant had access to his attorney (1) before he waived his right to a jury trial and (2) between the morning hearing and the trial. Consequently, we

may presume that appellant discussed the waiver issue with his attorney. *See State v. Russell*, 306 Minn. 274, 275, 236 N.W.2d 612, 613 (1975) (stating that if a defendant had a full opportunity to consult with counsel before entering a plea, the court “may safely presume that counsel informed him adequately concerning the nature and elements of the offense”). Finally, appellant’s intent to waive the jury trial was confirmed on two separate occasions. *See State v. Johnson*, 354 N.W.2d 541, 543 (Minn. App. 1984) (noting that defendant’s right to a jury trial was explained to him on two occasions and he had the ability to withdraw his waiver at trial). Therefore, we conclude that appellant’s waiver of his right to a jury trial was knowing, voluntary, and intelligent.

Affirmed.