STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0556

State of Minnesota,
Respondent,

vs.

Cohen James Curfman,
Appellant.

Filed May 5, 2014
Affirmed
Toussaint, Judge[*]

Polk County District Court
File No. 60-CR-12-2076

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

Gregory A. Widseth, Polk County Attorney, Andrew W. Johnson, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Smith, Judge; and Toussaint, Judge.

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

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

TOUSSAINT, Judge

Following his jury trial, Cohen Curfman appeals his convictions for misdemeanor obstruction of the legal process—interference with a peace officer and contempt of court. Curfman contends that his right to due process was violated because the court did not inquire into Curfman's competency and it abused its discretion when it denied Curfman a continuance to substitute counsel. Because these arguments contain no basis for reversal, we affirm Curfman's convictions.

D E C I S I O N

I. Competency Evaluation

Curfman contends that his due process rights were violated when the district court failed to order a competency evaluation under Minnesota Rule of Criminal Procedure 20.01, relying on the pretrial colloquies and subsequent discharge of his public defender to support his claim. A defendant has a due process right not to stand trial if he is incompetent. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011). The legal standard for competence to waive counsel is the same standard for competence to stand trial. *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). Because the evidence relevant to Curfman's competency is not disputed, we "review the record to determine whether [the district court] gave proper weight to the information suggesting incompetence in concluding that there was not sufficient doubt of the defendant's fitness to stand trial." *State v. Bauer*, 310 Minn. 103, 117, 245 N.W.2d 848, 856 (1976) (quotation omitted).

The Minnesota Rules of Criminal Procedure require that whenever the district court determines that "reason exists to doubt the defendant's competency," it must order an examination of the defendant's mental condition. Minn. R. Crim. P. 20.01, subd. 3. The inquiry "is not whether the defendant was competent to stand trial or whether he was denied his right to counsel, but only whether the trial court, in fulfilling its protective duty, should have conducted further inquiry into these important matters." *Bauer*, 310 Minn. at 108, 245 N.W.2d at 852. The need for further inquiry "depends entirely on the surrounding circumstances." *Bonga*, 797 N.W.2d at 720.

Courts may consider a number of factors in determining whether further examination of a defendant's competency is required. *Bauer*, 310 Minn. at 116, 245 N.W.2d at 855. These factors include the defendant's demeanor at trial, his irrational behavior, and "any prior medical opinion on [his] competence to stand trial." *Id.*

Curfman claims that the district court should have ordered a competency evaluation sua sponte due to his repeated requests to discharge his public defender and his submission of an affidavit declaring his sovereign rights. We disagree. First, even though the district court did ask the state whether it had any "concerns in the Rule 20 world," this single reference to rule 20 was the extent of the district court or counsels' doubt surrounding Curfman's competency. Presumably no other competency-related questions were raised because the record indicates that the only basis for a rule 20.01 evaluation would be Curfman's beliefs regarding his "sovereign rights held by envisionous power." And although Curfman told the district court that he did not understand the court's questions at a pretrial hearing, when this response is read in

context with the subsequent hearings, the record indicates that Curfman could comprehend, appreciate, and understand the district court's questions, the proceedings, and the consequences of discharging his court-appointed counsel. *See* Minn. R. Crim. P. 20.01, subd. 1 (enumerating six circumstances in which a defendant is not competent to waive counsel).

Second, based on the surrounding circumstances, further examination of Curfman's competence prior to trial would not have revealed a need for a rule 20.01 evaluation. The record reflects that Curfman had no mental or medical ailments that would hinder his ability to rationally consult with an attorney. Moreover, after the district court gave Curfman time to evaluate and speak with his public defender regarding his decision to discharge his counsel, his public defender informed the district court that:

> Your Honor, I did have [an] opportunity to speak with Mr. Curfman and he can correct me if I'm wrong, but I believe he's got a particular belief system now that would not allow him to be represented by the Public Defender's Office. It's my understanding that he would like to discharge our office. He does understand that that means that he would not get a different public defender. Ah, and also there's an argument that he would not receive a public defender if he requested it subsequently. He understands that. He will be representing himself. Ah, it's my understanding he would likely consult with other likeminded individuals, but he would not be retaining a licensed attorney to represent him in this matter.

Thus, we are satisfied that the district court adequately considered the surrounding circumstances and did not abuse its discretion by not, on its own initiative, suspending the pre-trial proceedings and initiating a competency evaluation.

II. Continuance Denial

Curfman next argues that the district court abused its discretion when it denied Curfman's request for a continuance to obtain substitute counsel. A defendant's right to the assistance of counsel includes a fair opportunity to secure an attorney of the defendant's choice. *State v. Fagerstrom*, 286 Minn. 295, 298, 176 N.W.2d 261, 264 (1970); U.S. Const. Amend. VI; Minn. Const. art. 1, § 6.

A district court's denial of a continuance to allow a defendant to retain new counsel is reviewed for an abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987). The decision whether to grant a request for substitute counsel is also within the district court's discretion. *State v. Clark*, 722 N.W.2d 460, 464 (Minn. 2006). "The reviewing court must examine the circumstances before the [district] court at the time the motion [for a continuance] was made to determine whether the [district] court's decision prejudiced [the] defendant by materially affecting the outcome of the trial." *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980).

Consideration of the facts and circumstances surrounding a district court's denial of a continuance generally focus on the timeliness of the request and the diligence of the defendant in obtaining new counsel. *See, e.g., State v. Johnson*, 417 N.W.2d 143, 145 (Minn. App. 1987) (concluding appellant had ample opportunity to hire private counsel in four months between arrest and trial). A continuance is likely to be denied when the motion is brought close to trial, absent unforeseen circumstances. *State v. Ahearn*, 292 Minn. 449, 449, 194 N.W.2d 256, 256 (1972). Because the right to counsel must be balanced against the public interest in maintaining an efficient judicial system, a

defendant's motion for a continuance to obtain counsel is properly denied when the defendant has not been diligent in obtaining counsel or preparing for trial. *State v. Courtney*, 696 N.W.2d 73, 82 (Minn. 2005); *see also Fagerstrom*, 286 Minn. at 299, 176 N.W.2d at 264 (stating that "[a] defendant may not obtain a continuance by discharging his counsel for purposes of delay or by arbitrarily choosing to substitute counsel at the time of trial").

Generally, a motion for a continuance must be made in writing and supported by affidavits or substantial reasons supporting the continuance. *O'Neil v. Dux*, 257 Minn. 383, 387, 101 N.W.2d 588, 591-92 (1960). And the general rules of practice for Minnesota district court require that "[i]n any criminal case, a lawyer representing a client, other than a public defender, shall file with the court administrator on the first appearance a 'certificate of representation,' in such form and substance as a majority of judges in the district specifies." Minn. R. Gen. Pract. 703.

Curfman requested a continuance in order to substitute counsel on December 7, 2012, just a few days before the scheduled December 11, 2012 trial date. This was after he discharged his public defender on November 20, 2012. On the morning of the trial, the district court explained to Curfman that because Curfman's attorney had not filed a certificate of representation or any notice of appearance, the district court would treat Curfman as a pro se defendant. Furthermore, the district court would have taken "more credence" to Curfman's motion for a continuance if Curfman's attorney had filed "a Notice of Appearance or a Notice of Representation."

In addition to requesting substitute counsel only four days before trial, the district court highlighted the fact that Curfman, at the November 19th and 20th hearings, made demands for a speedy trial and these demands were the basis for the expedited December 11th trial date. Moreover, at the November 30th hearing, Curfman renewed his request for a speedy trial and made no indication that he was seeking private counsel. At the conclusion of the hearing, the district court gave Curfman a court calendar and stated, "You don't have counsel anymore, so we'll expect you to be ready to go on these cases when they are called, okay. All right, well good luck to you, sir."

Reviewing courts also consider whether a defendant was prejudiced by the district court's denial of his continuance to the extent that it materially affected the outcome of the trial. *State v. Vance*, 254 N.W.2d 353, 358-59 (Minn. 1977). Curfman does not argue how he was prejudiced by the denial of his continuance. Rather, he claims that his request for a continuance "would not have unduly delayed the proceeding."

Arguably, Curfman was prejudiced by the fact that he had to proceed pro se at trial. But this was an informed and intentional decision that Curfman made when he discharged his public defender. *See Camacho*, 561 N.W.2d at 170 ("The Sixth and Fourteenth Amendments guarantee a criminal defendant the right to counsel and, reciprocally, the right of self-representation."). In conclusion, balancing Curfman's right to counsel of his choice—or lack of counsel—against the public interest in maintaining an efficient judicial system, the district court did not abuse its discretion in denying Curfman's motion for a continuance.

Affirmed.