

IN THE COURT OF APPEALS OF IOWA

No. 2-701 / 11-0669
Filed October 3, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JACK LEONARD HAYS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Jack Hays appeals from the judgment and sentence following his convictions for burglary in the first degree and three counts of sexual abuse in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Jack Leonard Hays, Fort Madison, appellant pro se.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, John Sarcone, County Attorney, and Jeff Noble and Frank Severino, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

Jack Hays appeals from the judgment and sentence following his convictions for burglary in the first degree and three counts of sexual abuse in the second degree. He contends the district court failed to consider his competency to represent himself, that his waiver of counsel was not knowing and voluntary, and that his sentence constituted cruel and unusual punishment. He also appeals twelve pro se claims. We affirm.

I. Facts and Proceedings

On September 27, 2009, Jack Hays broke into the home of his wife's best friend, Fran Brazzle, cutting his arm in the process. He proceeded to repeatedly choke and rape Brazzle for three hours—orally, vaginally, and anally. After Hays left, Brazzle called relatives and friends and told them what had just occurred. Eventually she called the police, who took samples from the scene and transported her to the emergency room. Brazzle was evaluated by a sexual assault nurse, and samples were taken from her fingernails, arm, mouth, vagina, and anus. She identified Hays as her attacker.

Police brought Hays to the station for questioning. He had a deep cut to his right forearm and scratches on his chest. He provided a buccal swab for DNA testing. Analysis showed his DNA matched blood on Brazzle's bedding and on her arm to a statistical factor of one in 100 billion. The swab from Brazzle's mouth screened positive for seminal fluid and, assuming her own DNA was on the swab, the remaining DNA matched Hays to one in 100 billion. Hays was also a one in 320 match for DNA recovered from Brazzle's fingernail clippings. Hays' blood was also present on a red cell phone left in Brazzle's bedroom. The cell

phone appeared from its contents to belong to Hays. Brazzle died a few months following her assault of an accidental prescription medication overdose.

Trial information was filed November 4, 2009, charging Hays with three counts of sex abuse in the second degree, kidnapping in the first degree, and burglary in the first degree. On December 10, 2009, Hays filed a pro se motion to dismiss based on the circumstances of his arrest, mental illness, and substance abuse. On December 11, 2009, the court ordered a competency evaluation.

The results of this evaluation showed Hays' mental status to be "entirely within normal limits [with] . . . no impairment of his ability to concentrate, no impairment of his ability to think abstractly, and no impairment of immediate recall." Hays then filed a motion to dismiss counsel and for permission to proceed pro se on December 15, 2009, citing the Sixth Amendment and *State v. Cooley*, 608 N.W.2d 9 (Iowa 2000). At a hearing on the competency evaluation and motion to dismiss counsel, the court found Hays competent to stand trial. The court then engaged Hays in a lengthy colloquy regarding his decision to proceed pro se. Hays informed the judge he had an associate degree in paralegal study, had represented himself numerous times before, and had a stable mental state. The court found Hays willingly, intelligently, and voluntarily decided to represent himself and granted his request to proceed pro se.

On January 14, 2010, the court again discussed with Hays his decision to represent himself and found again that he had knowingly and intelligently waived his right to counsel. The court also considered Hays' numerous motions filed pro se: a motion to suppress the red cell phone, motion for change of venue, motion

for expert witness and investigator, motion to dismiss, motion to strike, motion in limine, motion to take judicial notice, motion for reciprocal discovery and request for other discovery items, motion to strike State's brief and resistance to his motion to suppress, and motion to strike testimony. On January 21, he filed a waiver of speedy trial. On January 27, he filed an objection to expanded media coverage. On January 31, he again filed a motion to dismiss based on claimed defects in the initiation of prosecution. On February 2, he filed a motion to continue and reschedule evidentiary hearing and other proposed orders. On February 5, he requested reinstatement of his speedy trial rights and filed a motion for protective order. On February 10, he drafted a seven-page legal memorandum to support several other motions. Throughout these myriad motions and in the hearings regarding them, Hays cited case law and rules of evidence and procedure.

On February 11, the court ruled on the State's motion for the appointment of standby counsel. The court found that while Hays had knowingly, intelligently, and voluntarily waived his right to counsel, that standby counsel should be appointed. On February 17, Hays filed a motion for necessary resources and requested the court to dismiss his standby counsel and to appoint co-counsel. On February 16, he sought to have the State's attorneys removed. On February 25, the State moved to terminate Hays' self-representation, alleging he had engaged in misconduct aimed to subvert the judicial process.

On March 3, Hays filed a request for judicial notice, reply to resistance to motion for necessary resources, request for co-counsel, and a reply to resistance to amendment to motions to dismiss and suppress. On March 10, he filed an

affidavit, a motion to cease and desist, and a motion for protective order. On March 17, he filed a request for an injunction and another legal memorandum supporting his motions. On March 23, he again waived his right to a speedy trial and requested a continuance. On March 22, another hearing was held on the motions. On April 23, Hays filed another memorandum. On May 26, he filed a motion for order nunc pro tunc. On July 21, he filed a waiver of one-year speedy trial and requested a continuance as well as a motion to suspend rulings on his prior motions. Throughout, the court authorized payments to a court-appointed investigator billed for work on behalf of Hays. Further, the court granted Hays an mp3 player to view discovery documents and listen to recordings which would normally be produced on compact disks.

On August 5, the court again held a hearing on these motions. On August 6, Hays filed a motion for continuance and a motion for necessary resources. On August 11, he filed a response to the State's resistance to his motion to continue, an amendment to the motion, a motion for re consideration, and habeus corpus. On August 18, he filed a motion for continuance of trial date requesting he be appointed co-counsel. On August 20, a hearing was held on this along with other motions and his motion for continuance was denied. On August 23, Hays filed an amendment to the prior motions and a motion to reconsider continuance. At an August 27 hearing on the motion to continue and appoint counsel, the court granted a continuance of the trial and appointed Hays's standby counsel as counsel of record. During the hearing, the State resisted, speculating that the appointment of his counsel was a ruse to delay the proceedings scheduled for the following Monday. That day Hays filed a waiver of right to self-representation

and another waiver of speedy trial rights, agreeing not to revoke his waiver of self-representation. Trial was continued.

On September 17, Hays filed a motion to dismiss counsel and invoke self-representation once more. After a hearing, the court denied his motion to dismiss counsel. Hays again filed a motion to invoke self-representation and dismiss counsel on September 22. He filed an affidavit in support of this motion on October 12, and an amendment to the motion on October 13. He claimed he was forced to waive his right of self-representation. Hearing on his request to revoke counsel again was denied. He filed a motion to dismiss on November 14 based on not being allowed to re-invoke his right to self-representation. On December 29, he filed a motion for psychiatric evaluation, contending the evaluation done by the state-selected psychiatrist was insufficient.

On January 5, 2011—five days before trial was re-scheduled to begin—Hays again filed a motion to dismiss the charges and waive assistance of counsel, along with a motion for change of judge. He had filed an action against his counsel, which created a conflict of interest. The morning of the proceedings, Hays dug a pencil into his eye after taping a suicide note to his door at the jail. When the jail warden came to his room, Hays cried that he could not go to court because they would not let him represent himself. At a hearing that morning, Hays' counsel was able to obtain a two-week continuance so another competency evaluation could be conducted.

In his second competency evaluation dated January 13, the defense-selected psychologist found Hays demonstrated “an excellent understanding of the legal process and the types of briefs that are expected during court

proceedings.” The evaluator also noted Hays was fit to stand trial, and that though Hays “ha[d] a difficult relationship with his attorney it [was] based on anger and denial of his offense more than any delusional processes.” On January 14, the court granted Hays’s motion to remove defense counsel, finding the conflict of interest between Hays and his attorney was “antagonistic and potentially harmful.” The court once again engaged Hays in an extended colloquy regarding his understanding of the charges against him and the knowing, voluntary, and intelligent nature of his waiver of counsel. In addition, the court appointed a public defender as his standby counsel. On January 24, Hays filed another motion for necessary resources, reinstating his prior granted requests regarding time in the jail law library, his investigator, discovery files in paper and on the court-provided mp3 player, and blank subpoenas.

On January 27, the State filed an offer of proof to support a motion to terminate self-representation including examples of Hays’s ongoing misconduct and attempts to subvert the judicial process. This included soliciting perjured testimony and instructions to a witness to go to the emergency room instead of appearing pursuant to the State’s subpoena. The case went to trial January 31, 2011; Hays asked questions in voir dire and on cross-examination. He also delivered closing argument.

The jury found Hays guilty of three counts of sexual abuse in the second degree and one count of burglary. Prior to sentencing, Hays filed a pro se motion for new trial and motion in arrest of judgment. Hays was sentenced to life in prison without possibility of parole for all three sexual abuse counts and an indeterminate term of imprisonment not to exceed twenty-five years for burglary

in the first degree. The court ordered the sentences to be served consecutively and imposed special sentences of lifetime parole on the sex abuse counts. Hays now appeals.

II. Analysis

On appeal, Hays contends the trial court erred in failing to consider whether he was competent to represent himself, as well as competent to stand trial. He next argues that a knowing and voluntary waiver of the right to counsel should include a requirement that the court disclose that a pro se defendant has limited access to legal resources. Third, Hays asserts the district court imposed an illegal sentence when it sentenced him to life without parole for second or subsequent sexual offense. In his pro se brief, Hays also appeals the denial of his many different pre-trial and post-trial motions, also alleging the cumulative effect of the denials of his motions was to deny him various constitutional rights.

A. Consideration of Competency to Represent Self

We review the waiver of the constitutional right to counsel and the assertion of the right to self-representation de novo. *Cooley*, 608 N.W.2d at 13. Hays contends the district court's inquiry was insufficient as it solely determined whether he was competent to stand trial, not to conduct trial proceedings.

"A defendant has a Sixth and Fourteenth Amendment right to self-representation under the United States Constitution." *Id.* at 14 (citing *Faretta v. California*, 422 U.S. 806, 807 (1975)). The right to self-representation is invoked where a defendant makes the decision to do so knowingly, voluntarily and intelligently, after a searching or formal inquiry. *Id.* at 15. "A waiver is made knowingly when the accused is apprised of the factors delineated above,

admonished as to the usefulness of an attorney at that particular proceeding, and made cognizant of the danger in continuing without counsel.” *Id.*

The right to represent oneself is not absolute; the court must investigate whether the defendant is properly competent to represent himself. *Indiana v. Edwards*, 554 U.S. 164, 177 (2008). Competency to stand trial and competency to self-represent are governed by two different standards. *Id.* at 175. Some defendants may fall into a grey area between the mental ability to stand trial and fitness to represent themselves. *State v. Jason*, 779 N.W.2d 66, 75–76 (Iowa Ct. App. 2009). “[T]he trial judge . . . will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant.” *Edwards*, 554 U.S. at 177.

We find the district court here considered Hays’s competency to self-represent and ruled correctly in finding Hays competent to represent himself. Both competency evaluations of Hays found that while he was being treated for depression, his depression was mild and perhaps “appropriate.” Further, the second evaluation by the defense-selected psychologist found Hays had “an excellent understanding of the legal process and the types of briefs that are expected during court proceedings.” This expert opinion was corroborated by Hays’ conduct of his defense to that point. The district court was therefore correct in allowing Hays to proceed pro se given his “individualized circumstances.” *See id.* Certainly it is not required that Hays be as versed in the law as an attorney. While the record reflects many instances which demonstrate misunderstandings about the law on Hays’s part, the record also contains a broad range of examples of Hays’s awareness of legal principles and precedent.

To be certain an assertion of the right to self-representation is informed, the court was required to, and did, admonish Hays as to the wisdom of retaining counsel. See *Cooley*, 608 N.W.2d at 14. We therefore find the court properly considered Hays' competency to represent himself.

B. Knowing and Voluntary Waiver of Right to Counsel

Hays next contends that his waiver of his right to counsel was not knowing and voluntary as he was not apprised of the potentially limited access to legal resources. Once again, as this is a constitutional issue our review is de novo. *Id.* at 13.

Nothing in our assistance-of-counsel jurisprudence currently requires notice to an incarcerated defendant that his access to legal resources may be limited by the logistics of his detention. See *id.* at 15–18; see also *Hannan v. State*, 732 N.W.2d 45, 52–54 (Iowa 2007). A waiver of the right to assistance of counsel must be knowing, voluntary, and intelligent. *Hannan*, 732 N.W.2d at 52. To ensure this, the court must include in its colloquy sufficient warnings about the dangers and disadvantages of waiving the right to counsel. *Id.* at 53. This requires the defendant be “admonished as to the usefulness of an attorney at that particular proceeding, and made cognizant of the danger in continuing without counsel.” *Id.*

While “[t]he purpose of a colloquy is to provide fair notice of the obstacles inherent in self-representation before an accused embarks on so perilous an endeavor,” our courts have never held a specific notification regarding access to legal resources is required. See *Cooley*, 608 N.W.2d at 15. In fact, the United States Supreme Court in its review of the Iowa Supreme Court’s decision in *State*

v. Tovar, 656 N.W.2d 112 (2003), concluded more specific admonishments were unnecessary under the Sixth Amendment. *Iowa v. Tovar*, 541 U.S.77, 92 (2004).

The Court stated:

The law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it. We similarly observed in *Patterson*: “If [the defendant] . . . lacked a full and complete appreciation of all of the consequences flowing from his waiver, it does not defeat the State’s showing that the information it provided to him satisfied the constitutional minimum. The Iowa Supreme Court gave insufficient consideration to these guiding decisions. In prescribing scripted admonitions and holding them necessary in every guilty plea instance, we further note, the Iowa high court overlooked our observations that the information a defendant must have to waive counsel intelligently will “depend, in each case, upon the particular facts and circumstances surrounding that case[.]”

Id. (internal citations omitted). There is nothing in the Iowa Supreme Court’s subsequent opinions that demonstrate the Iowa constitution should not be interpreted similarly. See *e.g.*, *Hannan*, 732 N.W.2d at 52 (applying Sixth Amendment analysis to challenge brought under both Iowa and federal constitutions). As such, we decline to extend these requirements here.

Further, failure to advise Hays that he would not have unfettered access to legal resources if he proceeded pro se certainly did not render his waiver of right to counsel unknowing, involuntary, or unintelligent. See *id.* (“The surrounding circumstances will determine the sufficiency of a colloquy.”). The district court advised Hays numerous times during the fifteen months of pre-trial proceedings that he would be best suited with representation by an individual better acquainted with the law, and that he would have to understand several code

sections and the applicable rules. Hays noted during the first colloquy that he had represented himself pro se in the past and would have to write all motions by hand as the jail limits access to resources. At the time of the first colloquy, Hays had already drafted four other motions. For these motions it appeared he already had familiarity with the jail's legal research system, as he provided multiple citations to case law in support of them. Hays was experienced in the difficulties of preparation of legal documents while in jail, asked for and received multiple accommodations, and clearly knew the complexities in representing himself.

In addition, Hays waived his right to counsel not once, but twice. Both times the judge conducted a colloquy in accordance with *Cooley*, 608 N.W.2d at 15. The second time, Hays was certainly apprised of the limitations regarding legal research while in jail—he had already filed several motions for necessary resources and noted the limited access to the jail's legal library. As such, we cannot find that failure to warn Hays his access to legal resources would be limited rendered his waiver of assistance unknowing, unintelligent, or involuntary.

C. Cruel and Unusual Punishment

Hays next makes a facial challenge to the constitutionality of section 902.14 of the Iowa Code in the context of an illegal sentence. The issue is preserved for our review. *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009). We review the constitutional attack on the legality of a sentence de novo. *Id.*

Our supreme court in *State v. Oliver*, 812 N.W.2d 636 (2012), recently considered the issue of whether section 902.14 is constitutional on its face. There, our supreme court applied the federal cruel and unusual punishment

framework under *Graham v. Florida*, considering the national consensus as well as our state treatment regarding claims of cruel and unusual punishment. *Oliver*, 812 N.W.2d at 641 (citing *Graham v. Florida*, 130 S. Ct. 2011 (2010)). The court's thorough analysis included the arguments petitioner now raises regarding disproportionate sentencing in more sympathetic hypothetical scenarios. After extensive consideration, the court concluded the legislature provided for sufficient safeguards and that the statute was constitutional on its face. *Id.* at 647. As such, we cannot now find Iowa Code section 902.14 is unconstitutional on its face.

Further, the sentence is constitutional as applied to Hays. The threshold analysis of whether a sentence is constitutional as-applied is "whether a defendant's sentence leads to an inference of gross disproportionality." *Id.* Hays was convicted of three counts of sexual abuse in this case, and previously had been convicted of third-degree sex abuse. His criminal history includes convictions for burglary, OWI, going armed with intent, felon in possession of a firearm, violations of no contact orders, harassment, and sex offender registry violations. This demonstrates "an inability to conform his conduct to the law." See *id.* at 653. Given the legislature's strong interest in preventing recidivism and the particular circumstances of Hays' offense and criminal record, we cannot find the punishment to be grossly disproportionate.

D. Pro Se Claims

1. Error preservation

In his motion in arrest of judgment, Hays asserts he is "actually innocent and the prosecution is guilty of gross misconduct" in violation of various

constitutional rights; that he suffered from mental illness rendering him incompetent to stand trial; that he was illegally arrested; that the prosecution was vindictive; that he was denied the right to confront his accuser and protection of the rules of evidence; prosecutorial misconduct; and denial of his motion for change of venue. The motion for new trial was based on similar grounds, including that the weight of the evidence was not sufficient for the guilty verdict; he claims actual innocence; he reasserts the grounds for his motions for judgment of acquittal; the jury received evidence and other information not authorized by the court; the court misdirected the jury; the prosecutors committed misconduct; the verdict is contrary to the law and evidence; the court refused to properly instruct the jury; new evidence was discovered; vindictive prosecution; prejudice due to press coverage; inappropriate pressure; inadequate amount of time to prepare for trial; denial of constitutional rights due to who he is; and general claims that he was denied constitutional rights.

2. Cumulative errors

In the first portion of his brief, Hays cites several provisions of the Iowa and United States constitutions he believes were violated before and during his trial. These claims seem to rest on procedural errors explored more fully in the specific error portions of his brief. We discuss these below, finding no error was committed in the individual claims, and thus no error can be found in aggregate. To the extent the issues raised were intended to touch on other subjects, these arguments are not properly developed for our review. See Iowa R. App. P. 6.903(2)(g)(3).

3. Expanded Media Coverage

Hays next contends he was denied his right to a fair trial when the district court erred in allowing expanded media coverage and denied his motion for change of venue. Our court rules state: “Expanded media coverage of a proceeding shall be permitted, unless the judge concludes, for reasons stated on the record, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial.” We review challenges to expanded media coverage based on constitutional rights de novo. *State v. Douglas*, 485 N.W.2d 619, 623 (Iowa 1992). We will only overturn where there is a “showing of prejudice of constitutional dimensions.” *Id.* at 625. No such prejudice occurred here, and thus we affirm the district court’s denial of Hays motions.

4. Denial of Motion for Change of Venue.

We review a district court’s denial of a motion for change of venue de novo, but will reverse only upon a showing the district court abused its discretion in failing to move the trial. *State v. Evans*, 671 N.W.2d 720, 726 (Iowa 2003). The defendant must show either actual prejudice or that the publicity surrounding the trial was so pervasive that prejudice must be presumed. *Id.* Upon our de novo review of the record, we cannot find sufficient pervasiveness of publicity as to presume prejudice. Further, the district court adequately considered Hays’ request for a change of venue and found the voir dire process sufficient to protect Hays from prejudice. We find no prejudice and no abuse of discretion, and therefore affirm the district court on this issue.

5. Motion to Dismiss, Motion for Judgment of Acquittal, Motion for New Trial and Motion in Arrest of Judgment

Hays contends the district court erred in not granting his motions to dismiss, among others, on speedy trial and sufficiency of evidence grounds. We note Hays waived his right to a speedy trial, and requested several continuances himself—some of which were granted. We therefore cannot find the district court erred in not dismissing the charges on speedy trial grounds.

We review sufficiency of the evidence claims for the correction of errors at law; the finding of guilt is binding on us if supported by substantial evidence. The evidence against Hays—especially the DNA evidence—was overwhelming. We therefore affirm the district court’s ruling on this issue.

6. Prosecutorial Misconduct

The initial requirement for a due process claim based on prosecutorial misconduct is proof of misconduct. . . . The second required element is proof the misconduct resulted in prejudice to such an extent that the defendant was denied a fair trial. Thus, it is the prejudice resulting from misconduct, not the misconduct itself, that entitles a defendant to a new trial.

State v. Graves, 668 N.W.2d 860, 869 (Iowa 2003). Hays points to various instances of the prosecution’s behavior which he alleges constituted misconduct. These include the prosecutor’s communication with his wife and brother, that he was singled out for not taking a plea bargain, and that a particular comment in closing regarding a voice calling from the grave inflamed the passions of the jury. Whether or not any of this behavior in fact constituted misconduct, we cannot find, nor does the defendant point to, any prejudice which would result in the denial of a right to fair trial. We therefore affirm the district court finding no prosecutorial misconduct occurred here.

7. Hearsay and Confrontation

We review the district court's evidentiary rulings for abuse of discretion, and claims involving the confrontation clause *de novo*. *State v. Harper*, 770 N.W.2d 316, 319 (Iowa 2009). Hays challenges the admissibility of statements made by the victim in this case. We find the district court properly determined her statements to the state's witnesses were excited utterances made just following the attack. See *id.* at 319–20. We also find the victim's statements to her social worker were properly admissible for the diagnosis of treatment or emotional trauma. See *State v. Hildreth*, 582 N.W.2d 167, 169 (Iowa 1998).

The district court also properly determined Hays' confrontation clause rights were not violated by admittance of the victim's statements to first responders and her social worker. See *Harper*, 770 N.W.2d at 322 (noting statements to first responders found nontestimonial and finding statements to medical professionals for purposes of diagnosis nontestimonial). We affirm the district court regarding the admissibility of the victim's statements.

8. Competence

We have previously discussed Hays' competence to represent himself. We believe the district court also fully and accurately considered the grounds for finding Hays competent to stand trial. We thus affirm the district court's ruling without further discussion. Iowa R. App. P. 6.903(2)(g)(1).

9. Impartiality of Trial Judge

Hays next asserts the trial court was not impartial and thus he was denied a fair trial. Upon our *de novo* review of the record, we find this allegation unsupported. The court correctly admonished Hays regarding the providence of

proceeding with an attorney, and that he would be held to the same requirements in the courtroom as an attorney. The court may have employed pointed words for the parties during proceedings regarding their behavior. Hays has not demonstrated the trial court demonstrated any bias, much less that such partiality would rise to the level of denying him the right to a fair trial. *See State v. Veal*, 564 N.W.2d 797, 812 (Iowa 1997), *overruled on other grounds by State v. Hallum*, 585 N.W. 2d 249 (Iowa 1998).

10. Prior Bad Acts

We review a district court's evidentiary rulings regarding admission of prior bad acts for abuse of discretion. *State v. Reynolds*, 765 N.W.2d 283, 288 (Iowa 2009). Even if an abuse of discretion occurred, reversal is not warranted if the error was harmless. *Id.* Hays argues that a recording admitted into evidence contained information of prior bad acts. Upon our review of the trial transcript, it appears Hays offered the unredacted version of the recording into evidence. Two versions of the exhibit were available, and Hays chose the one with the additional statements on it to be submitted to the jury. We cannot fault the trial court in honoring his choice.

11. Search and Seizure

Hays contends the evidence used against him was seized illegally. He states his arrest in his home after the victim called 911 did not constitute exigent circumstances. Looking at the record as a whole, we find the seriousness of the crime, concern for the safety of Hays (as he lost a significant amount of blood at the scene), concern for his wife, and concern for the destruction of evidence

including bloody clothes sufficiently constituted exigent circumstances for his warrantless arrest. See *State v. Lovig*, 675 N.W.2d 557, 565–66 (Iowa 2004).

In addition, we find the district court carefully considered the execution of a search warrant at Hays' wife's apartment, that the State returned the seized evidence, and that such evidence was not admitted at trial. As such, no error was committed. *State v. Lane*, 726 N.W.2d 371, 380 (Iowa 2007) (noting remedy for fruit of poisonous search is exclusion of evidence).

12. Right to Self-Representation

We have previously discussed Hays's right to representation. As explored above, we find the trial court properly considered and honored Hays's constitutional right to represent himself at trial. The court correctly appointed available standby counsel for Hays as he was unable to afford to pay for a lawyer of his choice. See *United States v. Gonzales-Lopez*, 548 U.S.140, 151 (2006).

AFFIRMED.