STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1383

State of Minnesota,
Respondent,

vs.

Cory Donta Edwards,
Appellant.

Filed June 10, 2013
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-CR-11-34403

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Chutich, Judge; and Kirk, Judge.

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

CHUTICH, Judge

Appellant Cory Donta Edwards challenges his convictions of attempted first-degree murder, attempted second-degree murder, first-degree assault, and first-degree

aggravated robbery. Edwards argues that he is entitled to a new trial because (1) the state improperly used peremptory challenges to remove two members of the jury panel based on their race, (2) the prosecutor committed misconduct by improperly shifting the burden of proof to Edwards, and (3) the district court proceedings violated his right to a speedy trial. Because these arguments are without merit, we affirm the convictions.

FACTS

On October 26, 2011, W.J. was robbed and shot point-blank several times by a man he later identified as Edwards. W.J. and Edwards were acquainted before the shooting and W.J. knew Edwards by his street name, "Shorty C." On that day, Edwards asked W.J. to drive him to an intersection in Minneapolis so Edwards could meet a friend. When they arrived, Edwards's friend was across the street in a champagne- or gold-colored sports utility vehicle (SUV). Because "something didn't feel right" to W.J., he wrote down the SUV's license-plate number and later gave it to the police.

W.J. testified that Edwards got out of W.J.'s GMC Yukon and turned around, pointing a handgun at W.J., who was still sitting in the driver's seat. Edwards demanded money, and W.J. gave Edwards everything he had, about $550. Edwards then "just started shooting." W.J. balled up to shield himself, and took several bullets in the arms and torso. After Edwards stopped shooting, he jumped into the other SUV, which quickly drove away.

Severely injured and bleeding, W.J. crawled out of the Yukon where a passerby saw him and called 911. When help arrived, a police officer asked W.J. who shot him and he responded, "Cory Williams, Cory Williams shot me." The day after the shooting,

W.J. told police that "Shorty C" was the man who shot him. Police showed W.J. a photo lineup, and he "quickly and . . . positive[ly]" identified Edwards as the shooter. W.J. suffered severe injuries but ultimately survived.

At trial, W.J. testified that he was mistaken about the shooter's last name on the day of the shooting, and that it was Cory Edwards, not Cory Williams, who shot him. He explained that "I [told the officer] Cory Williams but I just remembered his last name [began] with W, and . . . Williams came to my head, but it was Edwards." At trial, he testified, "There is no doubt in my mind that Shorty C shot me," and identified Edwards as Shorty C.

Other trial testimony from law enforcement and crime-lab employees corroborated W.J.'s testimony that Edwards was the shooter. With the license-plate number of the SUV that W.J. wrote down, officers determined that the getaway vehicle was a silver GMC Jimmy registered to a man named C.O. C.O.'s ex-girlfriend testified that C.O. was friends with Edwards and that she had met Shorty C (whom she identified in the courtroom as Edwards) on two occasions at C.O.'s barber shop. In addition, forensic investigation revealed the presence of Edwards's fingerprints in W.J.'s Yukon. Edwards chose not to testify at trial, and the defense did not present any witnesses.

The jury found Edwards guilty of all four charges and the district court sentenced him to 220 months in prison. Edwards appealed.

D E C I S I O N

I. *Batson* Challenge

Edwards first challenges the state's use of two peremptory challenges to remove potential jurors M.M. and L.R., contending that the state improperly struck the two jurors because they were African American. The district court allowed the strikes to stand, concluding that the state had shown valid race-neutral reasons for the strikes and that they were not pretextual for racial discrimination.

Whether a party's exercise of a peremptory strike was racially discriminatory is a question of fact that we review for clear error. *State v. Carridine*, 812 N.W.2d 130, 137 (Minn. 2012). We "afford[] great deference to the district court because the record may not reflect all of the relevant circumstances that the court may consider." *Id.* (quotation omitted).

The Equal Protection Clause prohibits excluding a potential juror based solely on race. *Id.* at 136; U.S. Const. amend. XIV. In *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), the U.S. Supreme Court established a three-part test "to determine whether a peremptory challenge is motivated by a prohibited discriminatory intent." *State v. Greenleaf*, 591 N.W.2d 488, 500 (Minn. 1999). The defendant must first make a prima facie showing that the state exercised the challenge on the basis of race. *Id.* Once the prima facie showing has been made, the burden shifts to the state to articulate a race-neutral reason for the challenge. *Id.* Finally, if the state is successful in articulating a race-neutral reason, "the trial court must then determine whether there has been purposeful discrimination." *Id.*

1. Defendant's Prima Facie Showing

Under the first step of the *Batson* test, the defendant may establish a prima facie case of racial discrimination "by showing that one or more members of a racial group have been peremptorily excluded from the jury and that circumstances of the case raise an inference that the exclusion was based on race." *State v. Stewart*, 514 N.W.2d 559, 563 (Minn. 1994). The district court found that Edwards made a prima facie showing of discrimination, and neither party challenges this determination.

2. Race-Neutral Reasons

The second step of the *Batson* test requires the state to articulate race-neutral reasons for exercising the challenged peremptory strikes. "At this second step, the focus of the inquiry is on the facial validity of the explanation; therefore, the prosecutor's reason will be deemed race-neutral unless discriminatory intent is inherent." *State v. Gatson*, 801 N.W.2d 134, 141 (Minn. 2011); *see also State v. Martin*, 773 N.W.2d 89, 101 (Minn. 2009) (stating that the prosecutor's reason "need not be persuasive or even plausible"). "[A] prosecutor may exercise a peremptory challenge 'for any reason at all, as long as that reason is related to [the potential juror's] view concerning the outcome of the case to be tried.'" *State v. Martin*, 614 N.W.2d 214, 222 (Minn. 2000) (quoting *Batson*, 476 U.S. at 89, 106 S. Ct. at 1719)).

The prosecutor's main reasons for striking M.M. concerned his negative attitude toward law enforcement and the justice system. The prosecutor also cited M.M.'s lack of candor on the juror questionnaire and defiant body language and demeanor when responding to questions on voir dire.

A potential juror's previous contacts with and negative attitude toward law enforcement are valid race-neutral reasons for exercising a peremptory strike. *See Greenleaf*, 591 N.W.2d at 501 (stating that a prospective juror's "negative feelings toward government and law enforcement" are a valid race-neutral reason). In addition, a potential juror's demeanor is a proper race-neutral explanation for a peremptory strike. *See State v. Gaitan*, 536 N.W.2d 11, 16 (Minn. 1995) (noting that a prospective juror's demeanor qualifies as a race-neutral reason to strike that juror); *State v. Campbell*, 772 N.W.2d 858, 864 (Minn. App. 2009) (finding that a prospective juror's demeanor and body language are valid race-neutral reasons for a peremptory challenge). We therefore conclude that the district court did not clearly err in finding that the state articulated valid race-neutral reasons for striking M.M. from the jury.

The prosecutor stated that she struck L.R. because he had little, if any, life experience and she was concerned that L.R. may have difficulties reading, writing, or understanding because he left many questions blank on his juror questionnaire. Further, she noted that when asked about his reaction to the charges against Edwards, L.R. incorrectly referred to "two different murders."[1]

The district court found that these were valid race-neutral reasons for striking L.R. and this finding is not clearly erroneous. *See State v. Rivers*, 787 N.W.2d 206, 211 n.5

[1] The prosecutor seemed to cite L.R.'s reference to "two different murders" as evidence that he did not understand the case against Edwards. This misstatement of the charges was likely an honest mistake since the jury panel was given only a brief description of the case before the jurors completed their questionnaires. More concerning to us, however, is that L.R. checked "no" on his juror questionnaire when asked whether he agreed with the principle of law that a defendant is presumed innocent until proven guilty. When asked to explain this answer, L.R. wrote, "he has two different murders."

(Minn. App. 2010) (suggesting that where the prosecutor "struck prospective jurors whose life experiences, in the prosecutor's opinion, made them undesirable jurors," race-neutral reasons existed), *review denied* (Minn. Oct. 19, 2010). Thus, the district court properly found that the state's reasons for striking M.M. and L.R. were race-neutral.

3. Purposeful Discrimination

Finally, if the state's explanation for the strike is race-neutral, the third *Batson* step requires the district court to determine "whether the reason given was a pretext for purposeful discrimination." *Carridine*, 812 N.W.2d at 136. The party challenging the strike must demonstrate that (1) "the proffered race-neutral reason is not the real reason for the strike" and (2) "the real reason was the race of the venire member." *Angus v. State*, 695 N.W.2d 109, 117 (Minn. 2005). We give the district court's findings on the third step considerable deference, "because the court's finding typically turns largely on credibility." *State v. Taylor*, 650 N.W.2d 190, 202 (Minn. 2002).

Edwards contends that excluding M.M. because of his attitude towards law enforcement was inherently discriminatory because African Americans are overrepresented in interactions with police. It was not solely M.M.'s contacts with the police that raised concerns, however, but also his lack of candor in answering the juror questionnaire and his attitude towards law enforcement. These concerns, along with M.M.'s negative demeanor and body language, support the district court's conclusion that the strike was not pretextual.

Concerning L.R., Edwards argues that the pretextual nature of the state's strike is evidenced by its failure to strike T.M., another juror who was similarly situated to L.R.

"[P]retext may be established by proving that 'prosecutors use[d] their peremptory challenges to exclude African-American venire persons for a given reason or reasons, but then fail[ed] to apply the same reason or reasons to exclude similarly situated, white venirepersons.'" *Carridine*, 812 N.W.2d at 138 (quoting *Walton v. Caspari*, 916 N.W.2d 1352, 1362 (8th Cir. 1990)). Under this analysis we must compare the allegedly similarly situated jurors to determine whether they are actually similar. *Id.*

While L.R. and T.M. gave some similar responses to the questionnaire and to the attorneys' questions on voir dire, they were not so similarly situated such that striking L.R. while allowing T.M. to sit on the jury amounted to purposeful racial discrimination. As shown by their respective questionnaires, T.M. had more life experience than L.R., his answers were far more detailed and reasoned, and T.M.'s responses suggested that he was more widely read and better informed than L.R. We therefore conclude that L.R. and T.M. were not similarly situated for purposes of jury selection, and T.M.'s selection over L.R. does not show that the state's strike of L.R. was pretextual for racial discrimination.

Affording deference to the district court's findings, we find no clear error in its conclusion that the state's race-neutral reasons for striking M.M. and L.R. were not pretexts for purposeful discrimination. The district court properly denied Edwards's *Batson* challenge.

II. Prosecutorial Misconduct

In her closing arguments, defense counsel discussed the ancient Roman rule of evidence that "proof lies in him who asserts" in emphasizing the state's burden of proof.

On rebuttal, the prosecutor made the following statement:

> The defense counsel told you that proof lies in him who asserts. Right? My burden of proof. But I would also suggest proof lies in him who asserts. That's Cory, the defendant.

Edwards claims that with this statement, the prosecutor improperly shifted the burden of proof.

"Arguments that shift the burden of proof to the defendant are improper." *Carridine*, 812 N.W.2d at 148. To determine whether the prosecutor improperly shifted the burden of proof, we must look "at the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *Id.* (quoting *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993)). For objected-to prosecutorial misconduct, serious misconduct will be found "harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error," while less serious misconduct will be found harmless unless "the misconduct likely played a substantial part in influencing the jury to convict." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (quotation omitted); *see also State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010).[2]

[2] The supreme court in *McDaniel* recited this two-tiered approach to objected-to prosecutorial-misconduct claims, but noted that "[w]e have not yet decided whether this two-tiered approach . . . 'remains viable.'" *McDaniel*, 777 N.W.2d at 749 (quoting *State v. Graham*, 764 N.W.2d 340, 348 (Minn. 2009)). The *McDaniel* court did not decide whether the two-tiered approach is still viable, however, because it was able to resolve the appellant's claims without reaching the issue. *Id.* The supreme court has not yet reached the issue. *See Carridine*, 812 N.W.2d at 146 (concluding that because the objected-to misconduct was harmless under even the standard for more serious

Considering the closing argument as a whole, we conclude that the prosecutor's statement did not improperly shift the burden of proof to Edwards. In her argument, the prosecutor summed up all of the state's evidence pointing to Edwards's guilt and emphasized the importance of the jury's evaluation of W.J.'s testimony. She never implied in her initial argument that Edwards bore any burden or that he failed to provide evidence of his innocence. To the contrary, the prosecutor clearly and correctly referenced the state's burden of proof during her initial closing argument, as did defense counsel in her closing.

The single questionable statement occurred in the prosecutor's rebuttal argument, after defense counsel made the "proof lies in him who asserts" argument. The objected-to statement came directly after the prosecutor again noted that it was the state's burden of proof.

As the state notes, the syntax of the objected-to statement, as punctuated in the transcript on appeal, is odd. The state asserts that the prosecutor was perhaps suggesting that *W.J.* "asserted" that the shooter was Edwards and that proof lies in *W.J.'s testimony*.[3] Because the argument was delivered orally to the jury, making concern over the proper punctuation on appeal less critical, this interpretation of the phrase seems reasonable. In this context—where the district court judge who overruled the objection had the opportunity to hear and to view the entire argument in person, as well as to evaluate the

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misconduct, it need not reach the issue of the continued applicability of the two-tiered approach).

[3] Under this reasoning, the transcript should have been punctuated as follows: "But I would also suggest proof lies in him [W.J.] who asserts: "That's Cory, the defendant."

nuance of the objected-to statement as said to the jury, and where both attorneys repeatedly emphasized the correct burden of proof—we conclude that the prosecutor's sole statement did not improperly shift the burden of proof to Edwards.

In any event, even if the prosecutor's single statement was improper, any error is harmless under even the standard for serious misconduct. *See Powers*, 654 N.W.2d at 678. Despite the prosecutor's single assertion, strong evidence presented at trial pointed to Edwards's guilt. The harmless nature of any prosecutorial misconduct is also shown by the jury instructions, which included clear directives on the state's burden of proof and the presumption of innocence. *See State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) (stating that appellate courts presume that the jury follows the district court's instructions). We therefore conclude that any error is harmless beyond a reasonable doubt because the jury's verdict was surely unattributable to the prosecutor's single, awkward comment.

III. Speedy Trial

Finally, Edwards contends that the state violated his constitutional right to a speedy trial. *See* U.S. Const. amend. VI; Minn. Const. art. 1, § 6. We review a speedy-trial challenge de novo. *State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012). In Minnesota, a criminal trial must start within 60 days of the defendant's demand "unless the court finds good cause for a later trial date." Minn. R. Crim. P. 11.09(b); *see also State v. DeRosier*, 695 N.W.2d 97, 108–09 (Minn. 2005). To determine whether a delay beyond the 60-day requirement deprived a defendant of his or her right to a speedy trial, we consider four factors: "(1) the length of

the delay, (2) the reason for the delay, (3) whether the defendant asserted his or her right to a speedy trial, and (4) whether the delay prejudiced the defendant." *DeRosier*, 695 N.W.2d at 109 (citing *Barker v. Wingo*, 407 U.S. 514, 530–33, 92 S. Ct. 2182, 2192–93 (1972)). None of these factors are either necessary or sufficient to find a constitutional speedy-trial violation; they are related, however, and must be considered with all of the relevant circumstances. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

1. The Length of the Delay

If trial does not begin within 60 days of a defendant's speedy-trial demand, we presume that a constitutional violation has occurred. *Windish*, 590 N.W.2d at 315–16. The parties do not dispute that Edwards's trial started 122 days after he made his speedy-trial demand, and the delay was therefore presumptively prejudicial. While this factor weighs in favor of finding a violation of Edward's speedy-trial right, "the length of time does not, as an independent factor, provide strong support for finding a violation." *State v. Rhoads*, 802 N.W.2d 794, 806–07 (Minn. App. 2011), *rev'd on other grounds*, 813 N.W.2d 880 (Minn. 2012).

2. The Reason for the Delay

"The responsibility for promptly bringing a case to trial rests with the state." *State v. Hahn*, 799 N.W.2d 25, 30 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). "There may be no violation if the delay is due to good cause." *State v. Griffin*, 760 N.W.2d 336, 340 (Minn. App. 2009); *see also* Minn. R. Crim. P. 11.09(b). The state's deliberate attempt to delay trial weighs heavily against the state, while negligent or administrative delays receive less weight. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192.

When a delay in bringing a case to trial is the result of the defendant's own actions, no speedy-trial violation will be found. *See State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993).

On the first scheduled trial date in January, defense counsel noted that Edwards was opposed to a continuance, but that she had just assumed responsibility for the case and was "unprepared to go to trial today." The district court continued the matter to April "considering the fact that [Edwards had] new counsel and that counsel [needed] more time to adequately prepare for the trial." The district court also noted that the "delay is actually occasioned by the defense, not by the [c]ourt, not by the [s]tate."

Edwards clearly did not cause the delay, but it was rather due to the actions of the public defender's office in reassigning his attorney. While the unavailability of a public defender generally does not weigh in a defendant's favor, *Windish*, 590 N.W.2d at 316, "[t]he responsibility for an overburdened judicial system cannot, after all, rest with the defendant." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). Administrative delay is "generally insufficient to violate a defendant's speedy-trial right in the absence of a deliberate attempt to delay trial." *Hahn*, 799 N.W.2d at 32. The delay here cannot be attributed to the state, and the district court granted the continuance so that Edwards's attorney could properly prepare for trial. *See State v. Smith*, 749 N.W.2d 88, 97 (Minn. App. 2008) (finding no speedy-trial violation where "[a]ll delays . . . were for good cause and most were attributable to [the defendant's] attorney's need for time to prepare an adequate defense"). This factor therefore weighs against finding a speedy-trial violation.

3. Whether Edwards Asserted his Right to a Speedy Trial

The parties do not dispute that Edwards repeatedly asserted his speedy-trial right. This factor weighs in favor of Edwards.

4. Whether the Delay Prejudiced Edwards

The right to a speedy trial protects three main interests: "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Windish*, 590 N.W.2d at 318 (citing *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193). This last interest, impairment of the defense, is the most important. *Id.* "A defendant does not have to affirmatively prove prejudice; rather, prejudice may be suggested by likely harm to a defendant's case." *Id.*

Edwards first argues that he was prejudiced by the lengthy pretrial incarceration he experienced because of the delay. While unfortunate, the extra two months that Edwards spent in custody before trial is insufficient to show prejudice. *See Rhoads*, 802 N.W.2d at 807–08 (stating that "pretrial incarceration alone, while unfortunate, is . . . not enough to demonstrate prejudice").

Edwards also claims that his defense was impaired by the delay because of alleged discovery violations by the state that would have been more serious had the trial been held in January as originally scheduled. Edwards's claim concerning discovery sanctions is speculative, however, and is not the type of prejudice that typically weighs in favor of finding a speedy-trial violation. Edwards does not assert, for example, that he was unable to present witnesses or evidence in April that he could have presented in January. *See Windish*, 590 N.W.2d at 319 (suggesting that the availability of witnesses at earlier trial

dates but not later dates may show a speedy-trial violation); *State v. Brown*, 392 N.W.2d 224, 235–36 (Minn. 1986) (stating that no prejudice resulted from a seven-month delay because "[t]here is no evidence that, due to the delay, the witnesses at trial were unable to recall the essential facts . . . . [The appellant] does not now contend that a witness whom he would have called died during the seven-month period."). Thus, the fourth *Barker* factor further weighs against finding a speedy-trial violation.

Considering all of the *Barker* factors, we conclude that Edwards's right to a speedy trial was not violated. The delay was relatively short, cannot be attributed to the state, and ultimately likely resulted in a fairer proceeding because it allowed Edwards's attorney to adequately prepare for trial.

Affirmed.