STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0205

State of Minnesota,
Respondent,

vs.

Kyle Richard Greene,
Appellant.

Filed December 24, 2012
Affirmed
Kirk, Judge

Meeker County District Court
File Nos. 47-VB-11-42, 47-VB-11-527

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

Rebecca M. Rue, Litchfield Assistant City Attorney, Litchfield, Minnesota (for respondent)

Kyle Richard Greene, Darwin, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Kirk, Judge.

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

KIRK, Judge

On appeal from convictions of driving after suspension and driving after revocation, appellant argues that the district court failed to respond to perjury and

deprived appellant of the constitutional right to a speedy and fair trial. Appellant also alleges judicial bias. We affirm.

FACTS

In December 2010, the Minnesota Department of Public Safety (the department) suspended appellant Kyle Richard Greene's driver's license on two distinct grounds: (1) driving after withdrawal and (2) failure to comply with a child-support agreement. Subsequently, on January 15, 2011, Officer Jason Johnson observed appellant drive up to his place of employment. Officer Johnson recognized appellant and, based on previous conversations with other officers, he suspected appellant was driving without a valid license. After verifying the status of appellant's license on his computer, Officer Johnson approached appellant. The state subsequently charged appellant with driving after suspension, a violation of Minn. Stat. § 171.24, subd. 1 (2010).

On February 1, the department again suspended appellant's license for failure to comply with a child-support agreement. On February 10, the department revoked appellant's license based on an October 2009 conviction of failure to provide insurance information. And on March 17, after appellant failed to appear or pay for the January 2011 charge of driving after suspension, the department suspended appellant's license on this ground.

Approximately five months later, on August 18, Officer Johnson and two other officers, including Officer Gary Gruenke, responded to a domestic dispute. Eventually, the male involved in the dispute was allowed to call for a ride. The male called appellant, who drove a van to the scene. After appellant drove away with the male, the officers

confirmed that appellant did not possess a valid driver's license. The officers discussed whether to pursue appellant or mail him a citation. In the interest of safety, the officers determined that mail was the better option and Officer Johnson agreed to send the citation. The state charged appellant with driving after revocation, a violation of Minn. Stat. § 171.24, subd. 2 (2010).

Appellant's driving-after-revocation charge was initially assigned to Judge Steven Drange. But on November 14, appellant moved for Judge Drange to recuse himself, arguing that Judge Drange "is a Defendant in a federal civil rights lawsuit" filed by appellant. Judge Drange recused himself and the case was ultimately reassigned to Judge Charles Glasrud.

On November 15, in connection with the driving-after-suspension charge, appellant "appeared at [a district court] counter" and requested that the department reinstate his driver's license. On November 22, appellant pleaded not guilty to the charges and demanded a speedy trial.

On December 7, appellant demanded that the cases be heard in Meeker County. One week later, both cases were scheduled for a pre-trial conference in Stevens County. Appellant failed to appear. The state moved for the district court to issue an arrest warrant for appellant. The district court denied the motion and granted appellant's demand regarding venue.

Throughout December, appellant made several motions. First, appellant moved to dismiss the charges for a speedy-trial violation. The district court ultimately denied this motion. Appellant then moved to strike certain motions by the state, but after the district

court explained the motions, appellant withdrew his challenge. Appellant next moved for an injunction against Meeker County. The district court informed appellant that such action would require a separate lawsuit. Appellant then moved to dismiss the charges under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), arguing that "[t]he jury venire is composed of 25 members, all of whom are white." The district court denied the motion, explaining that the "issue has not been presented to this [c]ourt in a way that I can rule at this point." Finally, appellant moved the district court to take judicial notice of the right to a speedy trial and the issues raised in appellant's previous motions. The district court addressed this motion by stating, "I don't know what to tell you other than that I will address all matters of law that are properly brought to me."

The driving-after-revocation charge proceeded to trial on December 20. Officers Johnson and Gruenke testified on behalf of the state. While the jury deliberated, Judge Glasrud allegedly went to lunch with Judge Drange, the district's chief judge. After lunch, the jury returned a guilty verdict. Appellant subsequently moved for judgment notwithstanding the verdict and filed a complaint of judicial misconduct, alleging that the district court (1) "supplied no statement of facts and conclusions of law" when dismissing appellant's motions, and (2) failed to address "perjured testimony."

Before the second trial, appellant made four additional motions regarding the driving-after-suspension charge. First, appellant moved to preclude Officer Johnson from testifying, based on alleged perjury during the first trial. The district court denied this motion. Second, appellant moved for a fair trial. The district court granted this motion, adding that such a motion was not necessary to receive a fair trial. Third, appellant

moved for "enlargement of time," because the law library moved its books, leaving him unable to "'shepardize' case law for the convenience of the court." Promising to raise the library issue with the appropriate parties later that day, the district court noted appellant's speedy trial demand and its ability to "shepardize" cases and denied appellant's motion. Finally, appellant moved for Judge Glasrud to recuse himself because, on the day of the first trial, "Judge Glasrud stated that he was going to lunch with Judge Drange," an alleged defendant in a "federal civil rights lawsuit" filed by appellant. The district court denied this motion.

The driving-after-suspension charge proceeded to trial on January 6, 2012. Officer Johnson testified on behalf of the state. The jury returned a guilty verdict and the district court sentenced appellant on both offenses. For appellant's conviction of driving after suspension, the district court sentenced appellant to 30 days in jail, stayed for one year. For appellant's conviction of driving after revocation, the district court sentenced appellant to 60 days in jail, stayed for one year. This appeal followed.

D E C I S I O N

I. The district court did not err by failing to address alleged perjury.

Appellant alleges that both Officer Johnson and the prosecutor committed perjury and argues that the district court committed reversible error by failing to address such testimony. Under Minnesota law, a person is guilty of perjury if he or she "makes a false material statement not believing it to be true" in a proceeding "in which the statement is required or authorized by law to be made under oath or affirmation." Minn. Stat. § 609.48, subd. 1(1) (2010). "Perjured testimony must be set aside if there is a

reasonable likelihood that it affected the jury verdict." *State v. Gustafson*, 379 N.W.2d 81, 85 (Minn. 1985).

Here, appellant alleges four instances of perjury.

A. Officer Johnson #1.

Appellant alleges that Officer Johnson committed perjury by testifying that, on August 18, all three officers determined that appellant should be mailed a citation. To support his claim, appellant relies on Officer Gruenke's testimony that "Officer Johnson decided to send [appellant] the ticket in the mail." But Officer Johnson explained that a citation can only be issued by one officer and Officer Gruenke testified that all three officers discussed whether to pursue appellant or mail him a citation.

B. Officer Johnson #2.

Appellant alleges that Officer Johnson committed perjury by testifying that he has "African Americans in [his] family." On cross-examination, Officer Johnson testified that he has "a cousin that is married to an African American in Texas and [his] sister is currently dating an African American." Nothing in the record contradicts these statements.

C. Officer Johnson #3.

Appellant alleges that Officer Johnson committed perjury by testifying that, prior to citing appellant for driving after suspension, Officer Johnson knew appellant from prior contacts and from other officers. Nothing in the record contradicts these statements.

D. Prosecutor.

Appellant alleges that the prosecutor committed perjury by stating that appellant's license was suspended "for different reasons" in December and February. The record supports the prosecutor's statements.

Because there was no perjured testimony, appellant is not entitled to relief on this ground.

II. The district court did not deprive appellant of a speedy trial.

Appellant argues that the district court violated his right to a speedy trial.

A. Minnesota Rules of Criminal Procedure.

Under the Minnesota Rules of Criminal Procedure, a defendant charged with a misdemeanor "must be tried promptly after entering a not guilty plea. If a defendant or the prosecutor demands a speedy trial in writing or on the record, the trial must begin within 60 days." Minn. R. Crim. P. 6.06. "The interpretation of the rules of criminal procedure is a question of law subject to de novo review." *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

Here, it is undisputed that appellant entered a not guilty plea to both charges and demanded a speedy trial on November 22, 2011. The trial for the driving-after-revocation charge was held on December 20, 2011, and the trial for the driving-after-suspension charge was held on January 6, 2012. Because both trials began within the 60-day timeframe, appellant is not entitled to relief under the Minnesota Rules of Criminal Procedure.

B. Constitutional Guarantee.

Both the United States Constitution and the Minnesota Constitution guarantee the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "A speedy-trial challenge presents a constitutional question subject to de novo review." *State v. Hahn*, 799 N.W.2d 25, 29 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). When reviewing a speedy-trial challenge, this court considers a four-factor balancing test: "(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." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker v. Wingo*, 407 U.S. 514, 530-33, 92 S. Ct. 2182, 2191-93 (1972)).

When considering the length of delay, this court generally looks to the date of the speedy-trial demand. *See Hahn*, 799 N.W.2d at 30; *but see State v. Rhoads*, 802 N.W.2d 794, 806 (Minn. App. 2011) (stating that "[t]he delay has been measured from the time the police arrested the defendant"), *rev'd on other grounds*, 813 N.W.2d 880 (Minn. 2012). This court may look beyond an *express* speedy-trial demand, relying instead on "any action whatever as an assertion of a defendant's speedy trial right." *Windish*, 590 N.W.2d at 318 (quotation omitted).

Here, the state charged appellant with driving after suspension on January 20, 2011, and driving after revocation on September 7, 2011. But the record establishes that appellant took no "action whatever" on the driving-after-revocation charge until November 14, 2011, when appellant moved for the recusal of the district court judge assigned to the case. And he took no "action whatever" on the driving-after-suspension

charge until November 15, 2011, when he "appeared at [a district court] counter" and requested that the department reinstate his driver's license. Even if these initial actions triggered appellant's right to a speedy trial, appellant was tried on both charges within 60 days. Thus, the length of delay is not sufficient to trigger further inquiry, and appellant is not entitled to relief on this ground. *See State, City of Oakdale v. Curtis*, 393 N.W.2d 10, 12 (Minn. App. 1986) (concluding that delay of approximately two months past the presumptive 60-day limit was sufficient to trigger further inquiry).

III. The district court did not deprive appellant of a fair trial.

Appellant argues that the composition of the jury deprived him of the right to a fair trial. "The right to a fair trial is a fundamental right secured by the Sixth and Fourteenth Amendments." *State v. Hogetvedt*, 488 N.W.2d 487, 489 (Minn. App. 1992); *see also* U.S. Const. amends. VI, XIV.

A. Sixth Amendment.

The Sixth Amendment to the United States Constitution guarantees the right to an "impartial jury." U.S. Const. amend. VI. But it does not guarantee "a jury of a particular composition or one that mirrors the community." *State v. Williams*, 525 N.W.2d 538, 542 (Minn. 1994). For relief on Sixth Amendment grounds, a defendant must make a prima facie showing "that the jury venire from which the petit jury was selected did not satisfy the fair cross-section of the community requirement." *Id.* To make this showing, the defendant must establish that "the group allegedly excluded is a distinctive group in the community, that the group in question was not fairly represented in the venire, and that the underrepresentation was the result of a systemic exclusion of the group in

question from the jury selection process." *Id.* (quotations omitted). The government may rebut such a showing "by establishing that the system used manifestly and primarily advances a significant state interest that is incompatible with the fair cross-section requirement." *Id.*

Here, appellant merely asserted that "[t]he jury venire is composed of 25 members, all of whom are white." Because appellant failed to meet his burden of establishing a prima facie case of systemic exclusion of African Americans from the jury selection process, he is not entitled to relief on Sixth Amendment grounds.

B. Fourteenth Amendment.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection . . . ." *Batson*, 476 U.S. at 86, 106 S. Ct. at 1717. "Those on the venire must be indifferently chosen, to secure the defendant's right under the Fourteenth Amendment to protection of life and liberty against race or color prejudice." *Id.* at 86-87, 106 S. Ct. at 1717-18 (quotations omitted). When procedures implementing a neutral statute operate to exclude persons from the venire on racial grounds, equal protection may be denied. *Id.* at 88, 106 S. Ct. at 1718.

Here, appellant presented no evidence regarding how the venire was chosen. Because there is no evidence that the lack of African Americans in the venire was the

product of "purposeful racial discrimination," appellant is not entitled to relief on Fourteenth Amendment grounds. *See id.* at 86, 106 S. Ct. at 1717.

IV. Appellant's claim of judicial bias is without merit.

Appellant argues that the district court was biased against him. We review claims of judicial bias de novo. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005).

A district court judge is presumed to discharge judicial duties in each case with neutrality and objectivity; such presumption is overcome only if the party alleging bias provides evidence of favoritism or antagonism. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008) (citing *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)).

The crux of appellant's argument is that the district court improperly ate lunch, on the day of the driving-after-revocation trial, with Judge Drange, the district's chief judge and an individual whom appellant is suing in federal court. In support of his argument, appellant points to the district court's allegedly "one-sided rulings." But a careful review of the record establishes that the district court diligently considered each of appellant's numerous motions, granting his motions as to venue and a fair trial, promising to attend to the law library issue, and initially reserving appellant's motion regarding a speedy-trial violation. Additionally, the district court denied the state's motion to issue an arrest warrant for appellant's failure to appear at the pre-trial conference in Stevens County. Because appellant's allegations of judicial bias are without merit, appellant is not entitled to relief on this ground.

Affirmed.