STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1827

State of Minnesota,
Respondent,

vs.

Dameion Deshawn Hill,
Appellant.

Filed December 24, 2018
Affirmed
Schellhas, Judge

Clay County District Court
File No. 14-CR-17-823

Cathryn Middlebrook, Chief Appellate Public Defender, Renee Bergeron, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian Melton, Clay County Attorney, Alexander J. Stock, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Florey, Judge.

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

SCHELLHAS, Judge

Appellant challenges his felony convictions of domestic-abuse violation of an order for protection, arguing that the district court violated his right to a speedy trial and to a fair trial when the district court rejected his *Batson* challenge.[1] We affirm.

FACTS

Appellant Dameion Hill and victim A.L. are the parents of a son born in September 2008. A.L. obtained an order for protection (OFP) on behalf of herself and her children on March 3, 2016, and the district court issued a domestic-abuse no-contact order (DANCO) on June 29, 2016. Between January 13 and 15, 2017, A.L. received five calls from a restricted telephone number. A.L. answered one of the calls, recognized Hill's voice, and reported to local law enforcement that Hill stated that he wanted to see his son and implied that he "had been by her home."

Respondent State of Minnesota charged Hill with two felony violations of a DANCO and two felony domestic-abuse violations of an OFP, and Hill pleaded not guilty on March 29, 2017.[2] The district court scheduled a jury trial for Hill on May 16, 2017. At

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[1] *See Batson v. Kentucky*, 476 U.S. 79, 96–98, 106 S. Ct. 1712, 1723–24 (1986) (establishing three-part analysis to determine if peremptory challenge is motivated by racial discrimination).

[2] The state charged Hill with felony-level offenses because the alleged conduct occurred within ten years of two previous domestic-violence offenses. *See* Minn. Stat. § 518B.01, subd. 14(d)(1) (2016) (categorizing violation of OFP within ten years of two previous qualified domestic-violence-related-offense convictions as felony); Minn. Stat. § 629.75, subd. 2(d)(1) (2016) (categorizing violation of DANCO within ten years of two previous qualified domestic-violence related offense convictions as felony).

a settlement conference on May 10, 2017, Hill's counsel informed the court of a scheduling conflict with the May 16 trial date. The court noted that Hill was in custody in connection with a separate criminal case, and Hill then made a speedy-trial demand. By written order, the court continued Hill's May 16 trial date to June 20, 2017. At a roll call on June 14, 2017, the district court informed the parties that it might have to reschedule Hill's June 20 trial date due to another scheduled jury trial. The court subsequently continued Hill's June 20 trial date to July 18, 2017.

At a hearing on June 26, 2017, the district court informed the parties of the continued July 18 trial date, noting that it was nine days outside of the required 60-day period. Hill argued that the court should dismiss the charges because, while he could not "point to any specific prejudice" from the delay, "judicial unavailability" did not represent a valid reason to delay. The state argued that dismissal was not warranted because the state had fully prepared to try the case, the delay caused Hill no prejudice because he was already incarcerated on another file, and the court's calendar congestion constituted a valid reason to delay. The court denied Hill's dismissal request after "[l]ooking at the totality of the circumstances" and noted that Clay County had "been under-judged" and that "no other judge" was available to try Hill's case. The court acknowledged the existence of "some prejudice" to Hill but noted that the prejudice was minimized by the fact that Hill "would be at the jail regardless," and that the new trial date was "just nine days outside the 60-day window."

Hill's jury trial began on July 18, 2017. During jury selection, the state exercised a peremptory strike against the only prospective minority juror, J.R. Hill raised a *Batson*

challenge, which the district court rejected, and the jury found Hill guilty of all four counts. The court adjudicated Hill guilty on both counts of felony domestic-abuse violation of an OFP and sentenced him to two concurrent 33-month sentences.

This appeal follows.

D E C I S I O N

I.

Hill argues that his convictions must be reversed and the charges against him dismissed because the district court violated his right to a speedy trial. The United States Constitution and the Minnesota Constitution guarantee criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017); *see also* Minn. R. Crim. P. 11.09 ("On demand of any party after entry of [a] plea [other than guilty], the trial must start within 60 days unless the court finds good cause for a later trial date."). As a constitutional right, this court reviews de novo whether a district court denies a defendant the right to a speedy trial. *Osorio*, 891 N.W.2d at 627. "If a defendant has been deprived of his or her right to a speedy trial, the only possible remedy is dismissal." *Id*. (quotation omitted).

To determine if a violation of a speedy-trial right occurred, Minnesota courts analyze four factors established by the Supreme Court in *Barker v. Wingo*: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her speedy-trial right; and (4) whether the delay prejudiced the defendant. *Id*. at 627–28 (citing *Barker v. Wingo*, 407 U.S. 514, 530–33, 92 S. Ct. 2182, 2192–93 (1972)). "None of the *Barker* factors is either a necessary or sufficient condition to the finding of a deprivation

of the right . . . . [T]hey are related factors and must be considered together with such other circumstances as may be relevant." *Id*. at 628 (quotation omitted). Analyzing the *Barker* factors therefore involves a "difficult and sensitive balancing process in which the conduct of both the State and the defendant are weighed." *Id*. (quotations and citations omitted).

Length of delay

"A delay that exceeds 60 days from the date of the demand raises a presumption that a violation has occurred," triggering review of the remaining three *Barker* factors. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015); *State v. Windish*, 590 N.W.2d 311, 315–16 (Minn. 1999). Here, Hill's trial occurred on July 18, 2017, 69 days after his May 10, 2017 speedy-trial demand. Because Hill's trial occurred more than 60 days after his speedy-trial demand, the delay is presumptively prejudicial, and we therefore analyze the three remaining *Barker* factors.

Reason for delay

The district court cited calendar congestion as the sole reason for delay, explaining that "there's not another judge . . . we have been under-judged," which resulted "in cases stacking up." Hill argues that this factor should weigh in his favor because overcrowding in the court system is not a valid reason for delay.

"[O]vercrowded courts should be weighted less heavily but nevertheless should be considered," *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192, but "administrative delay, by itself, is generally insufficient to violate a defendant's speedy-trial right in the absence of a deliberate attempt to delay trial," *State v. Hahn*, 799 N.W.2d 25, 32 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). A "deliberate attempt to delay the trial in order to

hamper the defense should be weighted heavily against the government," but a "more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility . . . must rest with the government." *Osorio*, 891 N.W.2d at 628. Here, the record contains no evidence of a "deliberate attempt to delay the trial," and Hill does not argue that the delay occurred due to bad faith. *See State v. Cham*, 680 N.W.2d 121, 125 (Minn. App. 2004) (holding that 23-month "unusually long" delay due to district court's failure to find court interpreter weighed against speedy-trial violation because "the prosecution did not act in bad faith to delay the proceeding"), *review denied* (Minn. July 20, 2004). Further, Hill ignores the fact that the district court initially scheduled the trial for May 16, 2017, within the 60-day speedy-trial period but continued the trial date due to his counsel's unavailability. "When the overall delay in bringing a case to trial is the result of the defendant's actions . . . there is no speedy trial delay." *Osorio*, 891 N.W.2d at 628–29 (quotations omitted). This factor therefore weighs against Hill's claim.

Assertion of speedy-trial right

A defendant's "assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* at 629. Here, Hill made his speedy-trial demand 69 days prior to trial and it therefore weighs in favor of his claim.

Prejudice

Hill argues that the delay prejudiced him because it affected his potential to be released without bail and caused him fear and anxiety. "Three types of prejudice may result

from an unreasonable delay between formal accusation and trial: oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired." *Id.* at 631 (quotations omitted). The most serious form of prejudice is the possibility that the defense will be impaired "because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.* (quotations omitted). But if a defendant is already in custody for another offense, "the first two [*Barker*] interests are not implicated," and "the only remaining question is whether the defense was likely harmed by the delay. In other words [a defendant] has to suggest evidentiary prejudice." *Taylor*, 869 N.W.2d at 20 (citation and quotations omitted).

Here, Hill was in custody in connection with a separate criminal case. To prove prejudice in this case, the record therefore must support a finding that Hill suffered "evidentiary prejudice," such as "memory loss by witnesses or witness unavailability." *See id.* (discussing prejudice that trial delay could cause). Hill acknowledges that he did not suffer an impaired defense, and the record contains no indication of how the nine-day delay prejudiced him or his ability to present a complete defense. *See id.* at 20–21 (concluding that no prejudice occurred when trial delay allowed state to procure plea agreements from codefendants but did not otherwise affect defendant's ability to present complete defense). We conclude that this factor weighs against Hill's claim.

Balancing the Barker factors

Balancing the *Barker* factors, we conclude that the district court did not violate Hill's speedy-trial right. Although the first and second factors weigh in favor of Hill's claim, the cause of delay and the lack of prejudice weigh heavily against it. *See Osorio*,

891 N.W.2d at 632–33 (concluding no speedy-trial violation where the state caused the delay but defendant failed to timely assert his right and suffered no prejudice); *Taylor*, 869 N.W.2d at 19–21 (concluding no speedy-trial violation where a delay of over 100 days "was not greatly excessive," the continuances causing the delay were not objected to or were for good cause, and the defendant suffered no prejudice because he could point to no impairment of his defense and was already in custody). We therefore affirm Hill's convictions.

II.

Hill, who is African American, made a *Batson* challenge to the state's peremptory strike of the only prospective minority juror, who is Hispanic. Hill argued to the district court that because his client was African American and the state struck the only prospective minority juror, the court should infer that the state struck J.R. on the basis of his race. The state cited the following voir-dire testimony from J.R., arguing that it showed that he would hold the state to a higher burden of proof:

> THE PROSECUTOR: [J.R.] how do you feel about the burden beyond a reasonable doubt?
> J.R.: I think that's a fair way . . . of judging someone . . . .
> THE PROSECUTOR: Would you need . . . more evidence say if . . . I put on evidence of testimony, of victim testimony, and I was able to through that testimony establish all the elements of the crime, would you be able to come back with a guilty verdict based solely on the testimony of one person?
> J.R.: I don't think so. Based on the testimony of just one person, um, I don't think, one person's testimony would be enough to prove guilt, um, so I'd imagine that you'd have to have more than just one person saying they saw something in order, as a reasonable doubt, you know, to have, for guilty, for the process of guilt.
> . . . .

> THE PROSECUTOR: But . . . you would need something more than just the one person's testimony?
> J.R.: Yes. Because in this trial you have somebody who's claiming that that person's testimony is not accurate. So you have one person's testimony . . . who's saying that the other person's testimony is wrong. And so you have two people saying they saw something different. I think you'd have to have . . . an extra witness in that case.

Citing the prosecutor's demeanor in explaining its reason for striking J.R., the demeanor of J.R., and his answers as a valid race-neutral reason to strike him, the court rejected Hill's *Batson* challenge. On appeal, Hill argues for reversal and a new trial, arguing that the court deprived him of a fair trial by a jury of his peers by rejecting his *Batson* challenge.

"Peremptory challenges allow a party to strike a prospective juror that the party believes will be less fair than some others and, by this process, to select as final jurors the persons they believe will be most fair." *State v. Wilson*, 900 N.W.2d 373, 377 (Minn. 2017) (quotation omitted). The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits purposeful racial discrimination during jury selection. U.S. Const. amend XIV, § 1; *Batson*, 476 U.S. at 89, 106 S. Ct. at 1719. If "the facts establish, prima facie, purposeful discrimination and the prosecutor does not come forward with a neutral explanation for his action, [Supreme Court] precedents require that [the] conviction be reversed." *Batson*, 476 U.S. at 100, 106 S. Ct. at 1725.

Minnesota courts utilize a three-part analysis established by *Batson* to determine if racial discrimination motivated a peremptory challenge. *Wilson*, 900 N.W.2d at 378; *see also* Minn. R. Crim. P. 26.02, subd. 7(3) (explaining three-part *Batson* analysis). First, the opponent of the strike must "make a prima facie showing that the state exercised its

peremptory challenge against a prospective juror on the basis of race." *Wilson*, 900 N.W.2d at 378 (quotation omitted). To satisfy this burden, the party challenging the strike must show: "(1) that one or more members of a racial minority has been peremptorily excluded and (2) that circumstances of the case raise an inference that the exclusion was based on race." *Id*. (quotation and emphasis omitted). Second, the party making the peremptory strike must "articulate a race-neutral reason for the challenge." *Id*. The articulated race-neutral reasons "need not be persuasive, or even plausible; so long as discriminatory intent is not inherent in the prosecutor's explanation, the reason offered is deemed race neutral." *Id*. (quotation omitted). And third, if the striking party articulates a race-neutral reason, "the ultimate burden rests with the opponent to persuade the district court that the proffered reason was merely a pretext for the party's true motive: purposeful discrimination." *Id*. (quotations and citation omitted).

Minnesota appellate courts "give *great deference* to a district court's ruling on a *Batson* challenge and will not reverse the ruling unless it is clearly erroneous." *Id*. (emphasis added) (quotation omitted). Courts "grant such deference because the existence of racial discrimination in the exercise of a peremptory strike is a factual determination, and the record may not reflect all of the relevant circumstances that the court may consider." *Id*. (quotations omitted).

In this case, by allowing the state to provide a race-neutral reason for its strike, the district court implicitly concluded that Hill provided a prima facie case of purposeful

discrimination.[3] The state advanced the following race-neutral reason for striking J.R.: when asked if he could return a guilty verdict based on a single witness, J.R. said no, and that based on his answers, the state believed that J.R. would hold it to a higher burden. The court then asked Hill for further arguments based on the state's proffered "race-neutral" reason for striking J.R., and Hill argued that J.R. stated that he would follow the law and that "many people would have that [skeptical] feeling." The court rejected Hill's *Batson* challenge, explaining that it "observed the demeanor of all the jurors" and the prosecutor, J.R.'s responses, and how the state had attempted with follow-up questions to rehabilitate him, and that the state's race-neutral reason was "both allowed under the law and reasonable under the circumstances."

Hill argues that the district court erred by rejecting his *Batson* challenge because the state's reasons for striking "are refuted by the record," and the "superficially racially neutral reason" was "a smokescreen" to hide the "racially motivated removal of the only juror of color." Hill claims that the state did not give a valid race-neutral reason for striking because it already planned to call a second witness, the police officer that took A.L.'s statement, and other nonminority prospective jurors also "expressed skepticism" with finding an individual guilty based on a single witness's testimony. The record does not support Hill's claims.

[3] We note that the district court should have clearly addressed each step of the *Batson* analysis on the record. *See State v. Reiners*, 664 N.W.2d 826, 832 (Minn. 2003) ("The importance of clarity at each step of the analysis is that the opponent has the burden of proving a prima facie case, the proponent has the burden of production of a race-neutral explanation, and the opponent has the ultimate burden of proving pretext and discriminatory intent.").

First, although the state planned to, and did, call the police officer who took A.L.'s statement, the state's questioning of J.R. during voir dire, and J.R.'s answers, related not to witnesses testifying generally, but to the testimony of eyewitnesses and the establishment of the elements of an offense. The police officer did not witness the offense but only took A.L's statement after the offense occurred. Further, while other prospective jurors expressed hesitation with finding guilt based on a single eyewitness's testimony, they indicated that their decision on guilt would then depend on the witness's credibility. J.R.'s race and the race of the other jurors alone does not defeat the state's race-neutral reason. *See Reiners*, 664 N.W.2d at 833 (concluding that "evidence of pretext and discriminatory intent" insufficient to overcome race-neutral reason where challenging party "was unable to show any pattern of using peremptory challenges to exclude racial minorities from the jury").

In *State v. Onyelobi*, the state struck a prospective minority juror and the district court denied a *Batson* challenge based on the state's race-neutral reason that the juror's answers during voir dire indicated that she could not serve fairly if she had to view graphic photos. 879 N.W.2d 334, 349 (Minn. 2016). The defendant argued that the state singled out the removed juror by questioning her about the ability to apply the law fairly and that other jurors and "any reasonable, fair-minded person" would struggle to view graphic photos, but the state had not removed any other jurors for that reason. *Id.* at 350. The supreme court affirmed the denial of the *Batson* challenge, concluding that the defendant failed to prove pretext because the state had questioned minority and nonminority

prospective jurors alike about their ability to apply the law and the defendant had removed a white prospective juror for a similar reason. *Id*. at 351.

In this case, similar to *Onyelobi*, the state questioned the entire jury pool about finding guilt based on a single eyewitness's testimony and individually followed up with prospective jurors that expressed skepticism. The state also peremptorily removed S.O., a nonminority prospective juror, who had similar concerns to J.R., when she indicated that finding guilt based on a single eyewitness was "really vague . . . . I mean they could have other evidence, too, like text messages . . . . [I]t's a hard question." J.R. gave conflicting answers concerning his ability to follow the law pertaining to the state's burden, and Hill failed to rebut the state's race-neutral reason and explain how or why it was merely a pretext for purposeful discrimination. *Cf. Wilson*, 900 N.W.2d at 384 (holding that prospective juror's "conflicting statements were sufficient to support the district court's conclusion that [the defendant] failed to make a prima facie showing of racial discrimination"). Giving great deference to the district court's denial of Hill's *Batson* challenge, we conclude that the court did not clearly err because the record supports its decision.

Affirmed.