

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1228**

State of Minnesota,
Respondent,

vs.

William Deshawn Paige,
Appellant.

**Filed August 23, 2021
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69DU-CR-20-239

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions of second-degree assault and threats of violence, arguing that his constitutional right to a speedy trial was violated. We affirm.

FACTS

On January 21, 2020, respondent State of Minnesota charged appellant William Deshawn Paige with one count of making threats of violence, alleging that he threatened an apartment maintenance worker, G.L., with a knife. At the time of the alleged offense, Paige was on pretrial release for other charges. The district court set Paige's bail at \$60,000.

On February 18, Paige discharged his attorney, elected to proceed pro se, demanded a speedy trial, and requested release pending that trial. The district court appointed advisory counsel, denied Paige's request for release, and scheduled a speedy trial for March 31. On February 25, the state amended the complaint and added a charge of second-degree assault. On March 3, Paige moved to dismiss the charges for lack of probable cause, and the district court subsequently denied that motion.

On March 13, 2020, Minnesota Governor Tim Walz issued Emergency Executive Order No. 20-01 declaring a peacetime emergency due to the spread of the infectious disease COVID-19 and the resulting pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). On March 20, the Minnesota Supreme Court ordered that "[o]ther than for jury trials currently on-going, no new jury trials shall commence before April 22, 2020 or until further order of this court, whichever occurs first." *Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 at 3 (Minn. Mar. 20, 2020). The order modified a prior order from the supreme court, which omitted cases subject to a

speedy-trial demand from a general suspension of trial activities. *See Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 at 2 (Minn. Mar. 13, 2020).

At a pretrial hearing on March 26, Paige requested a bail reduction and reiterated his speedy-trial demand, but he offered to waive that demand if the district court would release him pending trial. The district court denied Paige's request for bail reduction and found good cause to extend the speedy-trial deadline, noting the supreme court's order that prohibited jury trials before April 22. The court rescheduled Paige's trial for April 28.

At a pretrial hearing on April 9, Paige asserted a speedy-trial violation and again requested a bail reduction. The district court denied Paige's request for a bail reduction and found good cause to continue Paige's jury trial based on the ongoing pandemic and statewide peacetime emergency. The court rescheduled Paige's trial for June 2.

On June 2, the district court held a court trial. G.L. testified that at the time of the charged offense, he was working at an apartment building. Paige's girlfriend had been evicted from the building, and G.L. was moving furniture from her apartment into storage. According to G.L., Paige approached him and told him that he would not be leaving the area. Next, Paige located a "steak knife" and "stuck the knife into [G.L.'s] rear tire." G.L. testified that Paige then ran at him with the knife and knocked him down a set of stairs. G.L. testified that he feared for his safety. G.L. called 911, and a recording of the call was admitted into evidence. G.L. testified that he entered the apartment building, and Paige "kicked the door" to the building. Paige then left the area near the door and dropped the

knife. G.L. opened the door, grabbed the knife, and placed it in the building. G.L. testified that Paige returned and threatened to kill G.L. and his family, after which the police arrived.

Three officers, an investigator, and a forensic scientist testified at trial, and body-camera footage from two of the officers was admitted into evidence. That testimony and evidence indicated that Paige was bleeding from the hand when officers arrived. Paige told the officers that he never possessed a knife, that he injured his hand trying to open the door to get his phone from G.L., and that the knife belonged to G.L. DNA testing of the knife revealed “a mixture of four or more individuals,” including a “major male DNA profile” matching Paige. Paige did not testify.

The district court found Paige guilty of both charges and entered judgment of conviction for both offenses. Paige appeals.

DECISION

Paige contends that his convictions must be reversed because the district court violated his constitutional right to a speedy trial. The United States and Minnesota Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. “Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review.” *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

In determining whether a defendant’s right to a speedy trial has been violated, Minnesota courts apply the four-factor balancing test set forth in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972). *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). Those four factors are “(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*, 407 U.S. at 530-33, 92 S. Ct. at 2192-93). “None of the factors is either a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.” *Id.* (quotation omitted). Thus, a speedy-trial determination involves “a difficult and sensitive balancing process.” *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193. We address each of the *Barker* factors in turn.

Length of the Delay

“The length of the delay is a ‘triggering mechanism’ which determines whether further review is necessary.” *Windish*, 590 N.W.2d at 315 (quoting *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192). “Where the length of the delay is ‘presumptively prejudicial’ there is a necessity for inquiry into the remaining factors of the test.” *Id.* (quoting *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192). “In Minnesota, delays beyond 60 days from the date of [a speedy trial] demand raise a presumption that a violation has occurred.” *Id.* at 315-16; *see* Minn. R. Crim. P. 11.09(b) (“On demand of any party . . . trial must start within 60 days unless the court finds good cause for a later trial date.”).

Paige’s court trial began on June 2, which was 105 days after his first speedy-trial demand on February 18. *See* Minn. R. Crim. P. 34.01 (setting forth rules for computation of time and stating, generally, that the first day is not counted, but the last day is counted). This delay is presumptively prejudicial and triggers consideration of the remaining factors.

Reason for the Delay

The second *Barker* factor is the reason for the delay, “including whether it is attributable to [the defendant] or the state.” *State v. Sistrunk*, 429 N.W.2d 280, 282 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). Clearly, the delay was not attributable to Paige. We therefore consider the extent to which it was attributable to the state.

“A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government.” *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192. “A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” *Id.* Lastly, “a valid reason, such as a missing witness, should serve to justify appropriate delay.” *Id.*

Here, there is no indication that the government deliberately attempted to delay the trial to hamper Paige’s defense. Instead, the reason for the delay was the COVID-19 pandemic. The state was not responsible for that circumstance, and that public-health reason is no less “valid” than a missing witness. It therefore justified an appropriate delay. *See id.* In sum, this factor is neutral.

Assertion of the Right to a Speedy Trial

“The 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 531-32, 92 S. Ct. at 2192-93. The frequency and force of the demand is relevant when assessing this factor. *Id.* at 528-29, 92 S. Ct. at 2191. Paige first demanded a speedy

trial at his omnibus hearing on February 18, and he continued to assert his right to a speedy trial at subsequent hearings. This factor weighs in favor of Paige.

Prejudice

We next consider the prejudice factor. “[U]nreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused’s defense will be impaired by dimming memories and loss of exculpatory evidence.” *Doggett v. United States*, 505 U.S. 647, 654, 112 S. Ct. 2686, 2692 (1992) (quotations omitted). “Of these forms of prejudice, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Id.* (quotation omitted). Paige argues that he suffered all three forms of prejudice.

As to oppressive pretrial incarceration, Paige’s trial began 105 days after he first demanded a speedy trial. Paige notes that he repeatedly requested reduced bail or nonmonetary release. The rules of criminal procedure do not mandate a defendant’s release from custody for failure to comply with a speedy-trial demand until 120 days from the date of the demand. The relevant rule provides, “Unless exigent circumstances exist, if trial does not start within 120 days from the date . . . the demand is made, the defendant must be released under any nonmonetary conditions the court orders” Minn. R. Crim. P. 11.09(b).

Paige acknowledges that his trial was held within the 120-day deadline, but he argues that keeping him in jail prior to his trial was particularly oppressive because it “kept him in close contact with other people in the midst of the COVID-19 pandemic.” However,

there is no indication that Paige suffered from an underlying medical condition that made him particularly susceptible to the COVID-19 virus or that he was housed in close proximity with inmates who had the virus. On this record, we cannot say that Paige suffered oppressive pretrial incarceration.

As to harm stemming from pretrial anxiety and concern, the “stress, anxiety and inconvenience experienced by anyone who is involved in a trial” is insufficient to demonstrate prejudice. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Paige’s trial was rescheduled twice, which may have caused stress, anxiety, and inconvenience. But there is no indication that Paige’s stress, anxiety, and inconvenience were any different or more serious than that experienced by any other person who was held in custody pending trial during the pandemic.

The third type of prejudice, impairment of the defense, is the most serious and may be either specific or presumptive. *Doggett*, 505 U.S. at 654-56, 112 S. Ct. at 2692-93. Specific prejudice involves an “affirmative showing that the delay weakened [the defendant’s] ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence.” *Id.* at 655, 112 S. Ct. at 2692. Presumptive prejudice does not require any particular showing of harm but results only from “excessive delay.” *Id.* at 655, 112 S. Ct. at 2693. Given that Paige’s in-custody trial was held within 120 days of his first demand for a speedy trial, as authorized by rule 11.09(b), we cannot say that there was excessive delay. *See id.* at 658, 112 S. Ct. at 2694 (finding presumptive prejudice because delay was “six times as long as that generally sufficient to trigger judicial review”).

As to specific prejudice, “[t]ypically, such prejudice is suggested by memory loss by witnesses or witness unavailability.” *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015). Paige notes that he represented himself and asserts that because he was in jail, he was unable to obtain and review, prior to trial, the body-camera footage from the responding officers and the recording of G.L.’s 911 call.¹ Paige was permitted to review the audio and video evidence with advisory counsel prior to the district court’s receipt of the evidence at trial. Paige argues that as “a nonlawyer, [he] was forced to make spur-of-the-moment determinations about admissibility arguments and his overall trial strategy.” Paige further argues that although he “decided in the moment not to object to admissibility” of the evidence, his ability to prepare his defense was hindered by his incarceration while trial was delayed.

Paige now has the benefit of appellate counsel. Yet, Paige does not specify or explain how his defense was impaired by his delayed review of the body-camera footage and 911 recording. Indeed, he does not proffer any theory regarding what he would have done differently to prepare his defense if he had observed the body-camera and 911-call evidence earlier. Thus, Paige does not establish specific defense-impairing prejudice.

In sum, the delay in this case did not result in oppressive pretrial incarceration, cause Paige unusual anxiety, concern, or inconvenience, or impair his defense. The prejudice factor therefore weighs in favor of the state.

¹ The prosecutor stated that discovery had been provided to Paige’s advisory counsel.

Balancing of the Factors

Paige demanded a speedy trial at his February 18 omnibus hearing. The start of Paige's trial more than 60 days from the date of that demand raises a presumption that a speedy-trial violation occurred. However, the government did not deliberately attempt to delay the trial to hamper Paige's defense. Instead, the delay was the result of the judicial branch's response to a public-health crisis during the COVID-19 pandemic. Moreover, Paige's in-custody trial began within the 120-day period mandated by rule 11.09(b). Most importantly, Paige has not shown prejudice resulting from the delay. Based on those circumstances, we hold that Paige's right to a speedy trial was not violated.

Affirmed.