STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0191

State of Minnesota,
Respondent,

vs.

Shawn Elson Randall,
Appellant.

Filed December 6, 2021
Affirmed
Frisch, Judge

Carlton County District Court
File No. 09-CR-19-2503

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

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from a conviction for violating a harassment restraining order, appellant argues that the district court lacks subject-matter jurisdiction over him, violated his Sixth Amendment right to a speedy trial and to confront an opposing witness, failed to prove a necessary element of the crime, and committed a prejudicial discovery violation. Appellant raises additional issues in his pro se supplemental brief. We affirm.

FACTS

On June 12, 2019, appellant Shawn Elson Randall's grandfather petitioned the district court for a harassment restraining order (HRO) against Randall. The following day, the district court issued an HRO prohibiting Randall from coming within two blocks of grandfather's house. Randall was served with the HRO three days later. Randall never contested the HRO. Randall and grandfather are members of the Fond du Lac Band of Lake Superior Chippewa. Grandfather lives on the Fond du Lac reservation.

On December 7, 2019, grandfather heard yelling and swearing outside his house.[1] He looked through the window and saw three people, including Randall, arguing in his backyard. Grandfather went onto the deck attached to the back of his house "to see what was going on." Grandfather watched as Randall and the two other men moved toward his driveway. Grandfather "thought there might be some kind of a fight getting started," so he went inside and called 9-1-1, and then returned to the deck. Randall came onto the deck

[1] The state's initial complaint listed the date of the offense as December 8. The state amended this date to December 7. The change in date does not impact Randall's appeal.

and walked toward grandfather, "shaking his finger at [him]." Randall was six or seven feet away from grandfather. Randall then turned around and, after "a few minutes," left the property.

On December 20, 2019, respondent State of Minnesota charged Randall with violating the HRO. At his January 22, 2020 initial hearing, Randall demanded a speedy trial and notified the district court that he would move to dismiss the charge for lack of subject-matter jurisdiction. On March 20, in response to the COVID-19 pandemic, the Chief Justice of the Minnesota Supreme Court issued an order which prohibited the commencement of new jury trials.[2] *Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. Mar. 20, 2020). Six days later, Randall formally moved to dismiss. The district court denied Randall's motion.

Randall's first trial date was scheduled for May 11. However, the district court found good cause to continue Randall's trial to July 7, concluding that "the case[] would have otherwise gone ahead, but for the pandemic . . . and unfortunately, can't go ahead."

[2] The Chief Justice extended this jury-suspension order through July 6, except for a limited number of pilot programs. *Order Governing the Operations of the Minnesota Judicial Branch Under Emergency Executive Order Nos. 20-53, 20-56*, No. ADM20-8001 (Minn. May 15, 2020). Thereafter, the Judicial Council allowed district courts to restart jury trials upon the submission and approval of plans to safely host jury trials. *Minnesota Judicial Branch COVID-19 Preparation Plan*, Minn. Jud. Council (May 15, 2020); *June 16, 2020, Judicial Council Meeting Minutes*, Minn. Jud. Council (June 25, 2020). The Judicial Council approved six counties to participate in the pilot program. *First Four Counties Approved to Hold Criminal Jury Trial Pilots*, Minn. Jud. Council (June 3, 2020); *Two Additional Counties Approved for Criminal Jury Trial Pilots*, Minn. Jud. Council (June 15, 2020).

On June 5, the district court continued Randall's trial a second time because of the COVID-19 pandemic, again finding good cause. The district court rescheduled the trial to August 4.

On July 2, the state requested that Randall undergo a Rule 20 prescreen competency evaluation. Randall's counsel did not object to the evaluation, and the district court ordered that Randall complete the same. The prescreen report recommended that Randall undergo a Rule 20 competency evaluation. Randall's counsel again did not object and instead advocated for Randall to complete the full evaluation, noting that Randall had completed a Rule 20 screening "less than a year ago" which "did not recommend any further examination, so clearly something has changed in the eyes of the professional, and I would respect that opinion." The district court ordered that Randall undergo a Rule 20 evaluation.

The first Rule 20 report was submitted on July 20, 2020. However, Randall did not cooperate with the evaluator, "refus[ing] to even come to the phone." At a hearing on July 28, the district court concluded that the report did not "me[e]t any of the standards required by the rule" and ordered a new Rule 20 evaluation. Randall's counsel did not object to a new evaluation, and again encouraged the completion of an evaluation, stating that "Randall does appear to be quite dysregulated in his behavior" and "there's been increased behavioral issues at the jail. . . . I think it is crucial to get the results of that Rule 20 before deciding, um, what to do." The district court ordered a second Rule 20 evaluation.[3] The district court continued the trial date for the third time, concluding that "I don't believe that

[3] In light of Randall's speedy-trial demand, the district court appointed a new evaluator to facilitate a quick turnaround in issuing the Rule 20 report.

we can be ready to try a case on this coming Tuesday . . . August 4th" and rescheduled the trial for September 1.

The second Rule 20 report was filed on August 5. Randall again refused to speak with the evaluator. On August 14, Randall's counsel filed a motion objecting to the second report because Randall did not speak with the evaluator, specifically expressing concern about "Randall's ability to consult with his attorney and contribute to his defense." Randall's counsel requested an update to the second report so that Randall could speak with the evaluator. On August 18, the district court ordered the evaluator to attempt to meet with Randall again. The district court continued Randall's trial date for the fourth time "because we will not be able to have [the evaluator's] response back" by September 1 and rescheduled the trial to September 15.

At the third Rule 20 evaluation, Randall did meet with the evaluator. The evaluator published an updated report concluding that Randall was competent to stand trial. Randall's counsel stated that he was satisfied with the updated competency report. Randall acknowledged to the district court that "I do have mental health issues" and apologized for his "bizarre behavior."

The trial started on September 15. That day, the parties conducted voir dire. At the end of the day, a prospective juror made prejudicial statements about Randall in the presence of other jurors. The district court struck all the jurors who could have overheard that juror's statements. After striking these jurors, the district court learned that the jury pool was insufficient to immediately move forward with the trial and continued the trial to the following week.

A jury was empaneled on September 22. The trial occurred over the next two days. The jury found Randall guilty of violating the HRO. Randall moved for a new trial and the district court denied the motion. The district court convicted Randall of violating the HRO and sentenced him to 30 months in prison.

Randall appeals.

DECISION

Randall challenges his conviction, arguing that (1) the district court lacks subject-matter jurisdiction over him, (2) his speedy-trial right was violated, (3) his prior-conviction stipulation was insufficient to establish a necessary element of the crime, (4) the state committed a discovery violation necessitating a new trial, and (5) improper testimony violated Randall's constitutional rights. Randall makes three additional arguments in his pro se supplemental brief. We address each in turn.

I. The district court has subject-matter jurisdiction over Randall.

Randall argues that the district court lacks jurisdiction over his criminal charges for violating an HRO based on his presence within a two-block radius inside the reservation for three reasons: (1) he is a member of an Indian tribe, (2) the HRO is a civil order, and (3) the HRO attempts to prohibit his access to tribal lands. We disagree.

"The Supreme Court has consistently recognized that Indian tribes retain attributes of sovereignty over both their members and their territory." *State v. Stone*, 572 N.W.2d 725, 728 (Minn. 1997) (quotation omitted). This sovereignty is subordinate to the federal government, not state governments. *Id.* However, state laws may be applied to tribal Indians where Congress expressly provides. *California v. Cabazon Band of Mission*

Indians, 480 U.S. 202, 207 (1987); *see also McGirt v. Oklahoma*, 140 S. Ct. 2452, 2478 (2020). Thus, a state's authority to exercise subject-matter jurisdiction over Indians on a reservation is governed by federal law. *State v. Jones*, 729 N.W.2d 1, 4 (Minn. 2007). We review de novo whether a state has jurisdiction to enforce a statute against an Indian tribe member on a reservation. *Id.*

Public Law 280 grants the state broad criminal jurisdiction over Minnesota's "Indian country."[4] Pub. L. No. 83-280, § 2(a), 67 stat. 588, 588 (1953) (codified in relevant part at 18 U.S.C. § 1162(a) (2018)). Public Law 280, however, grants the state only limited jurisdiction "over private civil litigation . . . [and not] general civil regulatory authority." *Cabazon*, 480 U.S. at 208 (citing *Bryan v. Itasca County, Minn.*, 426 U.S. 373, 385, 388-90 (1976)).

> Accordingly, when a State seeks to enforce a law within an Indian reservation . . . it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation . . . or civil in nature, and applicable only as it may be relevant to private civil litigation.

Id.

In *Cabazon*, the United States Supreme Court set forth the test for determining whether a state law is civil or criminal in nature within the meaning of Public Law 280,

[4] "Indian country" is defined by statute and includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government." 18 U.S.C. § 1151 (2018); *see DeCoteau v. Dist. Cnty. Court*, 420 U.S. 425, 427 n.2 (1975). Public Law 280 excludes the Red Lake Reservation and the Bois Forte Reservation at Nett Lake. 18 U.S.C. § 1162(a) (2018); *Stone*, 572 N.W.2d at 728 n.3.

and thus whether the state has jurisdiction to charge an Indian tribe member on a reservation with violating the state law:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation.

Id. at 209. The Court also established a "shorthand" test for this jurisdictional question, which focuses on "whether the conduct at issue violates the State's public policy."[5] *Id.*

The Minnesota Supreme Court has identified four non-exhaustive factors to evaluate "whether an activity violates the state's public policy in a nature serious enough to be considered 'criminal.'" *Stone*, 572 N.W.2d at 730. Those factors include (1) "the extent to which the activity directly threatens physical harm to persons or property or invades the rights of others," (2) the extent that the law allows for exceptions and exemptions, (3) "the blameworthiness of the actor," and (4) "the nature and severity of the potential penalties for a violation of the law." *Id.*

Minnesota courts apply "a two-step approach" to the *Cabazon* test. *Id.* First, we determine "the focus" of the analysis; that is, "whether to analyze the broad conduct or the narrow conduct at issue." *Jones*, 729 N.W.2d at 5. By default, we focus on the broad conduct, and only focus on the narrow conduct if "the narrow conduct presents

[5] In light of Public Law 280's purpose "to combat lawlessness," public policy refers to public *criminal* policy. *Stone*, 572 N.W.2d at 730. "Public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breaches in the social fabric which threaten grave harm to persons or property." *Id.*

substantially different or heightened public policy concerns." *Stone*, 572 N.W.2d at 730. Second, after determining the focus, we examine whether "the conduct at issue is generally permitted but subject to regulation, or if it is generally prohibited." *Jones*, 729 N.W.2d at 5. Where the conduct is generally permitted, "then the law controlling the conduct is civil/regulatory"; where the conduct is generally prohibited, "the law is criminal/prohibitory." *Stone*, 572 N.W.2d at 730. We utilize the "shorthand" public-policy test in close cases. *Jones*, 729 N.W.2d at 5.

Here, the broad conduct at issue is Randall's unrestricted ability to travel, while the narrow conduct at issue is Randall's specific ability to travel within two blocks of his grandfather's house. The restrictions on Randall's ability to travel within two blocks of his grandfather's house present heightened public-policy concerns. Randall is not a generic person with respect to his grandfather's property—he was specifically prohibited from traveling within two blocks of his grandfather's residence because his presence caused grandfather concern for his safety. Randall's proximity to his grandfather's property therefore presents heightened public-policy concerns, and we focus on the narrow conduct.

We next analyze whether "the conduct at issue is generally permitted but subject to regulation, or if it is generally prohibited." *Id.* Here, the narrow conduct—Randall's ability to travel near his grandfather's property—was generally prohibited because the HRO expressly restricted him from being within two blocks of the residence. Nothing about the HRO or the relevant HRO statute affords Randall an exception to enter the property. *See* Minn. Stat. § 609.748 (2018). Nor did grandfather grant Randall permission

to enter the property. The HRO thus generally prohibited Randall from coming within two blocks of his grandfather's property and constitutes a criminal/prohibitory law.

This conclusion is consistent with our holding in *State v. LaRose*. 543 N.W.2d 426 (Minn. App. 1996). There, defendant was cited with criminal trespass on a rental unit. *Id.* at 426. Defendant moved to dismiss for lack of jurisdiction because the trespass occurred on a reservation and was committed by an Indian tribe member. *Id.* at 427. We reasoned that Minnesota's trespass statute "serves punitive and deterrent ends not served by the regulatory property laws" and held that the statute "prohibits, rather than regulates, entry or occupancy of another's dwelling or building." *Id.* at 427-28. We concluded that the district court had subject-matter jurisdiction over charges related to the defendant's criminal trespass. *Id.* at 428.

Like the trespass statute in *LaRose*, the HRO statute at issue here "serves punitive and deterrent ends" and seeks to prohibit, not regulate, conduct. *Id.*; *see* Minn. Stat. § 609.748, subd. 6(b)-(d) (providing criminal penalties for violating an HRO). The HRO statute contains no exceptions. Minn. Stat. § 609.748. We hold that the HRO statute is criminal/prohibitory and subject-matter jurisdiction exists over Randall's criminal charges for a violation of that order.

The four-part public-policy shorthand test confirms our conclusion. *See Stone*, 572 N.W.2d at 730. First, Randall's violation of the HRO "directly threaten[ed] physical harm to persons or property or invade[d] the rights of others." *Id.* Grandfather obtained the HRO because he was fearful of Randall and did not want Randall near him or his property. Grandfather believed that a fight was breaking out between Randall and the other two

individuals, and Randall later came within six feet of grandfather on the deck, "shaking his finger" at grandfather. Randall's conduct was the exact conduct that grandfather sought to prevent by obtaining the HRO. Grandfather was forced to call the police to protect his person and property because Randall did not abide by the HRO. Second, there is no exception to the HRO statute or the HRO itself. Third, Randall is blameworthy for his conduct. Randall was served with the HRO and knew that he was prohibited from being within two blocks of his grandfather's home. He never opposed or challenged the HRO after its issuance. Nonetheless, Randall entered his grandfather's property and approached grandfather while shaking a finger at him. Fourth, a violation of an HRO carries a potentially severe penalty, as an HRO violation is chargeable as a felony if the person violating the HRO has two or more "domestic violence-related offense convictions" within ten years from the HRO violation. Minn. Stat. § 609.748, subd. 6(d)(1). All four factors support the conclusion that the HRO statute is a criminal/prohibitory law and that the district court has jurisdiction over criminal charges related to Randall's violation of the HRO.

The district court did not err by determining that it possesses subject-matter jurisdiction over this matter.

II. Randall's speedy-trial right was not violated.

Randall argues that his speedy-trial right was violated because his trial occurred more than 200 days after he requested a speedy trial. Randall claims that any delay caused by his motion to dismiss should not be attributed to him and that the state is responsible for

delays related to the COVID-19 pandemic, the Rule 20 competency evaluations, and the insufficient jury pool. We disagree.

The Sixth Amendment to the United States Constitution provides an accused "the right to a speedy and public trial." U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 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).

"[T]he central question we must answer when assessing a Sixth Amendment speedy trial claim is this: Did the State bring the accused to trial quickly enough so as not to endanger the values that the right to a speedy trial protects?" *State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021). "While the speedy trial right protects the individual interests of the accused, the speed with which an accused must be brought to trial must be considered with regard to the practical administration of justice." *Id.* (quotation omitted). "Criminal prosecutions are designed to move at a deliberate pace to protect the rights of the accused and to ensure the ability of society to protect itself by allowing for thorough and prepared prosecutions; whether a trial is prompt enough must be assessed in light of both interests." *Id.* (quotation omitted). "[A]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case." *Barker v. Wingo*, 407 U.S. 514, 522 (1972). "Accordingly, whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends on the circumstances." *Mikell*, 960 N.W.2d at 244 (quotation omitted).

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*. *State v. Windish*,

590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker*, 407 U.S. at 530-33). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. None of these factors are dispositive, "[r]ather, they are related factors and must be considered together with such other circumstances as may be relevant." *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quoting *Barker*, 407 U.S. at 533). "This balancing test allows the court to accommodate the sometimes competing interests between the orderly prosecution of crimes that is fair to both sides and the prompt resolution of the case by trial." *Mikell*, 960 N.W.2d at 245.

> This is not a check-the-box, prescriptive analysis; rather, we assess how the factors interact with each other in a difficult and sensitive balancing process to answer the essential question of whether the State brought the accused to trial quickly enough to avoid endangering the values that the right to a speedy trial protects.

Id. (quotation omitted).

A. Length of the Delay

We begin by considering the length of the delay. Randall argues that presumptive prejudice occurred because more than 60 days elapsed between the time that he demanded a speedy trial and when his trial commenced. "A defendant must be tried as soon as possible after entry of a plea other than guilty. . . . [T]he trial must start within 60 days unless the court finds good cause for a later trial date." Minn. R. Crim. P. 11.09(b). The supreme court has interpreted the rule "to mean that delays beyond the 60-day limit simply raise the presumption that a violation has occurred and require the trial court to conduct a

further inquiry to determine if there has been a violation of the defendant's right to a speedy trial." *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). "We determine whether good cause exists for a later trial date under Rule 11.09 by applying the *Barker* factors." *Mikell*, 960 N.W.2d at 246 (quotation omitted).

It is true that more than 60 days elapsed between the date that Randall demanded a speedy trial and the commencement of his trial. But the "threshold conclusion that a delay is presumptively prejudicial does not end our consideration of the length of the delay in the weighing of the *Barker* factors." *Id.* at 250. We instead consider the reasons for the delay, noting that "[a] longer delay may be justified if there are good reasons for the delay." *Id.*

B. Reason for the Delay

We next consider who bears responsibility for the delay. "[I]f there is good cause for the delay—for instance, a key witness of the State is unavoidably unavailable or the government takes a good faith, well-supported appeal from a pretrial ruling—the delay will not be held against the State." *Id.* at 251. The following chart depicts the delays in bringing Randall's case to trial:

Delay Time Frame	Reason for Delay	Number of Days (245 total)
Jan. 22 – Mar. 20[6]	Motion to dismiss for lack of subject-matter jurisdiction	59
Mar. 21 – Aug. 4	COVID-19 & prohibition on new jury trials	137
Aug. 5 – Sept. 14	Rule 20 evaluations	41
Sept. 15 – Sept 22	Insufficient jury pool	8

[6] Although Randall's motion to dismiss was not resolved until June, the COVID-19 pandemic served as a superseding delay because the Chief Justice's March 20 order made it impossible for the district court to host a new jury trial.

1. Motion to Dismiss for Lack of Jurisdiction

Randall is responsible for the 59-day delay caused by his motion to dismiss for lack of subject-matter jurisdiction. "Delays caused by defense motions generally weigh against the defendant." *State v. Hahn*, 799 N.W.2d 25, 32 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). In *State v. DeRosier*, the supreme court found that the "delay in bringing the matter to trial was occasioned by defense motions" and held that, "[w]hen the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation." 695 N.W.2d 97, 109 (Minn. 2005). Similarly, in *State v. Johnson*, the supreme court denied defendant's speedy-trial claim, concluding that defendant's "own motions were the primary reason for much of the delay." 498 N.W.2d 10, 16 (Minn. 1993).

Randall's motion to dismiss caused a 59-day delay in his trial—from January 22, when he raised his initial jurisdictional challenge, until March 20, when the Chief Justice prohibited new jury trials. This delay is solely attributable to Randall.[7]

2. The COVID-19 Pandemic

Neither party is responsible for the 137-day delay caused by the COVID-19 pandemic and the Chief Justice's prohibition on new jury trials. In *State v. Jackson*, we held that when the "delay occurred solely because of public-safety concerns due to the COVID-19 pandemic and when the district court was prohibited from holding a jury trial by order of the Chief Justice" neither party was responsible for the delay. ___ N.W.2d

[7] The state concedes that it is responsible for 16 days of the delay because it requested a continuance in February to brief Randall's motion. We need not credit this delay, however, because Randall's unmeritorious motion to dismiss was not resolved until April 16 and would have delayed his trial beyond March 20 even without the continuance.

___, ___, No. A21-0126, slip op. at 6-7 (Minn. App. Nov. 8, 2021). Here, the district court twice found that the pandemic constituted good cause to delay Randall's trial. We therefore conclude that the circumstances of the pandemic "rendered a trial unsafe and did not reflect a deliberate attempt by the state to hamper the defense." *Id.* at 6.

Randall argues that the implementation of the COVID-19 pilot program for restarting jury trials shows that his trial could have been held at an earlier date. We observe that Randall did not make this argument before the district court. Regardless, it is untenable. Of the 87 Minnesota counties, only six were approved for the pilot program and there is no evidence in the record that Carlton County could have been approved as a pilot county. Even so, Randall's trial was the *very first* post-COVID-19 jury trial in Carlton County.

COVID-19 created, and still presents, a significant public-health crisis. District courts attempted to restart jury trials as soon as safely possible, balancing the need to protect the participants, court employees, counsel, jurors, and the public. While Randall wanted his trial to occur sooner than it did, the delay caused by the pandemic was "unavoidable." *Id.* Any delay attributable to the COVID-19 pandemic cannot be attributed to either party.

3. Rule 20 Evaluations

The delay caused by the series of Rule 20 competency evaluations is attributable to Randall. "When the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation." *DeRosier*, 695 N.W.2d at 109. In *DeRosier*, the supreme court found that no speedy-trial violation existed where the delay was caused,

in part, by defendant's own Rule 20 motion. *Id.* Delays in the completion of competency evaluations because of a defendant's lack of cooperation are also legitimate reasons to delay a trial and are attributable to the defendant, rather than to the state, for speedy-trial purposes.[8]

Here, the record shows that Randall was nonresponsive and uncooperative throughout the evaluative process. Although Randall's claims that these were "eleventh-hour" evaluations, he omits that his own counsel supported each evaluation and that Randall himself caused the delay in completing the evaluations because he refused to meet with the evaluators. Indeed, Randall's counsel stated that completion of a complete Rule 20 evaluation was "crucial" to ensure that Randall was competent to consult with counsel, assist with his defense, and stand trial. Any delay caused by Randall's intractability and refusal to cooperate with the Rule 20 evaluations is attributable solely to him.

4. Insufficient Jury Pool

Randall asserts that the state delayed his trial by a week due to an insufficient jury pool. We again disagree. "The interpretation of the Minnesota Rules of Criminal Procedure is a question we review de novo." *Reynolds v. State*, 888 N.W.2d 125, 129 (Minn. 2016). Rule 11.09 provides that "[o]n demand of any party after the entry of [a not-guilty] plea, the trial must start within 60 days." Minn. R. Crim. P. 11.09(b). Rule 26

[8] In the nonprecedential case of *State v. Jones*, where defendant refused to cooperate in the Rule 20 evaluation, we held there that the "proceedings were legitimately delayed by at least three weeks while the court awaited the results of the evaluation." No. A11-2145, 2012 WL 5381834, at *1, 3 (Minn. App. Nov. 5, 2012), *rev. denied* (Minn. Jan. 29, 2013).

describes the process for conducting a trial, including procedures for jury selection and voir dire. Minn. R. Crim. P. 26.02. Subdivision 4 of that rule, for example, provides detailed instructions on jury-selection methods. *Id.*, subd. 4(3)(a). And while the Minnesota Rules of Criminal Procedure do not define when a trial "starts," the inclusion of numerous, specific jury-selection instructions for the voir dire process compels us to determine that a trial "starts," for speedy-trial purposes, at the commencement of voir dire. Because Randall's trial started on September 15, there was no legally cognizable delay when voir dire was continued to September 22.[9]

C. Assertion of Speedy-Trial Right

We next consider the nature of the assertion of the speedy-trial right. Although a "defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant was deprived of the right," the inquiry "is necessarily contextual." *Mikell,* 960 N.W.2d at 252 (quotation omitted). Minnesota courts consider "other signals in the case to assess whether a demand for a speedy trial is serious," *id.*, and consider "the frequency and force of a demand" which is likely to reflect the "seriousness and extent of the prejudice which has resulted" from an alleged violation, *Friberg,* 435 N.W.2d at 515.

[9] Even if Randall's trial did not "start" until September 22, the continuance of voir dire occurred because of an unforeseen and unfortunate statement by a juror. Without striking the jurors who overheard the statement, Randall would have been unfairly prejudiced at trial. Such a delay cannot be attributed to the state. *See Mikell,* 960 N.W.2d at 251 ("[I]f there is good cause for the delay . . . the delay will not be held against the State.").

Here, Randall asserted his demand for a speedy trial on January 22, 2020. Randall repeated his speedy-trial demand four more times, stating on September 3, "[t]his is my fifth speedy trial demand and I—and I can't wait." We do not question whether the demands for speedy trial were serious—Randall asserted his demand throughout his proceedings. But the context of the demands illustrate that all parties were aware that a safe trial could not occur precisely within 60 days following the demand because of the pandemic. We also observe that, notwithstanding his speedy-trial demands, Randall's counsel conceded that a trial could not occur until a competency evaluator determined that Randall could effectively consult with counsel and participate in his own defense. While this factor weighs in Randall's favor, these circumstances weaken the strength of the demand for a speedy trial in our overall balancing.

D. Prejudice by the Delay

We next consider whether Randall was prejudiced by the delay, focusing on three 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." *Mikell*, 960 N.W.2d at 253 (quotation omitted). An impairment of the defense is the "most serious" of these interests and is typically "suggested by memory loss by witnesses or witness unavailability." *Taylor*, 869 N.W.2d at 20 (quotation omitted).

Randall argues that he suffered all three forms of prejudice but acknowledges that our caselaw instructs us that "[i]f a defendant is already in custody for another offense . . . [oppressive pretrial incarceration and anxiety] are not implicated." *Id.* Because Randall

was already in custody for other offenses, we only consider whether the delay impaired Randall's ability to defend the merits of the charge.

Randall suggests that his defense was impaired because "by the time of trial grandfather's memory had faded and his story completely changed." We are not persuaded. At trial, the state produced definitive evidence establishing that Randall was physically present on grandfather's property in violation of the HRO. Although grandfather could not remember certain specific details from the day of Randall's alleged HRO violation, any impairment to grandfather's memory did not undermine the substantive defense to the charge. Because Randall was not prejudiced by the delay, this factor weighs against him.

E. Balancing the Factors

Our final step in the analysis consists of "the delicate and sensitive balancing required to answer" whether the state brought Randall to trial "quickly enough so as not to endanger the values that the speedy trial right protects." *Mikell*, 960 N.W.2d at 255. The supreme court, extrapolating from the *Barker* factors, identified "a series of commonsense questions . . . to determine whether the values embedded in the speedy trial right were protected." *Id.* at 244-45. These questions are:

> Who is responsible for the delay? Is the justification for the delay good or bad? Is the length of the delay consistent with, and proportionate to, the justification for the delay? Were the defendant's interests harmed by the delay itself and did that harm increase as the delay lengthened? Was the defendant serious about getting to trial promptly, which is good evidence that he perceived the delay as harmful?

Id. at 245.

Here, the delays in bringing Randall to trial were either caused by Randall or the pandemic. These delays were justified. Randall was responsible for the unmeritorious motion to dismiss and the delays caused by his uncooperative behavior regarding the Rule 20 examinations. The delay caused by the pandemic was justified by public-safety concerns. *See Jackson*, slip op. at 6-7. The length of these delays was consistent with, and proportionate to, the justification for the delay. Randall's interests were not harmed by the delay itself and any harm did not increase as the delay lengthened. None of the delays are attributable to the state. We therefore agree with the district court that Randall's speedy-trial right was not violated.

III. Randall stipulated to his prior convictions and cannot collaterally attack the validity of those prior convictions in this action.

A person may be convicted of felony violation of a restraining order if he or she violates an HRO "within ten years of . . . two or more previous qualified domestic violence-related offense convictions." Minn. Stat. § 609.748, subd. 6(d)(1). In 2016, Randall was convicted of third- and fourth-degree assault.[10] *State v. Randall*, No. A17-0444, 2018 WL 1040727, at *1 (Minn. App. Feb. 26, 2018), *rev. denied* (Minn. Apr. 25, 2018).

Prior to trial, Randall stipulated to these convictions in order to preclude the jury from learning about his criminal history. But now Randall claims that he only stipulated

[10] Randall appealed this conviction in 2018, arguing that the district court provided improper jury instructions and improperly denied his motion for a mistrial. *Randall*, 2018 WL 1040727, at *2-3. We affirmed. *Id.* at *3. Randall did not challenge his fourth-degree conviction as being a lesser-included offense.

to an exhibit containing a certified copy of the convictions and not to the element of having had two previous qualifying convictions. Randall also argues that his fourth-degree conviction from the 2016 assault was a lesser-included offense of his third-degree-assault conviction and is thus invalid under Minn. Stat. § 609.04, subd. 1(1) (2018) (providing that one cannot be convicted of a "lesser degree of the same crime"). Randall therefore contends that the state failed to prove that he had two prior qualifying convictions, a necessary element to a felony conviction for violation of an HRO.

As a threshold matter, Randall's argument constitutes an impermissible collateral attack on the validity of his prior conviction. We allow collateral attacks on prior convictions in only "unique cases." *State v. Schmidt*, 712 N.W.2d 530, 538 n.4 (Minn. 2006) (quotation omitted). For example, we allow collateral attacks to challenge an underlying conviction when a defendant pleaded guilty without the benefit of counsel. *State v. Nordstrom*, 331 N.W.2d 901, 904-05 (Minn. 1983); *see also State v. Simon*, 339 N.W.2d 907, 907 (Minn. 1983) (rejecting defendant's collateral attack when his guilty plea was counseled). Randall does not claim that his prior conviction was the product of unique circumstances. And Randall did not challenge the validity of his prior conviction on direct appeal. We therefore do not consider the collateral attack on the validity of his prior conviction in this postconviction appeal.

Moreover, we disagree with Randall's contention that he only stipulated to an exhibit containing information about his prior convictions as opposed to stipulating to the existence of his two prior convictions. Our review of the record shows that Randall agreed

to stipulate to the fact that he had two prior qualifying convictions during extensive colloquies with the district court. We see no error by the district court.

IV. The district court acted within its discretion by denying the motion for mistrial.

Randall argues that he is entitled to a new trial because of a prejudicial discovery violation by the state. The parties agree that the state committed a discovery violation by failing to disclose part of grandfather's testimony in advance of trial. *See* Minn. R. Crim. P. 9.01, subd. 1(2)(b) (mandating that the state disclose any written summaries of oral statements to the defense).

"The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the trial court." *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). We review a district court's decision to impose discovery sanctions for an abuse of discretion. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). We do not order a new trial to remedy a discovery violation unless there is a reasonable probability that the evidence would have affected the outcome of the trial. *State v. Clobes*, 422 N.W.2d 252, 255 (Minn. 1988).

At trial, grandfather testified that, after Randall and the two other individuals moved from the backyard to the driveway, Randall "came up on the—on the deck, started walking towards me and he stopped and he was saying something. I couldn't understand it, but he was shaking his finger at me." Randall argued, and the state agreed, that the state failed to disclose that grandfather would testify that Randall approached him on the deck, shaking his finger. Randall claimed that the failure to disclose this information prejudiced him because his defense centered around grandfather's inability to properly identify him.

The district court concluded that, although the state committed a discovery violation by failing to disclose this evidence, the testimony did not prejudice Randall because Randall's HRO violation stemmed from his being within two blocks of grandfather's property and the undisputed evidence showed that Randall did enter grandfather's property. Even so, the district court blunted any prejudice to Randall by allowing defense counsel to impeach grandfather at trial with his inconsistent statement to the police officer.

The district court did not abuse its discretion by denying Randall's motion for a mistrial. Even though the state committed a discovery violation by failing to disclose a portion of grandfather's testimony, Randall failed to establish that there is a reasonable probability that the evidence would have affected the outcome of the trial. Grandfather testified that he identified Randall in the backyard, other supporting evidence showed that Randall entered the property, and the HRO prohibited Randall from being within two blocks of grandfather's house.

V. The police officer's testimony did not violate Randall's constitutional rights.

Randall next argues that the Fond du Lac police officer's testimony violated his Sixth Amendment Confrontation Clause right because the officer testified to statements made by Randall's father. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The Confrontation Clause prohibits the admission of testimonial statements made by an out-of-court witness unless that witness was unavailable and the defendant had a prior opportunity to cross-examine him. *Crawford v. Washington*, 541 U.S. 36, 59 (2004). Both parties agree that father's statements, as told by the police officer at trial, were testimonial out-of-court statements.

We review unobjected-to testimonial statements for plain error. *State v. Rossberg*, 851 N.W.2d 609, 618 (Minn. 2014). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016) (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). "With respect to the substantial-rights requirement, [the defendant] bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). This is a "heavy burden." *Rossberg*, 851 N.W.2d at 618.

Even assuming the existence of plain error here, Randall has not shown that any violation of the Confrontation Clause affected his substantial rights. *See id.* The officer's testimony about father's statements was innocuous. Grandfather was the eyewitness who saw Randall on his property and his was the central testimony of the case. The officer's reference to Randall's father spans less than a page of the trial transcript and the identity of the referenced individual is not clear from the officer's testimony. Randall failed to meet his heavy burden to demonstrate how any plain error affected his substantial rights.

VI. Randall's pro se arguments fail.

Randall makes three pro se arguments in his supplemental brief. He argues that (1) his trial would have turned out differently if two additional Fond du Lac police officers had testified, (2) his pretrial incarceration and postponed trial caused his witnesses to be

unavailable, and (3) grandfather's petition for the HRO was "forged under perjury without home owners authorization, knowledge or consent."

Because Randall did not raise his first two arguments in the district court, they are forfeited on appeal.[11] We "will not decide issues which were not raised before the district court." *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Even so, plain error is not discernable from this record.

Randall's remaining claim that grandfather forged the petition for the HRO is an impermissible collateral attack on the validity of the HRO. "As a general rule, a party's failure to appeal the issuance of a court order precludes a collateral attack on that order in a subsequent proceeding." *State v. Romine*, 757 N.W.2d 884, 889-90 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009). Randall did not appeal from the HRO proceedings. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (providing 60-day time frame to appeal an appealable order). Instead, Randall now challenges the HRO for the first time on direct appeal from his criminal conviction for violating the HRO. Because the criminal proceeding is a subsequent and separate matter, we do not consider his arguments regarding the validity of the HRO. *State v. Harrington*, 504 N.W.2d 500, 503 (Minn. App. 1993) (refusing to consider collateral attack on HRO in reviewing an appeal taken from appellant's criminal conviction for violating the HRO), *rev. denied* (Minn. Sept. 30, 1993).

Affirmed.

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[11] We note that both of these issues stem from Randall's argument that subpoenaed witnesses did not testify. The record contains no evidence of the issuance or existence of any such subpoenas. Nor does the record contain any information about what these officers might have testified to at trial.