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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0604**

State of Minnesota,
Respondent,

vs.

Larry Duane Lucas, Jr.,
Appellant.

**Filed July 25, 2022
Affirmed in part, reversed in part, and remanded
Klaphake, Judge***

Crow Wing County District Court
File No. 18-CR-20-3179

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Gaitas, Judge; and Klaphake,
Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Larry Duane Lucas, Jr. argues that the district court violated his constitutional right to a speedy trial. In the alternative, he argues that the district court plainly erred by admitting expert testimony at his jury trial that amounted to improper character evidence. He also argues that one of his convictions—second-degree assault causing substantial bodily harm—must be reversed because the state did not present sufficient evidence that the bodily harm caused was “substantial.” Because we conclude that Lucas’s right to a speedy trial was not violated and that the state presented sufficient evidence to prove that the bodily harm caused was “substantial,” we affirm in part. But because we conclude that the district court plainly erred by admitting expert testimony that amounted to improper character evidence, we reverse in part and remand for a new trial.

DECISION

Lucas was charged with and convicted of second-degree assault with a dangerous weapon causing substantial bodily harm (count one), second-degree assault with a dangerous weapon (counts two and three), and threats of violence (count four) following an alleged incident of domestic violence at a campsite in Crow Wing County. Lucas demanded a speedy trial at his omnibus hearing on October 15, 2020, and repeated his demand multiple times before his jury trial began on January 11, 2021.

I. Lucas’s right to a speedy trial was not violated.

The United States and Minnesota Constitutions guarantee criminal defendants 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). If a defendant has been deprived of their right to a speedy trial, the case must be dismissed. *Id.*

To determine 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 (1972). *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (stating that Minnesota courts apply “the test articulated” in *Barker* for speedy-trial claims). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant’s assertion of their right to a speedy trial, and (4) any prejudice to the defendant. *Barker*, 407 U.S. at 530-33. No one factor is dispositive; rather, the factors are related and “must be considered together with such other circumstances as may be relevant.” *Osorio*, 891 N.W.2d at 628 (quotation omitted). Analyzing the *Barker* factors therefore involves “a difficult and sensitive balancing process . . . in which the conduct of both the [s]tate and the defendant are weighed.” *Id.* (quotations omitted). We address each factor in turn.

Length of Delay

A trial must start within 60 days of a defendant’s speedy-trial demand “unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). A delay of more than 60 days raises the presumption that a violation has occurred, triggering review of the three remaining *Barker* factors. *State v. Mikell*, 960 N.W.2d 230, 246 (Minn. 2021). Here, Lucas’s trial began on January 11, 2021, 88 days after his first speedy-trial demand. Because this delay exceeded 60 days, it triggers the presumption that a violation occurred and requires us to consider the remaining *Barker* factors.

Reason for Delay

We next consider who bears responsibility for the delay. When a defendant causes the overall delay in bringing a case to trial, there is no speedy-trial violation. *Id.* at 251. When the state is responsible, courts must assess the reasons offered to justify the delay. *Id.* A deliberate attempt to delay the trial in order to impede the defense weighs heavily against the state, while neutral reasons are weighted less heavily. *Id.* “And if there is good cause for the delay . . . the delay will not be held against the [s]tate.” *Id.*

Lucas’s trial was delayed during a period in which in-person jury trials were suspended in Minnesota due to safety concerns about the COVID-19 pandemic. On November 20, 2020, the Chief Justice of the Minnesota Supreme Court issued an order prohibiting the start of any new jury trials between November 30, 2020, and February 1, 2021, unless “the chief judge in the district where the trial is to be held, after consulting with the Chief Justice, grants an exception for the criminal jury trial to be held in person.” *Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001 (Minn. Nov. 20, 2020).

At a pretrial hearing on November 30, the district court informed the parties that Lucas’s trial, scheduled to begin in early December, would be delayed. The district court stated that it had received information about the application process for seeking an exception to allow a criminal jury trial to be held in person, but that it did not know if it would receive a response to an application in time “and in fact I’m not going to submit one.” The district court expressed several pandemic-related concerns. It explained that “a number of jurors” had reported testing positive for COVID-19, and one potential juror had

stated that they would refuse to wear a mask. The district court also expressed concern about jurors congregating at the court, noting that social distancing would not always be possible and citing the governor's recent executive order prohibiting social gatherings even where social distancing could be maintained. *See* Emerg. Exec. Ord. No. 20-99, *Implementing a Four Week Dial Back on Certain Activities to Slow the Spread of COVID-19* (Nov. 18, 2020). The district court cited its ultimate obligation to public safety, noting that limited space remained in area hospitals for COVID-19 patients.

Lucas argues that the delay of his trial is attributable to the state because the district court made a unilateral decision to delay the trial and “refused to ask for permission to hold it.” In *State v. Jackson*, we held that a 77-day delay caused solely by public safety concerns related to the pandemic was unavoidable and attributable to neither the state nor the defendant. 968 N.W.2d 55, 61 (Minn. App. 2021), *rev. granted* (Minn. Jan. 18, 2022). Following the reasoning in *Jackson*, we conclude that the 88-day delay of Lucas's trial due to pandemic-related restrictions on in-person jury trials was valid and attributable to neither party. The reason for the delay is therefore a neutral factor.

We are not persuaded otherwise by Lucas's argument that his case is distinguishable because the district court had the option to request an exception to the rule and hold an in-person jury trial. The record shows that the district court's decision not to apply for an exception to the prohibition on in-person trials reflects the same safety concerns underlying the prohibition itself. The district court explained its concern about the availability of a sufficient number of jurors and ultimately based its decision on concern about the health

risks that the pandemic posed to jurors and the public. We therefore conclude that this factor is neutral in the speedy-trial analysis.

Assertion of Right

A defendant's assertion of their right to a speedy trial "is entitled to strong evidentiary weight in determining whether the defendant was deprived of the right." *Mikell*, 960 N.W.2d at 252 (quotation omitted). Here, the parties do not dispute that Lucas repeatedly asserted his speedy-trial right. Because he did so multiple times throughout the pretrial proceedings, this factor weighs in favor of finding a speedy-trial violation.

Prejudice to the Defendant

To determine whether a defendant has suffered prejudice, we consider 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." *Id.* at 253 (quotation omitted). The third factor is the most serious. *State v. Windish*, 590 N.W.2d 311, 318 (Minn. 1999). "If a defendant is already in custody for another offense . . . the first two interests are not implicated." *Taylor*, 869 N.W.2d at 20.

Lucas emphasizes the first two interests, arguing that his pretrial incarceration was especially oppressive because it occurred during a global pandemic and that he suffered anxiety and concern. Though we acknowledge that Lucas likely experienced anxiety while in jail due to the health risks of COVID-19, the first and second interests relevant to the prejudice determination are not implicated if a defendant is already in custody for another

offense.¹ *Id.* And while Lucas was awaiting trial in this case for 28 days beyond the 60-day speedy-trial window, he was also in custody awaiting sentencing for two other felony cases. Therefore, he cannot show that he suffered either the first or second types of prejudice. Further, the record does not show that the delay impaired his defense, which is the most significant consideration. This factor therefore weighs against finding a speedy-trial violation.²

Balancing the Factors

Balancing the factors discussed above, we conclude that the state brought Lucas to trial “quickly enough so as not to endanger the values that the speedy trial right protects.” *Mikell*, 960 N.W.2d at 255. First, the 88-day delay triggered a presumption that a speedy-trial violation occurred. But the primary reason for the delay—concern about the safety risks posed by the COVID-19 pandemic—is a neutral factor attributable to neither party. Next, Lucas’s repeated assertion of his speedy-trial right weighs in favor of finding a violation. But the lack of prejudice to Lucas as a result of the delay weighs more strongly against finding a violation. Therefore, given the unique nature of the delay caused by the

¹ Lucas argues that this rule applies only to defendants with two simultaneously pending trials, citing *Mikell*, 960 N.W.2d at 253, and *Windish*, 590 N.W.2d at 313, 318. But neither case explicitly limits the rule to defendants with simultaneously pending trials.

² Lucas also cites *Doggett v. United States*, 505 U.S. 647, 655 (1992), to support his argument that the presumption of prejudice triggered by the first *Barker* factor means that prejudice is presumed, the state bears the burden of rebutting that presumption, and it failed to do so here. In *Doggett*, the Supreme Court held that the eight-year delay between the defendant’s indictment and arrest violated his speedy-trial rights even though he could not demonstrate exactly how the delay prejudiced him. *Id.* at 655. But though “affirmative proof of particularized prejudice is not essential to every speedy trial claim,” the prejudice assumed as a result of an eight-year delay cannot be assumed here.

pandemic, a careful balancing of the *Barker* factors leads us to conclude that the district court did not violate Lucas's speedy-trial right.

II. The state presented sufficient evidence for a jury to conclude that the victim suffered substantial bodily harm.

Lucas also argues that his conviction of second-degree assault with a dangerous weapon inflicting substantial bodily harm (count one) must be reversed because the state did not present sufficient evidence to prove that the harm the victim suffered met the statutory definition of "substantial bodily harm."

When reviewing the sufficiency of the evidence for a conviction, we "view[] the evidence in the light most favorable to the verdict, assuming the fact-finder believed the [s]tate's witnesses and disbelieved any evidence to the contrary." *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). Here, determining whether the state met its burden of proof also requires interpreting the statutory definition of the charged offense. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (noting that appellate courts may need to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim if those issues are intertwined). We consider questions of statutory interpretation de novo. *Id.*

To convict Lucas of count one, the state had to prove that he (1) assaulted the victim, (2) with a dangerous weapon, and (3) inflicted substantial bodily harm. Minn. Stat. § 609.222, subd. 2 (2020). Minnesota law defines "substantial bodily harm" as "bodily injury [1] which involves a temporary but substantial disfigurement, or [2] which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or [3] which causes a fracture of any bodily member." Minn. Stat. § 609.02,

subd. 7a (2020). “Substantial” means of “considerable size or amount.” *State v. Williams*, 451 N.W.2d 886, 890 (Minn. App. 1990). Whether a particular injury constitutes substantial bodily harm is a question for the jury. *See State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) (stating the same principle regarding great bodily harm).

Here, the state charged Lucas with second-degree assault with a dangerous weapon causing substantial bodily harm, among other charges, based on allegations that he assaulted the victim while on a camping trip. The victim testified at trial that Lucas hit her on the back of her leg and the back of her head with a rake handle. She testified that these blows injured the left side of her face and head and created a noticeable bruise on her leg. Lucas contends that the injuries to the victim’s head and leg did not reach the level of substantial bodily harm as defined by statute. We disagree.

A reasonable jury could have found that the injury to the victim’s leg amounted to “temporary but substantial disfigurement.” The victim testified that the back of her leg started swelling up after Lucas hit her with a rake handle, and a deputy who interviewed the victim later on the same day testified that he could see the swelling through her jeans. The victim also testified, and the deputy confirmed, that the blow to her leg created a bruise of considerable size that spread from the back of her knee up the full length of her thigh. Photographs introduced into evidence confirmed this testimony.

Further, a reasonable jury could also have found that the injury to the victim’s head created both “temporary but substantial disfigurement” and “temporary but substantial loss or impairment of the function of [a] bodily member or organ.” The victim testified that when Lucas hit the back of her head with the rake handle, the handle broke in two and

wrapped around the side of her head, injuring her face and causing swelling behind her ear. The deputy confirmed that he saw swelling and a lump on the left side of the victim's head. The victim also testified that the left side of her face hurt for at least a month after the incident, so much that she was unable to sleep on that side of her face, and the lump on the side of her head was still there six months later. These facts are sufficient to support the jury's finding that the assault inflicted substantial bodily harm. And because the jury determines whether an injury constitutes substantial bodily harm, we reject Lucas's argument that the victim's injuries were not serious enough to be "substantial."

III. The district court plainly erred by admitting expert testimony that improperly addressed the general behavior of perpetrators of domestic abuse.

Finally, Lucas argues that we must reverse his convictions and remand for a new trial because the district court erred by admitting expert testimony on the behavior of domestic-abuse perpetrators. Though Lucas objected generally to the introduction of the expert testimony at a pretrial motion hearing, he did not make any objections to the actual testimony later presented at trial. We therefore review this issue for plain error. *See State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016) (stating that we review unobjected-to error under the "plain error test").

"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." *Id.* "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). If a defendant

establishes all three factors, we may remedy the error “if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 328 n.2 (Minn. 2016) (quotation omitted).

When considering whether to admit expert testimony, a district court must determine whether the testimony will help the jury resolve factual questions presented at trial. Minn. R. Evid. 702; *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). A district court must also balance the relevance and probative value of the testimony against the danger of creating unfair prejudice, the potential for confusing or misleading the jury, and other concerns. Minn. R. Evid. 403. Expert testimony on “the experiences and reactions” of victims of domestic abuse or “battered women” may be admissible under these standards if it helps the jury understand behavior that might otherwise undermine a victim’s credibility. *State v. Obeta*, 796 N.W.2d 282, 292 (Minn. 2011); *State v. Vance*, 685 N.W.2d 713, 718 (Minn. App. 2004), *rev. denied* (Minn. Nov. 23, 2004). But to ensure that a defendant is not unfairly prejudiced by such testimony, an expert may not express an opinion on whether the defendant actually engaged in domestic abuse, among other limitations. *Vance*, 685 N.W.2d at 718.

Here, the state introduced testimony from an expert in the area of domestic abuse because the assault charges against Lucas stemmed from an alleged incident of domestic violence. Before the expert testified, the district court found that sufficient evidence had been produced to demonstrate that Lucas and the alleged victim were in a romantic relationship that involved domestic abuse, that Lucas used physical violence or the threat of it to control the victim, and that the victim’s credibility had been called into question by

the defense. Given those findings, the district court determined that the expert's testimony could help the jury understand the counterintuitive behavior of a victim of domestic abuse as long as the expert addressed that behavior "in a general sense" and did not opine that it "actually came into play in this case."

The expert testified about the dynamics of power and control in relationships involving domestic abuse. He also testified at length about the typical mindset of a male perpetrator of domestic abuse based on his experiences working with offenders in rehabilitation programs. He testified that a male perpetrator of domestic abuse has a "notion of being entitled to the submission of their female partner." And "[n]ot only does he feel entitled that she submit to what he wants, but if she doesn't submit to what he wants, then he has the right to punish her for not complying." The expert went on to say that this sense of entitlement is "something that is learned. Like racial bias, this is gender biased."

The expert also gave a lengthy explanation of the differences he perceived between male and female perpetrators of domestic abuse. When asked by the prosecutor why he referred to female perpetrators as "women convicted of illegal violence" and male perpetrators as "men who batter," the expert cited a fundamental "difference in intent." He explained that with men who engage in domestic abuse, "the intent of the violence is to get [a female partner] to submit to what they want or punish her for not submitting." But with women who engage in domestic abuse, "the intent behind [the violence] is typically to stop what's happening to them from the abusive partner." The expert went on to say that "*all* those women are in a relationship where they are being battered, but one of the ways that they respond to that battering is to use violence against their partner." (Emphasis added.)

And he discussed other perceived differences between male and female perpetrators of domestic abuse, such as a greater propensity among men to claim that “it is everybody else’s fault.”

Lucas argues that the district court improperly admitted the expert’s testimony because it was akin to improper character evidence that impermissibly “invited the jury to infer that, because Lucas’s conduct fit the profile of a male domestic abuser, then Lucas must be a domestic abuser.” To support his position, Lucas cites *State v. Williams*, 525 N.W.2d 538, 547 (Minn. 1994). In that case, police officers testified about the typical behaviors of drug couriers. *Id.* at 548. The supreme court observed that such profile evidence is similar to character evidence, and is therefore inadmissible, because it invites the jury to infer that if a defendant’s conduct fits that drug courier profile, then it is probative evidence that the defendant is a drug courier. *Id.* Lucas also relies on *State v. Vue*, a criminal sexual conduct case in which the defendant and the alleged victim were Hmong. 606 N.W.2d 719 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). In that case, this court held that expert testimony about gender dynamics between Hmong individuals was unfairly prejudicial because it went far beyond simply describing Hmong cultural practices that would help explain the alleged victim’s behavior. *Id.* at 723. Rather, the testimony was based on generalizations that the appellant was “part of a ‘guilty class’ of spouse-abusers,” and it therefore amounted to irrelevant and unfairly prejudicial cultural stereotyping. *Id.*

Here, the expert’s testimony about the difference between male and female perpetrators of domestic violence corresponds to the improper character evidence

discussed in *Williams*, and it improperly invoked gender stereotypes to support impermissible inferences like the testimony deemed inadmissible in *Vue*. The expert testified that male perpetrators of domestic abuse think and behave a certain way and invited the jury to infer that because Lucas was a male fitting the profile of a domestic abuser, he must have committed domestic violence in this case. Further, the portions of the expert testimony described above relay gender stereotypes about male and female perpetrators of domestic abuse without connecting that testimony to the counterintuitive behavior of domestic-abuse victims. Because the testimony went beyond its intended scope and suggested to the jury, as in *Vue*, that Lucas was part of a guilty class of male perpetrators of domestic abuse, we conclude that the district court plainly erred by admitting those portions of it.

We further conclude that this error affected Lucas's substantial rights. In order to meet the plain error standard, a 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). Our analysis under this third prong of the plain error test is the same as a harmless error analysis. *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). "Reversal is warranted only when the error substantially influences the jury's decision." *State v. Blanche*, 696 N.W.2d 351, 374 (Minn. 2005) (quotation omitted). To determine whether an error substantially influenced the jury's decision, we consider whether the district court gave a limiting instruction, whether the state dwelled on the evidence in the closing argument, and whether the evidence of guilt was overwhelming. *State v. Benton*, 858 N.W.2d 535, 541

(Minn. 2015). Here, Lucas argues that the expert's testimony was highly prejudicial because the prosecutor repeatedly used it "to assign a motive to Lucas and to buttress [the victim's] credibility" during closing argument. We agree.

The prosecutor referenced the expert's testimony several times in closing argument to support the state's version of events. The prosecutor asserted that Lucas assaulted the victim for "the purpose of putting her in her place," though the only testimony suggesting this motive came from the expert. The prosecutor invited the jury to "think about [the expert's] testimony" and the "common behavior on the part of someone who is a batterer, which Mr. Lucas is." And after stating that "days before the campsite incident, [the victim] said she was trying to distance herself from [Lucas] and trying to leave," the prosecutor invited the jury to "[t]hink about [the expert's] testimony. When that starts happening, things start escalating. So now [Lucas is] getting really mad. So he's putting her in her place out there at the campsite to make sure that she knows."

Based on this record, we conclude that the prosecution used the expert's inadmissible testimony to invite the jury to make assumptions about Lucas's mental state, motivation, and character. And because the state dwelled on this testimony in closing argument, the testimony was reasonably likely to have substantially influenced the jury's decision to convict on all counts. In addition, because the expert testified that women cannot be batterers, the expert's testimony was also reasonably like to have influenced the jury's consideration of Lucas's self-defense claim.

We are not persuaded otherwise by the state's emphasis on several unpublished opinions in which we have affirmed rulings admitting similar testimony by the same expert.

Those cases differ in various ways, including that the expert’s testimony had a more limited scope and more limited use by the prosecution. *See, e.g., State v. Johnson*, No. A15-1508, 2016 WL 4420737, 1 at *3 (Minn. App. 2016) (focusing on relevance of evidence based on contested issue of whether relationship involved domestic violence), *rev. denied* (Minn. Nov. 15, 2016); *State v. Diaz-Arreguin*, No. A15-0860, 2016 WL 1724113, 1 at *3 (Minn. App. 2016) (concluding that expert testimony was relevant and likely helpful to the jury because the state’s case relied heavily on the victim’s credibility, which the defendant attacked, and there was “no reasonable possibility” that the testimony substantially influenced the jury’s decision), *rev. denied* (Minn. July 19, 2016); *State v. Ezeobi*, No. A15-0062, 2016 WL 102483, 1 at *3 (Minn. App. 2016) (noting that the state “referred only briefly” to the expert’s testimony in closing argument and concluding that any error was harmless), *rev. denied* (Minn. Mar. 29, 2016).

In sum, we conclude that the district court plainly erred by admitting portions of the expert’s testimony. And because this error prejudiced Lucas and seriously affected the fairness and integrity of the judicial proceedings, we reverse his convictions and remand for a new trial.

Affirmed in part, reversed in part, and remanded.