STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0854

State of Minnesota,
Respondent,

vs.

Randip E. Satoskar,
Appellant.

Filed May 31, 2022
Affirmed
Gaïtas, Judge

Dakota County District Court
File No. 19HA-CR-20-146

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

Kathryn M. Keena, Dakota County Attorney, Jessica Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Gaïtas, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Randip E. Satoskar challenges his conviction for first-degree arson following a jury trial. He argues that the district court violated his right to a speedy trial, that the trial evidence was insufficient to support his conviction, that the district court

committed reversible error by failing to formally enter a competency finding after his competency evaluation, that his waiver of trial counsel was invalid, and that the district court plainly erred in its jury instructions. We affirm.

FACTS

Emergency workers responded to a report of a fire at Satoskar's house in West St. Paul on July 12, 2019. The fire department searched the house for occupants and initially found no one inside. But during a second search, they found Satoskar crawling out from under a bed in the northeast bedroom. Satoskar asked the firefighters what they were doing in his house. He was taken outside where police observed that he was "soaking wet, . . . covered in soot, [with] scratches on him, he was bleeding from several spots . . . , and he was unable to sit still." Officers found Satoskar's behavior to be "very suspicious."

A fire investigation revealed that the fire started in the northeast bedroom where Satoskar was found. Investigators found unburned fire starter and an unburned matchstick near the fire's point of origin. Initially, investigators deemed the cause of the fire to be "undetermined," but they ultimately classified it as "incendiary," meaning it was intentionally started.

Two days after the fire, on July 14, 2019, Satoskar's neighbor called 911 to report a fire alarm and large quantities of smoke billowing from Satoskar's window. While the neighbor spoke to the 911 dispatcher, he observed Satoskar in the backyard. He reported that Satoskar "was not wearing a shirt, was walking around in . . . sort of a stupor, carrying a red container, and making no attempt to either extinguish the fire or get help."

Police officers found Satoskar hiding in the rafters of his detached garage and attempting to ignite the structure with a blowtorch. When Satoskar did not follow orders to come down from the rafters, officers "pointed firearms at him, sprayed pepper spray at him, and shot non-lethal bullets at him" before finally getting him to comply using a stun gun. After arresting Satoskar, officers found two torch devices—one in the rafters and another in his pocket.

During the investigation of the second house fire, officers looked for accelerants in the northeast bedroom, which was again identified as the point of origin. The baseboard contained a "medium petroleum distillate," an accelerant that exists in "thousands" of everyday products. Investigators concluded that the July 14 house fire was also intentionally started. They also determined that it was a different fire than the one that had occurred two days before.

On January 17, 2020, respondent State of Minnesota charged Satoskar with two counts of first-degree arson for "unlawfully by means of fire or explosives, intentionally destroy[ing] or damag[ing] any building that is used as a dwelling" on July 12 and July 14, respectively. *See* Minn. Stat. § 609.561, subd. 1 (2018). The state later amended the complaint, with the district court's permission, to charge just a single count of arson for

both fires.[1] *Id.* Although Satoskar was initially represented by counsel, he later waived counsel and represented himself, including at trial.[2]

Satoskar demanded a speedy trial on March 25, 2020 and eight times thereafter. Various factors delayed the trial, including the suspension of all jury trials in Minnesota due to the COVID-19 pandemic, a motion by Satoskar's counsel for a rule 20.01 competency evaluation, the prosecutor's development of COVID-19 symptoms, and an additional 60-day pause on jury trials in the state due to COVID-19. While awaiting his trial, Satoskar remained in jail and made multiple requests for release pending trial due to the delay, all of which were denied. The trial eventually commenced on January 4, 2021, but when a juror fell ill, the district court declared a mistrial. A second jury trial began on January 25, 2021. Satoskar moved for a continuance so that he could pursue private investigative services to aid in his defense. The district court denied his motion.

The jury found Satoskar guilty of the charged offense of first-degree arson. Following the jury's verdict, the district court sentenced Satoskar to 48 months in prison and ordered him to pay $151,162.15 in restitution.

Satoskar appeals.

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[1] Satoskar, who was represented by counsel when the state amended the complaint, did not object. But a few months later, while Satoskar was representing himself, he orally moved to "sever" the single arson count into separate counts, expressing concern about jury unanimity if the case proceeded to trial on just one count. The district court denied the motion.

[2] Satoskar had access to advisory counsel for the duration of his trial.

DECISION

I. The district court did not violate Satoskar's constitutional right to a speedy trial.

Satoskar argues that the 285-day delay in bringing him to trial after his speedy-trial demand violated his constitutional right to a speedy trial.

The federal and Minnesota constitutions provide criminal defendants the right to a speedy trial. U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 6. The Minnesota Rules of Criminal Procedure also provide that:

> A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date.
>
> Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

Minn. R. Crim. P. 11.09(b).

Appellate courts review alleged violations of a defendant's Sixth Amendment right to a speedy trial de novo. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009). To determine whether a delay rises to the level of a violation of the constitutional speedy-trial right, reviewing courts use the balancing test set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021); *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). This test requires courts to consider the following factors, known as the *Barker* factors, in determining whether the right was violated: "(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." *Windish*, 590 N.W.2d at 315; *Barker*, 407 U.S. at 530-33.

A 60-day delay is presumptively prejudicial and requires a weighing of the latter three factors. *Windish*, 590 N.W.2d at 315-16. None of these factors alone is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker*, 407 U.S. at 533. An evaluation of the *Barker* factors "is not a check-the-box, prescriptive analysis," and instead involves an assessment of "how the factors interact with each other in a difficult and sensitive balancing process." *Mikell*, 960 N.W.2d at 245 (quotation omitted). Reviewing courts may also consider "other circumstances as may be relevant." *Barker*, 407 U.S. at 533.

To determine whether the delay in bringing Satoskar to trial violated his constitutional right to a speedy trial, we now consider each of the *Barker* factors in turn.

First, as noted, "[t]he length of the delay is a triggering mechanism which determines whether further review is necessary." *Windish*, 590 N.W.2d at 315 (quotation omitted). Here, Satoskar made his first speedy-trial demand on March 25, 2020 and later reasserted that demand. Satoskar's first jury trial began on January 4, 2021—285 days after his first speedy-trial demand. After that trial ended in a mistrial due to a juror's illness,[3] Satoskar's second jury trial began on January 25, 2021. Because the delay

[3] The district court informed Satoskar that he could agree to proceed with 11 jurors, rather than the 12 jurors required by the rules of criminal procedure. *See* Minn. R. Crim. P. 26.02, subd. 9. Satoskar requested a mistrial.

Satoskar experienced exceeded 60 days, which triggered a presumption of prejudice, we must address the other *Barker* factors. *See Windish*, 590 N.W.2d at 315.

The second factor is the reason for delay. If there is good cause for the delay, there may be no violation of the speedy-trial right. *Griffin*, 760 N.W.2d at 340.

Here, there were multiple causes for the delay, many of which were related to the COVID-19 pandemic. Between Satoskar's initial speedy-trial demand on March 25, 2020 and July 20, 2020—a total of 118 days—the delays were attributable to COVID-19-related court closures. The district court initially scheduled a trial for May 11, 2020, which fell within the 60-day speedy-trial window under the rules of criminal procedure. *See* Minn. R. Crim. P. 11.09(b). But by May 11, an order issued by the Chief Justice of the Minnesota Supreme Court barred jury trials in the interest of public health. *See Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. Mar. 20, 2020). Satoskar's trial was rescheduled to June 22, 2020, which still fell within the 60-day window, but jury trials had not yet resumed due to statewide pandemic restrictions. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch Under Emergency Executive Order Nos. 20-53, 20-56*, No. ADM20-8001, at 2-3 (Minn. May 15, 2020) (continuing the suspension of jury trials in criminal cases until July 6, 2020). Once again, the trial was rescheduled, this time for July 20, 2020. The district court, the prosecutor, and Satoskar's attorney prioritized the trial, with plans to begin jury selection on July 21.

But on July 21, 2020, Satoskar's counsel moved for a competency evaluation[4] based on his belief that Satoskar was not "able to [rationally] consult with us with respect to the facts of this case and forming a defense at trial." The district court ordered a competency evaluation and suspended the proceedings until it was completed. The evaluation was filed on September 18, 2020, and Satoskar was deemed competent to proceed to trial at a September 23, 2020 hearing. Following another speedy-trial demand, the district court and parties set a new trial date for November 16, 2020. The delay attributable to the competency-evaluation request and corresponding rescheduling procedures totaled 118 days.

Pandemic-related issues caused the remaining delays. On November 16, 2020, the parties once again appeared for jury trial. At this time, the prosecutor had experienced COVID-19 symptoms within the preceding 12 hours, so the district court continued the trial to November 30. By November 30, however, jury trials were again paused until February 1, 2021 by order of the Chief Justice due to a statewide surge in COVID-19 cases. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001, at 2 (Nov. 20, 2020). Nonetheless, the district court granted an exception to allow Satoskar's trial to occur as soon as possible. The trial was rescheduled to January 4, 2021, and commenced that day, although, as noted, it ultimately resulted in a

[4] The rules require that a district court order a competency evaluation if it "doubts the defendant's competency" at any point during the proceedings. Minn. R. Crim. P. 20.01, subd. 3.

mistrial when a juror became ill. The delay attributable to the prosecutor's illness and the statewide order pausing all jury trials totaled 49 days.

Satoskar contends that the state caused the delay in bringing him to trial. He correctly observes that the state bears the burden of vindicating a defendant's speedy-trial rights. *Windish*, 590 N.W.2d at 316. But the state responds that it was not responsible for the delays because they "were caused by public health mandates and precautions during the pandemic and by [Satoskar's] counsel's request for a competency evaluation." Moreover, the state contends that "[t]he delays were justified by good cause."

Although "[a] more neutral reason [for delay] such as negligence or overcrowded courts should be weighted less heavily" against the state, such a reason "nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Barker*, 407 U.S. at 531. However, this court recently held that the pandemic is a "neutral" reason for 77-day and 105-day trial delays and can be attributable neither to a defendant nor to the state. *State v. Paige*, No. A20-1228, 2021 WL 3716663, at *3 (Minn. App. Aug. 23, 2021), *rev. granted* (Minn. Nov. 16, 2021); *State v. Jackson*, 968 N.W.2d 55, 61 (Minn. App. 2021), *rev. granted* (Minn. Jan 18, 2022). Accordingly, Satoskar's argument that the state caused the delay resulting from the COVID-19 pandemic fails. Additionally, good cause justified the delay related to Satoskar's competency evaluation because ensuring that a defendant is competent to proceed safeguards the right to a fair trial. *See State v. Bauer*, 245 N.W.2d 848, 854-55 (Minn. 1976). Because the reasons for the delays in bringing Satoskar to trial

were either neutral (the COVID-19 pandemic) or justified by good cause (the competency evaluation), this factor weighs against Satoskar.

The third *Barker* factor requires us to consider whether Satoskar formally asserted his right to a speedy trial. Satoskar formally asserted his right to a speedy trial on March 25, 2020, and he raised concerns about speedy-trial violations throughout the proceedings. Continuous and adamant assertions are "entitled to strong evidentiary weight." *Barker*, 407 U.S. at 531. Such demands are "likely to reflect the seriousness and extent of the prejudice which has resulted." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Despite Satoskar's multiple speedy-trial requests, the state contends that his continuance request on January 25, 2021—when he requested additional time for investigation—waived his speedy-trial right or should weigh against him in the *Barker* analysis. *See State v. Hahn*, 799 N.W.2d 25, 31 (Minn. App. 2011) ("Appellant's attempts to delay the trial after requesting a speedy trial weigh against him for the purposes of a *Barker* analysis."), *rev. denied* (Minn. Aug. 24, 2011). Because Satoskar consistently invoked his speedy-trial right while his case was pending, however, we elect not to hold his (unsuccessful) January 2021 continuance request against him. We conclude that this factor weighs in Satoskar's favor.

Finally, the fourth *Barker* factor requires us to evaluate whether Satoskar was prejudiced by the delay in bringing him to trial. *Barker* provides that

> [p]rejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit

> the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

407 U.S. at 532. Satoskar argues that the 285-day delay in commencing his trial implicated each of these interests.

We disagree. Although Satoskar remained in jail before trial, he also posed a unique risk to public safety. We therefore cannot conclude that his pretrial incarceration was "oppressive." On the other hand, we acknowledge that Satoskar likely experienced heightened anxiety while in jail due to the health risks of COVID-19 and other stressors caused by the pandemic and incarceration in general. Ultimately, however, the prejudice factor weighs against Satoskar because the record shows that the delay in bringing him to trial did not impair his defense, which is the most significant consideration.

Satoskar argues that the delay informed his decision to represent himself; he believed that he would be tried more quickly if he was not encumbered by an attorney's schedule. The record offers some support for that assertion. At one hearing, Satoskar stated, "[i]f it is a delay in the trial, I'll continue as pro se." Satoskar further contends that he struggled to prepare for his trial while in custody. *Barker* acknowledges that, "if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." 407 U.S. at 533. However, Satoskar was provided with advisory counsel after he discharged his attorney. And the record shows that Satoskar ably represented himself. Thus, the final *Barker* factor weighs against Satoskar.

The delay in bringing Satoskar to trial was presumptively prejudicial. But because the delay was primarily attributable to the COVID-19 pandemic and to the suspension of the proceedings for a competency evaluation—and because it did not impact the trial that eventually occurred—we conclude that it did not violate Satoskar's constitutional right to a speedy trial.

II. To convict Satoskar of arson, the state was not required to prove beyond a reasonable doubt that he acted unlawfully.

Satoskar next challenges the sufficiency of the evidence underlying his first-degree arson conviction, arguing that the state failed to prove beyond a reasonable doubt that he *unlawfully* destroyed or damaged a dwelling with fire.

"Due process requires that every element of the offense charged must be proven beyond a reasonable doubt by the prosecution." *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Minnesota's first-degree arson statute provides, "Whoever unlawfully by means of fire or explosives, intentionally destroys or damages any building that is used as a dwelling at the time the act is committed . . . commits arson in the first degree." Minn. Stat. § 609.561, subd. 1. Satoskar contends that the unlawful nature of a fire is an element of the offense that the state must prove beyond a reasonable doubt.

We recently considered whether the unlawful nature of a fire is an element of first-degree arson. *State v. Beganovic*, ___ N.W.2d ___, ___, 2022 WL 1073237, at *1 (Minn. App. Apr. 11, 2022). In *Beganovic*, which we decided while Satoskar's appeal was pending, a defendant convicted of arson argued that the state failed to establish that he unlawfully started the fire at issue, necessitating reversal of his conviction. *Id.* Conducting

a plain-language analysis of the first-degree arson statute, we determined that the term unlawfully, as used in the arson statute, means "without authorization" provided by a permit statute that excludes certain fires from being categorized as arson. *Id.* at *3 (quoting Minn. Stat. § 609.564 (2016)). The permit statute states that an individual does not commit arson when a fire is set "pursuant to a validly issued license or permit or with written permission from the fire department of the jurisdiction where the fire occurs." Minn. Stat. § 609.564. We further determined that the term "unlawfully" in the arson statute provides an exception to liability and is not an element of the arson offense. *Beganovic*, 2022 WL 1073237, at *4. Accordingly, we concluded that "[t]he burden of proving that exception (that the defendant's act is lawful because it is authorized by the permit statute) falls on the defendant, not the state to prove the opposite." *Id.* In other words, a defendant may raise the lawfulness of a fire as an affirmative defense to first-degree arson. *Id.* at *5.

Based on our decision in *Beganovic*, we reject Satoskar's foundational assertion that the state was required to prove that he unlawfully set a fire. And because unlawfulness is not an element of first-degree arson, his sufficiency-of-the-evidence argument fails.

III. The district court's failure to formally enter a competency finding as required by the Minnesota Rules of Criminal Procedure, while error, does not require reversal of Satoskar's conviction.

Satoskar contends that his conviction must be reversed because the district court failed to issue an order finding that he was competent to stand trial.

Requiring an individual who is not competent to stand trial violates due process. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (citing *Drope v. Missouri*, 420 U.S. 162, 171-72 (1975); *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011)). A defendant is

competent if the defendant has a "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.'" *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)); *see also* Minn. R. Crim. P. 20.01, subd. 2 ("A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense."). To proceed to trial, "[t]he state must show the defendant's competence by a fair preponderance of the evidence." *State v. Ganpat*, 732 N.W.2d 232, 238 (Minn. 2007).

Under the Minnesota Rules of Criminal Procedure, if either party or the court at any time doubts a defendant's competency, the issue must be raised. Minn. R. Crim. P. 20.01, subd. 3. The court then must appoint at least one examiner, and the examiner must provide the court with a written report discussing the defendant's mental condition and an opinion regarding the defendant's competence to stand trial. *Id.*, subd. 4. Once the competency examination has been completed, if no objection is properly made, the rules provide that "the court may determine the defendant's competency on the examiner's report." *Id.*, subd. 5(b). Then, "[i]f the court finds by the greater weight of the evidence that the defendant is competent," the rules require the court to "enter an order finding the defendant competent." *Id.*, subd. 5(c). Alternatively, "the court must enter an order finding the defendant incompetent." *Id.*

Here, the district court ordered a competency examination at the request of Satoskar's counsel. In a written report, the examiner concluded Satoskar was competent

to stand trial. Satoskar did not challenge the examiner's competency finding in written filings or at the hearing that occurred before the district court once the examination was complete. At the hearing, the district court confirmed the absence of competency concerns on the record, stating that "a Rule 20 had previously been ordered, and that came back, and it looks like there are not any competency issues," and that "the examiner did find competency." The district court then set the case for trial. But the district court did not state on the record that it was entering a formal finding of competency. And the district court did not issue a written order to that effect. The district court's failure to enter an order finding that Satoskar was competent violated rule 20.01, subdivision 5(c).

Satoskar argues that the error requires reversal of his conviction. He does not explain the legal theory that would dictate this remedy. But in support of his request, he cites *Pate v. Robinson*, 383 U.S. 375 (1966), and *State v. Bauer*, 245 N.W.2d 848 (Minn. 1976). In *Pate*, the defendant relied on an insanity defense and his counsel repeatedly asserted that the defendant was still "insane" at trial, yet no competency examination was requested or performed. 383 U.S. at 378-85. And in *Bauer*, the district court denied defense counsel's request for a reassessment of a defendant's competency midtrial where there was substantial evidence suggesting that the defendant was no longer competent. 245 N.W.2d at 853-58. In both cases, reversal of the resulting convictions was necessary because there was evidence in the record suggesting that the defendants were not competent during their trials, implicating their due process rights. *Pate*, 383 U.S. at 384-86; *Bauer*, 245 N.W.2d at 853-58.

But the rationale of these cases does not apply here for two reasons. First, although the district court did not enter a formal finding of competency, the record makes clear that it implicitly found that Satoskar was competent. The competency examination concluded that Satoskar was competent. Following the examination, the district court asked the parties whether they wished to challenge that conclusion; neither party did. The district court then scheduled Satoskar's trial. At the trial, the district court told Satoskar, "[y]ou have been determined to be competent." Satoskar again did not challenge the district court's statement. He then went on to represent himself at trial, and no one raised any other concerns about his competence for the duration of the proceedings.[5]

Second, the record amply supports the district court's implicit finding of competence. An appellate court independently reviews the record "to determine if the district court gave proper weight to the evidence produced and if its finding of competency is adequately supported by the record." *Ganpat*, 732 N.W.2d at 238 (quotations omitted); *see also Curtis*, 921 N.W.2d at 346-48 (reaffirming *Ganpat*). Here, the only evidence produced was the unchallenged examination finding Satoskar competent to proceed.

Because the district court implicitly found that Satoskar was competent and the record fully supports that finding, we are confident that, despite the district court's rule violation, there was no constitutional violation. *See* Minn. R. Crim. P. 31.01 ("Any error

[5] During trial, when Satoskar waived his constitutional right to testify, the district court also stated, "I've noticed throughout the proceedings that you're very engaged. You know what's going on. You've asked questions. Your behavior has been completely appropriate before me."

that does not affect substantial rights must be disregarded."). We therefore decline Satoskar's request to reverse his conviction based on the rule violation.

IV. The district court obtained a valid waiver of trial counsel from Satoskar before he commenced self-representation.

Satoskar argues that his waiver of trial counsel was invalid because (1) the district court failed to make a formal competency finding, as previously discussed and (2) he was not advised of the restitution consequences of his conviction before waiving counsel.

Both the federal and state constitutions guarantee criminal defendants the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A defendant may waive the right to counsel, but the waiver must be knowing, voluntary, and intelligent. *Faretta v. California*, 422 U.S. 806, 807 (1975); *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998). The district court should ensure that a defendant waiving counsel is aware of the "possible punishments, mitigating circumstances, and any other facts relevant to the defendant's understanding of the consequences of the waiver." *Worthy*, 583 N.W.2d at 276 (quotation omitted). "When a defendant has consulted with an attorney prior to waiver, a trial court could 'reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.'" *Id.* (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)).

On review, an appellate court "will only overturn a 'finding of a valid waiver of a defendant's right to counsel if that finding is clearly erroneous.'" *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (quoting *Worthy*, 583 N.W.2d at 276).

We first turn to Satoskar's argument that his waiver of counsel was invalid because the district court failed to issue an order finding him competent in violation of the applicable criminal procedure rule. He seems to contend that, because there was no formal competency finding, he was incapable of making a knowing, intelligent, and voluntary waiver of counsel. A criminal defendant who is incompetent cannot make a valid waiver of the constitutional right to counsel. *Godinez*, 509 U.S. at 399-400 (citations omitted). But as we previously concluded, notwithstanding the district court's rule violation, the district court implicitly found Satoskar to be competent before he waived counsel and the record, including the competency evaluation, fully supports that finding.

We are also not persuaded by Satoskar's argument that the validity of his waiver is somehow undermined by the fact that the judge who accepted the waiver was not the judge involved in the competency proceedings. As Satoskar acknowledges, the judge who accepted the waiver was aware of the earlier competency proceedings. Indeed, the judge directly addressed those proceedings during the waiver. The judge stated, "when I did look at what was on the file, a Rule 20 had previously been ordered and that came back and it looks like there is not any competency issues." The prosecutor affirmed the judge's statement. The judge then asked Satoskar whether he understood the outcome of the competency proceedings, and Satoskar responded, "I do understand the conclusions."

The record also shows that the judge took great care in explaining the implications of Satoskar's decision to waive counsel and ensured that Satoskar fully understood what he was doing. During a lengthy discussion of Satoskar's decision to forgo counsel, the judge covered the statutory maximum sentence, the presumptive sentence, the benefits of

being represented by counsel, the obligations of a self-represented defendant, and the role of advisory counsel, and the judge repeatedly checked in with Satoskar to confirm his understanding of these things. The judge assured Satoskar that the decision to discharge the public defender's office "doesn't mean it's forever," and that if Satoskar requested counsel, the judge would likely reappoint the public defender's office. In addition to the courtroom discussion, Satoskar reviewed and signed a written petition to proceed pro se. Based on our review of the record, the district court did not clearly err in determining that Satoskar validly waived counsel.

We turn next to Satoskar's argument that his waiver of counsel was invalid because the district court did not apprise him of the restitution consequences of a conviction. Specifically, he contends that the "district court failed to ensure that [he] understood the consequences of proceeding to trial without counsel because [he] was not informed that he would be required to pay over $150,000 in restitution" if convicted.

Satoskar cites no case or statute that directly supports this argument. Instead, he analogizes restitution to a criminal sentence, contending that the failure to advise a defendant of potential restitution consequences in conjunction with a waiver of trial counsel is the equivalent of not addressing sentencing.

As Satoskar notes, we have held that payment of court-ordered restitution is a component of a defendant's sentence. *See State v. Hughes*, 742 N.W.2d 460, 463 (Minn. App. 2007), *aff'd*, 758 N.W.2d 577 (Minn. 2008). But Satoskar's analogy ultimately fails because sentencing and restitution differ in some critical respects. Unlike the sentencing consequences of conviction, which are ascertainable well in advance of a trial, the potential

restitution consequences of a conviction are often unknown until after a trial. Under Minnesota law, a victim can submit a restitution request after sentencing. *See* Minn. Stat. § 611A.04, subd. 1 (2018) (governing timing of a victim's restitution request). And a district court can even order restitution sua sponte without a victim's input. *See State v. Gaiovnik*, 794 N.W.2d 643, 652 (Minn. 2011) (holding that a district court has authority to sua sponte order restitution under Minnesota Statutes sections 609.10, 611A.04, and 611A.045).

Given this legal framework, information about restitution may not be available when a defendant is making decisions about trial representation and strategy. As a practical matter, informing a defendant of the specific amount of restitution at stake cannot be required for a valid waiver of trial counsel. Moreover, separate from any sentencing proceeding, a defendant is entitled to challenge requested restitution at a restitution hearing, *see* Minn. Stat. § 611A.045, subd. 3 (2018), and has a corresponding right to be represented by counsel at that hearing, *see State v. Maddox*, 825 N.W.2d 140, 146 (Minn. App. 2013). Here, even though Satoskar waived counsel for the purpose of his trial and sentencing, he could have requested counsel to challenge any restitution. The record shows that, at sentencing, the district court advised Satoskar of his right to challenge the restitution and gave him the opportunity to consult with advisory counsel. Satoskar did not challenge the district court's restitution order.

We reject Satoskar's argument that his waiver of trial counsel was not knowing, voluntary, and intelligent. He was initially represented by counsel, which allowed the district court to presume that he understood the perils of self-representation. *See Worthy*,

583 N.W.2d at 276. And before accepting Satoskar's decision to waive trial counsel, the district court provided a thorough and clear advisory. Thus, the district court did not clearly err in determining that Satoskar's waiver of trial counsel was valid.

V. The district court did not commit plain error in its jury instructions.

Finally, Satoskar argues that the district court erred in its jury instructions. First, he contends that the district court's arson instruction erroneously failed to inform the jury that the unlawful nature of a fire is an element of the offense. Second, he argues that the district court's failure to sua sponte provide a specific-unanimity instruction deprived him of his constitutional right to a unanimous verdict.

Satoskar did not raise his objections to the jury instructions at trial. When there is no objection to jury instructions at trial, the appellate court has discretion to consider a claim of error on appeal only "if there was plain error affecting substantial rights or an error of fundamental law in the jury instructions." *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted); *State v. Reek*, 942 N.W.2d 148, 158 (Minn. 2020). The burden is on an appellant to show that (1) error existed, (2) the error is plain, and (3) the error affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If the appellant satisfies these three requirements, an appellate court "may correct the error only if it 'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *Crowsbreast*, 629 N.W.2d at 437 (quoting *Johnson v. United States*, 520 U.S. 461, 467 (1997)).

A. The district court did not plainly err in following the pattern jury instruction for first-degree arson.

Attendant to Satoskar's argument that the unlawful nature of a fire is an element of first-degree arson, he argues that the district court should have instructed the jury on this element. The district court provided the jury with the pattern instruction for the offense of first-degree arson, which does not identify the unlawful nature of the fire as an independent element. *See* 10A *Minnesota Practice*, CRIMJIG 18.01 (2018). But as we previously discussed, our decision in *Beganovic* holds that "the state does not bear the burden of proving that the defendant acted unlawfully as a separate element." *Beganovic*, 2022 WL 1073237, at *5. Thus, the district court did not err by providing the jury with the pattern instruction.[6]

B. Although the district court plainly erred in failing to provide the jury with a specific-unanimity instruction, the error did not prejudice Satoskar.

Satoskar contends that the district court plainly erred by failing to provide the jury with a specific-unanimity instruction. He argues that the district court was required to instruct jurors that they had to unanimously agree about which of the two alleged fires constituted the arson offense. According to Satoskar, the district court's failure to provide such an instruction likely led to disagreement among jurors about which of the two fires he started, violating his right to a unanimous verdict.

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[6] Because Satoskar failed to raise lawfulness as an affirmative defense, the district court also did not err in not giving an affirmative-defense jury instruction. *See State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) ("It is an abuse of the district court's discretion to refuse to give an instruction on the defendant's theory of the case if there is evidence to support it.").

Satoskar's claim of error relies on *State v. Stempf*, where we addressed the district court's denial of a specific-unanimity instruction. 627 N.W.2d 352, 358 (Minn. App. 2001). There, the state alleged that the defendant was guilty of one count of drug possession but presented evidence of two separate acts of possession that occurred on two different occasions and in two different locations. *Id.* at 354. We reaffirmed in *Stempf* that jury instructions that "allow for possible significant disagreement among jurors as to what acts the defendant committed" violate a defendant's right to a unanimous verdict. *Id.* Under the circumstances presented in *Stempf*—where the state alleged two "separate and distinct culpable acts, either one of which could support a conviction" that "lack[ed] unity of time and place"—we determined that the district court erred in denying the defendant's request for a specific-unanimity instruction. *Id.* at 358-59. Because the jury could have disagreed about which act of possession the defendant actually committed, we concluded that a new trial was required. *Id.*

We agree that under the circumstances here—where the state presented evidence of two separate and distinct acts, either of which could support a first-degree arson conviction—a specific-unanimity instruction was warranted. The district court's failure to provide such an instruction was plain error.

Next, we must determine whether that error affected Satoskar's substantial rights. To evaluate whether a plainly-erroneous jury instruction affected substantial rights, the reviewing court "look[s] to all relevant factors including, but not limited to: (1) whether [the defendant] contested the omitted elements at trial and submitted evidence to support a contrary finding; (2) whether the State presented overwhelming evidence to prove those

elements; and (3) whether the jury's verdict nonetheless encompassed a finding on those elements notwithstanding their omission from the jury instructions." *State v. Peltier*, 874 N.W.2d 792, 800 (Minn. 2016).

We conclude that the error did not impact Satoskar's substantial rights. Satoskar argued to the jury that the state's evidence was insufficient to establish that he started either fire. With such a defense, there is a greater potential for disagreement among jurors. But given the truly overwhelming evidence that Satoskar intentionally set both fires, we cannot conclude that there was any appreciable risk of disagreement here. On July 12, Satoskar was found under a bed in the bedroom where the fire started, covered in soot, and in the vicinity of fire starter and a matchstick. On July 14, Satoskar was observed in his backyard with a red container while smoke billowed from his house; he made no attempt to extinguish the fire or to seek help. Police found Satoskar hiding in the rafters of his detached garage, where he was attempting to start another fire with a blowtorch.

Given the significant evidence that Satoskar started both fires, he cannot satisfy his burden of showing error that affected his substantial rights. We therefore conclude that the district court's error was not plain error requiring reversal of Satoskar's conviction.

Affirmed.