STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0955

State of Minnesota,
Respondent,

vs.

Clifton Dale Robinson,
Appellant.

Filed August 8, 2022
Affirmed
Slieter, Judge

Mower County District Court
File No. 50-CR-20-1312

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

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal, appellant challenges his conviction for attempted second-degree murder, claiming that he was denied his constitutional right to a speedy trial and that the evidence presented against him was insufficient. In a *pro se* supplemental brief,

appellant argues that he received ineffective assistance of counsel. Appellant's right to a speedy trial was not violated and there existed sufficient evidence to support the jury's guilty verdict. Additionally, appellant has not demonstrated that his counsel was ineffective. Therefore, we affirm.

FACTS

In July 2020, appellant Clifton Dale Robinson stabbed S.D. multiple times. Robinson was charged with attempted second-degree intentional murder, first-degree assault, and unlawful possession of a firearm. On October 15, 2020, Robinson filed a speedy-trial demand.[1] The jury trial commenced on February 16, 2021.

The following facts were presented during the jury trial. After leaving a bar near Robinson's apartment, S.D. met with Robinson to retrieve a bottle of alcohol S.D. had left at the apartment earlier in the evening. The two men walked to Robinson's apartment and proceeded up to the second floor. S.D. was standing behind Robinson while Robinson appeared to be unlocking the front door to his apartment. Before Robinson unlocked the door, he turned around and stabbed S.D. multiple times in the chest and abdomen. S.D. testified that after Robinson stabbed him, he knew that he "was in trouble" so he attempted to flee. Robinson pursued S.D. and cut S.D. multiple times in the back, hand, and the back of his head. Robinson continued to chase S.D. out of the apartment building and down the

[1] Because Robinson was also facing other criminal matters the district court consolidated all of Robinson's pending matters described in court files (50-CR-20-1180, 50-CR-20-1121, and 50-CR-20-1312). The consolidation was for all purposes other than trial. Robinson's speedy-trial demand was for the matter before this court (50-CR-20-1312). A fourth court file was subsequently consolidated with the previous matters (50-CR-20-425).

street until S.D. got about "three or four houses" away. Robinson returned to his apartment and called a friend to pick him up. Police eventually arrested Robinson at his girlfriend's home.

S.D. ultimately was taken to a hospital and underwent surgery. S.D.'s surgeon described the abdominal wound as "serious" because it "allowed [S.D.'s] bowel to herniate through or protrude" out from the stab wound. The surgeon noted that "[t]he intestine was constricted in a way that [the intestine] would have died if left there." After the surgeon "explored" S.D.'s abdominal wound, he found that S.D.'s small intestine had several cuts as well. The surgeon also testified that if those cuts would have been left untreated, S.D. could have died "from sepsis from those holes and leaking intestinal contents into [his] abdomen." A jury found Robinson guilty of attempted second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2018), with reference to Minn. Stat. § 609.17, subd. 1 (2018), and first-degree assault, infliction of great bodily harm, in violation of Minn. Stat. § 609.221, subd. 1 (2018). The jury found Robinson not guilty of illegal possession of a firearm. *See* Minn. Stat. § 609.165, subd. 1b (2018).

The district court adjudicated Robinson guilty of attempted second-degree intentional murder and sentenced Robinson to 203 months' imprisonment. The district court did not adjudicate guilt or impose a sentence for first-degree assault.[2] Robinson appeals.

[2] *See* Minn. Stat. § 609.04, subd. 1 (2018) (providing that a defendant "may be convicted of either the crime charged or an included offense, but not both").

DECISION

I. Speedy Trial

Robinson argues that the 124-day delay in commencing trial violated his constitutional right to a speedy trial. Both 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. Under Minn. R. Crim. P. 11.09(b), a criminal trial must start within 60 days of a speedy-trial demand "unless the court finds good cause for a later trial date." "If a defendant has been deprived of his or her [constitutional] right to a speedy trial, the only possible remedy is dismissal of the case." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (quotation omitted). "Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *Id.* However, "any 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, 92 S. Ct. 2182, 2188 (1972).

Barker describes four factors to be considered in speedy-trial claims: (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. *Id.* at 530, 92 S. Ct. at 2192; *see State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021) (applying the test articulated in *Barker* for a speedy-trial challenge). These factors are to be considered in balancing "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. "[W]hether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends on the circumstances." *State v. Jackson*, 968 N.W.2d 55, 60-61 (Minn. App. 2021)

(applying *Barker* factors to a trial delayed by chief justice order in response to COVID-19 pandemic) (quotation omitted), *rev. granted* (Minn. Jan. 18, 2022).

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

A. Length of the Delay

A "presumptively prejudicial" delay triggers further review. *Osorio*, 891 N.W.2d at 628 (quotation omitted). Delays beyond 60 days of a defendant's speedy-trial demand are presumptively prejudicial. *See Mikell*, 960 N.W.2d at 246. The longer the delay, the less likely it can be justified by other factors. *Id.* at 250 (concluding that 172-day delay was presumptively prejudicial).

On October 15, 2020, Robinson demanded a speedy trial. Robinson's jury trial was scheduled to begin on December 14, 2020, within the 60-day window prescribed by rule 11.09(b). On November 25, the district court postponed the trial until February, when the courts were "supposed to open back up for trials." Robinson's jury trial began on February 16, 2021—124 days after his speedy-trial demand, triggering the presumption of prejudice.

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.* Robinson experienced a delay that exceeded 60 days, triggering the presumption of prejudice; thus, we must consider the remaining *Barker* factors.

B. Reason for the Delay

When considering the second *Barker* factor, "the key question is whether the government or the criminal defendant is more to blame for th[e] delay." *State v. Taylor*,

869 N.W.2d 1, 19 (Minn. 2015) (alteration in original) (quotation omitted). After determining which party caused the delay, we consider the specific reason for the delay. *Osorio*, 891 N.W.2d at 628. A deliberate attempt to delay the trial to hamper the defense weighs heavily against the state, while neutral reasons such as negligence are weighted less heavily. *Mikell*, 960 N.W.2d at 251. "And if there is good cause for the delay . . . the delay will not be held against the [s]tate." *Id.*

Robinson was not to blame for the delay. Robinson's trial was delayed because the chief justice suspended jury trials throughout the state in response to the COVID-19 pandemic. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001 (Minn. Nov. 20, 2020) (providing that "no new jury trials will commence before February 1, 2021"). However, a criminal jury trial could be held in person if the chief judge in the district where the trial is to be held, after consulting with the chief justice, grants an exception. *Id.* Therefore, the question is whether "the [s]tate (considering the conduct of both the prosecution and *the courts*) is responsible for the delay." *Mikell*, 960 N.W.2d at 251 (emphasis added).

The record does not reveal whether the judge presiding over this trial sought an exception to the chief justice's no-trial order. However, we need not resolve the question of who is responsible for the delay because the supreme court, considering identical circumstances of delay due to the chief justice's order suspending jury trials, concluded that neither party was responsible for the delay. *See State v. Paige*, ___ N.W.2d ___ 2022 WL 2826253, at *5 (Minn. July 20, 2022) (concluding that "trial delays due to the statewide

orders issued in response to the COVID-19 global pandemic do not weigh against the [s]tate"). We are bound by that decision. The second factor is neutral.

C. Asserted the Right to a Speedy Trial

It is undisputed that Robinson asserted his demand for a speedy trial. A defendant's assertion of his right to a speedy trial is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32, 92 S. Ct. at 2192-93; *see also Mikell*, 960 N.W.2d at 252 (stating that an inquiry of "whether and how" a speedy-trial demand is asserted "is necessarily contextual"). "[T]he strength of an accused's efforts to secure a speedy trial is a signal of the personal prejudice the accused may suffer from delay since [t]he more serious the deprivation, the more likely the defendant is to complain." *Mikell*, 960 N.W.2d at 252 (alteration in original) (quotation omitted).

Robinson asserted his right to a speedy trial on October 15, 2020, and the district court scheduled the jury trial to begin within 60 days of Robinson's demand. On November 25, five days after the chief justice's no-trial order, the district court rescheduled Robinson's trial to February—more than 60 days from Robinson's demand. The record does not indicate whether the district court sought an exception to the chief justice's order to conduct the trial earlier. This factor favors Robinson.

D. Prejudice to the Defendant

We consider three interests to determine whether trial delay caused Robinson prejudice: "(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." *See id.* at 253 (quotation omitted). "[I]mpairment of the defense is the most serious of these interests because delaying a trial could result in memory loss by witnesses or witness unavailability." *Jackson*, 968 N.W.2d at 62 (quotation omitted).

Robinson contends that his pretrial incarceration was oppressive because he was placed "at an increased risk for contracting [COVID-19]," causing increased anxiety about his trial. However, Robinson does not identify—nor does the record show—any tangible harm related to COVID-19 or from his anxiety which might separate his increased anxiety from anxiety that anyone might expect to have while awaiting a felony trial. *See State v. Strobel*, 921 N.W.2d 563, 571 (Minn. App. 2018), *aff'd*, 932 N.W.2d 303 (Minn. 2019) (noting that "the stress, anxiety and inconvenience experienced by anyone who is involved in a trial is insufficient to demonstrate prejudice" (quotation omitted)). Robinson makes no argument regarding the critical third interest—whether his defense was impaired—and the record reveals none. Therefore, Robinson has not shown that he was prejudiced by the delay. This factor favors the state.

E. Balancing the Factors

We must now balance the above factors to determine whether the state brought Robinson to trial "quickly enough so as not to endanger the values that the speedy trial right protects." *See Mikell*, 960 N.W.2d at 255. Robinson's trial was delayed more than 60 days after his demand. During much of the delay, Robinson's other criminal matters were pending. Critically, Robinson has presented no argument, and we can discern none from this record, that his defense to the criminal charges were prejudiced by the delay. The delay was due to the chief justice's order in response to COVID-19, which the supreme

court in *Paige* stated is not attributable to either party. Accordingly, Robinson's speedy-trial right was not violated by the delay.

II. Sufficiency of the Evidence

Robinson argues that the state failed to prove that he acted with the intent to cause the death of S.D.[3] "Rather, [Robinson's] intent . . . was the intent required for first-degree assault—to intentionally inflict bodily injury."

When reviewing a claim of insufficient evidence, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [jury] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence "in the light most favorable to the conviction" and "assume the jury believed the [s]tate's witnesses and disbelieved any evidence to the contrary." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). "[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.*

To convict Robinson of attempted second-degree murder the state was required to prove, beyond a reasonable doubt, that Robinson committed a substantial step towards

[3] Robinson contends that because S.D. "was not killed" Robinson could not have had "the specific intent to kill [S.D.]" But Robinson did not have to cause the death of S.D. to be guilty of attempted second-degree murder. *See* Minn. Stat. §§ 609.17, subd. 1, .19, subd. 1(1).

intentionally causing S.D.'s death without premeditation. *See* Minn. Stat. §§ 609.17, subd. 1, .19, subd. 1(1). Attempted second-degree murder is a specific-intent crime. *See State v. Bakdash*, 830 N.W.2d 906, 912 (Minn. App. 2013), *rev. denied* (Minn. Aug. 6, 2013). The phrase "[w]ith intent to" is defined to mean "that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2018). Meaning, a person may be found guilty of attempted second-degree murder if he believes that his act will result in death. *See Arredondo v. State*, 754 N.W.2d 566, 572-73 (Minn. 2008) (affirming second-degree intentional murder verdicts "if the defendant believed his act would result in death" (quotation omitted)).

Generally, a person's intent is proven through circumstantial evidence. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000); *see also State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (applying circumstantial-evidence test to first-degree premeditated murder). Intent to kill may be inferred from the nature and manner of the killing. *See State v. Moore*, 481 N.W.2d 355, 361 (Minn. 1992). Intent to murder may also be based on evidence that demonstrates the "deliberate and intentional use of a [dangerous] weapon, the natural result of which could well have led to the victim's death." *State v. Geshick*, 168 N.W.2d 331, 332 (Minn. 1969) (affirming attempted first-degree murder conviction where a single knife wound was shallow); *see also Wolfe v. State*, 293 N.W.2d 41, 42 (Minn. 1980) (stating that act of stabbing victim with a blade in chest was sufficient evidence to support a finding of intent to kill).

Where, as here, "the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict," we apply the circumstantial-evidence standard of review to that element. *See Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Circumstantial evidence is "evidence from which the [jury] can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence." *Id.*

In assessing the sufficiency of circumstantial evidence, we conduct a two-part analysis. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). "The first step is to identify the circumstances proved." *Silvernail*, 831 N.W.2d at 598. We defer to the jury's credibility determinations because "the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *Harris*, 895 N.W.2d at 600. Second, we consider whether the circumstances proved are consistent with guilt and inconsistent with a rational hypothesis other than guilt. *Andersen*, 784 N.W.2d at 329-30. "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). In this second step, no deference is given to the jury's verdict. *Loving*, 891 N.W.2d at 643.

A. Circumstances Proved

The circumstances proved by the state related to Robinson's intent to attempt to kill S.D. are as follows:

- Robinson stabbed and cut S.D. multiple times in the chest, abdomen, back, hand, and head;
- S.D. did not provoke Robinson prior to being stabbed;
- Robinson continued stabbing and cutting S.D. while S.D. attempted to flee;
- Robinson pursued S.D. outside of the apartment building;
- S.D. required immediate and extensive medical treatment to save his life;
- Robinson did not treat S.D.'s wounds or call 911; and
- Robinson fled the scene after the attack.

B. Reasonable Inferences from the Circumstances Proved

We next determine whether the circumstances proved, viewed as a whole, "exclude beyond a reasonable doubt any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). Our review of the record reveals no reasonable inferences other than guilt.

Robinson used a knife to cause serious and life-threatening wounds to S.D., Robinson pursued S.D. down the stairs and attacked S.D. a second time, Robinson began to pursue S.D. outside before returning to his apartment, and Robinson did not attempt to provide S.D. with aid or call an ambulance. *See Moore*, 481 N.W.2d at 361 (stating that intent to kill may be inferred from the nature and manner of the killing). Based on the circumstances proved, there is no reasonable inference other than guilt.

III. Ineffective Assistance of Counsel

Robinson's *pro se* supplemental brief contends that his trial counsel was ineffective for failing to request an omnibus hearing.

The Sixth Amendment of the United States Constitution guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 2063 (1984); *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

We apply the two-prong test set forth in *Strickland* to determine whether a defendant received ineffective assistance of counsel. *Peltier*, 946 N.W.2d at 372. The *Strickland* test requires Robinson to prove that: (1) his "counsel's representation fell below an objective standard of reasonableness"; and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). The claim must satisfy both of the *Strickland* prongs, meaning that if only one prong is met the claim fails and we need not apply the second prong. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). For the reasons we describe below, Robinson cannot show that the proceeding would be different even if his "counsel's representation fell below an objective standard of reasonableness." *See Zumberge*, 937 N.W.2d at 413 (quotation omitted).

Robinson argues that his counsel's performance was deficient because he failed to request an omnibus hearing to challenge the basis of probable cause supporting the search warrant of the apartment building where the incident occurred. Because the basis for the

state's evidence presented to the jury did not derive from the search of Robinson's apartment, Robinson cannot satisfy the second *Strickland* prong.

The state presented evidence that Robinson stabbed and cut S.D. multiple times in the chest, abdomen, back, hand, and head. S.D. testified that on July 3, 2020, he "was stabbed" by Robinson. *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (stating that uncorroborated testimony of a single credible witness may be sufficient to support a conviction). The emergency-room physician testified that S.D. required "immediate" life-saving procedures. One of the police officers testified that S.D.'s clothing was "soaked in blood." When the officer asked what happened to S.D., he was told that "[S.D.] had been stabbed." Officers followed a trail of "blood spots" from where S.D. was found to Robinson's apartment building. Once officers arrived at the building they found "blood on the outside door." And through a window, officers saw "blood in the area inside as well." This evidence was independent from evidence obtained from the search of Robinson's apartment and, as we explained above, was sufficient to support the jury's verdict.

Officers executed a search warrant for Robinson's building and found the following in the hallway leading to Robinson's apartment: a "piece of a knife handle"; a "tennis shoe"; a "baseball cap"; a blood trail on the floor; and a cellular phone "on the ground outside [Robinson's] apartment door." Inside Robinson's apartment, officers found the following: blood on the floor of the living room, bedroom, and kitchen; a bottle of alcohol; the "blade portion of the knife" without a handle; and a portion of a knife handle matching "the portion of the handle" found at the bottom of the stairs. Nothing found in the apartment was essential to the jury's verdict.

In sum, there was not "a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different." *See Zumberge*, 937 N.W.2d at 413 (quotation omitted). Because Robinson failed to satisfy the second prong of the *Strickland* test, we decline to address the first prong—whether his counsel's representation was objectively unreasonable. *See Swaney*, 882 N.W.2d at 217.

Affirmed.