

*This opinion is nonprecedential except as provided by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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1196**

State of Minnesota,
Respondent,

vs.

Harun Warsame Abdi,
Appellant.

**Filed August 1, 2022
Affirmed
Bjorkman, Judge**

Stearns County District Court
File No. 73-CR-19-6527

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his assault conviction, arguing that his constitutional right to a speedy trial was violated and the district court abused its discretion by admitting the out-of-court statement of a witness who did not recall the events at trial. We affirm.

FACTS

On August 2, 2019, a woman (wife) called 911 to report that her husband, appellant Harun Warsame Abdi, had assaulted her in their St. Cloud apartment. In a recorded statement to the responding officer, wife stated that Abdi hit her in the head and choked her while she was in bed with their baby, causing her to lose consciousness. When she came to, Abdi was on top of her, choking her with one hand and striking her in the face with the other. He then got off the bed and struck her with a clothes hanger and a kitchen mallet before leaving the apartment. The responding officer photographed wife's injuries.

Approximately a week later, a neighbor, H.S., gave a recorded statement to police about the incident. H.S. recounted that wife came to her apartment in the middle of the night following the assault. H.S. observed that she was crying and upset, could barely talk, and had facial injuries. She then went to Abdi's apartment, where she found Abdi holding the baby. H.S. took the baby from Abdi and returned to wife.

Law enforcement located and arrested Abdi several days later. Respondent State of Minnesota charged him with felony domestic assault in violation of Minn. Stat. § 609.2247, subd. 2 (2018). At his first court appearance on August 14, Abdi informed the court that he was not requesting a speedy trial at that time. He posted bail and was released from custody subject to a domestic-abuse no-contact order. At a settlement conference on February 7, 2020, Abdi asked the district court to set the case for a two-day jury trial in "mid to end of April or early May" and confirmed he was making his request "without regard to time." The court scheduled the trial for May 5.

On March 25, the district court canceled the trial pursuant to the order issued by the Chief Justice of the Minnesota Supreme Court in response to the COVID-19 pandemic. *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) (prohibiting the commencement of new jury trials by order of the Chief Justice of the Minnesota Supreme Court); *Order Governing the Operations of the Minnesota Judicial Branch Under Emergency Executive Order Nos. 20-53, 20-56*, No. ADM20-8001 (Minn. May 15, 2020) (extending the jury moratorium in accordance with the Governor’s executive orders regarding COVID-19 restrictions). On August 18, Abdi filed a letter asking the district court not to “set it for trial at this point” in light of ongoing plea negotiations with the state. After the parties failed to reach a plea agreement, the district court rescheduled the trial for December 17. Abdi later requested a continuance, and the district court rescheduled the trial for May 17, 2021.

On April 27, 2021, Abdi filed a written speedy-trial demand. At the hearing, the district court found good cause to again continue the trial because there was only one courtroom “capable of doing trials during the pandemic” in Stearns County consistent with then-existing COVID-19 restrictions. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001, at 2 (Minn. Mar. 22, 2021) (providing that in-person criminal jury trials must adhere to the guidelines and exposure measures in certain Judicial Branch COVID-19 Preparedness Plans). The court indicated it had “literally no other options than to continue this matter.”

Trial commenced on July 6, 68 days after Abdi demanded a speedy trial. Wife did not appear at trial, and the state called H.S. to describe her interactions with wife on the night in question. H.S. testified that she could not remember anything. The district court admitted H.S.'s recorded police statement as substantive evidence under the residual exception to the hearsay rule. The jury found Abdi guilty,¹ and he now appeals.

DECISION

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

The United States and Minnesota Constitutions afford 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). Deprivation of the right to a speedy trial requires dismissal of the case. *Id.*

To determine whether a defendant's speedy-trial right was violated, we apply the balancing test set forth by the Supreme Court of the United States in *Barker v. Wingo*, 407 U.S. 514 (1972). *Osorio*, 891 N.W.2d at 627. Under the *Barker* test, we consider four factors: "(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." *Id.* (quotations omitted).

¹ Before trial, the state filed amended complaints adding two counts of misdemeanor domestic assault and a single count of felony threats of violence. Prior to jury selection, the state dismissed the felony charges. Abdi was convicted of the remaining misdemeanor charges.

Abdi argues that his right to a speedy trial was violated because trial began more than 60 days after his speedy-trial demand. When evaluating the first *Barker* factor, any delay beyond 60 days is “presumptively prejudicial,” requiring consideration of the other three *Barker* factors. *State v. Paige*, ___ N.W.2d ___, ___, 2022 WL 2826253, at *4 (Minn. July 20, 2022) (quotation omitted); *see also* Minn. R. Crim. P. 11.09 (stating that once a defendant enters a plea other than guilty, “the trial must start within 60 days unless the court finds good cause for a later trial date”). It is undisputed that Abdi asserted his right to a speedy trial on April 27, 2021, and trial began on July 6, 2021, 68 days later. Accordingly, both the first and third *Barker* factors support Abdi’s argument. We now turn to the remaining factors.

Abdi asserts that the state is solely responsible for the trial delay. We disagree. Our supreme court recently rejected this argument in *Paige*. 2022 WL 2826253, at *5-6. There, the supreme court held “that trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State.” *Id.* at *5. And, as in this case, the trial was postponed pursuant to the Chief Justice’s order and COVID-19 protocols. *Id.* at *1-3. Following *Paige*, we conclude that the delay here is not attributable to the state.

Under the fourth *Barker* factor, we consider prejudice by focusing on the defendant’s interests in: “(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.” *State v. Mikell*, 960 N.W.2d 230, 253 (Minn. 2021) (quoting *State v. Windish*, 590 N.W.2d 311, 318 (Minn. 1999)). Impairment of the defense is the “most

serious” of these interests. *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015) (quotation omitted). Consideration of these three interests undermines Abdi’s assertion that the trial delay prejudiced him.

Abdi posted bail shortly after being arrested and does not argue that the trial delay impaired his defense. But he asserts that he “suffered prejudice in the form of continued anxiety and concern” because the domestic-abuse no-contact order prohibited him from “see[ing] his family for over two years,” including not “meet[ing] his youngest child until after sentencing.” He does not explain how the 68 days between his speedy-trial demand and the start of trial exacerbated those effects, let alone how the 8-day delay beyond the 60-day speedy-trial period did so. Abdi did not invoke his speedy-trial right for almost two years and asked to continue the trial date several times before he made his speedy-trial demand.

Having considered the *Barker* factors, “we turn to the delicate and sensitive balancing required to answer whether the State brought [Abdi] to trial quickly enough so as not to endanger the values that the speedy trial right protects.” *Mikell*, 960 N.W.2d at 255. On balance, these factors demonstrate Abdi’s constitutional right to a speedy trial was not violated. Abdi’s trial proceeded 68 days after he demanded a speedy trial. As in *Paige*, Abdi’s trial did not begin within 60 days of his demand because of pandemic-related restrictions that prevented the district court from holding any trials. 2022 WL 2826253, at *1-3. Given that the delay is not attributable to the state or Abdi, and Abdi makes no compelling argument that the brief delay prejudiced him in any way, we discern no endangerment of the values the speedy-trial right protects.

II. Any error in the admission of H.S.’s recorded statement was harmless.

Abdi argues the district court abused its discretion by admitting H.S.’s recorded statement under the residual hearsay exception. Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is inadmissible unless it falls into a prescribed hearsay exception. Minn. R. Evid. 802. Statements not covered under a specific hearsay exception may still be admissible under the residual exception if they have “equivalent circumstantial guarantees of trustworthiness” and the district court determines that

- (A) the statement is offered as evidence of a material fact;
- (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
- (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807; *see State v. Hallmark*, 927 N.W.2d 281, 292-93 (Minn. 2019) (stating that the district court first evaluates “the totality of the circumstances to determine whether [the] hearsay statement has circumstantial guarantees of trustworthiness” and then must “determine whether the three enumerated requirements of Rule 807 are met” (alteration in original) (quotations omitted)).

We review a district court’s “determination that a statement meets the foundational requirements of a hearsay exception . . . for an abuse of discretion.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). On appeal, the defendant must demonstrate that the district court abused its discretion in admitting the evidence and that they were prejudiced by its

admission. *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997). In determining whether the erroneous admission of evidence was prejudicial or harmless, we consider whether there is “no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006) (quotation omitted). Error is harmless if the jury could have reached the same “verdict based on the other evidence . . . presented.” *State v. Blasus*, 445 N.W.2d 535, 540 (Minn. 1989). Put another way, the question is “whether the error substantially influenced the verdict.” *State v. Expose*, 872 N.W.2d 252, 260 (Minn. 2015). Based on our careful review of the record, we conclude the answer is no.

As Abdi himself points out, the trial record contains evidence that is more probative of the trial issues than H.S.’s recorded statement. In the 911 call recording, wife reports that her husband hurt and threatened to kill her and identifies Abdi as her husband. She reiterates these facts and describes the assault in further detail in her later recorded statement to the responding officer. Numerous photographs depict wife’s injuries. And the responding officer testified at length at trial about what took place on the night of the assault, which included him identifying wife as the 911 caller and victim and taking photographs of her injuries. This evidence—which is not challenged on appeal—goes to the relationship between Abdi and wife, Abdi’s threats to wife, the date of the assault, wife’s identity as the victim, and wife’s injuries. In short, the record persuades us that any error in the admission of H.S.’s recorded statement did not substantially influence the verdict and was, therefore, harmless.

Affirmed.