STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1434

State of Minnesota,
Respondent,

vs.

Jamal Jackson,
Appellant.

Filed September 6, 2022
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-20-24781

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal that the delay of his trial violated his speedy-trial right. Alternatively, appellant argues that the district court erred by sentencing him for his Domestic Abuse No Contact Order (DANCO) violation and domestic-assault convictions

because those offenses were committed as part of the same behavioral incident as the first-degree criminal-sexual-conduct offense for which he was sentenced. Appellant also raises issues of sufficiency of the evidence, ineffective assistance of counsel, relationship evidence, and other evidentiary rulings in his pro se supplemental brief. We affirm.

FACTS

On October 28, 2020, appellant Jamal Jackson sexually assaulted his then-girlfriend, D.C., multiple times in a motel room. Respondent State of Minnesota charged appellant with first-degree criminal sexual conduct, third-degree criminal sexual conduct, domestic assault, and violating a DANCO.

On April 16, 2021, appellant demanded a speedy trial. The district court scheduled a jury trial for June 1, 2021. It also denied bail, keeping in place a custody hold issued to appellant in a separate case. On May 17, 2021, the state filed a motion to collect a buccal swab from appellant to analyze his DNA and later filed a motion for a continuance, arguing that it needed time to do so. At the continuance hearing on May 28, the state also noted that a witness would be unavailable on June 1. The district court granted the state's motion and set trial for June 28, 2021. Trial began on June 29, 2021.

At trial, the state presented testimony from the responding officer, a DNA analyst, the nurse who examined D.C. after the sexual assault, and D.C. Appellant presented testimony from a witness to attack D.C.'s credibility, and he also testified in his own defense. Following trial, the jury found appellant guilty of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2020); third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(c) (2020); domestic assault,

in violation of Minn. Stat. § 609.2242, subd. 4 (2020); and violating a DANCO, in violation of Minn. Stat. § 629.75, subd. 2(d)(1) (2020).

The district court adjudicated appellant guilty of all four counts and sentenced him for the DANCO violation, domestic assault, and first-degree criminal sexual conduct. It did not sentence appellant for third-degree criminal sexual conduct after determining that it is "a lesser degree of the same offense arising out of the same behavioral incident" as first-degree criminal sexual conduct. This appeal follows.

DECISION

I. Appellant's trial delay did not unconstitutionally violate his speedy-trial right.

Appellant argues that the delay of his trial violated his speedy-trial right. We are not persuaded.

"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). But "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 (1972).

Barker sets out four factors to consider 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. Minnesota has adopted these factors, noting that they must 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." *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021). In the final analysis, "whether 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 (Minn. App. 2021) (quotation omitted), *rev. granted* (Minn. Jan. 18, 2022).

A. Length of the delay

Appellant argues that this factor weighs in his favor because the delay is presumptively prejudicial. Relevant here, a delay becomes "presumptively prejudicial . . . 60 days after an accused demands a speedy trial after entering a not guilty plea." *Mikell*, 960 N.W.2d at 246. A presumptively prejudicial delay triggers the "necessity for inquiry into the remaining factors of the [*Barker*] test." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Here, because the 74-day delay is presumptively prejudicial, this factor slightly favors appellant.

B. Reason for the delay

Appellant argues that this factor weighs in his favor because the state did not have good cause to delay the trial beyond 60 days. Under the second *Barker* factor, we consider the reasons for the delay, including which party bears responsibility for the delay. *Mikell*, 960 N.W.2d at 250-51. When the trial delay is attributable to the state's actions, we assess the state's reason for the delay. *Id*. at 251 (noting that when good cause for delay exists, such as "a key witness of the State is unavoidably unavailable . . . the delay will not be held against the State"); *see Barker*, 407 U.S. at 531. Here, the delay is attributable to the state's continuance request to (1) collect and analyze appellant's DNA and (2) secure one of its witnesses.

First, the record shows that the state filed a motion to obtain appellant's DNA, and then a motion for a continuance, nearly two months after appellant's first appearance and

one month after appellant's speedy-trial demand and June 1 trial scheduling. At the continuance hearing, the district court asked the state why it waited two weeks before trial to obtain appellant's DNA. The state responded that it did not have "an explanation beyond . . . [it] did not realize that [appellant's] DNA was not actually taken." This lack of diligence weighs against the state. *See Windish*, 590 N.W.2d at 317.

Second, the state also gave little explanation for why its witness would be unavailable on the scheduled trial date. The state argued only that it was "just notified this morning that one of [its] witnesses . . . is unavailable next week and is out of town." This also weighs against the state. *See id*. ("The state did not produce any evidence of its efforts to ensure [the witness's] appearance. This lack of diligence weighs against the state."). Because we give these two reasons less weight than deliberate attempts to delay the trial, which appellant does not argue, this factor slightly favors appellant. *See Osorio*, 891 N.W.2d at 628 (stating that "deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government" (quoting *Barker*, 407 U.S. at 531)).

C. Assertion of the right to a speedy trial

Because the record shows that appellant asserted his speedy-trial right 74 days before trial, this factor weighs in appellant's favor.

D. Prejudice to appellant

Appellant contends that this factor weighs in his favor because the delay prejudiced him. The prejudice that can result from a violation of a defendant's speedy-trial right may be avoided or minimized by protecting the defendant's interests in the following ways:

(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. *Barker*, 407 U.S. at 532. The most serious of these interests is the third, *id.*, and "is typically suggested by memory loss by witnesses or witness unavailability," *Jackson*, 968 N.W.2d at 62 (quotation omitted). "A defendant does not have to affirmatively prove prejudice; rather, prejudice may be suggested by likely harm to a defendant's case." *Windish*, 590 N.W.2d at 318. "If a defendant is already in custody for another offense . . . the first two interests are not implicated." *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015); *see also Windish*, 590 N.W.2d at 318 (concluding that defendant's first two interests did not apply because he "was already in custody for another offense").

Appellant contends that, although he was already in custody for a probation violation in another case, it relates because the charges in this case caused his probation violation. Nothing in the record supports this contention. But even if this were true, appellant's pretrial incarceration was for a *separate violation* in a *separate case*. The district court did not impose appellant's probation-violation hold. Thus, appellant's first and second interests are not implicated.

Turning to appellant's third interest, he asserts that the delay harmed his case because his trial counsel "was prepared to start on June 1" and delaying the trial by two weeks "undoubtedly affected counsel's preparedness."

Nothing in the record supports this conclusory assertion. Moreover, the delay in fact allowed appellant more time to obtain a statement from a witness. On this record, appellant has not established a likely harm to his case. *See State v. Jones*, 977 N.W.2d 177,

192 (Minn. 2022) (finding record did not establish likely harm to case given that 23-month delay had no bearing on alleged prejudice). We conclude that the delay did not prejudice appellant. This factor favors the state.

E. Balancing the *Barker* factors

In balancing the factors, Minnesota courts have emphasized the prejudice factor. *See State v. Jones*, 392 N.W.2d 224, 234-36 (Minn. 1986); *State v. Strobel*, 921 N.W.2d 563, 573 (Minn. App. 2018), *aff'd*, 932 N.W.2d 303 (Minn. 2019). In both *Jones* and *Strobel*, courts concluded that the first three factors weighed at least slightly in favor of the defendant but still determined that the defendant's speedy-trial right had not been violated because the defendant did not suffer any prejudice as a result of the delay. *Jones*, 392 N.W.2d at 234-36; *Strobel*, 921 N.W.2d at 573. Although the first three factors slightly favor appellant, the delay did not prejudice appellant. We therefore conclude that, on balance, the delay did not violate appellant's speedy-trial right.

II. The district court did not err by sentencing appellant for his DANCO-violation and domestic-assault convictions.

Appellant asserts that the district court erred by sentencing him for his DANCO-violation and domestic-assault convictions because those offenses were committed during the same behavioral incident as his first-degree criminal-sexual-conduct offense and without an applicable exception. We disagree.

Minnesota law "generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident." *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted); *see also* Minn.

Stat. § 609.035 (2020). "[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses . . . ." Minn. Stat. § 609.035, subd. 1. We review de novo whether a district court erred by entering multiple convictions or sentences. *See State v. Barthman*, 938 N.W.2d 257, 265 (Minn. 2020).

There are certain limited exceptions to this general single-behavioral-incident rule. Minn. Stat. § 609.035, subds. 3-6 (establishing exceptions to bar for multiple punishments). One exception is that a criminal-sexual-conduct offense committed "with force or violence" is not a bar to punishment for any other offense committed by the defendant as part of the same course of conduct. *Id*., subd. 6. Appellant contends that this exception does not apply here because the jury did not find that he committed first-degree criminal sexual conduct with force because, as explained below, it can include either force *or* coercion. Appellant is correct that the jury did not specifically find force. As a result, we must next consider whether the record shows that appellant committed the offense with force. *See State v. Leake*, 699 N.W.2d 312, 321 (Minn. 2005) (stating that to determine whether third-degree criminal sexual conduct fulfilled requirement of using "force or violence," district court must determine whether offense was "committed with force or violence—and not coercion alone").

"Force" is defined as "the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another" and the complainant "reasonably believe[s] that the actor has the present ability to execute the threat." Minn. Stat. § 609.341, subd. 3 (2020). "Bodily

harm" means "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2020). In *State v. Leake*, 699 N.W.2d at 324-25, the supreme court concluded that the defendant committed third-degree criminal sexual conduct "with force" when he admitted to "physically pull[ing] [the victim] back and forc[ing] her to have sex" with him.

Here, sufficient evidence in the record shows that appellant committed first-degree criminal sexual conduct with force.[1] Appellant, a 250-pound man, used his body weight to sexually penetrate D.C. forcibly, a 140-pound woman. D.C. testified that appellant restrained her by pinning down her arms and legs and pushing his forearm down onto her neck, which prevented her from "breath[ing] very well." She stated that it was "very painful" in "[her] chest and [her] neck area." Later, appellant restrained D.C. again by pinning her down like before, and he tried to "jam" a remote control inside her rectum, causing D.C. to feel "like [she] was being stabbed." D.C. further testified that while appellant "sodomized [her] with the remote," he also grabbed a plastic Arizona Tea bottle and tried to "jam it" into her vagina, causing her to "feel lightheaded . . . and scared that [she] was going to pass out" from the pain.

Furthermore, the nurse who examined D.C. after the sexual assault testified that she found injuries on D.C.'s body, including "an abrasion on her left inner knee" and her "left posterior hip." The nurse also found injuries on parts of D.C.'s vagina and perianal region. D.C. told investigators that appellant "struck her twice" before pinning her down and

[1] After careful review, we also note that the record supports that appellant committed first-degree criminal sexual conduct with violence.

"punched her several times during the sexual assault." D.C. "thought she would die that night." She also reported that appellant choked her on and off for about ten minutes while pinning her down and that he "was punching her in her hips." For those reasons, we conclude that the district court did not err by sentencing appellant for his DANCO-violation and domestic-assault convictions.

III. Appellant's pro se arguments fail.

Appellant filed a pro se supplemental brief raising issues including sufficiency of the evidence, ineffective assistance of counsel, erroneously admitted relationship evidence, and other evidentiary rulings. The evidentiary issues were not raised below, and we therefore do not consider them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that only those issues presented and considered by district court may be considered on appeal). But we consider appellant's sufficiency-of-the-evidence and ineffective-assistance-of-counsel arguments in turn, as they are properly before this court.

Sufficiency of the evidence

Appellant appears to argue that the state failed to prove that: (1) he committed first-degree criminal sexual conduct and (2) he committed domestic assault because he did not cause D.C. bodily harm and D.C. is not a household member.

When evaluating the sufficiency of the evidence, "we carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] 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). In conducting this analysis, we view the evidence in the

light most favorable to the verdict, *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016), and assume that the factfinder "believed the state's witnesses and disbelieved any evidence to the contrary," *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). If the jury could have reasonably found the defendant guilty, we will not overturn the verdict. *Waiters*, 929 N.W.2d at 900.

To prove appellant guilty of first-degree criminal sexual conduct, the state had to show that he engaged in sexual penetration with D.C. by using "force or coercion to accomplish the act," and causing D.C. personal injury. *See* Minn. Stat. § 609.342, subd. 1(e)(i). "Sexual penetration" includes "sexual intercourse, cunnilingus, fellatio" and "any intrusion however slight into the genital or anal openings . . . of the complainant's body by any part of the actor's body or any object used by the actor for this purpose" without the complainant's consent. Minn. Stat. § 609.341, subd. 12 (2020). The record supports that appellant's acts were nonconsensual. And the record supports that appellant acted using force against and causing personal injury to D.C. Based on the facts and the reasonable inferences to be drawn, we conclude that the jury could have reasonably found appellant guilty of first-degree criminal sexual conduct.

To prove appellant guilty of domestic assault, the state had to show that he acted against "a family or household member" with the intent to cause fear "of immediate bodily harm or death" or by intentionally inflicting or attempting to inflict bodily harm. *See* Minn. Stat. § 609.2242 (2020). "Family or household member" includes "persons who are presently residing together" or have resided together, and "persons involved in a significant romantic or sexual relationship." Minn. Stat. § 518B.01, subd. 2(b)(4), (7) (2020).

Appellant testified that he and D.C. began a romantic relationship in 2019 and were together "on and off" for over a year. D.C. testified that she lived with appellant for a time period in 2019. We again note that the record supports that appellant intentionally inflicted or attempted to inflict bodily harm against D.C. We therefore conclude that the jury could have reasonably found appellant guilty of domestic assault.

Ineffective assistance of counsel

Appellant argues that his trial counsel provided ineffective assistance because she failed to (1) contact a possible witness; (2) research and evaluate facts; (3) produce hallway video footage from the motel; (4) elaborate on D.C.'s alleged mental illness; (5) investigate or attack the nurse's testimony; (6) investigate D.C.'s criminal background; and (7) request an evidentiary hearing. We are not persuaded.

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 (1984). We apply the two-prong test set forth in *Strickland* to determine whether a defendant received ineffective assistance of counsel. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). The *Strickland* test requires appellant 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." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). The claim must satisfy both of the *Strickland* prongs, so if one prong is not met, the claim fails and we need not apply the other prong. *See*

Swaney v. State, 882 N.W.2d 207, 217 (Minn. 2016). Because it is dispositive, we start by addressing the second *Strickland* prong.

As already explained, the state presented sufficient evidence that appellant sexually penetrated D.C. without her consent by using force, causing D.C. personal injury. It also presented sufficient evidence that appellant intentionally inflicted or attempted to inflict bodily harm against D.C., a "family or household member." And appellant stipulated to having violated an active DANCO. Furthermore, while much of the state's evidence came from D.C.'s testimony, *see State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (stating that uncorroborated testimony of single credible witness may be sufficient to support conviction), other evidence corroborated her testimony. The nurse examiner found an abrasion on D.C.'s left inner knee and one near her left posterior hip. She also found multiple injuries to D.C.'s genitals, which the nurse testified was uncommon and that "[m]aybe 30 percent of exams have injuries" given that genital injuries heal quickly. Appellant's sperm-cell DNA matched the male DNA found in vaginal and cervical swabs taken from D.C. And D.C. gave statements to officers and the nurse, consistent with her testimony. The responding officer testified that he discovered the plastic tea bottle and the remote control after arriving at the crime scene. He found the tea bottle on a counter at the end of one of the motel beds and the remote control under the sheets of the other bed.

Finally, appellant does not argue *how* counsel's alleged deficiencies affected the state's case, which supported the jury's guilty verdicts. In sum, he has not shown "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 we conclude that appellant failed to satisfy the second prong of the *Strickland* test, we need not address the first prong. *See Swaney*, 882 N.W.2d at 217.

Affirmed.