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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1005**

State of Minnesota,
Respondent,

vs.

Dwayne Peterson, a/k/a Ywdaane Hunafa,
Appellant.

**Filed June 20, 2011
Affirmed
Minge, Judge**

Ramsey County District Court
File No. 62-CR-09-12630

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges his conviction of fifth-degree assault, arguing that his right to
a speedy trial was violated, that his waiver of counsel was invalid, that the district court

abused its discretion in excluding certain evidence, and that the state did not present sufficient evidence to support the conviction. We affirm.

FACTS

Two men confronted appellant Dwayne Peterson, a/k/a Ywdaane Hunafa, for sleeping in a vacant home.¹ After a brief argument, Hunafa punched one of the men and walked away. He was subsequently arrested and charged with fifth-degree assault under Minn. Stat. § 609.224, subd. 2(b) (2008).

On July 13, 2009, Hunafa pleaded “not guilty” and demanded a speedy trial. Although the trial was originally scheduled for September 8, it was delayed several times and finally began on November 30, 2009. Hunafa was represented by counsel until November 16, when the district court granted his petition to proceed pro se. A jury found Hunafa guilty of fifth-degree assault, and he was sentenced. This appeal followed.

D E C I S I O N

I. Right to a Speedy Trial

The first issue is whether the district court denied Hunafa the right to a speedy trial. “By rule in Minnesota, trial is to commence within 60 days from the date of the demand unless good cause is shown . . . why the defendant should not be brought to trial within that period.” *State v. DeRosier*, 695 N.W.2d 97, 108–09 (Minn. 2005) (citing Minn. R. Crim. P. 6.06, 11.10). A court must balance four factors in determining whether a delay violates a defendant’s right to a speedy trial: (1) the length of the delay; (2) the reason for the delay; (3) whether and how frequently the defendant asserted his

¹ At appellant’s request, this opinion will refer to Dwayne Peterson as Ywdaane Hunafa.

right to a speedy trial; and (4) whether the delay prejudiced the defendant. *Id.* at 109 (citing *Barker v. Wingo*, 407 U.S. 514, 530–33, 92 S. Ct. 2182, 2192–93 (1972)). This court reviews a speedy-trial challenge de novo. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009).

Initially, we consider the length of the delay. A delay of greater than 60 days from the date of the speedy-trial demand is presumptively prejudicial and triggers review of the remaining three factors. *Id.* at 340. Hunafa’s trial did not begin until 140 days after his demand for a speedy trial. The delay is therefore presumptively prejudicial and requires review of the three remaining factors.

Next, we consider the reason for the delay. A trial delay does not violate a defendant’s right to a speedy trial if good cause is shown for the delay. Minn. R. Crim. P. 11.09(b). Good cause for delay does not include calendar congestion. *McIntosh v. Davis*, 441 N.W.2d 115, 119–20 (Minn. 1989). If Hunafa’s actions caused the delay, there is no violation of the right to a speedy trial. *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993).

Hunafa’s trial was originally scheduled for Tuesday, September 8. However, a different proceeding extended into that week, pushing Hunafa’s trial back several days. Because Hunafa’s attorney was unavailable from Monday, September 14, through Tuesday, September 22, the district court rescheduled the trial for September 28. This 20-day delay is primarily attributable to Hunafa’s attorney’s scheduling conflict.

On September 28, Hunafa filed a petition to proceed pro se. During a competency inquiry by the district court, Hunafa revealed that he was diagnosed with schizophrenia,

was not taking medication, and had heard voices as recently as July. The district court ordered a rule 20 competency evaluation and further postponed the trial. Although the competency evaluation indicated Hunafa was incompetent to proceed, subsequent reports suggested that he was feigning symptoms of schizophrenia. The district court further delayed the trial and ordered a second rule 20 competency evaluation, which indicated that Hunafa was manipulative, faking his symptoms of mental illness, and competent to proceed with trial. On November 16, the district court adopted the findings of the second competency evaluation and scheduled the trial for November 30 to provide both parties the opportunity to subpoena witnesses. Therefore, the delays after September 28 were largely attributable to Hunafa's purported symptoms of mental illness, not to any judicial or prosecution factor.

Hunafa suggests that the competency evaluations were scheduled to neutralize the September delay in commencing with trial. However, the district court has the authority, at any time, to independently raise the issue of competency. Minn. R. Crim. P. 20.02, subd. 3. Because Hunafa falsely exhibited symptoms of mental illness, the district court had a duty to investigate Hunafa's competency and to order rule 20 evaluations. Overall, Hunafa's attorney's scheduling conflict added 20 days, while Hunafa's malingering created an additional delay of nearly two months. Therefore, the reasons for the delay weigh against Hunafa.

Third, we consider whether and how frequently Hunafa asserted his right to a speedy trial. Hunafa persistently asserted his right to a speedy trial at every appearance and in every motion. Therefore, this factor weighs in favor of Hunafa.

Finally, we consider whether the delay prejudiced Hunafa. To determine prejudice, we weigh three interests: “(1) preventing oppressive pretrial incarceration, (2) minimizing the anxiety and concern of the accused, and (3) preventing the possibility that the defense will be impaired.” *State v. Windish*, 590 N.W.2d 311, 318 (Minn. 1999). Hunafa’s only claims of prejudice are that the prosecution was using the delay to accumulate evidence against him and that the prison doctors were not properly caring for his medical needs. Neither argument is supported with any evidence. In addition, pretrial incarceration, without more, is insufficient to show prejudice. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990). Therefore, this factor weighs against Hunafa.

Overall, because the delay was largely attributable to Hunafa’s claimed symptoms of mental illness and because Hunafa has not shown that any prejudice occurred, we conclude the district court did not violate Hunafa’s right to a speedy trial.

II. Waiver of Counsel

The second issue is whether Hunafa’s waiver of the right to counsel was valid. Criminal defendants are guaranteed the right to an attorney at trial. U.S. Const. amend. VI, XIV; Minn. Const. art. I, § 6. A valid waiver of the right to counsel must be (1) competent; and (2) voluntary, knowing, and intelligent. *State v. Camacho*, 561 N.W.2d 160, 172–73 (Minn. 1997); *State v. Garibaldi*, 726 N.W.2d 823, 826–27 (Minn. App. 2007). We review the district court’s acceptance of a defendant’s decision to waive his right to counsel for clear error. *Camacho*, 726 N.W.2d at 173.

Hunafa does not challenge the district court’s finding that he was competent to represent himself. Therefore, the only issue is whether Hunafa’s waiver was voluntary,

knowing, and intelligent. To meet this requirement, a district court must advise a defendant of: (1) the nature of the charges; (2) the range of allowable punishments; (3) potential defenses; (4) any mitigating circumstances; and (5) all other facts essential to a broad understanding of the consequences of waiver. Minn. R. Crim. P. 5.04, subd. 1(4). In addition, a district court must either procure a written waiver signed by the defendant or, if the defendant refuses to sign, allow the defendant to enter the waiver on the record. *Id.* An important factor in whether a valid waiver occurs is whether the defendant is objecting to proceeding pro se or is affirmatively seeking the opportunity. *See State v. Jones*, 772 N.W.2d 496, 504–06 (Minn. 2009).

In September, when Hunafa initially filed a petition to proceed pro se, the district court obtained a signed document stating that Hunafa understood the charges against him and the consequences of conviction. The district court also advised Hunafa that he would likely receive a prison sentence if convicted due to his extensive criminal record and that, without an attorney, he may miss an opportunity to present exculpatory evidence. Despite these warnings, Hunafa continued to affirmatively seek the opportunity to proceed pro se.

In November, after multiple rule 20 evaluations and the subsequent finding of competence, the district court again recommended that Hunafa not proceed pro se, stating that attorneys were more skilled in the law, knew the rules of evidence and criminal procedure, and had experience in court. The district court also requested that Hunafa complete a new written waiver, but Hunafa refused, instead directing the district court to the waiver petition that he had signed in September.

Overall, the district court met all the procedural requirements for ensuring that a waiver of the right to counsel was voluntary, intelligent, and knowing. Initially, Hunafa signed a written petition to proceed pro se, which indicated the nature of the charges, the range of punishments, and an admission that he had consulted with his public defender and was aware of the consequences of proceeding pro se. In addition, the district court advised Hunafa of other mitigating factors, including that he was more likely to miss opportunities to present exculpatory evidence and that he would likely receive a prison sentence because of his criminal history. Although nobody advised Hunafa on the record of his available defenses, we assume such a conversation occurred because Hunafa was represented by counsel from July through November and frequently discussed his case with that attorney.

Hunafa argues that the written waiver and district court colloquy that occurred in September should not be considered because he was subsequently found incompetent. However, because the district court concluded that Hunafa's incompetency was based on his feigning symptoms of mental illness, the district court could reasonably assume that Hunafa was competent during the waiver proceedings. *See State v. Ganpat*, 732 N.W.2d 232, 240–41 (Minn. 2007) (affirming waiver of *Miranda* rights while incompetent because defendant was found to be faking symptoms of low intelligence and mental illness).

Based on the foregoing analysis, we conclude that the district court's acceptance of Hunafa's waiver of counsel was not clearly erroneous.

III. Evidentiary Issues

The third issue is whether the district court denied Hunafa the right to present an effective defense. Although the right to present witnesses is protected by the constitution, a defendant, even when appearing pro se, must still comply with the rules of procedure and evidence. *State v. Richards*, 495 N.W.2d 187, 195 (Minn. 1992). “The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997) (quotation omitted).

Hunafa argues that the district court abused its discretion in determining that the testimony of his proposed witness, Bennie Stafford, was inadmissible. When Hunafa called Stafford, the district court questioned him regarding his potential testimony. Stafford was to testify regarding an incident that may have occurred involving one of Hunafa’s accusers, but he lacked personal knowledge of the incident and the identities of those involved. The rules prohibit a witness from testifying to matters outside his personal knowledge. Minn. R. Evid. 602. The district court held that Stafford’s testimony was based on inadmissible hearsay rather than his personal knowledge. Hunafa also had the opportunity to question Stafford, identify an exception to the hearsay rule, and salvage the testimony. Because there is no argument that the district court erroneously interpreted the law or that the district court acted arbitrarily, we conclude that the district court did not abuse its discretion in deeming Stafford’s testimony inadmissible.

Hunafa also argues that the district court abused its discretion by not allowing him to cross-examine his accusers about the criminal complaint. The district court ruled that neither witness had sufficient personal knowledge of the criminal complaint to address statements in it. Because no evidence suggests the accusers did have such personal knowledge, the district court did not abuse its discretion in limiting Hunafa's ability to cross-examine his accusers regarding the criminal complaint.

IV. Sufficiency of the Evidence

The final issue is whether the state presented sufficient evidence to support the jury's guilty verdict. If a jury could reasonably conclude that Hunafa was proven guilty beyond a reasonable doubt of the offense charged, this court will not overrule its verdict. *State v. Daniels*, 361 N.W.2d 819, 826 (Minn. 1985). We examine the evidence by regarding it in the light most favorable to the verdict and assume the jury disbelieved any testimony conflicting with its verdict. *Id.*

To find Hunafa guilty of gross-misdemeanor fifth-degree assault, the jury needed to find that he intentionally inflicted or attempted to inflict bodily harm upon another, and that he had a previous qualified domestic-violence-related-offense conviction within the previous three years. Minn. Stat. § 609.224, subd. 2(b) (2008). Hunafa stipulated to the required prior conviction. The victim testified that Hunafa punched him in the face with a closed fist and that he sustained bruising and loosened teeth as a result of the punch. Another witness corroborated this account. This testimony constituted sufficient evidence for the jury to find Hunafa guilty.

Hunafa argues that the witnesses testified inconsistently regarding certain details, such as the color of Hunafa's clothing or how Hunafa entered the vacant home. Inconsistencies between prosecution witnesses do not necessarily establish false testimony or a basis for reversal. *Daniels*, 361 N.W.2d at 826. Inconsistencies in memory are a "sign of the fallibility of human perception — not proof that false testimony was given at the trial." *State v. Hanson*, 286 Minn. 317, 335, 176 N.W.2d 607, 618 (1970). Because the inconsistent statements did not undermine the proof of the basic elements of fifth-degree assault, the jury could reasonably find Hunafa was guilty of that charge.

Affirmed.

Dated: