STATE OF MINNESOTA
IN COURT OF APPEALS
A07-174

State of Minnesota,
Respondent,

vs.

Lamar Lance Hamilton,
Appellant.

Filed May 27, 2008
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 05081326

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Paul J. Maravigli, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Hennepin County jury found Lamar Lance Hamilton guilty of third-degree criminal sexual conduct for raping his 17-year-old niece. On appeal, Hamilton argues that the district court erred by (1) refusing to grant his motion to dismiss on the basis of his Sixth Amendment right to a speedy trial; (2) admitting DNA testimony; (3) striking a juror for cause; and (4) answering a question from the jury when Hamilton was absent from the courtroom. We conclude that there was no error with respect to any of these contentions and, therefore, affirm.

FACTS

In May 2003, Hamilton's niece, S.L., who was 17 years old and not getting along with her mother, came to live with Hamilton and his girlfriend. Soon after S.L. moved in, Hamilton began calling her derogatory names, accusing her of being promiscuous, and asking her to have sex with him.

On June 6, 2003, S.L. was watching television in Hamilton's bedroom when Hamilton came home from work. Hamilton yelled at S.L, called her a "slut," and accused her of having sex with other men or boys that day, which she denied. He told her to pull down her pants and underpants so that he could ascertain whether she had been having sex. He touched her between her legs. He then ordered her to bend over the bed and attempted penetration of her vagina but was unsuccessful. He made her change positions twice, threatening to hit her if she did not cooperate. While she was kneeling

on all fours on the bed, he penetrated her vagina for one or two minutes. He was not wearing a condom.

Hamilton's girlfriend then returned to the home. Before leaving the bedroom, Hamilton threatened to kill S.L. if she told anyone what had happened. When Hamilton left the apartment, S.L. told Hamilton's girlfriend about the incident. The next morning, the police were called, and S.L. was taken to Hennepin County Medical Center. A nurse used a "sexual assault kit" and took vaginal and perineal swabs from S.L, following the protocols for collecting, sealing, marking, and preserving the specimens.

On July 15, 2003, Hamilton was taken into custody. He was charged with third-degree criminal sexual conduct and pleaded not guilty. Trial was set for September 29, 2003. A week before the scheduled trial, the state moved for a continuance and to obtain a DNA sample from Hamilton. On the day for which trial was scheduled, the motion was granted, the trial was continued to December 9, and Hamilton was given a conditional release from custody. The state obtained a DNA sample from Hamilton in December, but the case was dismissed without prejudice due to the unavailability of the results of DNA testing.

Hamilton's DNA sample was locked in a secured drawer of the locked office of the assigned police sergeant until December 15, 2003, when it was brought to the Minneapolis Police Department property room. In the ensuing months, the assigned prosecutor made several inquiries about the status of the DNA testing, but the DNA sample remained untested for 17 months. The prosecutor's supervisor made a number of telephone calls, and finally, on May 13, 2005, the assigned police sergeant delivered

Hamilton's DNA sample and S.L.'s sexual-assault kit to the Minnesota Bureau of Criminal Apprehension (BCA). Additional delays ensued. The DNA samples were not examined at the BCA until August 2005, and it was not until October 2005 that the BCA issued a report stating that Hamilton's DNA had been identified on the perineal swab from S.L.

On December 27, 2005, the state, with a newly assigned prosecutor, filed a new complaint against Hamilton, again charging him with third-degree criminal sexual conduct. On March 7, 2006, Hamilton entered not-guilty pleas and waived his right to a speedy trial because of impending back surgery. On July 17, 2006, Hamilton moved to dismiss, alleging a denial of his right to a speedy trial, and the motion was denied. On September 25, 2006, trial began. Hamilton appeared pro se with the assistance of stand-by counsel. On September 29, the jury returned a guilty verdict. The district court sentenced Hamilton to 88 months of imprisonment with an additional period of conditional release. Hamilton appeals, raising four issues.

ISSUES

I. Did the district court err by denying Hamilton's motion to dismiss on the basis of his Sixth Amendment right to a speedy trial?

II. Did the district court abuse its discretion by admitting DNA testimony?

III. Did the district court abuse its discretion by striking a juror for cause?

IV. Did the district court err when it answered a jury question when Hamilton was voluntarily absent from the courtroom?

D E C I S I O N

I. Right to Speedy Trial

The United States and Minnesota constitutions establish that in all criminal prosecutions, "the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI; Minn. Const. art. I, § 6. In determining whether a delay has deprived the defendant of the right to a speedy trial, Minnesota courts generally apply the four-part balancing test of *Barker v. Wingo*, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 2192-93 (1972). *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Determining whether a defendant has been denied the right to a speedy trial is a constitutional question, which is reviewed de novo. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

A. Allegation of Bad Faith

Despite the general rule that the *Barker* test applies, Hamilton argues that his conviction can be reversed without applying that test because the prosecutor engaged in "improper legal maneuvering" in bad faith in order to circumvent Hamilton's speedy trial rights. Hamilton relies on *State v. Kasper*, 411 N.W.2d 182 (Minn. 1987), in which the supreme court considered a prosecutor's attempt to avoid speedy-trial issues by dismissing the charges and then re-filing them to restart the 60-day period. *Id.* at 183-84. The prosecutor did so after the district court had denied his motion for a continuance. *Id.* at 183. The supreme court noted that "[t]o permit the prosecution of defendant to continue under these circumstances would be to permit the circumvention of" the timing rules. *Id.* at 185. The supreme court admonished the prosecutor's "maneuvering" around

the 60-day speedy-trial requirement and reversed the district court's denial of the defendant's motion to dismiss the case. *Id.* at 185.

Hamilton points to the long delay between when he originally was charged on July 17, 2003, and when he was recharged on December 27, 2005, and contends that bad faith is the sole reason for the delay. The state responds that Hamilton's bad-faith argument was not raised in the district court and, thus, should not be considered on appeal. In fact, Hamilton did not make the argument in the district court. Thus, the issue is waived. *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004) (holding that defendant waived argument concerning voluntariness of confession despite having made argument that confession was inadmissible on other grounds).

Nonetheless, we may exercise our discretion to consider the bad-faith argument under a plain error analysis. *Id.*; *see also* Minn. R. Crim. P. 31.02. Under the plain error doctrine the defendant first must show (1) error, (2) that was plain, and (3) that affected substantial rights. *State v. Caine*, 746 N.W.2d 339, 349 (Minn. 2008). Once plain error is shown, a reviewing court will reverse if the error "'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (alteration in original) (quoting *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1549 (1997)).

It is not plain that this is a case of bad-faith legal maneuvering. The district court record contains an affidavit of the prosecutor handling the case when the state dismissed the first set of charges in December 2003. He explained that in September 2003, he moved the district court for an order to obtain a DNA sample from Hamilton. The

district court granted that motion and continued trial to December 9, 2003, and Hamilton was released from custody. The prosecutor attempted to communicate with Hamilton's attorney about obtaining a sample, but the assistant public defender resigned his position, leaving Hamilton without counsel for a period of time. The prosecutor then asked the Minneapolis Police Department to effectuate the court order, but the sergeant assigned to the case was on medical leave, and it took some time to find assistance from another officer. A bench warrant was issued on December 1, 2003, and Hamilton was arrested. Three days later, he provided a DNA sample and was released. The prosecutor further stated that it takes six weeks for the BCA to complete its testing. Accordingly, in December 2003, the case was dismissed without prejudice to allow the state to continue with its investigation by conducting DNA testing. Thus, the dismissal of the case was not plainly attributable to bad-faith legal maneuvering. *See State v. Sime*, 669 N.W.2d 922, 925 (Minn. App. 2003) (concluding that district court's continuance was proper based on circumstances surrounding state's request and lack of bad faith); *In re Welfare of G.D.*, 473 N.W.2d 878, 881-82 (Minn. App. 1991) (distinguishing *Kasper* and holding that dismissal without prejudice was not done in bad faith); *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990) (holding that state's request for reasonable continuance to allow for DNA testing constituted good cause).

B. *Barker* Factors

As stated above, the four-part balancing test of *Barker v. Wingo* applies. The four factors are (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the delay prejudiced the

defendant. *Windish*, 590 N.W.2d at 315. The factors must be considered together in light of the relevant circumstances, and none is dispositive or necessary to a finding that a defendant has been deprived the right to a speedy trial. *Id.*

1. Length of the Delay

The first *Barker* factor is "a triggering mechanism in that until some delay . . . is evident the other factors need not be considered." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). The starting point for calculating the length of the delay is the filing of criminal charges, which is when the Sixth Amendment right attaches. *Id.*

Hamilton argues that the total length of the delay was more than 29 months because he was arrested in July 2003 and tried in September 2006. But case law indicates that the speedy-trial clock runs only while charges are pending. The Sixth Amendment right to a speedy trial

> "has no application after the Government, acting in good faith, formally drops charges. . . . Once charges are dismissed, . . . the formerly accused is, at most, in the same position as any other subject of a criminal investigation. . . . [W]ith no charges outstanding, personal liberty is certainly not impaired to the same degree as it is after arrest while charges are pending."

G.D., 473 N.W.2d at 882 (alteration in original) (quoting *United States v. MacDonald*, 456 U.S. 1, 7-9, 102 S. Ct. 1497, 1501-02 (1982)). Hamilton points to two foreign cases as persuasive authority for exceptions to the *MacDonald* holding, but they are both inconsistent with Minnesota law and distinguishable on their facts. *See State v. Drachman*, 358 S.E.2d 603, 607 (W. Va. 1987) (holding that speedy trial right did not lapse where no dismissal of underlying charge ever occurred); *State v. Bailey*, 655 P.2d

494, 496-97 (Mont. 1982) (holding that speedy trial right did not lapse where county attorney continued to prosecute after initial dismissal of charges).

The delay at issue here is approximately eight months. Charges were pending from July to December 2003 and from December 2005 until Hamilton waived his right to a speedy trial in March 2006. A seven-month delay was enough to trigger consideration of the other *Barker* factors in *Jones*. *See* 392 N.W.2d at 235. Thus, the eight-month delay in this case is sufficient to prompt consideration of the other factors.

2. Reason for the Delay

In assessing the reason for the delay, "different weights should be assigned to different reasons" for the delay. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192. Although deliberate attempts to delay the trial are weighted heavily against the state, more "neutral" reasons for delay, such as negligence or overcrowded courts, are accorded less weight. *Id.* Nonetheless, "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Id.*

Hamilton argues that no good reason exists for the delay between the charging and re-charging of the case. The state contends that the delay was not intentional but, rather, due to mere negligence. The district court noted that part of the delay was due to "normal processes of the court" but that there also was "apparently some negligence."

This case can be distinguished from two cases cited by Hamilton where the government's negligence was found to weigh heavily against the state. In *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686 (1992), the Supreme Court held that a delay of eight-and-one-half years between the defendant's indictment and his arrest violated his

Sixth Amendment right to speedy trial. *Id.* at 657-58, 112 S. Ct. at 2694. The Court noted that investigators made no serious effort for six years to find Doggett although they could have found him easily. *Id.* at 652-53, 112 S. Ct. at 2691. In *State v. Sistrunk*, 429 N.W.2d 280, 282 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988), which involved a delay of 12 years, the negligence was unexplained. Here, in contrast, negligence may have existed, but the delay was not as long, part of the delay was due to Hamilton's lack of cooperation, and the state made periodic efforts to move the investigation forward. It also appears that part of the delay may have been attributable to a temporary moratorium on DNA testing at the BCA because of pending litigation, although the district court made no findings on that issue.

Because negligence, not intentional delay, was the primary reason for the delay, the second factor should not be weighed heavily against the state. *See State v. Huddock*, 408 N.W.2d 218, 220-21 (Minn. App. 1987) (recognizing, in case involving administrative delay, that negligent delays by government are "given less weight" than deliberate delays).

3. Assertion of Speedy Trial Right

"The demand for a speedy trial may be made orally or in writing, but it must be made on the record to give all parties notice of when to start the clock running." *State v. Rachie*, 427 N.W.2d 253, 257 (Minn. App. 1988), *review denied* (Minn. Sept. 20, 1988). In looking at this factor, the force and frequency of the defendant's demand for trial must be considered. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989).

The district court found that Hamilton did not assert his right to a speedy trial prior to his motion to dismiss on the day of trial. Hamilton concedes that he did not demand a speedy trial but relies on his demand for a jury trial. That Hamilton never demanded a speedy trial weighs against finding a violation of his right to a speedy trial. Asking for a jury trial is not the same as demanding a speedy trial. Thus, the third *Barker* factor weighs heavily against Hamilton.

4. Prejudice

The fourth factor, prejudice, is measured in light of the interests that the speedy trial right was designed to prevent. *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. Three interests must be assessed: (1) preventing oppressive pretrial incarceration, (2) minimizing the accused's anxiety and concern, and (3) limiting the possibility that the defense will be impaired. *Id.* The third interest is the most important. *Id.*

With respect to the first interest, Hamilton was incarcerated from July 17, 2003, to September 30, 2003, and for only a few days in December 2003, when he violated his conditional release. That amount of pretrial incarceration is not "oppressive."

With respect to the second interest, Hamilton asserts that he was forced to live with the knowledge that he could be re-charged "whenever the state saw fit." He also maintains that his long-term relationship with his girlfriend was put at risk and that the possibility of a long prison sentence put a "presumptive chill" on any employment and relationship stability he might have sought. But "the stress, anxiety and inconvenience experienced by anyone who is involved in a trial" is not a significant form of prejudice. *Friberg*, 435 N.W.2d at 515.

With respect to the third and most important interest, Hamilton has not demonstrated that his defense was impaired. Prejudice may be suggested by "likely harm" to the defendant's case. *Windish*, 590 N.W.2d at 318. Hamilton argues that the delay presumptively compromised the reliability of his trial because witnesses' memories had faded, neighbors who saw him before or after the incident likely were unavailable, and evidence may have become lost or decayed. The district court, however, stated, "There's no claim of problems locating witnesses or in failing memories except for speculation about the State's witnesses, but that's the State's problem and not the defendant's problem." Also, the BCA forensic scientist testified that the delay in DNA testing did not affect the tests or his conclusions. Because Hamilton's claims of prejudice are speculative, the fourth *Barker* factor weighs against Hamilton.

5. Summary

The eight-month delay was somewhat significant. The reason for the delay was mere negligence, which weighs less heavily against the state. Although the anxiety Hamilton experienced as a result of the delay is not disputed, he did not assert his right to a speedy trial. And the evidence of prejudice is weak. Considering these factors, we conclude that the district court did not err in refusing to grant Hamilton's motion to dismiss on the basis of his Sixth Amendment right to a speedy trial. *See Cham*, 680 N.W.2d at 125 (reversing dismissal because delay was 23 months long, reason for delay was difficulty obtaining an interpreter, defendant never moved for speedy trial, and prejudice was mere anxiety); *Friberg*, 435 N.W.2d at 515 (affirming denial of motion to

dismiss because delay was not deliberate, defendant contributed to delay, and defendant suffered no prejudice).

II. Admission of DNA Evidence

Hamilton argues that the district court abused its discretion in admitting DNA evidence because the state did not establish a chain of custody for the physical evidence. Hamilton contends that the DNA evidence, which "languished for 17 months in what was essentially an old storage room," could have broken down with exposure to various temperatures and could have been tampered with.

Scientific test results are admissible only if the state establishes a chain of custody for the evidence subjected to testing. *State v. Dille*, 258 N.W.2d 565, 569 (Minn. 1977). The purpose of establishing chain of custody is to ensure that evidence has not been contaminated or altered. *State v. Bellikka*, 490 N.W.2d 660, 663 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992). "Admissibility should not depend on the prosecution negativing all possibility of tampering or substitution, but rather only that it is reasonably probable that tampering or substitution did not occur." *State v. Johnson*, 307 Minn. 501, 505, 239 N.W.2d 239, 242 (1976). "In the absence of any indication of substitution, alteration, or other form of tampering, reasonable probative measures are sufficient." *Berendes v. Comm'r of Pub. Safety*, 382 N.W.2d 888, 891 (Minn. App. 1986) (quotation omitted). Whether the state has established a sufficient chain of custody to warrant admission of scientific evidence is left to the sound discretion of the district court. *Johnson*, 307 Minn. at 504, 239 N.W.2d at 242.

Hamilton did not object to the admission of DNA evidence at trial. At the pre-trial hearing on his motion to dismiss, Hamilton's defense counsel remarked that it was "preposterous and inexcusable" that DNA testing would take two years, but there was no objection to the admission of DNA evidence. Nonetheless, "[p]lain errors or defects affecting substantial rights" may be considered on appeal. Minn. R. Crim. P. 31.02. Under the plain error doctrine the defendant first must show (1) error, (2) that was plain, and (3) that affected substantial rights. *Caine*, 746 N.W.2d at 349.

The district court did not commit plain error in admitting the DNA evidence. Hamilton admitted at trial that the buccal swab contained his DNA. The police sergeant testified that the DNA sample was inventoried and kept in the MPD property room until the sample and the sexual-assault kit were delivered to the BCA. Furthermore, the BCA forensic scientist testified that both items were sealed, that there was no evidence of tampering, and that the delay between obtaining the samples in 2003 and testing them in 2005 did not affect the accuracy of the results or his conclusions.

Because there was no evidence of tampering, substitution, or degradation of the DNA sample, the chain of custody is adequate. In "all reasonable probability," the item offered was the one seized and was in a substantially unchanged condition. *See Johnson*, 307 Minn. at 505, 239 N.W.2d at 242. Thus, we find no plain error or abuse of discretion in the district court's admission of the DNA evidence.

III. Dismissal of Juror

During jury selection, the district court excused a prospective juror who indicated a bias against the prosecution. Hamilton contends that he was denied his right to a fair

trial by an impartial jury. *See* U.S. Const. amend. VI; Minn. Const. art. I, § 6. A prospective juror may be removed for cause based on "[t]he existence of a state of mind on the part of the juror . . . which satisfies the court that the juror cannot try the case impartially." Minn. R. Crim. P. 26.02, subd. 5(1)1. The district court is in the best position to judge whether a juror is impartial. *State v. Drieman*, 457 N.W.2d 703, 708-09 (Minn. 1990). A district court's decision to dismiss a juror for cause is subject to an abuse-of-discretion standard of review. *See State v. Manley*, 664 N.W.2d 275, 284 (Minn. 2003).

Hamilton first argues that the district court struck the prospective juror on its own motion, without voir dire from either party. The district court, however, did not dismiss the juror sua sponte. Rather, the district court asked the state whether it wanted the juror excused for cause, and the state replied, "yes."

Hamilton next argues that he was denied the opportunity to conduct voir dire of the prospective juror in order to rehabilitate her. But Hamilton did not have a right to question the prospective juror before the judge ruled on the state's challenge. "A challenge for cause may be made at any time during voir dire by any party." Minn. R. Crim. P. 26.02, subd. 4(3)(a)4. It is true that, "[b]efore exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case." *Id.*, subd. 4(1). But this is not a case in which Hamilton was prevented from asking questions before deciding whether to exercise a challenge; that situation did not arise because the state challenged the prospective juror. Hamilton relies on a rule providing that "prospective jurors shall be examined as to their

qualifications, first by the court, then by the parties." *Id.*, subd. 4(3)(a)3. But this provision is primarily concerned with the order in which examination shall occur, if it occurs. Furthermore, the "scope of voir dire is committed to the district court's sound discretion." *State v. Gillespie*, 710 N.W.2d 289, 295 (Minn. App. 2006), *review denied* (Minn. May 16, 2006).

Finally, the prospective juror's statements provided the district court with sufficient grounds to dismiss her. The prospective juror stated that, approximately 15 years earlier, her husband had been accused of similar misconduct with his daughter. She explained that her husband is "African American, native American mix," that she "thought there was racial discrimination," that "there was a lot of bias," and that she believed the police had done a poor job investigating. When asked whether she could consider the evidence fairly, she said, "that's hard. I don't know. I can't say." The district court excused the juror "based on [her] honesty that she doesn't know if she would put her own opinions at issue here." Because the district court judge is in the best position to observe the demeanor of the prospective juror, the district court judge "should be given deference in determining if a juror should be removed for cause." *State v. Graham*, 371 N.W.2d 204, 206 (Minn. 1985). Furthermore, the "impartiality of the adjudicator goes to the very integrity of the legal system." *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007).

In sum, the district court did not abuse its discretion when it excused the prospective juror for cause.

IV. Response to Jury's Question in Hamilton's Absence

Hamilton argues that the district court committed fundamental error by answering a jury question when Hamilton was voluntarily absent from the courtroom. A defendant has a constitutional right to be present at all stages of trial. U.S. Const. amend. VI; *State v. Sessions*, 621 N.W.2d 751, 755 (Minn. 2001); Minn. R. Crim. P. 26.03, subd. 1(1) ("The defendant shall be present . . . at every stage of the trial"). Responding to a jury's question is a stage of trial. *Sessions*, 621 N.W.2d at 755. The general rule is that a district court judge should have no communication with the jury after deliberations begin, unless in the defendant's presence. *Id.* at 755-56. The right to be present, however, can be waived by the defendant. *State v. Ware*, 498 N.W.2d 454, 457 (Minn. 1993).

After the jury retired to begin deliberations on the afternoon of September 28, 2006, the fourth day of trial, the district court instructed Hamilton that he needed to "stay here in the hallway" in the event of any jury communication. The district court also stated that if the jury did not reach a verdict that afternoon, it would resume deliberations the next morning at 9:00 a.m. The next morning, the district court received a note from the jury more than two hours after they resumed deliberating. The district court noted that Hamilton was "not in the courtroom or on the floor." The district court also noted:

> Hamilton came, or at least called our office about 10:15 and asked what he was supposed to do. At that point he was here, and he was told that he needed to stay in the courtroom or on the floor, although he could go down and get coffee or something, but that was 10:15 and it's now 11:25.

The jury's note asked whether it could return a verdict on only two of the three counts. When asked if he had anything to say for the record, Hamilton's stand-by counsel replied,

"I don't think I should." The district court proceeded to answer the question by stating that it could receive verdicts on fewer than all three charges but that it would like the jury to try to reach a unanimous verdict on all charges, if possible.

A defendant may waive his right to be present at trial by being absent from the courtroom, even if he did not receive a warning to stay nearby. The United States Supreme Court has held that a defendant's voluntary failure to return to his trial after a lunch recess constituted a waiver of his right to be present. *Taylor v. United States*, 414 U.S. 17, 18-20, 94 S. Ct. 194, 195-96 (1973). Although the defendant's attorney told him to return to the courtroom at the appointed hour, the court itself did not warn him of the consequences if he failed to return. *Id.* Nonetheless, the court noted:

> It seems . . . incredible to us, as it did to the Court of Appeals, "that a defendant who flees from a courtroom in the midst of a trial – where judge, jury, witnesses and lawyers are present and ready to continue – would not know that as a consequence the trial could continue in his absence."

Id. at 20, 94 S. Ct. at 196 (quoting *United States v. Taylor*, 478 F.2d 689, 691 (1st Cir. 1973)).

Similarly, in *State v. Stout*, 273 N.W.2d 621 (Minn. 1978), the Minnesota Supreme Court held that a defendant's voluntary absence from trial was an effective waiver of his right to be present even without a warning that the trial would continue if he were absent. *Id.* at 623 & n.1 (citing *Taylor* but recommending that district courts inform defendants that voluntary absence will not prevent completion of trial). Here, Hamilton was specifically told by the district court that he needed to stay in the courtroom or nearby. By not being in the courtroom or nearby, Hamilton waived his right to be present

for jury questions. Hamilton contends that the district court waited only ten minutes and should have waited longer because he was present later, during the discussion of the jury's second question. The record does not indicate when the district court received the first question, when the district court conducted the discussion regarding the second question, or how long the district court waited on each of these occasions. Regardless, Hamilton was instructed to be in the courtroom or in the hallway nearby, yet he was not there at 11:25 a.m. In light of the previous warning, the district court reasonably went forward without him. Thus, there was no violation of Hamilton's right to be present at trial.

Even if Hamilton's right to be present were violated, the violation was harmless error. *See* Minn. R. Crim. P. 31.01. The district court gave a neutral, accurate, and typical response when it informed the jurors that they could return verdicts on fewer than all three charges but that the court would prefer a unanimous verdict on all charges. *See State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996) (holding that district court's instructions to jury to keep deliberating did not coerce jury to reach verdict). Hamilton does not argue that the district court's answer was incorrect. Thus, any error would be harmless. *See Mckenzie v. State*, 687 N.W.2d 902, 906 (Minn. 2004) (holding that any error in district court's answering jury question in defendant's absence was harmless because of propriety of answer).

Affirmed.