STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1843

State of Minnesota,
Respondent,

vs.

Candyce Marlee Jones,
appellant.

Filed September 22, 2009
Affirmed
Hudson, Judge

Ramsey County District Court
File No. 62-K5-07-004455

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, Minnesota 55102-1657 (for respondent)

Bradford Colbert, Special Assistant Public Defender, 875 Summit Avenue, Suite 254, St. Paul, Minnesota 55105 (for appellant)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

HUDSON, Judge

On appeal from her conviction of two counts of terroristic threats, appellant argues that both convictions must be reversed because she was denied her constitutional right to a speedy trial and because the district court refused to conduct an in camera review of the internal affairs records of the complainant, who was an off-duty police officer. She also argues that one of her convictions must be reversed because the state did not prove that she possessed the requisite intent. We affirm.

FACTS

Appellant Candyce Jones was charged with two counts of terroristic threats for threatening the complainant, who was an off-duty police officer, and his ten-year-old son. Jones demanded a speedy trial on January 7, 2008. Jones also moved for a change of venue, which was heard on February 15, 2008. Trial was set for March 3, 2008. The parties appeared on March 3 and asked the court to change the trial date to the week of March 17 because the prosecutor was unavailable the week of March 3 and defense counsel was attending a conference the following week.

On March 11, 2008, Jones moved for disclosure of the complainant's public and nonpublic internal affairs records. But Jones did not serve the City of St. Paul with her motion for disclosure until March 17. The entire *public* portion of the complainant's internal affairs file and the *nonpublic data relating to appellant* was disclosed. But the City of St. Paul opposed disclosure of the remaining nonpublic data in the internal affairs records. A hearing on the motion was scheduled for April 7, 2008. By order dated

April 15, 2008, the district court denied appellant's motion for disclosure of the remaining, nonpublic data and for an in camera review of the complainant's internal affairs records, concluding that there was "no basis to conduct even an *in camera* review," because the state had provided all of the public data and all of the nonpublic data relating to appellant and appellant had not provided a valid evidentiary basis for the possible admission of material involving persons other than herself.

Appellant's jury trial began on April 22, 2008. During the trial, the complainant explained that, on the morning of December 23, 2007, he and his ten-year-old-son went to a Walgreens store in Roseville to buy wrapping paper. When they entered the store, the complainant recognized appellant standing at the camera counter with another woman. Appellant looked at the woman she was with and told her who the complainant was. The complainant knew appellant through his police work and they did not have a positive relationship.

A few minutes later, as the complainant and his son stood in line to pay for his merchandise, appellant, who was approximately thirty feet away, called out, "Is that your son . . . ?" The complainant responded, "Yes, that's my son." According to the complainant, appellant then looked at him and his son, raised her voice, and said, "With the people that you're harassing, he's going to end up dead and I will see to it." The complainant said he felt afraid for his son, and he responded, "At least he will not end up in jail making an accusation that I beat him up." Then he paid for the wrapping paper and immediately left the store.

Appellant followed the complainant and his son out of the store, screaming profanities at them. She then started taking pictures of the complainant and his son in their vehicle. The complainant said that this alarmed him because he "didn't want pictures of [his] child floating around amongst [appellant's] circles." The complainant could tell that his son was nervous about what had happened. After leaving Walgreens, the complainant and his son went to the son's hockey game and then reported the incident to the Roseville Police Department.

The complainant's son also testified about the Walgreens incident. He said that appellant walked up to them and said that the way the complainant harasses people, his son will end up getting killed. The son said that he was standing about two or three feet away from appellant when she said that, and that he felt scared. The son said that as they left the store, he was seated in the passenger seat of the truck and appellant came out and started taking pictures of him and his dad in the truck. The son ducked, trying to avoid the pictures.

Other witnesses, including a manager, an assistant store manager, and another customer, also testified. The manager could not remember anything specific about the exchange between appellant and the complainant—just "a lot of angry conversation." But she recalled that the complainant embraced his son tightly and held him close to him as he paid for his merchandise.

The assistant manager testified that she was standing at the front of the store when she heard a loud, female voice coming from the back of the store. She then saw the complainant, a ten-year-old boy, and appellant walking toward the front of the store. The

assistant manager did not hear much of what was said, but when the complainant came to pay for his merchandise, appellant followed him and stood "right next to him," and told him, "I will see your son later." The assistant manager was concerned about what might happen, and she believed that appellant was making a threat.

Finally, a customer testified that he did not hear any threats, but that he heard appellant ask the complainant, "[I]s that your boy?" The customer also said that appellant asked the complainant if he was "still drinking," and then she started yelling a bunch of things at him. The customer thought that the complainant looked concerned. When the complainant left, the customer then saw appellant or another woman run after him.

Appellant did not testify. According to one of the officers who investigated the incident, appellant admitted knowing the complainant but denied threatening him or his son. Appellant also asserted that she had stayed at the store for 45 minutes after the complainant and his son left. But the store's videotape footage showed that appellant waited a minute, but then followed the complainant and his son outside.

The jury found appellant guilty of both counts of making terroristic threats, and the district court sentenced appellant to concurrent, executed terms of 21 months and 24 months. This appeal follows.

D E C I S I O N

I

For her first claim, appellant argues that her convictions must be reversed because her constitutional right to a speedy trial was violated. A speedy-trial challenge presents a

constitutional question subject to de novo review. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

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. To determine whether a delay has deprived the defendant of the right to a speedy trial, Minnesota courts apply the four-part balancing test announced in *Barker v. Wingo*, 407 U.S. 514, 530–32, 92 S. Ct. 2182, 2192–93 (1972), in which the pretrial conduct of both the state and the defendant are weighed. *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). The four *Barker* 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. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). 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 of the right to a speedy trial. *Id.*

A. Length of the delay

The length of the delay functions as a "triggering mechanism" in the speedy-trial analysis, and unless delay is evident, "the other factors need not be considered." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). In Minnesota, a delay over 60 days from the date of a defendant's speedy-trial demand is presumptively prejudicial and requires further inquiry. *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). Here, appellant filed a written speedy-trial demand on January 7, 2008, but her trial did not begin until April 22, 2008—approximately 106 days after her speedy-trial demand. This 46-day

delay beyond the 60-day period raises a presumption that appellant's right to a speedy trial was violated.

B. Reason for the delay

The reason for the delay is closely related to the length of the delay, and the weight given to this factor depends on the reason for the delay. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192; *Cham*, 680 N.W.2d at 125. The state's deliberate attempt to delay the trial to hamper the defense would weigh heavily against the state, while negligent or administrative delays are given less weight. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192; *State v. Huddock*, 408 N.W.2d 218, 220 (Minn. App. 1987). "The responsibility for an overburdened judicial system cannot . . . rest with the defendant." *Jones*, 392 N.W.2d at 235. But if the overall delay in bringing a case to trial is due to the defendant's actions, there is no speedy-trial violation. *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005).

Appellant contends that the delay here was attributable to the district court. But the record suggests that appellant was responsible for a significant part of the delay. Appellant made her speedy-trial demand on January 7, 2008. She filed a motion to change venue, which was heard in February. A week before the trial date, appellant moved for discovery of the complainant's internal affairs records. But she did not promptly serve the motion on a necessary party, the City of St. Paul, and the hearing on her discovery motion was scheduled for April 7, 2008. As a practical matter, trial could not begin until the discovery issue was resolved. The discovery motion was denied on April 15, 2008, and trial began the next week. Because much of the delay in this case is

the result of the late discovery motion, this factor tends to weigh against appellant's claim.

C. Defendant's assertion of her right to a speedy trial

Appellant made a formal demand for a speedy trial on January 7, 2008, and she reminded the court of her demand at hearings on March 17 and April 7, 2008. This factor weighs in appellant's favor.

D. Prejudice to the defendant

The final prong of the *Barker* test requires us to determine whether appellant was prejudiced because of the delay. *Windish*, 590 N.W.2d at 318. To assess prejudice, we consider three interests that the right to a speedy trial was intended to protect: avoiding oppressive pretrial incarceration; minimizing the defendant's anxiety and concern; and preventing impairment of the defendant's defense. *Id.* (citing *Barker*, 407 U.S. at 532, 92 S. Ct. at 2182). The third factor, possible impairment of a defendant's defense, is the most important. *Id.*

Appellant does not allege that her defense was impaired or that she experienced excessive anxiety. Rather, she argues only that the delay in her trial implicated her interest in avoiding pretrial incarceration. Although "[p]retrial incarceration may be unfortunate," it is "not a serious allegation of prejudice." *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990). Importantly, the length of delay here—46 days—was not as great as cases where we have found prejudice. *See State v. Griffin*, 760 N.W.2d 336, 341 (Minn. App. 2009) (concluding six-month delay prejudicial even though no prejudice to

the appellant's defense of the case). The prejudice factor is not significant and thus tends to weigh in favor of the state.

Based on this de novo review of appellant's speedy-trial claim and application of the *Barker* factors, we conclude that appellant was not denied her constitutional right to a speedy trial.

II

Next, appellant argues that the district court erred by denying her request for an in camera review of the complainant's internal affairs records. When a defendant seeks confidential records, courts prefer an in camera review. *State v. Burrell*, 697 N.W.2d 579, 604 (Minn. 2005). Nonetheless, a defendant requesting an in camera review "must make at least some plausible showing that the information sought would be material and favorable to his defense." *Id.* at 605 (quotation omitted). The Minnesota Supreme Court has required a defendant to show that the sought-after information "could be related to the defense" and that the documents to be reviewed were "reasonably likely to contain" such information. *State v. Hummell*, 483 N.W.2d 68, 72 (Minn. 1992) (denying in camera review because defendant provided "no theories on how the [confidential medical] file could be related to the defense or why the file was reasonably likely to contain information related to the case"). A district court has considerable discretion in granting or denying discovery requests, and its decision will not be reversed absent a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

The Minnesota Government Data Practices Act governs the release of information in a police officer's internal affairs file. Two types of complaint data in an officer's internal affairs records are public data: (1) "the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action," Minn. Stat. § 13.43, subd. 2(a)(4) (2006), and (2) "the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body," Minn. Stat. § 13.43, subd. 2(a)(5) (2006). If a party seeks information beyond the public data and a government entity opposes disclosure of that information, a two-step procedure is used to determine whether the nonpublic data are discoverable. Minn. Stat. § 13.03, subd. 6.

Minn. Stat. § 13.03, subd. 6, requires the district court to determine "whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action." *Id.*; *State v. Renneke*, 563 N.W.2d 335, 338 (Minn. App. 1997), *abrogated on other grounds by State v. Underdahl*, 767 N.W.2d 677 (Minn. 2009). Then if the data are discoverable under the relevant rules, the court must determine "whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data." Minn. Stat. § 13.03, subd. 6; *Renneke*, 563 N.W.2d at 338.

Here, the entire public portion of the complainant's internal affairs records and the nonpublic data relating to appellant were disclosed. In support of her request for an in camera review of the undisclosed data, appellant argued that the data that she had received showed past improper conduct (including prior false statements, numerous citizen complaints, and numerous avoidable accidents); that the undisclosed, nonpublic data might contain exculpatory information; and that the information would be admissible to show "a pattern of harassing behavior." Here, the district court ruled that, although an in camera review would ordinarily be appropriate, *Renneke*, 563 N.W.2d at 338, there was "no basis to conduct even an *in camera* review of [the complainant's] file," because the state had provided all the public data and all the nonpublic data relating to appellant and appellant had not provided a valid evidentiary basis for the possible admission of material involving persons other than herself.

On appeal, appellant argues that the district court incorrectly determined that the evidence sought would not be admissible. Appellant's entire argument is based on the supposition that the undisclosed, nonpublic data in the complainant's records would have shown that the complainant had wrongly accused someone of making threats against him and that such information would have shown a common scheme or plan and therefore been relevant and admissible as reverse-*Spreigl* evidence. But appellant has offered no basis for concluding that the undisclosed portion of the internal affairs records was

reasonably likely to contain such information, other than the volume of complaints in the file.[1]

Furthermore, it is not clear that such evidence would be admissible as reverse-*Spreigl* evidence, as appellant claims. In Minnesota, evidence of other crimes, wrongs or acts sought to be admitted under Minn. R. Evid. 404(b) is collectively referred to as *Spreigl* evidence. *State v. Robinson*, 536 N.W.2d 1, 2 n.1 (Minn. 1995). Reverse-*Spreigl* is evidence of a crime, wrong, or act committed by someone other than the defendant and offered to show that the other person committed the crime of which the defendant is accused. *State v. Johnson*, 568 N.W.2d 426, 433 (Minn. 1997). Before a district court admits reverse-*Spreigl* evidence, a defendant must show: (1) by clear and convincing evidence that the third party participated in the reverse-*Spreigl* incident; (2) that the reverse-*Spreigl* incident is relevant and material to defendant's case; and (3) that the probative value of the reverse-*Spreigl* evidence outweighs its potential for unfair prejudice. *See id.* (laying out elements for admission of *Spreigl* evidence and stating that elements for *Spreigl* evidence are the same for reverse-*Spreigl* evidence). The reverse-*Spreigl* incident is not relevant if it is not "sufficiently similar to the [current incident] in terms of time, place or modus operandi." *Robinson*, 536 N.W.2d at 2.

[1] More particularly, appellant argues that there was a possibility that such evidence existed because the disclosed data showed that the complainant had been the subject of 16 disciplinary actions from 1990-2002, was involved in 14 traffic accidents (6 of which were preventable), and had 42 public complaints lodged against him. It is not clear how any traffic accidents would have been relevant to appellant's case. Additionally, the hearing transcript reveals that appellant had significant information relating to the disciplinary actions. *See* Minn. Stat. § 13.43, subd. 2(a)(5) (2006) (providing that complaint data relating to the final disposition of any disciplinary action, the specific reasons for the action, and data documenting the action, is public information).

Appellant cites *Renneke*, 563 N.W.2d at 339, in support of her claim that the information sought here would be admissible as reverse-*Spreigl* evidence. In *Renneke*, the defendant was stopped for speeding, and when he refused to cooperate, he was charged with obstruction of legal process. 563 N.W.2d at 336. The defendant claimed that the deputy had used excessive force and sought disclosure of the deputy's personnel file on the belief that it contained complaints regarding the use of excessive force, which would support his self-defense claim. *Id.* at 339. The district court granted the defendant's motion for discovery of the personnel file, and the state appealed. *Id.* at 336. We remanded the matter for an in camera review of the officer's internal affairs records and provided some comments on what information would be discoverable. *Id.* at 339. Specifically, we explained that evidence of prior incidents or excessive force, even if proved, were not admissible to show that the deputy used excessive force against the defendant, but that they might be admissible as reverse-*Spreigl* evidence if they were sufficiently similar to the incident at issue and if the other requirements for admission of *Spreigl* evidence were met. *Id.* But we noted that such complaints were not relevant to show the deputy's motive to accuse the defendant of obstruction of legal process, explaining: "To allow discovery of prior complaints against an officer solely on the ground that they may possibly bear on the officer's credibility is too broad. It could support such disclosure in almost every criminal prosecution." *Id.*

The facts in *Renneke* lent themselves to a reverse-*Spreigl* analysis because the issue was who had assaulted whom during the arrest. Here, in contrast, it is unclear how the information appellant seeks would be admissible as reverse-*Spreigl* evidence. Nor is

it clear how the undisclosed information in the internal affairs records would be "sufficiently similar" to the facts here, where the complainant was off duty and where his son was also a victim. It appears, as the district court found, that appellant would use prior, similar complaints to undermine the complainant's credibility by demonstrating that he had made false accusations against others, thereby tending to show that he had also wrongly accused appellant. This court rejected such a tactic in *Renneke*. *Id.* at 339 (indicating that prior complaints could not be admissible as reverse-*Spreigl* evidence to show motive where defendant was seeking to attack the officer's credibility); *see also* Minn. R. Evid. 608(b) (stating that specific instances of conduct may not be proved using extrinsic evidence if used to attack a witness's credibility).

Appellant has not made a plausible showing that the undisclosed portion of the internal affairs records was reasonably likely to contain information that was material and favorable to her defense. Therefore, the district court did not abuse its discretion by denying appellant's request for an in camera review of the records.

III

Lastly, appellant argues that the evidence is insufficient to support one of her convictions for terroristic threats because the state did not prove that appellant had the requisite intent to terrorize the complainant's son. When considering a claim of insufficient evidence, "our review on appeal is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). "We will not disturb the verdict if the jury,

acting with due regard for the presumption of innocence and for the . . . [requirement of] proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004) (quotation omitted) (second alteration in original). We assume that the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

A person who "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror" is guilty of making terroristic threats. Minn. Stat. § 609.713, subd. 1 (2006); *State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975). "A threat is a declaration of an intention to injure another or his property by some unlawful act." *Schweppe*, 306 Minn. at 399, 237 N.W.2d at 613. A threat may be communicated by words or acts. *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996). Whether a defendant's statements constitute a threat turns on "whether the communication in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor." *Schweppe*, 306 Minn. at 399, 237 N.W.2d at 613 (quotation omitted).

Appellant argues that she lacked the intent to terrorize the complainant's son. The statute requires that appellant have made the threat "with purpose to terrorize [the complainant's son] . . . *or* in reckless disregard of the risk of causing such terror" in the complainant's son. Minn. Stat. § 609.713, subd. 1 (emphasis added). "Intent . . . is a

subjective state of mind usually established only by reasonable inference from surrounding circumstances." *Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614.

Here, the evidence indicated that appellant looked at the complainant and his son and stated that, because of the complainant's harassment of others, the son would end up dead and that she would see to it. The son was standing directly next to the complainant at that time, he was clearly in a position to hear and understand appellant, and appellant looked directly at the son when making the threat. *See In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (recognizing that intent may be inferred from the defendant's conduct). Furthermore, the son testified that appellant's statement and conduct scared him. *See State v. Marchand*, 410 N.W.2d 912, 915 (Minn. App. 1987) (indicating that a victim's reaction to the alleged threat is circumstantial evidence of intent), *review denied* (Minn. Oct. 21, 1987). In light of these facts, a reasonable jury could infer that appellant acted with the purpose of terrorizing or with reckless disregard of causing such terror in the complainant's son. Therefore, appellant's insufficiency-of-the-evidence claim fails.

Affirmed.