STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1521

State of Minnesota,
Respondent,

vs.

Robert Kinte Dawon Battle,
Appellant.

Filed September 3, 2024
Affirmed
Reilly, Judge*

Ramsey County District Court
File No. 62-CR-23-1285

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Reilly, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal, appellant challenges his conviction arguing that his speedy-trial right was violated and that the evidence was insufficient for the jury to find that he caused substantial bodily harm. In a pro se supplemental brief, appellant argues that the district court admitted inadmissible video footage and that he received ineffective assistance of counsel. Because appellant's speedy-trial right was not violated, the evidence was sufficient for the jury to find that appellant caused substantial bodily harm, the video footage was admissible, and appellant cannot establish he received ineffective assistance of counsel based on the trial record, we affirm.

FACTS

At around 2:30 a.m. on October 8, 2022, a state trooper noticed that a vehicle was weaving, had a broken taillight, and was traveling at varying high rates of speed. When the vehicle exited the freeway, the trooper turned on his emergency lights to initiate a traffic stop. As the trooper was walking to the vehicle, the "vehicle took off" at about 50 to 70 miles per hour. The trooper returned to his squad car and began pursuing the vehicle.

The trooper came across "a large dust cloud," which he believed had resulted from a vehicle "entering" the center median. The trooper located a tire and a rim. While the trooper was stopped, another officer pulled up and told him that the vehicle was the next block up.

The trooper drove to the location of the vehicle. The vehicle was stopped in the middle of a road and a person, later identified as appellant Robert Kinte Dawon Battle, was

lying on the ground and yelling that the passengers of the vehicle were not involved. Battle told the trooper that he and the passengers had been at a bar earlier that night. Battle also told the trooper that he drove away following the initial stop because his license was cancelled, which the trooper later confirmed. The trooper observed that Battle had bloodshot, watery eyes, slurred speech, an odor of alcohol, and was having a hard time following instructions. The vehicle sustained damage to the driver's side and was missing the rear driver's side tire. One passenger, N.K., had injuries to their face, was bloody, and appeared confused.

The trooper took Battle to a hospital to obtain a blood sample pursuant to a search warrant and to have him checked for injuries. Test results from a sample of Battle's blood taken around 4:00 a.m. reflected a blood alcohol concentration of about 0.232. N.K. also went to a hospital for treatment on their nose.

On October 10, respondent State of Minnesota charged Battle with two counts of driving under the influence in violation of Minn. Stat. § 169A.20, subds. 1(1), (5) (2022), one count of criminal vehicular operation in violation of Minn. Stat. § 609.2113, subd. 2(4) (2022), and one count of fleeing in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 4(c) (2022) (the first complaint).[1] On February 23, the eve of trial, the state dismissed the complaint because it learned that a key witness was unavailable. Battle remained in custody on a Minnesota Department of Corrections hold (DOC hold). On March 7, the

[1] We note that the first complaint is not in the record, but both parties agree on the date and content of the first complaint. We therefore rely on their description for purposes of this appeal.

state recharged Battle with the same counts. On March 27, Battle made a speedy-trial demand. The trial began on May 16.

Shortly after the start of the first witness's testimony, Battle waived his right to counsel and represented himself at trial. Battle also testified as follows. Battle noticed in his rearview mirror the trooper approaching him at a high rate of speed. Battle stopped when the trooper turned on his squad-car lights but became uneasy because he did not believe that he had done anything wrong. Battle moved his car forward when the trooper was walking to Battle's car, but Battle stopped again. The trooper hit Battle's car, pushing Battle's car up against the curb. The hit was so forceful that the back wheel of Battle's car came off. Battle then drove to an active crime scene and stopped there. Battle also testified that certain video footage was fabricated and that it depicted events that did not occur.

The jury found Battle guilty on all counts. Battle moved to dismiss based on a violation of his speedy-trial right. The district court denied Battle's motion, reasoning that the trial began almost 60 days after the second complaint was filed and within 60 days of when Battle made his speedy-trial demand, and that the analysis did not turn on the dismissal of the first complaint.

The district court convicted Battle of one count of driving under the influence and for fleeing in a motor vehicle but did not adjudicate the remaining counts because they were included offenses. Battle was sentenced to 66 months' imprisonment for driving under the influence followed by a 5-year conditional release period, and 33 months' imprisonment for fleeing in a motor vehicle, to be served concurrently.

Battle appeals.

DECISION

Battle asserts that his speedy-trial right was violated and that the state did not present sufficient evidence that he caused substantial bodily harm. In his pro se supplemental brief, Battle argues that the district court admitted inadmissible video footage and that he received ineffective assistance of counsel. We address each argument in turn.

I. Battle's speedy-trial right was not violated.

Under the United States and Minnesota Constitutions, a criminal defendant has the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The speedy-trial right protects against "undue and oppressive" pretrial incarceration, reduces the "anxiety and concern accompanying public accusation," and avoids delay that may impair the accused's ability to present a defense. *State v. Jones*, 977 N.W.2d 177, 190 (Minn. 2022) (quotation omitted). "When a defendant's speedy trial right is violated, the only possible remedy is dismissal of the indictment." *Id.* (quotation omitted).

Whether a defendant has been denied their speedy-trial right is a question we review de novo. *Id.* In doing so, we consider a "nonexclusive" list of factors referred to as the *Barker* factors: (1) "the length of the delay," (2) "the reason for the delay," (3) "the defendant's assertion of the right," and (4) any "prejudice to the defendant resulting from the delay." *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021) (citing *Barker v. Wingo*, 407 U.S. 514, 521, 529-33 (1972)); *State v. Paige*, 977 N.W.2d 829, 837 (Minn. 2022) (referring to these factors as the *Barker* factors). The *Barker* factors are not "a check-the-box, prescriptive analysis," and no single factor is necessary or independently sufficient to show deprivation of the right to a speedy trial. *Mikell*, 960 N.W.2d at 245. Rather, we

carefully balance these factors, in the context of each case, to determine whether the delay "endanger[ed] the values that the speedy trial right protects." *Id.* at 244-45.

The parties agree that the prosecution of this matter began with the first complaint and that the length of the delay between the filing of the first complaint in October 2022 and the start of trial in May 2023 was presumptively prejudicial, such that review of the remaining *Barker* factors is appropriate. *Id.* at 245, 249-50 (noting that a six-month delay without a speedy-trial demand is presumptively prejudicial and concluding that the delay between the initial filing of charges and trial, exclusive of the period between when the charges were dismissed and recharged, was presumptively prejudicial). The parties also agree that the reason for the delay—the dismissal and recharging of this matter—is a neutral factor for this analysis. *See id*. at 251 (noting that if there is good cause for the delay, including a key witness for the state being "unavoidably unavailable," the delay does not weigh against the state). We therefore focus on the remaining two *Barker* factors: Battle's assertion of the speedy-trial right and the prejudice caused to him by the delay.

A. Assertion of the Right

When considering the defendant's assertion of their speedy-trial right, we consider the frequency and force of the demand as evidence of the seriousness of the potential prejudice at play. *See Mikell*, 960 N.W.2d at 252 ("A defendant's demand for a speedy trial is evidence that he believes that he will be harmed if the trial is delayed."); *Paige*, 977 N.W.2d at 840 ("[T]he strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." (quotation omitted)).

Battle argues and the record reflects that Battle made repeated assertions of his speedy-trial right. Battle made a speedy-trial demand at the omnibus hearing and reasserted that demand at two later hearings. Because of Battle's repeated demands, we conclude that this factor weighs slightly in Battle's favor.

B. Prejudice

We consider three interests when assessing prejudice: "(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." *Mikell*, 960 N.W.2d at 253 (quotation omitted). The third interest is the "most serious." *Jones*, 977 N.W.2d at 192 (quotation omitted). And it "is typically suggested by memory loss by witnesses or witness unavailability." *Mikell*, 960 N.W.2d at 253 (quotation omitted).

Battle argues that he need not show prejudice, but that he was prejudiced here because he was in custody during the delay and "[i]t is possible that the delay hampered [his] ability to fully obtain and present the evidence" used to support his defenses that law enforcement caused the crash and doctored the videos, and that the state withheld evidence.

As for pretrial incarceration, the record reflects that Battle was in custody while he was awaiting trial on the first complaint and was in custody on a conditional release order following the filing of the second complaint. The state notes that Battle was in custody on a DOC hold for the period during the dismissal and refiling of the charges. But the period between dismissing the charges and filing the second complaint was only about two weeks, and the reason for and extent of the DOC hold is unclear from the record. We therefore

consider the impact of Battle's pretrial incarceration for purposes of our speedy-trial analysis despite the DOC hold.

As for the impairment of his defense, Battle need not prove that his defense was actually impaired by the delay in trying his case. *See id.* at 254 (explaining that a court may consider speculative harm to a defendant because "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify" (quotation omitted)). But Battle does not identify the specific ways in which being in custody may have impaired his ability to raise his defenses. The record reflects that all the state's evidence was disclosed before the first complaint was dismissed in February 2023. To the extent that Battle's defenses depended on evidence that the state did or did not disclose, Battle had that information for months before his May 2023 trial. Battle does not explain how this delay in going to trial impacted his ability to argue that the state altered or withheld evidence. And we note that law enforcement's testimony during trial did not reflect that they lost their memory regarding relevant details. *See id.* at 253 (noting that impairment of defense "is typically suggested by memory loss by witnesses or witness unavailability" (quotation omitted)).

We do not weigh this factor in Battle's favor, particularly because he has not established even a speculative impairment to his defense caused by the delay.

C. Balancing of Factors

Finally, we must conduct "the delicate and sensitive balancing required to answer" whether the state brought Battle to trial "quickly enough so as not to endanger the values that the speedy trial right protects." *Id.* at 255. Just over six months passed between the

filing of the first complaint and the start of trial. The state dismissed the first complaint about four months into its prosecution of Battle because a key witness was unavailable for trial. Battle made no speedy-trial demand before the first complaint was dismissed. The state then recharged Battle a few weeks later, at which point Battle made a speedy-trial demand. Battle reasserted that demand at later hearings. Battle was in custody the entire time awaiting trial, a few weeks of which was because of a DOC hold. But the record does not reflect that Battle was prevented from supporting his defense theory because of the delay in getting to trial. Under these circumstances, we conclude that Battle's speedy-trial right was not violated.

II. The evidence was sufficient for the jury to find that Battle caused N.K. substantial bodily harm.

Battle argues that we should reverse his conviction for fleeing in a motor vehicle and vacate the finding of guilt for criminal vehicular operation because the state was required under both counts to prove that Battle caused substantial bodily harm—specifically that N.K. suffered a broken nose based on the state's theory of the case—but the state failed to do so. We do not consider Battle's challenge with respect to the finding of guilt for criminal vehicular operation because he was not convicted of that count. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to consider a sufficiency-of-the-evidence challenge to two counts for which the defendant was not formally adjudicated and sentenced). As to Battle's challenge to his conviction for fleeing, we disagree.

N.K. testified that they received treatment for their injured nose at a hospital. When asked how their nose was injured, they stated, "Well, when we crashed, like, it hit me smack right here [], in the middle of my nose. . . . I was bruised and in pain for like three months after the car crash. And I don't even know if it was broken or not." The state also offered images showing N.K.'s bloody face as exhibits. The resident physician who treated N.K. testified that, based on diagnostic imaging, N.K. had a "possible, subtle nasal bone fracture," that "subtle nasal bone fracture" means a broken nose, and that she treated N.K. for a subtle nasal bone fracture. And an officer testified that there was blood in the driver's side rear passenger seat, and their body-worn camera footage depicted the same.

When an element of an offense is supported by direct evidence, our review for sufficiency of the evidence 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 that they did." *State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016) (quotation omitted). "We will not overturn the verdict if the jury, acting with regard for the presumption of innocence and the State's burden of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty." *State v. Jones*, 4 N.W.3d 495, 502 (Minn. 2024). And "we view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict." *Id.* at 500 (quotations omitted).

Substantial bodily harm is an element of fleeing in a motor vehicle. Minn. Stat. § 609.487, subd. 4(c). To prove substantial bodily harm, the state must show "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but

substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a (2022). "[T]he nose of a person is a bodily member." *State v. Stafford*, 340 N.W.2d 669, 671 (Minn. 1983).

Evidence that an injury *could have been* of the sort sufficient to support a finding of a particular degree of harm is not enough to actually support such a finding beyond a reasonable doubt. *See, e.g.*, *State v. Gerald*, 486 N.W.2d 799, 801-02 (Minn. 1992) (concluding that a physician's testimony that a cut in the victim's ear was close to a major artery and could have caused the victim to bleed to death, but that the victim ultimately did not suffer that injury, did not show great bodily harm because "[t]he fact that a lesser injury is located near a major organ or vessel and therefore could have been more serious is not sufficient to satisfy" the statutory definition of great bodily harm).

But this is not a case in which the jury inferred the severity of an injury based on evidence of how severe the injury *could have been*, but ultimately was not. In a similar case, *State v. Burgos*, No. A12-1193, 2013 WL 1707086, at *1-2 (Minn. App. Apr. 22, 2013), we concluded that the evidence was sufficient for the jury to find that the victim suffered substantial bodily harm based on a broken nose.[2] The evidence presented to the jury included the victim's testimony that her nose was broken and pictures of the victim's swollen and cut nose. *Id.* at *1. The treating physician stated that swelling, bruising, and tenderness suggested that the victim had a "nasal bone fracture" which means a "broken

[2] We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

nose." *Id.* The treating physician testified about how a physician can diagnose a broken nose, and that they "felt like clinically [the victim] had evidence of a nasal bone fracture. . . . And so based on, again, the degree of swelling and experience as an ER physician, I felt it was very likely [the victim] had a broken nose." *Id.*

Here, the state presented evidence showing N.K.'s actual injuries: that N.K. was bruised and in pain for three months following the crash, pictures of N.K.'s injuries just after the crash, and the resident physician's testimony that they concluded that N.K. had a "possible nasal subtle fracture" based on diagnostic imaging. This evidence was sufficient to permit the jury to infer that N.K. suffered a broken nose.

We note that the resident physician's qualification of their diagnosis of N.K.'s condition as "possible" does not make this evidence insufficient for a jury to find that N.K. suffered a broken nose. *See id.* (recounting that the physician described the diagnosis as a "suggest[ion]" based on an "estimation" and as "very likely"). Unlike cases in which the evidence of harm was insufficient, the resident physician's testimony was not about hypothetical injuries that could have resulted from Battle's actions. *See, e.g.*, *Gerald*, 486 N.W.2d at 801-02. And the state was not required to elicit affirmative and explicit testimony from N.K. that their nose was broken. N.K.'s testimony about the nature of their injuries, paired with the other evidence the state presented, was enough to permit the jury to determine that Battle caused N.K. substantial bodily harm.

III. The district court did not plainly err by admitting the state's video evidence of the incident.

In his pro se supplemental brief, Battle argues that the district court erred by admitting certain video footage depicting the incident, which was inadmissible because of a "breach of the squad video's chain of evidence." Battle argues that because the footage was in the care of the prosecutor, it was not "secure and safe from contamination and breach," and that because the footage was used in a different matter and was in other prosecutor's files, the "security of the evidence is broken." We disagree.

Because Battle did not object to the admission of any of the squad-car or body-worn camera footage of the incident, we review the admission of this evidence for plain error. *See State v. Rossberg*, 851 N.W.2d 609, 617-18 (Minn. 2014) (noting that appellate courts generally will not consider a challenge to unobjected-to evidence, but that an appellate court may still "take notice of plain errors affecting substantial rights" (quotation omitted)). Battle must show that there is "(1) error, (2) that was plain, and (3) that affected the defendant's substantial rights." *Id.* at 618 (quotation omitted). "If those conditions are met, we assess whether we should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

The chain-of-custody rule requires "the prosecution to account for the whereabouts of physical evidence connected with a crime from the time of its seizure to its offer at trial." *State v. Johnson*, 239 N.W.2d 239, 242 (Minn. 1976); *see also* Minn. R. Evid. 901(a) ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its

proponent claims."). This rule "serves the dual purpose of demonstrating that (1) the evidence offered is the same as that seized, and (2) it is in substantially the same condition." *Johnson*, 239 N.W.2d at 242. It also ensures "that the items seized have not been exchanged for others more incriminating, and that they have not been contaminated or altered." *Id*. That said, there is "no rigid formulation of what showing is necessary in order for a particular item of evidence to be admissible." *Id.* Instead, the chain-of-custody rule requires the district court to "be satisfied that, in all reasonable probability, the item offered is the same as the item seized and is substantially unchanged in condition." *Id*. "In the absence of any indication of substitution, alteration, or other form of tampering, reasonable probative measures are sufficient." *State v. Hager*, 325 N.W.2d 43, 44 (Minn. 1982) (quotations omitted). Speculation regarding tampering or substitution "may well affect the weight of the evidence accorded it by the factfinder but does not affect its admissibility." *Id.* (quotation omitted).

Before the district court admitted the exhibits, the trooper testified that he reviewed the footage of the exhibits from his body-worn and squad-car cameras and that the exhibits were "a true and accurate representation" of the events recorded by his body-worn and squad-car cameras. And another officer testified that he reviewed the footage of the exhibits from his body-worn and squad-car cameras and that the exhibits were "a true and accurate representation" of his body-worn and squad-car camera footage. After his testimony, the district court admitted the exhibits. Based on this testimony, the district court could "be satisfied that, in all reasonable probability, the item offered is the same as the item seized and is substantially unchanged in condition." *Johnson*, 239 N.W.2d at 242.

And we note that in response to Battle's questions challenging the authenticity of the footage, the trooper testified that video evidence is handled by a third party and that he cannot "erase or do any of that sort of thing from the evidence site." And the officer agreed with Battle that "body cams and cameras are tamper-proof." The district court did not plainly err by admitting this evidence.

IV. Battle has not established that he received ineffective assistance of counsel.

Also in his pro se supplemental brief, Battle argues that he received ineffective assistance of counsel because his first attorney, who represented him before the first complaint was dismissed, failed to obtain certain evidence, did not object to the state untimely introducing footage and tampered footage, refused to argue that the footage was altered, failed to argue that the state violated double jeopardy by dismissing the complaint and filing the same charges, told Battle that he had more time than he did to obtain evidence for trial, and failed to make a record of their mistakes. Battle also seems to argue that his second attorney, who represented him after the second complaint was filed and until Battle waived his right to counsel at trial, failed to secure a contested hearing to argue that the state was withholding evidence, obtain certain evidence, and sufficiently communicate with Battle.

"Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). A post-conviction proceeding allows for the development of "additional facts to explain the attorney's decisions, so as to properly consider whether a defense counsel's performance was deficient." *Id.* (quotation omitted).

But a claim for ineffective assistance of counsel must be brought on direct appeal when it can be decided based on the trial-court record. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004). We conclude Battle's assertions can be decided on the trial-court record.

We apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), to evaluate an ineffective-assistance-of-counsel claim. *State v. King*, 990 N.W.2d 406, 417 (Minn. 2023). The first prong requires the appellant to show that his "attorney's representation fell below an objective standard of reasonableness." *Id.* (quotations omitted). The second prong requires the appellant to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* (quotations omitted). "A court may address the two prongs of the test in any order and may dispose of the claim on one prong without analyzing the other." *Id.* (quotation omitted).

Battle cannot show prejudice with respect to his claims against his first attorney. The first attorney's representation ended with a dismissal of the case against Battle based on the unavailability of a key witness for the state. The result would not have been different had his attorney done the things that Battle asserts fell below an objective standard of reasonableness.

And Battle cannot show prejudice with respect to his claims against his second attorney. First, Battle has not established that there is a reasonable probability that the result of the proceeding would have been different had his second attorney pursued a hearing to contest evidence or to argue that other evidence that Battle asserts exists but was not disclosed by the state. In a conference before voir dire, Battle's second attorney made

a record of certain motions that Battle wanted raised. The attorney explained that he declined to argue the motions because he did not believe that they were supported by law. One of the motions that the attorney declined to argue was that the state withheld evidence and "that actual evidence of the case was withheld from the prosecution, specifically related to . . . dash cam videos and body cameras" that Battle believed were "from the real crime scene." Later, while discharging his second attorney and waiving his right to counsel, Battle asserted that certain videos he had seen were now missing. Battle's second attorney stated, "From my review of the evidence, I believe every single video has been disclosed. I don't believe a *Brady* violation[3] had been committed. I would also note, I spoke with the attorney on the previous case, and she is of the same mind."

The record does not reflect that the state withheld evidence that Battle's second attorney could have obtained or could have shown was improperly withheld. The state asserted that it "produced all evidence in this case from multiple jurisdictions," including remedying a classification issue with the police department involved in the incident. Battle offered no evidence other than his own assertions that evidence was withheld or altered. And the trial testimony reflected that the video evidence was accurate, and that law enforcement did not tamper with it. There is no reasonable probability that the result of the proceeding would have been different had Battle's second attorney pursued a hearing to challenge the validity of evidence or withholding of evidence or made further efforts to

[3] "A *Brady* violation occurs when the State suppresses material evidence favorable to the defendant despite a request for production by the defense." *Griffin v. State*, 941 N.W.2d 404, 410 n.2 (Minn. 2020) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)).

obtain evidence when the record reflects that all the evidence was accurate and was disclosed.

Second, Battle has not established that there is a reasonable probability that the result of the proceeding would have been different had his second attorney communicated with him more. Battle does not assert on appeal that he would not have chosen to discharge his second attorney had the second attorney communicated with him more. And, unlike his evidence-based claims, the record does not otherwise reflect that Battle's decision to discharge his second attorney related to the amount of attorney-client communication he received. Without attacking his decision to discharge his second attorney, waive his right to counsel, and proceed through the majority of the trial pro se, Battle cannot show that the result of the proceeding would have been different.

We therefore conclude that we cannot provide Battle relief based on his assertion that he received ineffective assistance of counsel.

Affirmed.