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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1681**

State of Minnesota,
Respondent,

vs.

Seekou Lee,
Appellant.

**Filed October 29, 2018
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-CR-15-8662

Lori Swanson, 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, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant Seekou Lee challenges his judgments of conviction and sentences for kidnapping and domestic assault by strangulation. Lee seeks reversal, arguing that his constitutional right to a speedy trial was violated. Alternatively, he argues that he is entitled to a new trial because the district court abused its discretion by admitting evidence of threatening statements he made after the offenses occurred. Because we conclude that Lee's constitutional right to a speedy trial was not violated and that the district court did not abuse its discretion in receiving the disputed evidence, we affirm.

FACTS

Lee and K.L.Y. were culturally married in 1997 and have three daughters. Following an incident in which Lee attempted to strangle their oldest daughter, a district court in May 2015 issued a domestic abuse no contact order (DANCO) that prohibited Lee from having contact with K.L.Y. and their oldest daughter.

On October 31, 2015, K.L.Y. stayed overnight in a hotel and used the guest room safe to store her credit cards and other personal items. The next day, K.L.Y. went to a friend's house for a Halloween party. When she saw Lee at the party, she tried to leave. Lee followed K.L.Y. to her car, forced his way into the driver's seat, and drove them to the house that they had shared before the DANCO. K.L.Y. tried to run away but Lee tackled her, wrapped a computer cord around her neck, strangled her until she could not breathe, and threatened to kill her. Later, K.L.Y. convinced Lee to take her to a casino. K.L.Y. gave

Lee money, and after he had lost it all by gambling, they left. K.L.Y. suggested that they go to her hotel so she could retrieve her credit cards and Lee agreed.

Lee and K.L.Y. arrived at the hotel at approximately 11:00 a.m. on November 2, 2015. Because K.L.Y. had lost the key to the safe, the hotel called a locksmith; K.L.Y. and Lee waited in the car. K.L.Y. told Lee that she needed to use the hotel restroom. Once inside the restroom, K.L.Y. hid, wrote a note on a paper towel asking for help, and handed it to a hotel employee walking by the door. The employee notified the manager, who then led K.L.Y. to a back room where they called the police. Police arrived and arrested Lee.

The state charged Lee with violation of a DANCO, under Minn. Stat. § 629.75, subd. 2(d)(1) (2014); kidnapping, under Minn. Stat. § 609.25, subds. 1(3), 2(2) (2014); and domestic assault by strangulation, under Minn. Stat. § 609.2247, subd. 2 (2014).

On April 19, 2017, the district court conducted a pretrial hearing and began a four-day jury trial. The state called seven witnesses, who testified to the events described above. Lee testified and denied meeting K.L.Y. at the Halloween party and driving them to their former house. He also denied strangling or assaulting her. Lee testified that he got together with K.L.Y. on November 1, 2015, after she invited him to join her and their daughters on an outing. Lee testified that he and K.L.Y. went to downtown Minneapolis, “kind of out on a date” and talked about “reunit[ing] the family again.” Additionally, Lee testified that they left downtown after 10:00 p.m., drove to a casino, and gambled until 6:00 a.m. Lee also testified that he and K.L.Y. had fought about money; specifically, he believed that K.L.Y. had refinanced their home and took \$140,000 without his knowledge or permission. Lee testified that K.L.Y. told him that she “transferred most of the money into credit card

form” and that those cards were stored at her hotel. Lee testified that they went to the hotel because K.L.Y. promised to give him the credit cards.

The jury found Lee guilty of all three charges. The district court determined that the kidnapping and violation of a DANCO offenses comprised a continuing course of conduct and imposed a sentence of 93 months in prison for kidnapping and 21 months for domestic assault by strangulation. Lee appeals.

D E C I S I O N

I. Lee’s constitutional right to a speedy trial was not violated.

Lee made three speedy-trial demands, the facts of which we review before considering his arguments on appeal. On November 13, 2015, just over a week after the state initiated charges, Lee filed his first speedy-trial demand. On December 21, 2015, Lee requested a competency evaluation and the district court granted his request. In a report dated January 25, 2016, the evaluator concluded that Lee “did not show any psychiatric impairment,” had “the capacity to understand the criminal proceedings and to participate in the defense,” and “is competent to stand trial.” The district court received the evaluator’s finding that Lee was competent. Lee challenged the evaluator’s conclusions, sought a competency hearing, and requested funding for a second evaluation. The district court initially denied Lee’s request based on missing information. Lee refiled his request to fund a second evaluation in March 2016.

On May 24, 2016, Lee filed a second speedy-trial demand. Three days later, the district court ordered a second competency evaluation of Lee. In July 2016, a second evaluator’s report concluded that Lee was competent to stand trial but recommended that

Lee be referred for civil commitment as mentally ill and dangerous. Lee challenged the second evaluator's report and again requested a competency hearing.

On August 24, 2016, the district court held a contested competency hearing. The defense offered the testimony of a forensic psychologist, who testified that "[t]here is nothing about [Lee's] personality features that disrupt his ability to . . . be able to be seen as competent." The psychologist also testified that, although Lee may be a candidate for civil commitment, he maintains the "ability to understand the basic elements of being competent to stand trial." The state offered as exhibits the two competency evaluation reports discussed above and argued that Lee was competent. In support of Lee's position, his trial counsel testified that Lee did not have the ability to assist in his own defense because he "has no interest in defending his case." Following the hearing, the parties submitted letter briefs.

In a written decision in October 2016, the district court denied Lee's objection to the competency evaluation reports and adopted the second evaluator's findings, reasoning the weight of the evidence established that Lee was competent to stand trial. The district court also noted that, based on expert testimony, Lee's "potential suitability for civil commitment is not relevant to the question of competency."

On October 24, 2016, the district court conducted a review hearing to schedule a pretrial hearing and a jury trial, and Lee made a third speedy-trial demand. At a review hearing on November 14, 2016, the state updated the district court on the ongoing civil-commitment proceeding. The parties discussed their scheduling conflicts and the district

court set trial to begin on December 12, 2016. Later, the trial date was continued and reset for January 23, 2017.

At a review hearing on January 9, 2017, Lee again moved to stay the criminal proceeding until after the civil-commitment proceeding was completed. Lee suggested that trial be continued until after June 2017. The district court expressed concern about delaying Lee's trial, but acknowledged that "the chances, quite frankly, of this case being tried in this next [trial] block are pretty slim just because I have a number of speedy trial demands on [other] cases."

At a review hearing on January 23, 2017, the district court denied Lee's motion to stay the criminal proceeding. The district court continued the trial date but placed the parties "on call." The prosecuting attorney stated that his investigator was not available until after February 10 and argued that the witness's unavailability provided good cause to extend the trial date.

On February 16, 2017, the district court scheduled Lee's trial for April 4, 2017, and later adjusted the date to April 14. Meanwhile, the state requested a hearing on the speedy-trial issue by letter dated March 1. An initial hearing to address the state's request was continued because of scheduling conflicts.

The district court considered the speedy trial issue at the pretrial hearing on April 19, 2017. The state argued that Lee's constitutional right to a speedy trial had not been violated because the trial had been delayed for good cause, both parties had "continuing scheduling issues," a witness had been unavailable, and Lee made two "request[s] to suspend and delay the criminal proceeding to ensure the civil proceeding would not negatively impact that."

Lee's attorney agreed that "the delay was caused by calendaring of both counsel," but also argued that the delay should not be counted against Lee. Midway through the hearing, Lee's attorney asked the district court to find a speedy-trial violation and release Lee.

The district court denied Lee's motion after reviewing, in detail, the "rather unique procedural history," and discussing each speedy-trial demand by Lee, the extended competency proceedings, and the civil-commitment petition that was dismissed in early April 2017. The district court found good cause for the delay and concluded that Lee's speedy-trial rights were not violated for five reasons.

First, the district court concluded that, based on existing caselaw, no speedy-trial violation occurred during the competency proceedings. Second, the district court found that, after Lee's competency was determined, the delay until trial was over 120 days and, therefore, presumptively prejudicial. Third, the district court determined that the court and parties were responsible for some part of the total delay. Fourth, the district court found that Lee did not assert any prejudice to his defense as a result of the delay. Fifth, the district court addressed Lee's lengthy stay in custody and found a "strong interest" in not releasing Lee before trial, based on threatening statements Lee made to competency evaluators.¹

¹ Lee's threats against K.L.Y. are discussed elsewhere in this opinion. Lee also made more general threats during two one-hour interviews with his competency evaluator. Lee stated that he had thoughts of "killing a bunch of innocent people out there. Like a mass killing" so that others could feel his pain. "He talked seriously about these thoughts . . . [and] clarified that he had access to guns." Although the district court learned of Lee's general threats during pretrial proceedings, the general threats were not admitted as evidence at trial.

On appeal, Lee focuses on the delay between his third speedy-trial demand on October 24, 2016, and the first day of his trial on April 19, 2017. He notes, however, an entire delay of 523 days between Lee’s first speedy-trial demand on November 13, 2015, and the first day of trial. Lee acknowledges that, in the period leading up to his third speedy-trial demand, he delayed trial by requesting competency evaluations, and by challenging the evaluators’ opinions, but he argues that four months of the initial delay should be attributed to the district court because it inexplicably delayed granting his motion for a second evaluation. Lee emphasizes that the entire 177-day delay after his third speedy-trial demand should be attributed to the state and the district court.

Both the United States and Minnesota Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. We apply a *de novo* standard of review when considering whether a defendant’s right to a speedy trial has been violated. *State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012).

A criminal trial must start within 60 days of the defendant’s demand “unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). If the delay extends beyond 60 days, we must determine whether there was good cause for the delay. *McIntosh v. Davis*, 441 N.W.2d 115, 120 (Minn. 1989). To determine whether a delay deprived a defendant of his right to a speedy trial, we consider four factors: “(1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his or her right to a speedy trial, and (4) whether the delay prejudiced the defendant.” *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005) (citing *Barker v. Wingo*, 407 U.S. 514, 530-33, 92 S.

Ct. 2182, 2192-93 (1972)). None of these factors is either necessary or sufficient to find a constitutional speedy-trial violation; they are related, however, and must be considered with all of the relevant circumstances. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

1. The length of delay before Lee’s trial supports a presumption that a violation occurred.

“The length of the delay is a ‘triggering mechanism’ which determines whether further review is necessary.” *Id.* (quoting *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192). Because Lee’s trial was delayed more than 60 days after his third speedy-trial demand, we presume that a violation of Lee’s speedy-trial right has occurred and continue to analyze the remaining three factors to determine whether good cause existed for the delay. *See State v. Friberg*, 435 N.W.2d 509, 512 (Minn. 1989).

2. Lee caused many of the delays before trial began.

We address each segment of the delay and attribute it to a party. *See, e.g., State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993) (attributing 16 days of a 629-day delay to the prosecution and the remainder to the defendant for filing motions).

Lee argues that he is responsible for approximately one month of the competency delay because he requested a competency evaluation in December 2015, about one month after he was charged. He argues that the district court is responsible for four months of the ten-month delay leading to his competency determination because the district court did not grant Lee’s request for a second evaluation until the end of May 2016.

“The responsibility for promptly bringing a case to trial rests with the state.” *State v. Hahn*, 799 N.W.2d 25, 30 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). A delay caused by an overburdened judicial system weighs against the state, but less so than “a deliberate attempt on the part of a prosecuting attorney to delay a trial.” *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). Some circumstances may satisfy the good-cause requirement for a lengthy delay, such as when calendar congestion is beyond the prosecutor’s control and “the defendants suffered no unfair prejudice,” *Friberg*, 435 N.W.2d at 513, or when there were exceptional circumstances for calendar congestion, *Hahn*, 799 N.W.2d at 30.

If the “overall delay in bringing a case to trial is the result of the defendant’s actions, there is no speedy trial violation.” *Johnson*, 498 N.W.2d at 16. “Moreover, delay occasioned by the defendant himself often is deemed a temporary waiver of his speedy trial demand, which can only be revived when the defendant reasserts his speedy trial right.” *Id.* In particular, no speedy-trial violation occurs when a party requests a rule 20 evaluation. *DeRosier*, 695 N.W.2d at 109 (affirming conviction and rejecting speedy-trial challenge where delay resulted from defense motions, including one for rule 20 evaluation).

Here, the district court found that Lee’s constitutional right to a speedy trial was not violated, in large part, “because of the concerns that have been expressed repeatedly about [Lee’s] competency to proceed with this matter and to assist in his defense.” The district court further explained:

I believe that it is reasonable to attribute the delays that all relate to [Lee’s] competency to [Lee]. Now, obviously, that is not his fault, but they are, I think occasioned by [Lee]. And I

don't think that those can be attributable to the state and I also don't think they can be attributable to delays in the judicial process.

We agree. After Lee's first speedy-trial demand on November 13, 2015, one month passed before Lee requested a rule 20 evaluation. For the next two months, Lee caused additional delays by challenging the evaluator's finding of competence and requesting funding for a second evaluation. We agree with Lee that part of this delay must be attributed to the district court for failing to rule on Lee's request. *See Friberg*, 435 N.W.2d at 513. But we also note that Lee's request was denied initially because of missing information.

After the district court granted Lee's request for a second evaluation, Lee caused additional delays by challenging that determination and requesting a competency hearing. In short, Lee's rule 20 requests and proceedings provided good cause to delay the trial. No speedy-trial violation occurred based on the delay leading to the district court's October 2016 competency determination.

After Lee's third speedy-trial demand on October 24, 2016, Lee asked the district court to stay the criminal proceeding until the civil-commitment proceeding was complete. Although the district court eventually denied Lee's motion for a stay on January 23, 2017, this three-month delay cannot be attributed to the state because it opposed Lee's motion. Thus, the delay from October 2016 until January 2017 is attributable to Lee. *See DeRosier*, 695 N.W.2d at 109.

The three-month delay after January 2017 and until trial began in April 2017 was due, in large part, to scheduling conflicts between the district court and the attorneys involved. In his pro se supplemental brief, Lee argues that any administrative delay due to

court congestion and the district court deciding to hear other speedy-trial cases before his constitutes a speedy-trial violation. See *Windish*, 590 N.W.2d at 316 (stating that “overcrowding in the court system is not a valid reason for denying a defendant a speedy trial”). The district court explained that it would be difficult to “completely break down the amount of days that [Lee] has been held in custody and mak[e] attribution to the state,” which bears some of the responsibility for the delay, “because of busy court calendars [and] the prosecutor being occupied . . . in [another] trial.” The district court continued, “[T]here are also some delays that are attributable to the busy calendar of [Lee’s attorney], who, as he pointed out, is not only a part-time public defender, but also has a private criminal practice.”

Nothing in the record suggests that the state deliberately delayed bringing Lee’s case to trial. Thus, although the state bears some responsibility for the delay after January 2017, it does not weigh heavily against the state. *Jones*, 392 N.W.2d at 235. Because the final three-month delay also was caused by Lee’s attorney’s schedule and any remaining delay was due to the district court’s congested calendar, *Windish*, 590 N.W.2d at 316, we conclude that the reason-for-delay factor weighs neither for nor against Lee’s claim.

3. Lee asserted his right to a speedy trial.

We consider “[t]he circumstances surrounding the frequency and intensity of a defendant’s assertion of a speedy trial demand—including the import of defense decisions to seek delays.” *Windish*, 590 N.W.2d at 318. As previously discussed, Lee first made a speedy-trial demand on November 13, 2015, and renewed his demand two more times. The state argues that, because Lee also demanded “multiple psychological evaluations and

challeng[ed] their results,” Lee should not be given the benefit of making demands before October 24, 2016.

We agree. Lee’s actions in challenging the results of the competency determinations and requesting an additional evaluation resulted in significant delays, which “can be said to have resulted in [speedy trial] waiver.” *See Johnson*, 498 N.W.2d at 16. Lee renewed his speedy-trial demand on October 24, 2016, but he also sought to stay the criminal proceeding while his civil-commitment proceeding was pending. We conclude that the third factor weighs only somewhat in favor of Lee’s claim.

4. The delay did not prejudice Lee.

We determine whether the delay prejudiced Lee’s defense by considering 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.” *Windish*, 590 N.W.2d at 318; *see Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. “A defendant does not have to affirmatively prove prejudice; rather, prejudice may be suggested by likely harm to a defendant’s case,” which is the most serious type of prejudice. *Windish*, 590 N.W.2d at 318. But without evidence that the defendant was prejudiced due to the delay, *e.g.*, that “the witnesses at trial were unable to recall the essential facts surrounding” the offense, or that the defendant’s “detention impaired his right to fair representation,” courts may not find that a defendant’s right to a speedy trial was violated. *Jones*, 392 N.W.2d at 235-36.

Lee claims that he “was stressed enough about the length of the proceedings,” and suffered “anxiety and concern.” The district court acknowledged Lee’s lengthy pretrial

confinement, but found that, given Lee’s statements about harming others, the confinement was justified because of “significant public [and] victim safety concerns.” The district court also found that “it does not appear, at least I have not heard that there has been any prejudice to [Lee] in bringing this matter to trial.”

The record supports the district court’s finding that Lee did not suffer any prejudice to his defense, other than “stress, anxiety and inconvenience experienced by anyone who is involved in a trial.” See *Friberg*, 435 N.W.2d at 515; see, e.g., *State v. Helenbolt*, 334 N.W.2d 400, 405-06 (Minn. 1983) (finding no violation of speedy-trial right even though defendant alleged prejudice in form of anxiety and impairment of defense). Thus, the fourth factor weighs against Lee’s claim.

Based on the four relevant factors, we conclude that the extended delay between Lee’s third speedy-trial demand and the first day of trial did not deprive Lee of his right to a speedy trial. Lee promptly asserted his right to a speedy trial after the competency determination, and the delay created the presumption that a speedy-trial violation occurred. But Lee caused some of the delay, as did the state and the district court, and ultimately, Lee failed to prove prejudice. Therefore, we affirm the district court’s decision that Lee’s constitutional right to a speedy trial was not violated.

II. The district court did not abuse its discretion by admitting Lee’s statements as general relationship evidence.

Lee’s clinical psychologist, Dr. Kristin Jacobs, and police lieutenant Lindberg, who took a report from Jacobs, both testified at trial. Over Lee’s objection, the district court allowed Lindberg to testify that, in February 2016, Jacobs reported to the police that Lee

had threatened to kill K.L.Y. and also said, “he also didn’t care about any restraining orders.” Lee argues that the district court improperly admitted his statements to Jacobs.² Lee contends the evidence that “he didn’t care about any restraining orders” was irrelevant and cumulative of other evidence. Lee also contends the evidence of his threats to kill his wife was not admissible as relationship evidence because it was not “domestic conduct” under Minn. Stat. § 634.20 (2016). The state responds that the district court properly admitted the evidence as general relationship evidence, not evidence of domestic conduct under section 634.20. We apply an abuse-of-discretion standard of review to a district court’s decision to admit evidence. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). “On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Relationship evidence under Minn. Stat. § 634.20 is only “a subtype of general relationship evidence.” *State v. Bell*, 719 N.W.2d 635, 638-39 n.4 (Minn. 2006). General “relationship evidence is character evidence that may be offered to show the strained relationship between the accused and the victim . . . [and] such evidence has further probative value when it serves to place the incident for which appellant was charged into proper context.” *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (quotations omitted).

² In deciding in limine motions, the district court concluded that Lindberg’s testimony was proper under *State v. Expose*, 872 N.W.2d 252, 260 (Minn. 2015), which held that a district court need not exclude a third-party’s testimony if a therapist discloses information otherwise protected by the therapist-patient privilege. Lee’s brief to this court notes this ruling and also states that he is not challenging the privilege issue on appeal.

Courts admit general relationship evidence to “illuminate the relationship between the defendant and the alleged victim” and to place a crime in the context of that relationship. *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Evidence that provides the context of a relationship “bolsters its probative value.” *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998). A court also must consider whether relationship evidence, although relevant, should be excluded because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

The district court allowed Jacobs to testify that she called the police to report Lee’s statements, and the district court allowed Lindberg to testify about what Jacobs reported. The district court reasoned that the evidence “corroborate[d] the statements which have been made by [K.L.Y.] about the threats that [Lee] has made to her, the animus that he has expressed to her, and his disregard of restraining orders.” The district court concluded that the probative value of the evidence outweighed the prejudicial effect. The district court also instructed the jury that the testimony was “being offered for the limited purpose of demonstrating the nature and extent of the relationship between” Lee and K.L.Y.

After a thorough review of the record, we conclude that the district court did not abuse its discretion in allowing the challenged testimony because it was relevant and more probative than prejudicial. Lee testified that he and K.L.Y. had been on a date the day before the incident and were rebuilding their relationship and discussing reuniting the family. The evidence that Lee stated he hated and wanted to kill K.L.Y. provided

corroboration of K.L.Y.'s testimony about the events and her relationship with Lee. The disputed testimony was not unfairly prejudicial because the jury was properly instructed about its limited purpose. Therefore, we conclude that the district court did not abuse its discretion by admitting the relationship evidence.

Affirmed.