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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1893**

State of Minnesota,
Respondent,

vs.

Adam Robert Hageman,
Appellant.

**Filed November 9, 2020
Affirmed
Bjorkman, Judge**

Morrison County District Court
File No. 49-CR-16-1124

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of unlawful firearm possession and second-degree assault, arguing that he was denied his constitutional right to a speedy trial. Because

the 26-day trial delay did not violate his speedy-trial right and his pro se argument that his counsel was ineffective for failing to seek dismissal on speedy-trial grounds fails, we affirm.

FACTS

On August 7, 2016, appellant Adam Hageman had an altercation with his father at his father's residence. His father told him to leave, and he did. Concerned that Hageman would return, his father called Hageman's brother and asked him to come to the residence. Hageman's brother did so and brought his handgun. Approximately 30 minutes later, Hageman returned, riding with his two children in the back seat of a vehicle operated by his acquaintance, A.W., whose brother, D.W., was in the front passenger seat. When Hageman's brother told them multiple times to leave, Hageman approached and shoved his brother, and they began wrestling. Hageman told his brother he intended to kill him and, as they wrestled, grabbed the handgun and pointed it at him. Hageman's father took the gun from Hageman; Hageman then bit his brother on the arm. Hageman's family called the police, and Hageman was arrested and charged with unlawful possession of a firearm, second-degree assault, and domestic assault.

Hageman was released on bail and thereafter received a series of continuances to address work responsibilities and retain private counsel. During this time, he expressly waived a speedy trial. On June 29, 2017, Hageman repeated that he had not yet retained a lawyer. The district court noted that the case was "about a year old," told Hageman that it would enter not-guilty pleas for him, and indicated it would set "a jury trial date out a couple months or so," by which point Hageman could retain counsel or apply for a public

defender. Hageman failed to appear for his September 1 pretrial hearing, and the district court issued a warrant for his arrest. Hageman was discovered in Florida early the following year and returned to Minnesota.

On February 26, 2018, Hageman first demanded a speedy trial. The district court appointed a public defender to represent Hageman and scheduled a jury trial for April 26.

On April 4, the prosecutor asked the district court to postpone the trial. He explained that Hageman's brother planned to be out of town on the trial date for a previously scheduled family vacation. Hageman opposed rescheduling and reiterated his speedy-trial demand. After stating it did not believe the state had good cause to delay the trial, the district court rescheduled the trial for late May and released Hageman from custody.

Hageman's trial took place on May 23-24. The state presented the testimony of the officers who responded to the scene, Hageman's father and brother, and A.W. Hageman did not testify or present his own witnesses, but counsel argued that he acted in self-defense. The jury found Hageman guilty on all three counts. Hageman absconded again, but in August 2019, the district court sentenced him to 60 months in prison. Hageman appeals.

D E C I S I O N

I. The one-month continuance to facilitate Hageman's brother's appearance at trial did not deprive Hageman of his right to a speedy trial.

Under the United States and Minnesota Constitutions, a criminal defendant has a right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether a defendant

has been denied that right is a question of law, which we review de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

In assessing speedy-trial claims, Minnesota courts apply the balancing test articulated in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). *Id.* 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. *Id.* “None of the factors alone is dispositive; rather, the factors are related and must be considered together with such other circumstances as may be relevant.” *State v. Griffin*, 760 N.W.2d 336, 340 (Minn. App. 2009) (quotation omitted).

Hageman contends his speedy-trial right was violated because the district court postponed his trial from April 26, 2018, to May 23, 2018.¹ We address each of the *Barker* factors in turn.

Length of the Delay

When a defendant pleads not guilty and demands a speedy trial, “the trial must start within 60 days unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). A delay of more than 60 days is presumptively prejudicial, triggering review of the remaining three *Barker* factors. *Griffin*, 760 N.W.2d at 340 (citing *State v. Windish*, 590 N.W.2d 311, 315-16 (Minn. 1999)).

¹ Hageman does not complain of the delay between the date he was charged and his February 26, 2018 speedy-trial request, apparently acknowledging that the lack of progress up to that time was primarily his own doing. See *Griffin*, 760 N.W.2d at 340 (stating that delay attributable to defendant is not a speedy-trial violation).

It is undisputed that Hageman's trial did not occur within 60 days of his speedy-trial demand. Accordingly, the delay is presumptively prejudicial. But it is far from egregious. The district court prioritized Hageman's case on the court calendar so that the trial took place 86 days after his speedy-trial demand. Overall, this factor weighs somewhat in favor of Hageman.

Reason for the Delay

Both the state and courts are responsible for "ensuring speedy trials for criminal defendants." *Id.* Congested court calendars generally do not justify a delay, but a delay of the defendant's own making or for "good cause" is not a speedy-trial violation. *Id.*

Hageman contends the reason for the delay weighs against the state because the district court stated that it did not believe "the unavailability of one victim is good cause under the precise facts of this case." But this court owes that assessment no deference because we review the *Barker* factors de novo. *Osorio*, 891 N.W.2d at 627. Moreover, it is well established that witness unavailability generally constitutes good cause for delay, provided the prosecutor is "diligent in attempting to make witnesses available and the unavailability [does] not prejudice the defendant." *Windish*, 590 N.W.2d at 317; *see also In re Welfare of G.D.*, 473 N.W.2d 878, 882 (Minn. App. 1991) ("Delay due to witness unavailability is permissible when the delay is neither lengthy nor unfairly prejudicial." (quotation omitted)).

Hageman's brother was one of two alleged victims, making him a key witness for the state. The prosecutor acted with reasonable diligence in trying to secure both victims for trial, notifying them on March 15 of the April 26 trial date. Hageman's brother was

unavailable on that date because of out-of-state travel that he had booked before the trial was even scheduled. Proceeding to trial without him would not have been feasible, as even Hageman acknowledges that his brother's testimony was critical to establishing the state's case. Consequently, the reason for the trial delay weighs against Hageman.

Assertion of the Right

Hageman expressly demanded a speedy trial on February 26, 2018, and reiterated that demand on April 4, when the prosecutor requested a continuance. This factor weighs in Hageman's favor.

Prejudice

To determine whether a delay prejudices a defendant, we consider (1) the length of the defendant's pretrial incarceration, (2) the "anxiety and concern" that delay may cause the defendant, and (3) possible impairment to the defendant's case, with this third factor being "the most important." *Griffin*, 760 N.W.2d at 340-41. None of these factors are implicated here.

First, Hageman experienced no pretrial incarceration attributable to the continuance because the district court released him pending trial. Nor was he subject to onerous release conditions; he was merely ordered not to leave the state without the court's prior approval. *Cf. id.* at 341 (concluding that this factor indicated prejudice, even though defendant was not incarcerated, because her "freedom was severely restricted"). And the only reason he was unable to work from February through May is because he absconded to Florida in 2017.

Second, Hageman’s purported anxiety during the delay period does not withstand scrutiny. The only fact he points to is that his fiancée was pregnant during the delay. But Hageman did not mention the pregnancy in opposing the trial continuance. And the child apparently was born in August 2018; a delay from April to May did not change the fact that Hageman’s fiancée was going to be pregnant during the trial.

Third, the record does not indicate that the delay caused Hageman any “evidentiary prejudice,” such as “memory loss by witnesses or witness unavailability.” *See State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015) (quotation omitted). In a pro se supplemental brief, Hageman contends that the delay prevented him from calling D.W. as a witness to prove his self-defense claim. But Hageman did not call any witnesses, and gave no indication that the decision had anything to do with D.W.’s availability.² Hageman’s pro se claim of witness memory loss is similarly unpersuasive; it is inconceivable that a delay of less than one month—after Hageman himself caused 18 months of delay—materially impaired witnesses’ memories.

In sum, while the trial postponement was long enough to establish a presumption of prejudice, the record rebuts that presumption, revealing that Hageman suffered no prejudice from the 26-day delay the state needed to secure a key witness’s availability at trial. Hageman has not demonstrated that his right to a speedy trial was violated or that he sustained any prejudice.

² Hageman may have declined to call D.W. because his sister, A.W., already provided the self-defense testimony he hoped to elicit from D.W.—that Hageman’s brother was hostile toward D.W. and Hageman and “threatened [D.W.],” and therefore could be seen as the aggressor in the altercation.

II. Hageman has not demonstrated ineffective assistance of counsel.

In his pro se supplemental brief, Hageman argues that defense counsel was ineffective because he did not move for dismissal of the charges on speedy-trial grounds.³ To obtain relief on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's representation fell below "an objective standard of reasonableness," and (2) "there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Taylor*, 869 N.W.2d at 21. Hageman has done neither. Because the underlying speedy-trial claim is unavailing, as discussed above, defense counsel was not objectively unreasonable in failing to seek dismissal on that ground, and he would not have altered the outcome of the proceeding if he had. *See id.* (rejecting ineffective-assistance-of-counsel claim premised on the failure to seek dismissal for denial of a speedy trial because the underlying speedy-trial claim lacked merit). Hageman is not entitled to relief based on ineffective assistance of counsel.

Affirmed.

³ Hageman asserts additional errors in his pro se reply brief. Those assertions are not responsive to the state's brief and lack supporting argument or legal authority; as such, they are not properly before us. *See State v. Palmer*, 803 N.W.2d 727, 741 (Minn. 2011) ("Claims contained in a pro se supplemental brief with no argument or citation to legal authority in support of the allegations are deemed waived." (quotation omitted)); *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (deeming waived argument raised for the first time in reply brief and not responsive to state's briefing).