

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0173**

State of Minnesota,
Respondent,

vs.

Pedro Ray Tejeda,
Appellant.

**Filed February 1, 2021
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-19-5765

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

Michael O. Freeman, Hennepin County Attorney, Linda Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Following a search of his home that revealed a gun and ammunition, appellant Pedro Tejeda was convicted of possession of a firearm or ammunition by a prohibited person. Tejeda challenges his conviction, arguing that the district court should have given a

unanimity instruction to the jury and suppressed evidence of the gun and ammunition because the search warrant affidavit did not establish probable cause. Tejeda also asserts that the 51-day delay of his jury trial was a violation of his right to a speedy trial. Because the possession of the gun and ammunition are part of the same behavioral incident and do not require a unanimity instruction, the affidavit articulated an adequate basis for the search, and Tejeda was not prejudiced by the delay of his trial, we affirm.

FACTS

In spring 2019, officers were called to a home in Minneapolis for reports of gunshots. The residents who called believed that the shots came from a nearby house where appellant Pedro Tejeda resided. When officers arrived they found bullet holes in the residents' walls and determined that the shots had likely come from Tejeda's home. Officers contacted Tejeda, who denied any knowledge of the gunshots and refused to leave his house. Eventually, officers left the scene. The following day, Tejeda was arrested and interviewed by detectives. Based on the events of the previous evening, information gathered during the interview, and additional investigation, officers believed that Tejeda was in possession of "an unknown type of handgun," and requested a search warrant.

In support of the search warrant request, the affidavit provided an account of the previous night's events at Tejeda's home. It confirmed that both the neighbors and officers called to the scene believed that the bullets had come from Tejeda's home. And the affidavit explained that Tejeda had previously been contacted by police on seven different occasions in the last year and had been civilly committed twice. Finally, the affidavit

described surveillance footage that purportedly showed Tejeda “shooting out a vehicle window with an unknown type gun.”

The district court issued the warrant to search Tejeda’s home for “any guns, ammo, dcs [discharged cartridge casings], gun accessories and evidence of the shootings to include cameras, camera systems, digital storage, and surveillance video.” Upon execution of the search warrant, officers discovered a 9mm pistol and ammunition, both located inside a safe. The state then charged Tejeda with one count of possession of a firearm or ammunition by a prohibited person.¹

While awaiting trial, Tejeda moved to suppress evidence obtained during the search. He challenged the validity of the search warrant, arguing that the information within the affidavit did not “establish a fair probability” that evidence would be found. According to Tejeda, “there is no conclusive evidence that the bullet was fired either from inside or outside [his] house. There is no evidence that he, in fact, was the one who fired a bullet through the house.” The district court denied Tejeda’s motion to suppress.

On April 10, 2019, Tejeda demanded a speedy trial. The district court scheduled a jury trial for May 14, 2019, to comply with the request. But the trial was delayed twice after the state requested continuances. The first delay was due to witness scheduling conflicts, and the second was due to the prosecutor’s unavailability. On both occasions, the district court found good cause for delay and granted the continuance.

¹ Minn. Stat. § 624.713, subd. 1(2) (2018). Tejeda had previously been convicted of third-degree assault.

On July 30, 2019, a jury trial commenced. There, the parties disagreed on whether to include a unanimity instruction for the jury. Tejeda’s attorney expressed concern over leaving “firearm” and “ammunition” together in one verdict form. He suggested the district court provide one verdict form, but include “a box to mark firearm and a box to mark ammunition just so we know what [the jury] determined.” The state argued that unanimity was not an issue because the statute did not treat them as separate offenses, but instead provided that a person “shall not be entitled to possess ammunition *or* a pistol.” Minn. Stat. § 624.713, subd. 1 (2018) (emphasis added). The district court determined that a unanimity instruction was not required and did not provide one to the jury.

On August 1, 2019, the jury delivered its verdict, finding Tejeda guilty. The district court sentenced Tejeda to 60 months’ incarceration with credit given for 242 days already served.

Tejeda appeals.

DECISION

Tejeda presents three primary arguments for reversing his conviction. First, Tejeda claims that the district court abused its discretion by rejecting his request for a unanimous jury verdict. His second argument is that the district court erred by admitting evidence of the gun and ammunition found during the search of his home. Third, Tejeda asserts that his right to a speedy trial was violated. Finally, Tejeda raises a number of claims in pro se briefing, including sufficiency of the evidence, judicial and juror bias, and trespass. We address Tejeda’s arguments in turn.

I. The district court did not abuse its discretion when it denied Tejeda’s request for a unanimous jury instruction.

Despite being charged with one count of possession of a firearm or ammunition by a prohibited person, Tejeda contends that the charge was actually for two separate criminal acts—possession of a firearm and possession of ammunition. Therefore, he argues, the district court was required to provide a unanimity instruction to the jury to determine which criminal act the jurors found him guilty of committing—possession of a firearm *or* possession of ammunition.

District courts have broad discretion regarding jury instructions, and we will not reverse a district court’s decision on the matter unless there was an abuse of discretion. *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015). A district court abuses its discretion when the jury instructions “confuse, mislead, or materially misstate the law.” *Id.* at 15. Here, the district court determined that unanimity instructions were not necessary.

Our review of that decision begins with a recitation of the relevant rules regarding jury verdicts. In criminal cases, jury verdicts must be unanimous. Minn. R. Crim. P. 26.01, subd. 1(5). Jurors must unanimously agree that the state proved each element of the charged offense, but need not agree on the ways in which the crime was committed. *State v. Pendleton*, 725 N.W.2d 717, 730-31 (Minn. 2007). Instead, jurors may find that a crime was committed by “alternative ways,” so long as they all agree that the crime was committed. *Id.* at 732. Here, the statute under which Tejeda was convicted makes it a crime for a prohibited person to “possess ammunition or . . . any other firearm.” Minn. Stat. § 624.713, subd. 1. According to Tejeda, although the state only charged him with

one count of possession of a firearm or ammunition by a prohibited person, he was actually charged for two different criminal acts. To support his argument, Tejeda relies on *State v. Stempf*, 627 N.W.2d 352 (Minn. App. 2001).

In *Stempf*, the appellant was charged with one count of fifth-degree possession of a substance containing methamphetamine. *Id.* at 353. But at trial, the state introduced evidence of two instances of alleged possession to support conviction.² *Id.* This court held that because the two acts of possession “occurred in different places and at different times,” and did not constitute a single act, the district court should have given specific unanimity instructions to the jury. *Id.* at 358.

The facts in this instance are distinct from those in *Stempf*. Tejeda was charged with one count of possession of *either* a firearm *or* ammunition, stemming from the discovery of the gun and ammunition at the same time and in the same location. The state did not introduce evidence of the gun and ammunition as two separate criminal acts, but alternative means by which Tejeda, in a single act of possession, violated the law. When a defendant engages in a single behavioral incident, *Stempf* does not apply and a unanimity instruction is not required. *Id.* at 354-55.

And in our recent decision, *State v. Nowels*, we held that where the appellant was charged with one count of possession of a firearm and one count of possession of ammunition for having a loaded gun, that possession was part of the same “behavioral incident”—the single criminal act of possession—because the firearm and ammunition

² Methamphetamine was discovered at the appellant’s place of work and later in the truck appellant arrived to work in as a passenger. *Stempf*, 627 N.W.2d at 353.

were found together in one loaded gun. 941 N.W.2d 430, 440 (Minn. App. 2020), *review denied* (Minn. June 16, 2020). As a result, appellant could not be charged twice for the single crime of possession of a firearm or ammunition. *Id.* at 440, 443 (“Here, Nowels’s possession of the loaded gun constitutes more than one offense—whether the state charged the conduct as possession of ammunition, possession of a firearm, or both—but the unlawful conduct occurred as part of the same behavioral incident.”).³

Although, unlike in *Nowels*, the gun found in Tejeda’s home was not loaded, the same “single behavior” analysis applies here. The gun and ammunition were found in the same place—the safe. The gun and ammunition were also found at the same time—during the execution of the search warrant. The state charged Tejeda with one count of possession of a firearm or ammunition, introducing the gun and ammunition not as separate elements necessary to make up a single criminal act, but as alternative means of committing a single criminal act. Possession of either item would result in Tejeda’s conviction. Minn. Stat. § 624.713, subd. 1(2). And possession of either a gun or ammunition requires proof of the same elements: (1) Tejeda is a prohibited person; and (2) he possessed a firearm *or* ammunition. *Nowels*, 941 N.W.2d at 443. Therefore, possession of the items were part of the same single behavior. *Id.* at 440.

³ Furthermore, we determined that the possession of a firearm or ammunition required proof of the same elements: the appellant is a prohibited person and possessed a firearm *or* ammunition. *Id.* at 443. Although the appellant was charged with two counts of the same crime, each one was a “different means to commit the crime—possessing a *firearm* and possessing *ammunition*.” *Id.* at 442.

To determine that here, the jury should have been given a unanimity instruction, would go against our precedent in *Nowels* and *Stempf*. We conclude that the district court did not abuse its discretion when it rejected Tejeda's request for a unanimity instruction.

II. The district court did not err when it admitted evidence found during the search of Tejeda's house.

Tejeda next asserts that the district court abused its discretion when it denied his motion to suppress evidence obtained from the search of his house. He argues that the search warrant affidavit did not adequately establish a connection between either the house and a firearm or Tejeda and a firearm. Therefore, Tejeda claims, the district court did not have a substantial basis for believing probable cause existed to issue the search warrant.

When reviewing a district court's decision regarding probable cause, we consider whether the search warrant affidavit "viewed as a whole, provides a substantial basis for a finding of probable cause." *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). We also view an issuing judge's decision to grant a search warrant "flexibly, deferentially, and with an eye to encouraging rather than discouraging the use of warrants by law-enforcement officers." *Id.*

To obtain a search warrant, officers must establish in their affidavit that there is probable cause to believe a crime was committed and evidence of the crime will be found at the place to be searched. *Id.* This "nexus," or connection, between the place to be searched and the items to be seized may be supported by either direct observation or inferred from the totality of the circumstances, including the crime alleged, the items sought, the opportunity for concealment, and reasonable assumptions about where a

suspect would keep the evidence. *Id.* The probable cause inquiry asks whether a person of “reasonable caution,” in looking at the totality of the facts described in the affidavit, would be justified in believing that the items sought would be found at the place to be searched. *Id.*

Here, the affidavit described the events leading to Tejeda’s arrest and provided additional information detectives discovered during investigation. Based on those factual allegations, we conclude that the affidavit established probable cause for the search of Tejeda’s house and established a nexus between both Tejeda and the gun and Tejeda’s home and the gun.

While the neighbors and responding officers did not directly observe the gun at Tejeda’s house, the nexus between Tejeda’s house and the gun can be inferred from the totality of the circumstances. *Id.* Neighbors reported the sound of gunshots and bullets in the walls of their home, which they believed came from the direction of Tejeda’s home. When investigating officers arrived on scene and examined the bullet holes, they too determined that the bullets had come from Tejeda’s home. These facts, when considered together, would lead a person of reasonable caution to be justified in believing that a gun had been fired from, and could be found in, Tejeda’s home.

The affidavit’s factual allegations further support a nexus between Tejeda and the gun. In addition to the neighbors reporting sounds of gunshots coming from Tejeda’s home, officers also had previous surveillance footage of Tejeda shooting a gun out a car window. And if an individual is believed or known to have a gun, it is reasonable to infer that an individual would keep the gun at their residence. *State v. Yarborough*,

841 N.W.2d 619, 623 (Minn. 2014). Therefore, when considering the totality of the facts in the affidavit, a person of reasonable caution would be justified in believing that a gun would be found in Tejeda's home.⁴

To attempt to persuade us otherwise, Tejeda alleges in pro se briefing that not only were there substantive issues with the affidavit, but that the officers involved in the search also trespassed and exceeded the scope of the warrant. We find these arguments unconvincing.

First, the fact that the affidavit listed the wrong zip code for the home to be searched does not invalidate the search warrant. An incorrect zip code, in this instance, does not impair the officers' ability to "locate and identify the premises with reasonable effort with no reasonable probability that [other premises] must be mistakenly searched." *State v. Gonzales*, 314 N.W.2d 825, 827 (Minn. 1982) (quotations omitted). Nor do the "no trespassing" signs on Tejeda's property turn the officers' otherwise legal execution of a valid search warrant into a trespass. The federal and state constitutions only protect persons against *unreasonable* and *unwarranted* searches. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Finally, although the affidavit did not specifically describe any documents as items to be seized, here, the firearm sale record and firearm trace summary were properly seized because they were "immediately facially recognizable" as evidence which connected Tejeda to the gun found in the safe. *State v. Severtson*, 232 N.W.2d 95, 97 (Minn. 1975).

⁴ We note that we reach this conclusion without addressing the mental-health assertions made in the affidavit, and therefore do not consider the appropriateness of those statements.

In sum, based on the factual allegations in the search warrant affidavit, and in light of our deference to the issuing judge's decision, we conclude there was a substantial basis for a finding of probable cause. The district court did not err in admitting evidence found during the search of Tejeda's house.

III. Appellant's right to a speedy trial was not violated.

When a defendant requests a speedy trial, the trial must begin within 60 days of the request unless there is good cause for delay. Minn. R. Crim. P. 11.09(b). We review whether an appellant's right to a speedy trial was violated de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). To determine whether a defendant's right to a speedy trial has been violated, we weigh four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted their right to a speedy trial; and (4) whether the defendant was prejudiced because of the delay. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker v. Wingo*, 407 U.S. 514, 530-33, 92 S. Ct. 2182, 2192-93 (1972)).

Length of Delay

Tejeda asserted his right to a jury trial on April 10, 2019. Jury trial was required to begin, absent good cause, by June 9, 2019. Trial did not begin until July 30, 2019, 51 days beyond the 60-day period. Because Tejeda's trial was delayed beyond the 60-day period, the delay is presumptively prejudicial and the remaining factors must be analyzed. *Id.*

Reason for Delay

The delays were caused by the unavailability of the state's witnesses and the prosecutor's scheduling conflicts. Unavailability of witnesses is generally good cause for

delay. *State v. Terry*, 295 N.W.2d 95, 96 (Minn. 1980). And while the state bears the burden to ensure a defendant's right to a speedy trial, here the prosecutor made a good faith effort to bring Tejeda to trial.⁵ *Windish*, 590 N.W.2d at 316-17. Thus the reasons for delay weigh against the state, but less so than if there was evidence that the state had deliberately intended to delay the trial to harm Tejeda. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192.

Tejeda Asserted Right to Speedy Trial

Tejeda demanded a speedy trial on April 10, 2019 and reiterated his request each time the state motioned for a continuance. This factor weighs in his favor.

Prejudice to Tejeda

Tejeda asserts that the delays unfairly prejudiced him by keeping him incarcerated beyond the initial trial date. Three types of prejudice are recognized as potentially resulting from the delay of a speedy trial: "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired." *Osorio*, 891 N.W.2d at 631 (quotations omitted). Here, Tejeda only alleges that the delay of his trial resulted in oppressive pretrial incarceration.

This prejudice argument is undercut by the fact that Tejeda had two outstanding holds without bail from ongoing criminal cases not related to this matter. And although Tejeda's attorney requested the respective courts remove those holds in light of the present case, neither court granted that request, and the holds remained. Therefore, even if Tejeda's jury trial had proceeded as scheduled and he had been released upon a finding of not

⁵ The lead attorney made arrangements for a substitute prosecutor at the June 24, 2019 trial because he would be unavailable to try Tejeda on that date.

guilty—or if he had been released while awaiting trial—his remaining holds would have resulted in continued incarceration. Because Tejeda would have remained incarcerated, with or without the state’s continuances, his claim of prejudice due to oppressive pretrial incarceration is unpersuasive.

To summarize, while some of the *Barker* factors weigh in favor of Tejeda’s argument, the state’s efforts to remain on schedule when possible and the lack of prejudice lead us to conclude that the delays did not violate Tejeda’s right to a speedy trial.

In conclusion, the district court did not abuse its discretion when it denied Tejeda’s request for a unanimous verdict. The guns and ammunition, discovered at the same time and in the same place, were part of the same behavioral incident. As such, the district court was not required to provide a unanimity instruction to the jury. Nor did the district court err by admitting evidence obtained during the search of Tejeda’s house. Based on the affidavit, the district court could find that there was probable cause to issue the warrant. Finally, Tejeda’s right to a speedy trial was not violated.⁶

Affirmed.

⁶ Tejeda makes a number of additional claims in pro se briefing in support of his appeal. He asserts that both the judge and the jury were biased, and that there was insufficient evidence to convict him. However, he makes these claims in general terms and does not adequately brief the arguments. As such, we do not address them here. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).