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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0148**

State of Minnesota,
Respondent,

vs.

Toman Davin Matthews,
Appellant.

**Filed March 7, 2022
Affirmed
Johnson, Judge**

Becker County District Court
File No. 03-CR-19-2103

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Brian W. MacDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Becker County jury found Toman Davin Matthews guilty of two counts of first-degree criminal sexual conduct based on evidence that he sexually abused his girlfriend's 11-year-old daughter. We conclude that the district court plainly erred by admitting

inadmissible evidence and that the prosecutor plainly engaged in misconduct. But we conclude that Matthews is not entitled to a new trial based on those plain errors because they did not affect his substantial rights. We also conclude that the district court did not err by admitting evidence concerning Matthews's relationship with other family members or by not ordering the disclosure of the victim's other reports of sexual assault. Lastly, we conclude that Matthews's *pro se* arguments do not warrant appellate relief. Therefore, we affirm.

FACTS

In late September 2019, 11-year-old A.G. disclosed to a Becker County child-protection employee that Matthews, her mother's boyfriend, had raped her. In October 2019, a licensed social worker, Raelyn Soltis, conducted a forensic interview of A.G., who stated that, on one day in the late summer of 2019, she went upstairs to retrieve her baby sister from her mother's and Matthews's bedroom. She encountered Matthews in the bedroom. Matthews grabbed A.G. by the hair and forced her to put her mouth on his penis. Matthews then attempted to place his mouth on her vagina. The incident ended when Matthews heard one of A.G.'s step-siblings walk up the stairs.

In October 2019, the state charged Matthews with one count of first-degree criminal sexual conduct and one count of attempted first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2018). Matthews discharged his public defender and represented himself at trial, with the assistance of advisory counsel.

The case was tried over three days in October 2020. The state called five witnesses, including A.G., A.G.'s mother, and Soltis. A.G. gave testimony that was generally

consistent with her pre-trial statement to Soltis. The state played in open court the video-recording of Soltis's forensic interview of A.G. Matthews testified on his own behalf. He denied sexually assaulting A.G. and stated that she has a history of not telling the truth and manipulating others. Matthews called four other witnesses: the principal of A.G.'s former school, his mother, and two law-enforcement officers.

The jury found Matthews guilty of both charges. The district court imposed a sentence of 144 months of imprisonment on count 1 and a concurrent sentence of 90 months of imprisonment on count 2. Matthews appeals.

DECISION

I. Admission of Vouching Testimony

Matthews first argues that the district court erred by admitting testimony in which Soltis, the forensic interviewer, vouched for A.G.'s credibility.

As a general matter, "one witness cannot vouch for or against the credibility of another witness." *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). The rationale for this rule is that "the credibility of a witness is peculiarly within the competence of the jury, whose common experience affords sufficient basis for the assessment of credibility." *State v. Myers*, 359 N.W.2d 604, 609-10 (Minn. 1984). Nonetheless, in "unusual cases," such as a "sexual assault case where the alleged victim is a child," an expert witness's testimony concerning the subject of credibility may be admissible. *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982). But an expert witness may not offer a direct or indirect opinion on the credibility of a particular child. *State v. Wembley*, 712 N.W.2d 783, 791-92 (Minn. App. 2006), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007).

In this case, Matthews challenges three parts of Soltis's testimony. Matthews did not object at trial to any of the three statements that he challenges on appeal. Accordingly, we apply the plain-error test. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error test, we will reverse a conviction only if the appellant shows that (1) the district court committed an error, (2) the error was plain, and (3) the plain error affected the appellant's substantial rights. *See Griller*, 583 N.W.2d at 740. "An error is plain if it was clear or obvious," such as if "the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). An error affects the substantial rights of an appellant if it was "prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. If an appellant establishes the first three requirements, "we will correct the error only if the error seriously affects the fairness, integrity, or the public reputation of judicial proceedings." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

A. "Credible and Reliable"

Matthews first contends that the district court plainly erred by admitting Soltis's testimony that she found A.G.'s disclosures to be "credible and reliable." The challenged testimony was given when the prosecutor asked Soltis, "was there anything that you observed during this interview that gave you indications that [A.G.]'s disclosures were not reliable?" Soltis answered, "No, I found her statements to be credible and reliable."

The state agrees that "a forensic interviewer is usually prohibited from directly opining that a complainant's disclosure is credible." But the state contends that, in this case, the challenged testimony is admissible on the ground that Matthews had "opened the

door” to it by attempting to show that A.G.’s mother, L.H., did not believe A.G.’s allegations. In general, a party “opens the door” to otherwise inadmissible evidence by introducing evidence that “creates in the opponent a right to respond with material that would otherwise have been inadmissible.” *State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006) (quotation omitted). The purpose of the doctrine is to ensure that one party does not gain an unfair advantage by introducing testimony on a particular subject about which the other party may not introduce evidence to refute or respond to the first party’s testimony. *Id.* Specifically, the supreme court has held that an expert witness, such as a forensic interviewer, may testify about an alleged child victim’s credibility if the defendant has sought to prove that the child’s mother does not believe the child’s allegation. *See Myers*, 359 N.W.2d at 607-12; *Adesiji v. State*, 384 N.W.2d 908, 911-12 (Minn. App. 1986), *rev. denied* (Minn. June 13, 1986).

In this case, Matthews earlier had cross-examined L.H. in a way that suggested that she did not believe A.G.’s allegations. Matthews did so by asking whether she was pressured into telling police interviewers that she believed A.G. In doing so, Matthews “opened the door” to responsive vouching testimony from Soltis. *See Myers*, 359 N.W.2d at 607-12; *Adesiji*, 384 N.W.2d at 911-12. Thus, Soltis’s testimony that A.G.’s accusations against Matthews were “credible and reliable” was not plain error.

B. False Allegations

Matthews also contends that the district court plainly erred by admitting Soltis’s testimony that “false [sexual abuse] allegations occur less than five percent of the time, so . . . they very rarely occur.” The state concedes that this testimony is plainly inadmissible.

C. Reliability Assessment

Matthews further contends that the district court plainly erred by admitting Soltis's testimony that A.G.'s behavior during her forensic interview was consistent with commonly used criteria for determining reliability.

A forensic interviewer may testify generally about the protocol for interviewing alleged child sexual-abuse victims, including the existence of certain factors or criteria that may indicate that the child is credible. *Myers*, 359 N.W.2d at 610; *State v. Morales-Mulato*, 744 N.W.2d 679, 689 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). The state contends that the district court did not plainly err on the ground that Soltis's testimony is "arguably admissible" under *Myers*. But a forensic interviewer may not testify that, in a particular interview, the child's behavior conformed to those credibility factors. *See Wembley*, 712 N.W.2d at 791-92; *Morales-Mulato*, 744 N.W.2d at 690. In *Wembley*, a forensic interviewer testified regarding four criteria that she had used to evaluate the credibility of a child complainant and, in addition, testified that the behavior of a 12-year-old child satisfied those criteria. 712 N.W.2d at 790-92. This court concluded that the forensic interviewer's testimony "violated the prohibition against expert opinion as to a witness's credibility." *Id.* at 792.

In this case, Soltis testified about the factors she looks for when assessing the reliability of a child who has reported a sexual assault. The state then played for the jury the video-recording of A.G.'s forensic interview. Soltis then testified in detail that A.G.'s behavior during the interview was consistent with the reliability factors that she had identified. Such testimony is plainly inadmissible under *Wembley*.

D. Substantial Rights

To be entitled to a new trial, Matthews must show that the district court committed one or more plain errors that affected his substantial rights because they were “prejudicial and affected the outcome of the case.” *Griller*, 583 N.W.2d at 741.

Soltis’s testimony about the rarity of false accusations was brief and was not mentioned by the state in closing argument. Soltis’s testimony that A.G. exhibited certain reliability factors was more extensive and was mentioned in the state’s closing argument. But, as in *Wembley*, the jurors viewed the video-recording of the forensic interview and were able to perceive whether A.G. exhibited the reliability factors, which tends to indicate that the vouching testimony did not have a strong effect on the jurors. 712 N.W.2d at 792; *see also Morales-Mulato*, 744 N.W.2d at 690. In watching the video-recording and observing A.G.’s trial testimony, jurors likely formed their own conclusions as to whether A.G.’s testimony was reliable.

Thus, the district court’s plain error of admitting Soltis’s vouching testimony on two occasions did not affect Matthews’s substantial rights.

II. Claims of Prosecutorial Misconduct

Matthews next argues that the prosecutor engaged in misconduct in three ways.

The right to due process of law includes the right to a fair trial. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005); *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn. App. 2007), *rev. denied* (Minn. June 19, 2007). “Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial.” *State v. Jones*, 753 N.W.2d 677, 686 (Minn.

2008) (quotation omitted). Consequently, prosecutorial misconduct may deny the defendant his right to a fair trial. *Ramey*, 721 N.W.2d at 300.

Matthews did not object at trial to the prosecutorial misconduct that he challenges on appeal. Accordingly, we apply the modified plain-error test. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). To prevail under the modified plain-error test, an appellant initially must establish that there is prosecutorial misconduct and that it is plain. *Ramey*, 721 N.W.2d at 302. If the appellant establishes plain misconduct, the burden shifts to the state to show that the plain misconduct did not affect the appellant's substantial rights, *i.e.*, "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted).

A. Eliciting Vouching Testimony by Soltis

Matthews first contends that the prosecutor engaged in misconduct by eliciting vouching testimony from Soltis, as described above in part I.

It is improper for a prosecutor to elicit vouching testimony from a witness. *Van Buren v. State*, 556 N.W.2d 548, 551 (Minn. 1996). We have determined that Soltis provided vouching testimony on two occasions. *See supra* part I.B., I.C. On both occasions, Soltis's vouching testimony was directly responsive to the prosecutor's questions.

The state contends that Matthews has not established that the misconduct is plain because it is unclear whether the prosecutor knowingly elicited inadmissible evidence. Assuming without deciding that knowledge or intent is a prerequisite to a finding of plain prosecutorial misconduct, we can infer that such knowledge or intent was present in this

case. The prosecutor elicited inadmissible vouching testimony with direct questions: “[W]hat do you know about false allegations of sexual assault?” “Did [A.G.] demonstrate that she followed the [reliability factor]?” “Did you observe [the reliability factor] in this interview?” Thus, the prosecutor plainly engaged in misconduct by eliciting Soltis’s inadmissible vouching testimony.

B. Eliciting Vouching Testimony by L.H.

Matthews also contends that the prosecutor engaged in misconduct by eliciting vouching testimony from A.G.’s mother, L.H. In his direct examination of L.H., the prosecutor used a transcript of a police investigator’s interview of L.H. The prosecutor read aloud the investigator’s statement that she “believe[d] what [A.G. was] saying.” The prosecutor also prompted L.H. to read aloud another statement by the investigator indicating her belief of A.G. and, in addition, L.H.’s own prior statement, “I definitely believe her.” In *State v. McNeil*, 658 N.W.2d 228 (Minn. App. 2003), this court concluded that there was “no doubt that it was misconduct” for the prosecutor to ask the mother of an alleged sex-abuse victim whether she believed her daughter’s allegations. *Id.* at 232. In this case, the prosecutor elicited similar testimony. Thus, the prosecutor plainly engaged in misconduct by eliciting vouching testimony from L.H.

C. Closing Argument

Matthews further contends that the prosecutor engaged in misconduct during closing argument by making the following statement with respect to A.G.: “Her disclosures have been consistent, and make it impossible for her to have been lying.” Matthews

contends that this is a misstatement of law on the ground that it practically instructs the jury to find A.G. credible if it finds her statements to be consistent.

The prosecutor did not offer his own endorsement of A.G.'s credibility. Instead, the prosecutor referred to the consistency of A.G.'s disclosures, which is a fair comment on the evidence. Based on that evidence, the prosecutor asked the jury to draw an inference that A.G. was credible. A prosecutor is permitted "to present to the jury all legitimate arguments on the evidence" and "to present all proper inferences to be drawn therefrom." *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). Matthews puts too much emphasis on the word "impossible," which may be a strong word but does not amount to an instruction that the jury must find A.G. credible. *See State v. Vue*, 797 N.W.2d 5, 15-16 (Minn. 2011) (concluding that prosecutor did not engage in misconduct by arguing that defendant wanted jury to "believe the impossible"). Thus, the prosecutor did not plainly engage in misconduct in that part of his closing argument.

D. Substantial Rights

To avoid a conclusion that Matthews is entitled to a new trial, the state must show that the prosecutor's plain misconduct did not affect Matthews's substantial rights, *i.e.*, "that there is no reasonable likelihood that the absence of the misconduct" had a significant effect on the jury's verdict. *Ramey*, 721 N.W.2d at 302 (quotation omitted).

The prosecutor's plain misconduct includes his eliciting of Soltis's vouching testimony on two occasions, as described above. *See supra* parts I.B., I.C. We have concluded that Matthews has not shown that the plainly erroneous admission of Soltis's vouching testimony affected his substantial rights. *See supra* part I.D. For essentially the

same reasons, we also conclude that the state has shown that the prosecutor's plain misconduct did not affect Matthews's substantial rights.

In addition, the prosecutor plainly engaged in misconduct by eliciting vouching testimony from A.G.'s mother, L.H., by directing her to read from a transcript of a pre-trial interview in which she said, "I definitely believe her." Immediately after L.H. read that excerpt from the transcript, Matthews cross-examined her by asking whether she felt pressured to make that statement, and she answered in the affirmative. Matthews's cross-examination likely diminished the evidentiary value of the testimony that the prosecutor had wrongfully elicited. The prosecutor did not mention that portion of L.H.'s testimony in his closing argument, likely because L.H.'s testimony was, on the whole, equivocal and not fully supportive of the state's case. L.H.'s vouching testimony did not significantly add to the prejudice arising from Soltis's vouching testimony, which did not affect Matthews's substantial rights.

Thus, the state has shown that the prosecutor's plain misconduct did not affect Matthews's substantial rights. *See State v. Bush*, No. A20-1005, 2021 WL 2908643, at *4-5 (Minn. App. July 12, 2021) (concluding that Becker County prosecutor's eliciting of evidence of vouching testimony by forensic interviewer did not affect substantial rights of appellant convicted of criminal sexual conduct), *rev. denied* (Minn. Sept. 21, 2021).

III. Relationship Evidence

Matthews next argues that the district court erred by admitting evidence that Matthews previously had physically abused A.G., her mother, and her brother.

In a prosecution for criminal sexual conduct:

Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Minn. Stat. § 634.20 (2020); *see also State v. Fraga*, 864 N.W.2d 615, 626-27 (Minn. 2015); *State v. Sanders*, 743 N.W.2d 616, 620-21 (Minn. App. 2008), *aff'd*, 775 N.W.2d 883 (Minn. 2009). Evidence admitted pursuant to section 634.20 is commonly known as “relationship evidence.” *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). Relationship evidence has probative value if it “helps to establish the relationship between the victim and the defendant” or “places the event in context.” *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008), *rev. denied* (Minn. Oct. 29, 2008). Relationship evidence may give rise to unfair prejudice if the evidence “persuades by illegitimate means, giving one party an unfair advantage.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). The parties agree that the plain-error test applies because Matthews did not object to the challenged evidence at trial.

Matthews challenges the admission of relationship evidence on three occasions. First, in the forensic interview, A.G. stated that Matthews had “hurt” her, her mother, and her aunt. Second, A.G. testified that Matthews had abused her, her mother, and her brother. Third, a county child-protection social worker testified that A.G. had disclosed that Matthews had been “physically abusive towards her and her mother.” Each of the three references to prior abuse was relatively general and lacking in details. Matthews contends

that the probative value of the vague references to physical abuse were outweighed by the danger of unfair prejudice.

The evidence of prior physical abuse in the household was probative of the relationship between Matthews and A.G. As reflected in the applicable caselaw, evidence that Matthews previously had physically abused A.G. and other members of her family helps to contextualize A.G.'s delayed disclosure of the assault and the fact that L.H. did not independently report the assault. *See State v. Andersen*, 900 N.W.2d 438, 441-42 (Minn. App. 2017) (affirming admission of evidence of prior abusive behavior that highlighted appellant's attempts to manipulate, control, and restrain victim); *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008) (affirming admission of evidence of prior abusive conduct that provided context for victim's behavior). Thus, the district court did not err by admitting relationship evidence.

IV. Evidence of Other Allegations

Matthews next argues that the district court erred by denying him discovery of documents concerning A.G.'s allegations that other persons had sexually assaulted her on other occasions.

Matthews's defense theory was that A.G. falsely accused him of rape because she was upset with him for leaving their family to go to Colorado. Matthews sought to introduce evidence that A.G. similarly had falsely accused other persons of sexual assault. Before trial, Matthews requested that the district court conduct an *in camera* review of A.G.'s school records, medical records, and child-protection records to determine whether there were any documents relevant to his defense. The district court reviewed more than

2,000 pages of documentation and identified only 12 documents with “potential relevance” to Matthews’s case. The district court ordered the disclosure of six of those documents to Matthews but withheld five documents on the ground that disclosure is prohibited by the rape-shield law and one document on other grounds. *See* Minn. Stat. § 609.347, subd. 3 (2020); Minn. R. Evid. 412. Seven days before trial, Matthews requested that the district court conduct an *in camera* review of an August 2020 forensic interview of A.G. in which she accused a minor relative and two other minors of sexually assaulting her. The district court reviewed a video-recording of that forensic interview but did not disclose it to Matthews because of the rape-shield law.

As a general rule, in a prosecution for criminal sexual conduct, “evidence of the victim’s previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury.” Minn. Stat. § 609.347, subd. 3. Nonetheless, sexual-history evidence is admissible if it “is constitutionally required by the defendant’s right to due process, his right to confront his accusers, or his right to offer evidence in his own defense.” *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015) (quotation omitted). But a defendant’s “right to present a defense is not unlimited.” *State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012), *rev. denied* (Minn. Feb. 27, 2013); *see also State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). “[T]he admission of evidence of a witness’s prior sexual conduct is highly prejudicial and will not survive a rule 403 balancing test unless a special exception applies.” *Olsen*, 824 N.W.2d at 340. We review evidentiary rulings for an abuse of discretion. *Wenthe*, 865 N.W.2d at 306. “If exclusion of evidence did violate defendant’s right to present a defense, the appellate court will not reverse the decision if

the error is found to be harmless beyond a reasonable doubt.” *State v. Goldenstein*, 505 N.W.2d 332, 340 (Minn. App. 1993) (citing *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989)), *rev. denied* (Minn. Oct. 19, 1993).

Matthews suggests that the evidence that was not disclosed to him (six documents and the video-recording of the August 2020 forensic interview of A.G.) would have been admissible if he could have shown that A.G. had made false accusations against others. The state agrees that evidence of a victim’s predisposition to fabricate accusations is admissible as substantive evidence if there is a “reasonable probability” that the victim made prior accusations that were false and that the evidence is admissible to impeach if the victim’s prior accusations “were indeed fabricated.” *Id.* at 340. A defendant bears the burden of presenting evidence of a predisposition to fabricate or actual fabrication. *See State v. Crims*, 540 N.W.2d 860, 868 (Minn. App. 1995), *rev. denied* (Minn. Jan. 23, 1996); *State v. Kroshus*, 447 N.W.2d 203, 205 (Minn. App. 1989), *rev. denied* (Minn. Dec. 20, 1989). But Matthews does not attempt to demonstrate that A.G.’s prior accusations were false. The state points out that, based on documents that are in the public record, Matthews was personally familiar with A.G.’s accusations against two adult men who were known to him. The state further asserts that both of the adult men pleaded guilty to criminal sexual conduct. Matthews does not dispute the state’s assertions in his reply brief. Thus, the district court did not err by not ordering the disclosure of six documents relating to A.G.’s accusations against two other adult men.

The district court denied Matthews’s request for disclosure of the video-recording of the forensic interview in which A.G. accused a minor relative and two other minors of

sexually assaulting her. The district court reasoned that there was “no mention of false identification, or falsification of incidents” and that “[n]othing in the interview questions suggest[ed] bias or a character for untruthfulness of the alleged victim.” Matthews does not identify any evidence that might satisfy his burden of showing that A.G.’s accusation against the minors was fabricated.

Matthews also contends that A.G.’s accusations against the adult men would have been admitted under another exception to the rape-shield laws on the ground that A.G. acquired knowledge of sexual matters from persons other than Matthews. He cites *Benedict*, in which an expert witness testified that the five-year-old victim “exhibited an unusual knowledge of sexual activities for someone his age,” which was “the result of the boy having been given an education by somebody.” 397 N.W.2d at 340. This case is distinguishable. Soltis testified that A.G.’s knowledge of sexual matters was limited and age-appropriate.

Thus, the district court did not err by denying Matthews discovery of documents concerning A.G.’s accusations that other persons had sexually assaulted her.

V. *Pro Se* Argument

Matthews has filed a 12-page, handwritten, *pro se* supplemental brief. See Minn. R. Crim. P. 28.02, subd. 5(13), (17). He makes many assertions about pre-trial proceedings and the trial without specifically identifying adverse district court rulings. We discern only one *pro se* argument that is supported by citations to legal authorities and warrants analysis.

Matthews argues that he was denied his constitutional right to a speedy trial. The United States Constitution provides that, in all criminal prosecutions, “the accused shall

enjoy the right to a speedy and public trial.” U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. To determine whether a delay has deprived a defendant of the right to a speedy trial, we apply the four-factor balancing test from *Barker v. Wingo*, 407 U.S. 514 (1972). *See State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021). The four factors are (1) 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. *Barker*, 407 U.S. at 530-33.

A. Length of Delay

The first *Barker* factor, the length of the delay, “serves dual purposes.” *Mikell*, 960 N.W.2d at 245. It is a “‘triggering mechanism’ which determines whether further review is necessary.” *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (quoting *Barker*, 407 U.S. at 530). It also is a factor in determining whether a speedy-trial violation has occurred. *Mikell*, 960 N.W.2d at 245. In Minnesota, a defendant must be tried “as soon as possible after” the entry of a not-guilty plea. Minn. R. Crim. P. 11.09(b). If a defendant demands a speedy trial, “the trial must start within 60 days unless the court finds good cause for a later trial date.” *Id.* Matthews requested a “review” of his speedy trial “timeline and remedy” in July 2020. The district court deemed that request to be premature because Matthews had not yet entered a plea. *See* Minn. R. Crim. P. 11.09(a), (b). Matthews requested a speedy trial on August 17, 2020. The district court granted his request on September 14, 2020. His trial began on October 20, 2020, only 64 days after his request for a speedy trial. Thus, the first factor weighs only slightly in favor of a finding of a speedy-trial violation.

B. Reason for Delay

The second *Barker* factor, the reason for the delay, requires consideration of whether one of the parties is responsible for the delay. *Mikell*, 960 N.W.2d at 250-51. If a defendant's actions caused the delay, there is no speedy-trial violation. *Id.* at 251; *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005). If the state has caused the delay, there may be a speedy-trial violation, depending on the particular reasons for the delay. *Mikell*, 960 N.W.2d at 251. Matthews contends that the state caused the delay by not supplying him evidence and not delivering his subpoenas. But the record indicates that Matthews's actions were the primary cause for delay. His public defender requested three continuances to obtain evidence and prepare motions. Matthews later discharged his public defender, which led to further delay to allow for the appointment of advisory counsel. Matthews also requested *in camera* review of over 2,000 pages of documentation and the video-recording of A.G.'s August 2020 forensic interview. Thus, the second factor weighs against a finding of a speedy-trial violation. *See DeRosier*, 695 N.W.2d at 109; *State v. Hahn*, 799 N.W.2d 25, 31 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011); *State v. Carlson*, 369 N.W.2d 326, 328 (Minn. App. 1985), *rev. denied* (Minn. July 26, 1985).

C. Assertion of Right

The third *Barker* factor requires consideration of both “whether and how” a defendant asserted his right to a speedy trial. *Mikell*, 960 N.W.2d at 252. The inquiry is “necessarily contextual” and includes a consideration of “the strength of an accused’s efforts to secure a speedy trial.” *Id.* We consider the “frequency and force” of a defendant’s demand, as the “strength of the demand is likely to reflect the seriousness and

extent of the prejudice which has resulted.” *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Matthews contends that he made “several requests and statements concerning his speedy trial rights.” That may be true, but most of those requests and statements were not unequivocal requests for a speedy trial. In November 2019, Matthews sent a written communication to the district court in which he expressed concerns about his public defender because the public defender had wanted him to waive his right to speedy trial. In January 2020, Matthews requested an omnibus hearing but not a trial. In February 2020, Matthews alluded to having his speedy-trial rights violated, but he also brought various motions concerning procedural and evidentiary issues. Matthews eventually made a written request for a speedy trial on July 13, 2020. Thus, this third factor weighs against a finding of a speedy-trial violation. *See State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993); *State v. Givens*, 356 N.W.2d 58, 62 (Minn. App. 1984), *rev. denied* (Minn. Jan. 2, 1985).

D. Prejudice

The fourth *Barker* factor requires consideration of whether Matthews was prejudiced by the delay. *See Mikell*, 960 N.W.2d at 253. The caselaw recognizes three types of interests that may be prejudiced: “(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. The third type of prejudice is the most serious “because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Doggett v. United States*, 505 U.S. 647, 654 (1992) (quotation omitted). Matthews was detained for 376 days between his arrest and the trial. But Matthews does not explain specifically *how* he was prejudiced. A “bare

assertion” that a defendant has suffered anxiety or concern is insufficient to show prejudice. *See State v. Chute*, 887 N.W.2d 834, 846 (Minn. App. 2016), *aff’d on other grounds*, 908 N.W.2d 578 (Minn. 2018); *State v. Friberg*, 421 N.W.2d 376, 379 (Minn. App. 1988), *aff’d*, 435 N.W.2d 509 (Minn. 1989). It is true that “excessive delay presumptively compromises the reliability of a trial in ways that cannot be identified.” *State v. Griffin*, 760 N.W.2d 336, 341 (Minn. App. 2009) (quotation omitted). But the delay in this case was not excessive; Matthews’s trial began only four days after the 60-day period following his request for a speedy trial and his not-guilty plea. Thus, the fourth factor weighs against a finding of a speedy-trial violation.

E. Summary

To resolve Matthews’s argument, we must perform a “delicate and sensitive balancing” to determine whether the state brought him to trial “quickly enough so as not to endanger the values that the speedy trial right protects.” *Mikell*, 960 N.W.2d at 255. Matthews asserted his right to a speedy trial nine months after he was charged. The delay in his trial was relatively short and was attributable primarily to his own conduct. He has not identified any particular form of prejudice arising from the delay. Therefore, on balance, we conclude that Matthews’s constitutional right to a speedy trial was not violated.

Affirmed.

A handwritten signature in black ink, appearing to read "Matthew E. Johnson". The signature is fluid and cursive, with the first name "Matthew" being the most prominent part.