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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0373**

State of Minnesota,
Respondent,

vs.

Gerald Edward Bolster,
Appellant.

**Filed April 25, 2022
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Dakota County District Court
File No. 19HA-CR-20-1828

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

Kathryn M. Keena, Dakota County Attorney, Jessica Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Segal, Chief Judge; Slieter, Judge; and Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from a final judgment, appellant argues that (1) two of his convictions for threats of violence must be reversed for insufficient evidence, (2) he is entitled to a new trial on all charges because the district court committed reversible error by denying his motion for a mistrial, and (3) his convictions for threats of violence and child endangerment as to his two children arose out of a single behavioral incident and that the child-endangerment sentences thus must be vacated under Minn. Stat. § 609.035 (2018). Appellant also raises several claims in a pro se supplemental brief, including that his speedy-trial rights were violated. We affirm in part, reverse in part, and remand.

FACTS

The facts here involve a 15-hour standoff between appellant Gerald Edward Bolster and law enforcement that occurred in July 2020. Law enforcement was called by the manager of a mobile-home park about threatening behavior by Bolster who was at the residence of his wife, B.B., and their four children at the mobile-home park.

Law enforcement responded and learned that the complaint was about Bolster and discovered that there was a harassment restraining order (HRO) in effect that prohibited Bolster from having contact with B.B. Two officers went to the residence and B.B. answered the door. The officers asked her to step outside and bring her children with her. After B.B. and two of the four children came outside, the officers asked the location of her youngest son. B.B. then tried to go back into the home, but Bolster grabbed her, pushed

her back outside, and shut the door. This left two of the children, a 13-year-old daughter and a four-year-old son, inside the home with Bolster.

Law enforcement on the scene had body cameras and much of the incident was captured on video and submitted into evidence at trial. Bolster can be heard, on body-camera video, threatening to shoot the officers if they tried to enter the home, telling them to come back with a court date, and refusing to let the two children leave the home. One of the officers informed Bolster that he was under arrest for violating a no-contact order, that the officers were not going to leave, and again asked Bolster to release the two children who were still inside. Based on their observations, the officers believed that Bolster may have been holding a gun.

The officers requested assistance from the South Metro SWAT team and remained at the property while they waited for assistance to arrive. At one point an officer heard Bolster say that he was going to shoot the gas meter, located right outside the mobile home. Bolster also threatened to “blow the gas” and yelled that he was going to gas the officers out. And Bolster broke out a window and threw a lamp and a backpack at the gas meter, among other objects. In addition, Bolster mentioned a “bomb,” which was overheard by his daughter who was inside the home. The daughter texted a friend to say she was scared. About 11 hours after the police first arrived, the daughter escaped with her cat through a window in the rear of the mobile home. At about 2:15 in the morning, after almost 15 hours of trying to get Bolster to peaceably leave the house, the SWAT team entered the house, took Bolster into custody, and located his son.

Respondent State of Minnesota charged Bolster with three counts of threats of violence (one related to threats against law enforcement and one count each related to his two children who were inside the home during the standoff), violation of the HRO, and two counts of child endangerment. On July 29, 2020, Bolster made a speedy-trial demand. The district court scheduled the trial for September 14, 2020, within the 60-day window, but later found good cause to delay the trial because of the unavailability of Bolster's defense attorneys and the limited number of courtrooms available due to COVID-19 protocols.

The trial started on October 27, 2020. The jury found Bolster guilty on all counts. The district court entered convictions on all counts and sentenced Bolster to 60 months in prison for making threats of violence against his son, 48 months in prison for making threats of violence against his daughter, 28 months in prison for making threats of violence against the police, and 365 days each for violating the HRO and the two counts of child endangerment. This appeal follows.

DECISION

I. Bolster's conviction for threats of violence against the son is not supported by sufficient evidence and must be reversed.

Bolster argues that the evidence is insufficient to sustain his convictions for making threats of violence to his son and daughter.¹ Upon a claim of insufficient evidence, we review the record to determine “whether the evidence, when viewed in the light most

¹ Bolster does not challenge the sufficiency of the evidence for his conviction for threats of violence against law enforcement. He also does not challenge the sufficiency of the evidence for the child-endangerment convictions and his conviction for violating the HRO.

favorable to the conviction, is sufficient to allow the jurors to reach their verdict.” *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004).

We assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary. We will not disturb the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.

Id. at 25-26 (citations omitted).

When a conviction is based on circumstantial evidence, we use a two-step process to assess the sufficiency of the evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, assuming that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict. *Id.* at 598-99. Second, this court independently examines the reasonableness of the inferences the jury could draw from those circumstances. *Id.* at 599. The circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

Under Minnesota law, “[w]hoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror” is guilty of making a threat of violence. Minn. Stat. § 609.713, subd. 1 (2018). A “crime of violence” under the statute includes first-degree arson. *See id.*; *see also* Minn. Stat. § 609.1095, subd. 1(d) (2018).

At trial, the state theorized that Bolster committed threats of violence against his two children by using the word “bomb” and threatening to shoot the gas meter and thereby

blow up the residence. Bolster argues that the evidence is insufficient to prove that he threatened to commit first-degree arson with the intent to terrorize or in reckless disregard of the risk of causing terror to his children. A threat is “a declaration of an intention to injure another or his property by some unlawful act.” *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975). Under the reckless-disregard prong of the threats-of-violence statute, an individual need not have the specific intent of terrorizing another, but rather “recklessly risks the danger that the statements would be taken as threats by another and that they would cause extreme fear.” *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009) (quotation omitted), *rev. denied* (Minn. Nov. 17, 2009). Bolster argues that the evidence is insufficient to prove that he made a threat of arson in reckless disregard of the risk of terrorizing his children.

The circumstances proved here are as follows. Bolster was acting in an irate and belligerent manner, various officers heard him threaten to “blow the gas” or shoot the gas meter, and he threw multiple items at the gas meter. The officers and Bolster’s daughter heard him mention a bomb. During the standoff, his daughter sent messages to her friend that she was shaking and was not able to calm down. She eventually left through a window on the backside of the home, not through the door, taking her cat with her. Her four-year-old brother, however, remained in the residence and was found a “very short distance” from Bolster when law enforcement eventually entered the residence. The residence was a mobile home and not very large.

Based on these circumstances, the evidence is sufficient to sustain the conviction for making threats of violence against Bolster’s daughter. While she testified that her father

never threatened her, she could hear him yelling at law enforcement and distinctly heard him use the word “bomb.” She also texted a friend that she was shaking and could not calm down, and ultimately climbed through a window to get out of the residence. It is reasonable to conclude that Bolster should have known that using the term “bomb” while in a tense standoff with law enforcement would cause extreme fear, and that he recklessly disregarded that risk. The evidence also supports the reasonable inference that Bolster’s daughter experienced fear as a result of his actions. We thus conclude that the circumstances proved with regard to his daughter are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.

The evidence concerning threats of violence against Bolster’s four-year-old son is not as clear. The state’s case relies on the argument that the residence was so small that the only reasonable inference is that both children heard their father make threats and that this caused them terror. But while Bolster’s daughter testified that she heard Bolster say the word bomb, the state provided no such evidence to corroborate what the son heard. While it is a rational and even likely hypothesis that, because of the close quarters, the son heard the threats and was scared as a result, we cannot conclude that this is the only rational hypothesis that can be drawn from the circumstances proved. Given the lack of evidence as to son, it is not irrational to draw the inference that the son did not hear the threats. As a result, the evidence is insufficient to sustain Bolster’s conviction for making threats of violence against the son and we reverse that conviction.

II. The district court did not abuse its discretion by denying the motion for a mistrial.

Bolster's next argument concerns testimony from one of the detectives explaining that the detective was involved in the case because he "monitor[ed] jail calls made by Gerald Bolster from the Dakota County jail." Bolster's trial counsel objected, and the district court immediately instructed the jury to disregard the statement. The district court later gave a more detailed instruction that they should not consider the location of the phone calls and reminded the jury of the presumption of innocence. Bolster's trial counsel made a motion for a mistrial, which the district court denied. Bolster argues that the district court abused its discretion by denying the mistrial motion.

A mistrial may be granted only if "there is a reasonable probability that the outcome of the trial would [have been] different" had the incident resulting in the motion not occurred. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006) (quotation omitted). This court reviews the denial of a motion for a mistrial for abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). We consider the entire trial, including the mitigating effects of a curative instruction, when determining whether inadmissible evidence affected the outcome of the trial. *See Manthey*, 711 N.W.2d at 506-07.

Bolster argues that the improper testimony that he was in jail was highly prejudicial, that the curative measures were insufficient to prevent prejudice, and that he is therefore entitled to a new trial. We are not persuaded. The district court here immediately instructed the jury to disregard the reference to jail and later reminded the jury that Bolster is to be presumed innocent, that being arrested in the normal process of law should not be

considered by the jury as proof of guilt, and that the burden to prove guilt was on the state, not on Bolster to prove his innocence.

Moreover, the jury was already aware from other testimony that Bolster had been arrested at the end of the standoff. And, as the state notes, the evidence that Bolster was in jail was ultimately going to come in through another witness. The state put some of the recorded jail calls into evidence and, to lay foundation for admission of the calls, the witness was permitted to testify that the phone calls were recorded in jail. Given that the jury was ultimately going to hear that the phone calls were recorded in jail, we cannot conclude that the detective's testimony affected the outcome of the trial.

III. The threats-of-violence and child-endangerment offenses arose out of a single behavioral incident, and the sentence for child endangerment of the daughter must be vacated.

We now turn to Bolster's argument that the district court erred by sentencing him for both threats of violence and child endangerment because the offenses were committed as part of a single behavioral incident. Under Minn. Stat. § 609.035, subd. 1, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." The statute prohibits multiple sentences, including concurrent ones, for offenses that were committed as part of a single behavioral incident. *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012).

The district court's decision whether multiple offenses were committed as part of a single behavioral incident under Minn. Stat. § 609.035, subd. 1, entails factual determinations that will be reversed only if clearly erroneous. *State v. O'Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008). When the facts are not in dispute, the determination

whether multiple offenses are part of a single behavioral incident presents a question of law that is reviewed de novo. *Ferguson*, 808 N.W.2d at 590.

In determining whether offenses were committed as a part of a single behavioral incident, the court considers “whether the offenses (1) arose from a continuous and uninterrupted course of conduct; (2) occurred at substantially the same time and place; and (3) manifested an indivisible state of mind.” *State v. Heath*, 685 N.W.2d 48, 61 (Minn. App. 2004), *rev. denied* (Minn. Nov. 16, 2004).

We conclude that the offenses here were committed as part of a single behavioral incident. The state is correct that the threats-of-violence convictions are predicated on specific threats of arson while the child-endangerment convictions are predicated on Bolster’s actions throughout the 15-hour standoff. But both charges ultimately considered the effects of Bolster’s actions on the physical and emotional health of his children during the uninterrupted, although prolonged, standoff. In addition, the prosecutor specifically referenced the threats of arson when addressing the child-endangerment charges in closing arguments. Because we reverse the threats-of-violence conviction as it relates to the son, the sentence imposed for the child-endangerment conviction as to the son is not duplicative and remains. But the sentence for child endangerment of the daughter occurred during the same behavioral incident that led to the threats-of-violence conviction and, under Minn. Stat. § 609.035, only one sentence is permitted. Thus, the child-endangerment sentence as it relates to the daughter must be vacated.

IV. Bolster's pro se claims lack merit.

Finally, Bolster filed a pro se supplemental brief in which he makes several allegations relating to his arrest and subsequent trial. He asserts that he did not threaten anyone or possess any weapons, that he did not know about the HRO, that he did not have adequate counsel, that the district court judge was prejudiced against him, that his mental-health issues, including the fact that he was taking illegal drugs while incarcerated, were not adequately addressed during trial, that his daughter was coached on what to say by a victim advocate, and that his speedy-trial rights were violated. The only assertion that is accompanied by legal argument or authority is that his speedy-trial rights were violated, and the other issues are therefore forfeited. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (declining to consider arguments based on mere assertion and unsupported by argument or authority on appeal).

The United States and Minnesota Constitutions afford criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Under Minn. R. Crim. P. 11.09, a trial must start within 60 days of a speedy-trial demand “unless the court finds good cause for a later trial date.” And a defendant must be released if the trial does not start within 120 days of the speedy-trial demand “[u]nless exigent circumstances exist.” Minn. R. Crim. P. 11.09. If a defendant has been deprived of his constitutional right to a speedy trial, the criminal case against him must be dismissed. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). This court reviews a claimed speedy-trial violation de novo. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015).

“[T]o determine whether a speedy-trial violation has occurred, we apply the four-factor balancing test set forth by the Supreme Court of the United States in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972).” *Osorio*, 891 N.W.2d at 627. The four factors are: “(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.” *Id.* (quotations omitted). “None of these factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.” *Taylor*, 869 N.W.2d at 19 (quotation omitted). It is “a difficult and sensitive balancing process” in which the court considers “the conduct of both the State and the defendant.” *Osorio*, 891 N.W.2d at 628 (quotations omitted).

Bolster experienced a 30-day delay after the speedy-trial deadline because of the continuance. The delay was caused by a combination of the limited availability of courtrooms due to the COVID-19 pandemic protocols and the unavailability of Bolster’s defense counsel. Bolster expressed his dissatisfaction by stating that he did not believe that the pandemic constituted good cause for a delay, but never made a motion to dismiss. In a recent precedential opinion, this court determined that a 17-day delay caused by public-safety concerns related to the COVID-19 pandemic did not violate the appellant’s speedy-trial rights. *State v. Jackson*, 968 N.W.2d 55, 63 (Minn. App. 2021), *rev. granted* (Minn. Jan. 18, 2022). This court observed that neither the defendant nor the state was responsible for the delay, and that “[t]he delay was justified by the pandemic.” *Id.*

Here, the delay was caused by public-safety concerns related to the COVID-19 pandemic and the unavailability of defense counsel on the original trial date. We discern no prejudice to Bolster given that the trial was continued in part to accommodate the schedule of defense counsel. And he was ultimately tried just 30 days outside the 60-day window, which is well before the 120-day deadline on which a defendant must be released. Finally, he was tried just four months after the offense occurred, which makes it unlikely he suffered any prejudice from a witness losing a memory or witness unavailability. See *Taylor*, 869 N.W.2d at 20 (stating prejudice may be shown by “memory loss by witnesses or witness unavailability”). We thus conclude that the delay did not violate Bolster’s speedy-trial rights.

Affirmed in part, reversed in part, and remanded.