

*This opinion is nonprecedential except as provided by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
A21-0474**

Clayton Douglas Groves, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 20, 2021
Affirmed in part, reversed in part and remanded
Cleary, Judge***

Mille Lacs County District Court
File No. 48-CR-17-2369

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

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

Joseph Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Cleary,
Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant Clayton Douglas Groves challenges the district court's denial of his petition for postconviction relief, arguing that: (1) his convictions for criminal sexual conduct should be vacated because his right to a speedy trial was violated, and (2) the postconviction court abused its discretion by rejecting his request for in-camera review of the victim's counseling and social services records. We conclude that appellant's speedy-trial right was not violated, but we agree that the postconviction court abused its discretion by denying appellant's motion for in-camera review of the victim's records. We therefore affirm in part, reverse in part, and remand.

FACTS

Appellant was charged with various counts of criminal sexual conduct against M.S., the eight-year-old daughter of appellant's ex-girlfriend. M.S. told a police investigator that appellant touched her on her leg, stomach, and private parts with his hand but not with any other part of his body. Appellant denied the allegations. The state charged appellant with three counts of second-degree criminal sexual conduct against M.S.

Before trial, appellant moved the court for in-camera review of M.S.'s social service and counseling records. Appellant's motion was submitted with an affidavit in which appellant stated that he had learned from M.S.'s mother that M.S. had previously made sexual assault allegations against her biological father to a representative at her school. Appellant identified M.S.'s elementary school and stated that the report had been made in 2014 or 2015. Appellant's affidavit asserted that, because the school was a mandated

reporter, the allegations had been investigated by social services and the allegations had not been substantiated. Appellant stated in his affidavit that he had been told by M.S.'s mother that, because of the allegations, M.S. was seeking ongoing counseling at the school. Appellant stated that any unsubstantiated or false allegations were relevant to his defense as evidence of fabrication or truth conflation by M.S. Appellant asked the district court to review M.S.'s social service and counseling records and to disclose to the defense any relevant information. The district court found that appellant had not made a plausible showing that the information he sought would be material and favorable to his defense and denied the motion.

On June 28, 2018, appellant demanded a speedy trial. His trial date was set for August 28, 2018. On August 7, M.S. spoke with the police investigator and described new incidents, including an incident where appellant penetrated M.S.'s vagina with his penis. On August 10, the state filed an amended complaint which added a charge of first-degree criminal sexual conduct based on M.S.'s second statement. The state also moved for a continuance of the trial date on the grounds that appellant needed time to review the new charge and receive the video and transcript evidence supporting it. Appellant objected to the continuance. The district court allowed the state to amend the charges and issued an order continuing the trial.

Appellant's trial began September 24, 2018. The jury found appellant guilty of one count of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct. Appellant petitioned for postconviction relief. Appellant argued: (1) the postconviction court should vacate appellant's convictions because his Sixth Amendment

right to a speedy trial was violated; (2) the postconviction court should vacate appellant's convictions and order a new trial because the district court improperly allowed the state to impeach appellant with four felony convictions; (3) the postconviction court should review in camera the records regarding M.S.'s prior allegations of abuse that appellant had sought before trial and consider whether the failure to disclose the records entitled appellant to a new trial; and (4) the postconviction court should vacate appellant's conviction and sentence on count 4 because it was committed during the same behavioral incident as count 1 and amend appellant's conditional-release term on count 1 to ten years.

The postconviction court agreed that counts 1 and 4 arose from the same behavioral incident and granted that part of the petition. The postconviction court denied appellant's other claims. Appellant now appeals, arguing that his right to a speedy trial was violated and that the postconviction court abused its discretion by denying his motion for in-camera review of M.S.'s counseling and social services records.

DECISION

I. Appellant was not denied his right to a speedy trial.

Appellant first argues that the district court violated his right to a speedy trial when it continued his trial 284 days after he was charged and 88 days after he demanded a speedy trial. The United States Constitution and the Minnesota Constitution guarantee criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether a defendant has been denied a speedy trial is a constitutional question that we review de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). To determine whether a speedy-trial violation occurred, we apply the four-factor balancing test

established by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530-33 (1972). In applying the *Barker* test, we consider: (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 *Barker* factors is a necessary or sufficient condition to finding the deprivation of the speedy-trial right; instead, they are related factors and must be considered together with other relevant circumstances. *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021) (citing *Barker*, 407 U.S. at 533).

A. Length of the delay

The first factor is the length of the delay. The length of the delay functions as a triggering mechanism: there must be some presumptively prejudicial delay before further review is necessary. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). In Minnesota, delays more than 60 days after a defendant's speedy-trial demand raise a presumption that a violation has occurred. *Id.* at 315-16; *see* Minn. R. Crim. P. 11.09(b). Appellant's September 24 trial occurred 88 days after his June 28 speedy-trial demand. That delay is presumptively prejudicial so we must consider the three remaining *Barker* factors.

B. Reason for the delay

The essential question under the second *Barker* factor is whether the government or the defendant is more to blame for the delay. *Osorio*, 891 N.W.2d at 628. After determining which party is responsible for the delay, courts consider the specific reason for the delay. *Id.* Deliberate attempts to delay the trial in order to hamper the defense weigh heavily against the government, neutral reasons such as negligence or overcrowded

courts weigh less heavily, and a good reason, such as a missing witness, will justify an appropriate delay. *Id.*; *see also Barker*, 407 U.S. at 531.

The state was responsible for delaying appellant's trial. The trial was continued on the state's motion and over appellant's objection. The state originally provided four reasons for the delay, but before the postconviction court, the state only asserted that the continuance was necessary to allow appellant and his attorney to review M.S.'s August 7 interview and the new first-degree criminal-sexual-conduct charge that resulted from it. Appellant argues that this factor weighs in his favor because he did not want or need extra time to review the new charge. The state argues that this factor weighs against appellant because the brief continuance was necessary to ensure that appellant was competently represented by counsel who had an adequate opportunity to review the evidence and present an effective defense.

We agree with appellant that this factor weighs in his favor and against the state, but its weight is minimal. While the state insisted on the continuance over appellant's objection, there is no indication that the state deliberately sought to delay the trial in order to hamper appellant's defense. Instead, it appears the state wanted to ensure that appellant had time to prepare for the more severe first-degree criminal-sexual-conduct charge, and it sought a relatively short delay of approximately one month. Additionally, the added charge underlying the continuance did not result from the state's lack of diligence in investigating and charging appellant, but rather from unexpected new details revealed by the eight-year-old victim. Because the state was responsible for the delay, but because the delay was

relatively short and not for an improper reason, this factor weighs only slightly in appellant's favor.

C. Assertion of the speedy-trial right

A defendant's assertion of his right to a speedy trial is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32; *see also Osorio*, 891 N.W.2d at 629. Appellant asserted his right to a speedy trial on June 28, 2018. This factor therefore weighs in appellant's favor.

D. Prejudice to appellant

The final prong of the speedy-trial analysis is whether appellant suffered prejudice because of the delay. *Osorio*, 891 N.W.2d at 631. There are three types of prejudice which may result from unreasonable delay: (1) oppressive pretrial incarceration, (2) anxiety and concern of the accused, and (3) the possibility that the defense will be impaired by diminishing memories and the loss of exculpatory evidence. *Id.* (citing *Doggett v. United States*, 505 U.S. 647, 654 (1992)).

Appellant argues that the 28-day delay beyond the 60-day speedy-trial period was excessive, which raises a presumption of prejudice. But although exceeding the 60-day period is "presumptively prejudicial" for the purpose of triggering analysis of the last three *Barker* factors, a delay must actually be "excessive" before we presume that the delay prejudiced the defense. *State v. Strobel*, 921 N.W.2d 563, 571 (Minn. App. 2018) ("Presumptive prejudice does not require any particular showing of harm but results only from excessive delay." (quotation omitted)), *aff'd* 932 N.W.2d 303 (Minn. 2019). We have generally not considered a 28-day delay to be excessive. *See State v. Jefferson*, No. A18-

0122, 2019 WL 908269, at *4-5 (Minn. App. Feb. 25, 2019) (holding that 59-day delay beyond 60-day period was not excessive), *rev. denied* (Minn. May 14, 2019); *State v. Davis*, No. A13-0267, 2014 WL 502849, at *2 (Minn. App. Feb. 10, 2014) (holding that 22-day delay beyond 60-day period was not excessive).¹ Appellant is therefore not entitled to the presumption that he was prejudiced by the delay.

Appellant also has not shown that the delay caused any of the three types of prejudice. Appellant argues that because he was in custody from the time of his arrest in December 2017 until his trial in September 2018, he was subjected to oppressive pretrial incarceration. But the rules of criminal procedure do not require a defendant's release from custody for failure to comply with a speedy-trial demand until 120 days from the date of the demand. Minn. R. Crim. P. 11.09(b); *see also Strobel*, 921 N.W.2d at 573. Appellant was tried within this 120-day period. And pretrial incarceration by itself does not constitute a serious allegation of prejudice. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990).

Appellant also did not assert that he experienced any exceptional anxiety or concern while awaiting trial as a consequence of the delay. Appellant only argues that the record has not shown that appellant did not experience the anxiety and concern that a person in appellant's position would presumptively suffer while awaiting trial. That is not enough. The expected stress and anxiety experienced by anyone who is involved in a trial is insufficient, by itself, to demonstrate prejudice. *Strobel*, 921 N.W.2d at 571.

¹ Although unpublished opinions are not precedential, they may have persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993).

Finally, appellant has not argued that the delay impaired his defense. Specific prejudice involves an affirmative showing that the delay impeded the defendant's ability to raise specific defenses, elicit specific testimony, or produce specific evidence. *Id.* Appellant does not claim that the delay impeded his defense in any specific way. He only claims presumptive prejudice, which "does not require any particular showing of harm but results only from excessive delay." *Id.* (quotation omitted). But we have already concluded that the delay was not excessive and does not support a claim of presumptive prejudice. Appellant therefore was not prejudiced by the delay of his trial, and this factor weighs against him and in favor of the state.

Although the first three factors weigh in appellant's favor, the reason for the delay weighs only slightly in appellant's favor and appellant was not prejudiced by the delay. We therefore conclude that appellant was not denied his right to a speedy trial.²

II. The postconviction court abused its discretion by denying appellant's motion for in-camera review of privileged social service and counseling records.

Appellant argues that both the district court and postconviction court abused their discretion by refusing to conduct an in-camera review of M.S.'s counseling and social services records for substantive evidence of appellant's innocence. We review a postconviction court's decision for an abuse of discretion. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). Criminal defendants are afforded a broad right of discovery, but

² Minnesota courts have previously held that although the first three *Barker* factors weighed in a defendant's favor, the defendant's right to a speedy trial was not violated because the defendant did not suffer prejudice from the delay. *See Strobel*, 921 N.W.2d at 573; *State v. Jones*, 392 N.W.2d 224, 234-36 (Minn. 1986). We reach the same conclusion here.

that right is not unlimited. *Id.* at 349. When a defendant seeks privileged records, as appellant does here, the court may screen the records in camera to balance the defendant's right to prepare a defense against a victim's right to privacy. *Id.* (citing *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987)). In-camera review is not a right but rather a discovery option, and the defendant must first make a plausible showing that the information sought would be both material and favorable to his defense. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). The request must be reasonably specific, *State v. Lynch*, 443 N.W.2d 848, 852 (Minn. App. 1989), *rev. denied* (Minn. Sept. 15, 1989), and the defendant's argument that the records are material and favorable to the defense must go beyond mere conjecture, *State v. Evans*, 756 N.W.2d 854, 873 (Minn. 2008).

Appellant moved for in-camera review of M.S.'s school counseling and social services records relating to criminal-sexual-conduct allegations M.S. made against her father. Appellant provided an affidavit stating that appellant learned from M.S.'s mother that M.S. had made sexual assault allegations against her father to a school representative and that the allegations were reported to and investigated by social services. Appellant stated that he was told that the allegations were not substantiated and, as a result of the allegations, M.S. was seeking ongoing counseling at the school.

The district court denied appellant's motion for in-camera review of the records because it found that appellant had not made a plausible showing that the information sought would be material and favorable to appellant's defense. The postconviction court affirmed the district court's denial.

Evidence of prior false accusations is admissible to attack the credibility of a victim and as substantive evidence tending to prove that an alleged criminal-sexual-conduct offense did not occur. *See State v. Goldstein*, 505 N.W.2d 332, 340 (Minn. App. 1993). Evidence of a prior false allegation by M.S. would therefore be material and favorable to appellant's defense. Appellant's affidavit relaying the information he learned from M.S.'s mother about the prior allegations provided enough information to make a plausible showing that the records he sought could contain material and favorable evidence. *See State v. Eubanks*, No. A19-2042, 2021 WL 318260, at *3 (Minn. App. Feb. 1, 2021) (reiterating that the standard for in-camera review is only a "plausible showing," which does not require absolute certainty as to the contents of the privileged information sought); *see also State v. Burrell*, 697 N.W.2d 579, 605 (Minn. 2005) (concluding that, in a close case, the district court should have conducted an in-camera review of privileged records even though defendant could be engaging in a "fishing expedition" and the records sought may not contain useful evidence).

The postconviction court abused its discretion by denying appellant's motion for in-camera review. We reverse and remand to the postconviction court for in-camera review of M.S.'s counseling and social services records to determine whether they contain evidence that would have been material and favorable to appellant's defense. If, after a review is conducted, the postconviction court concludes that some records should have been provided to appellant, the postconviction court can then evaluate whether a new trial must be granted.

Affirmed in part, reversed in part, and remanded.