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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0975**

State of Minnesota,
Respondent,

vs.

Carl Joseph Matusovic,
Appellant.

**Filed June 13, 2022
Affirmed
Frisch, Judge**

Goodhue County District Court
File No. 25-CR-19-2706

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Stephen F. O’Keefe, Goodhue County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that his conviction for intentionally providing a false address on a sex-offender registration form should be overturned because the evidence was insufficient

to support his conviction, a *Blakely* violation occurred, and his speedy-trial right was violated. We affirm.

FACTS

In October 2019, respondent State of Minnesota charged appellant Carl Joseph Matusovic with failing to register as a predatory offender or intentionally providing false information to a “corrections agent, law enforcement authority, or the bureau” in violation of Minn. Stat. § 243.166, subd. 5(a) (2016).¹ Matusovic, a repeat sex offender who has been required to register since 1993, had been released in June 2018 from the Goodhue County jail in Red Wing on an unrelated charge. The state alleged that Matusovic provided a false address on a sex-offender registration form prior to his release from the jail.

Matusovic received a trial date of January 13, 2020. On January 13, Matusovic requested a continuance to conduct more discovery. Trial was rescheduled for February 18. On February 10, Matusovic fired his public defender and asked for trial to be delayed again so he could prepare. On February 26, Matusovic waived his right to a speedy trial. Although his trial was scheduled for May 11, the COVID-19 pandemic caused his trial date to be moved to September. During this time, he again demanded a speedy trial. However, as the trial approached, Matusovic requested and was appointed a new public defender to represent him, and he again waived his speedy-trial demand. His trial was scheduled for December.

¹ The “bureau” is defined as the Bureau of Criminal Apprehension (BCA). Minn. Stat. § 243.166, subd. 1a(b) (2016).

On December 14, Matusovic again demanded a speedy trial. Because COVID-19 restrictions prevented the commencement of trial on December 14, Matusovic consented to a new trial date of February 8, 2021. On January 21, 2021, the chief justice of the Minnesota Supreme Court instituted a moratorium on jury trials until March 15, 2021, unless an exception was requested and granted. *See Order Governing Continuing Operations of the Minnesota Judicial Branch*, ADM20-8001, at 2 (Minn. Jan. 21, 2020) (January jury-moratorium order). Matusovic's trial was continued to March 29, 2021, at which time a court trial occurred.

The following facts were elicited at trial. A Goodhue County detention deputy testified that she assisted Matusovic with filling out a BCA change-of-information form, which he was required to complete before his discharge from the jail. The deputy asked Matusovic for information and then recorded the information provided by Matusovic on the form. She asked Matusovic to identify his primary address for registration purposes, and Matusovic provided a Rosemount address which the deputy then recorded on the form. The deputy completed the BCA form with information provided by Matusovic, printed the form, and then provided the form to Matusovic to verify the information and sign in the appropriate area, which he did. The deputy testified that Matusovic did not appear to be confused about the form.

Matusovic also testified at trial. He admitted that he never lived at the address he provided on the form. He explained that he provided the Rosemount address as a mailing address, not a primary address, and he knew he would be homeless when he was released from the jail. He testified that he thought he was providing an address to allow probation

to contact him. He also testified that he did not intend to register at that address as a sex offender because he did not want to put his friend who lived at the address “through that.” He testified that he was both unaware of and confused about the process of registering as homeless.

Matusovic’s friend who lived at the Rosemount address testified that she had not spoken with Matusovic in a long time. A police officer testified that Matusovic’s friend was surprised that he listed her address on the form.

The district court found Matusovic guilty of intentionally providing false information on the BCA form. Specifically, the district court found that Matusovic had filled out numerous registration forms in the past, understood what it meant to provide an address on a change-of-information form, and “had no intention by his own admission” of staying at the Rosemount address. At sentencing, the state asked the district court to make a finding of fact that Matusovic was a level-III offender in order for the court to impose a ten-year term of conditional release. The district court then found that Matusovic was a level-III sex offender and imposed the ten-year term of conditional release. Matusovic appeals.

DECISION

I. The evidence is sufficient to find Matusovic guilty under Minn. Stat. § 243.166, subd. 5(a).

Matusovic argues that the evidence is not sufficient to convict him under Minn. Stat. § 243.166, subd. 5(a), because (1) the deputy at the jail to whom he gave the false information does not qualify as a “law enforcement authority” under the statute and (2) he

did not intentionally provide false information. A defendant is guilty under Minn. Stat. § 243.166, subd. 5(a), if they “intentionally provide[] false information to a corrections agent, law enforcement authority, or the bureau.” “We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). Under that standard, “[t]he verdict will not be overturned if, giving due regard to the presumption of innocence and the prosecution’s burden of proving guilt beyond a reasonable doubt, the [fact-finder] could reasonably have found the defendant guilty of the charged offense.” *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005).

In evaluating sufficiency-of-the-evidence challenges, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We assume that the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This standard of review applies when a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

If the state uses circumstantial evidence to prove an element of an offense, we apply a heightened standard of review to the evidence underlying that element. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013) (citing *State v. Al-Naseer*, 788 N.W.2d 469, 473

(Minn. 2010)). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599 (quotation omitted).

A. The direct evidence at trial established that Matusovic provided false information to a corrections agent, law enforcement authority, or the bureau.

Matusovic first argues that his conviction must be overturned because the Goodhue County detention deputy to whom he provided false information about his primary address is not a “law enforcement authority” under the statute. We disagree.

We first observe that Matusovic’s argument is based on a mischaracterization of the state’s allegations, arguments at trial, and the basis for the district court’s determination of guilt and subsequent conviction. Matusovic asserts that the state did not base its case on Matusovic providing false information to the BCA, and that the district court only convicted him of providing false information to “the local authorities,”² which he seemingly equates to the statutory term “law enforcement authority.” But the record belies that argument. The complaint contained allegations that Matusovic provided false information on the BCA “Change of Information Form,” which listed the BCA as a recipient of this false information. The state consistently argued at trial that the false information on the form was sent to the bureau in violation of the statute, specifically noting in its opening statement that the form containing the false information was sent to the BCA

² We note that Matusovic cites this language out of context; the district court’s reference to “local authorities” related to Matusovic failing to register and was unrelated to him providing false information to the detention deputy or on the form.

and in its closing argument that Matusovic's signed form with the false information was submitted to the BCA. The district court based Matusovic's conviction on the false information contained on the BCA form delivered to the bureau, *not* the statements communicated to the detention deputy. Matusovic does not contest that the state proved beyond a reasonable doubt that he provided false information regarding his primary address *to the BCA*, which the statute expressly criminalizes. See Minn. Stat. § 243.166, subd. 5(a) (stating a defendant is guilty if they "intentionally provide[] false information to a corrections agent, law enforcement authority, *or the bureau*." (emphasis added)).

Regardless of Matusovic's characterization of the state's case and his conviction, the direct evidence elicited at trial shows that Matusovic provided false information to the BCA. After the deputy received the registration information from Matusovic, she entered the information onto a BCA registration form and printed it for Matusovic to review, verify, and sign, which he did. The form is titled "BCA Change of Information Form" and indicates that all information on the form will be sent to the BCA. In the area above Matusovic's signature, the form contains a notice that the offender has a duty to register and provide accurate information. Because the form is from the BCA, expressly indicates that the information would be sent to the BCA for registration purposes, and the evidence shows that Matusovic provided false information on the form and thereafter verified that information and signed the form, the evidence is sufficient to support the district court's finding that Matusovic provided false information to the BCA in violation of the statute.

Turning to Matusovic's argument on appeal, we are not persuaded that a detention deputy in the Goodhue County jail is not a "law enforcement authority" within the meaning

of the statute. When interpreting a statute, we “must read and construe the statute as a whole, and we must interpret each section in light of the surrounding sections, so as to give effect to all of the provisions.” *State v. Barrientos*, 837 N.W.2d 294, 300 (Minn. 2013). Statutes should be interpreted in a way to “avoid absurd results.” *State v. Greenman*, 825 N.W.2d 387, 390 (Minn. App. 2013) (quoting *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)). And “reviewing courts should give a reasonable and sensible construction to criminal statutes.” *Id.* (quoting *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996)). We review de novo a sufficiency-of-the-evidence claim that turns on the meaning of a statute under which the defendant was convicted. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019).

“Law enforcement authority” is defined as, “with respect to a home rule charter or statutory city, the chief of police, and with respect to an unincorporated area, the county sheriff.” Minn. Stat. § 243.166, subd. 1a(e) (2016). There is no dispute that Red Wing, the city where the jail is located, is a home-rule charter city. Matusovic therefore argues that he is only liable under the statute if he provided false registration information to one person, the Red Wing Chief of Police. The state concedes that Matusovic did not give false information to the Red Wing Chief of Police but argues that Matusovic’s restrictive reading and application of the statute is misplaced. We agree.

The definition of “law enforcement authority” is not as rigid as Matusovic suggests because the plain language of the statute sets forth a definition of “law enforcement authority” “unless the context clearly indicates otherwise.” Minn. Stat. § 243.166, subd. 1a(a) (2016). The context here clearly indicates otherwise and includes a detention

deputy charged with the responsibility of collecting information from a predatory offender about to be released from custody to enable the statutory registration requirements.

A predatory offender about to be released from custody must complete registration requirements before release. See Minn. Stat. § 243.166, subd. 3a(b) (2016) (requiring offenders to register at least three days before their release from a correctional facility). Under Matusovic’s interpretation, criminal liability does not attach when an inmate in his position provides false registration information to a detention deputy, or anyone other than the chief of police, charged with the responsibility for collecting official registration paperwork.³ Matusovic’s overly limiting interpretation that he is guilty of providing false information to a law-enforcement authority only if he provides false information to *one person* is not reasonable, would lead to absurd results, and frustrates the statute’s overall purpose of creating “a sexual-offender registry to assist law enforcement with

³ We also note that the Red Wing Police Department enacted a policy effective May 23, 2008, approved by the chief of police, the purpose of which is to set forth the manner in which “th[e] agency complies with the requirements of Minnesota Statutes 243.166 . . . that provide for the registration of predatory offenders for community notification relative to the release of these offenders.” See Red Wing Police Dep’t, Policy No. 27, Predatory Offender Registration and Community Notification 1 (2008). On appellate review, we are permitted to take judicial notice of public records. *In re Reissuance of NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 581 n.8 (Minn. 2021). The policy provides that the department will “facilitate” the registration requirements for those who are “about to be released from custody” by working with “law enforcement agenc[ies],” including “all agencies which carry on law enforcement or prosecutorial functions including, but not limited to, local, state and federal agencies, and parole, probation and court services agencies.” Policy No. 27, *supra*, at 1-2. Thus, the clear context set forth in this policy, adopted by the Red Wing Police Department and approved by the chief of police, is to facilitate registration of predatory offenders as required by statute by coordinating with *other* law-enforcement authorities, including staff employed at the jail.

investigations.” *State v. Munger*, 858 N.W.2d 814, 820 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Mar. 25, 2015).

Accordingly, we conclude that the evidence at trial demonstrated beyond a reasonable doubt that Matusovic provided false registration information to the bureau and alternatively to a law-enforcement authority.

B. The evidence is sufficient to establish Matusovic’s intent.

Matusovic also argues that the evidence is insufficient to establish that he *intentionally* provided false registration information. The parties disagree on whether a direct- or circumstantial-evidence standard of review should apply. “[I]ntent is a subjective state of mind usually established only by reasonable inference from surrounding circumstances.” *State v. Slaughter*, 691 N.W.2d 70, 77 (Minn. 2005) (quotation omitted). We agree that evidence of Matusovic’s intent, or subjective state of mind, must be derived from the evidence presented at trial and apply the circumstantial-evidence standard of review. *See Harris*, 895 N.W.2d at 599.

We review the sufficiency of circumstantial evidence by conducting a two-step analysis. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019) (citing *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011)). First, we identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). “[W]e assume that the [fact-finder] resolved any factual disputes in a manner that is consistent” with the verdict. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). Second, we determine “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017)

(quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *Silvernail*, 831 N.W.2d at 599. We will reverse the conviction if a reasonable inference other than guilt exists. *Loving*, 891 N.W.2d at 643. But we will uphold the verdict if the circumstantial evidence forms “a complete chain” which leads “directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Peterson*, 910 N.W.2d 1, 7 (Minn. 2018) (quotation omitted).

We first identify the circumstances proved. Since 1993, Matusovic has been required to register as a predatory offender. He has completed numerous forms updating his registration status and address. Matusovic had often initialed or signed the forms asking him to verify the accuracy of his submissions. In this case, when asked by the detention deputy for his primary address for registration purposes, Matusovic identified the address of a friend in Rosemount. Matusovic admitted that he never lived at that address and did not intend to reside at that address after his release. The friend at the Rosemount address did not authorize Matusovic to reside at the address and had no knowledge that Matusovic listed her residence as his primary address. Matusovic intended to be homeless after his release. Matusovic reviewed the information recorded on the BCA registration form, verified its accuracy, and signed the form. The form is an official BCA document and indicates that the completed form will be sent to the bureau.

We next determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Loving*, 891 N.W.2d at 643. Matusovic argues that a rational hypothesis inconsistent with guilt exists, namely that he was confused when he filled out the form and thought he was just putting down a mailing

address for probation to contact him. This hypothesis is not reasonable given the circumstances proved. Matusovic had been registering as a predatory offender for decades before the instant offense. He knew at the time of his registration that the information he provided regarding his residence was untrue and that he would be homeless after his release. Matusovic's hypothesis that he listed the Rosemount address simply as a probation contact point is not rational given that the friend at the Rosemount address was "shocked" when police arrived at her house in an attempt to contact Matusovic, Matusovic had not contacted the friend in years, and Matusovic testified that he did not want to involve his friend in his offender-registry affairs. The form also clearly denotes that it will be sent to the BCA, not to probation. Although Matusovic alleges that he made an honest mistake, the district court discredited his testimony and found that he did not make an unintentional mistake in filling out the form. We do not review credibility determinations on appeal. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997). Accordingly, the only rational hypothesis from the circumstances proved is that Matusovic intentionally listed a false address on the registration form.

II. Although a *Blakely* violation occurred, the error was harmless.

Matusovic next argues that his term of conditional release should be reversed because he is entitled to a trial on the issue of whether he is a level-III sex offender. "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); see *State v. Hagen*, 690 N.W.2d 155, 158 (Minn. App. 2004). The statutory maximum that a court may impose

for a crime is “the maximum sentence [allowed] . . . solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” *Blakely v. Washington*, 542 U.S. 296, 303 (2004) (emphasis omitted). Whether a *Blakely* error has occurred is a legal question which we review de novo. *State v. Dettman*, 719 N.W.2d 644, 648-49 (Minn. 2006).

A defendant convicted for violating Minn. Stat. § 243.166, subd. 5(a), is subject to a ten-year term of conditional release if the defendant was assigned a risk level III under Minnesota Statutes section 244.052 (2016) at the time of the violation. Minn. Stat. § 243.166, subd. 5a (2016). The imposition of this term of conditional release requires a jury to determine beyond a reasonable doubt that the defendant was assigned a risk level III at the time of the violation, absent a waiver by the defendant of this right. *State v. Her*, 862 N.W.2d 692, 697 (Minn. 2015); see Minn. R. Crim. P. 26.01, subd. 1(2)(b) (allowing for waiver of jury trial to determine aggravating factors).

The state concedes that a *Blakely* violation occurred in this case but argues that the violation was harmless. We agree with the parties that a *Blakely* violation occurred and must determine whether the error was harmless beyond a reasonable doubt. See *State v. Chauvin*, 723 N.W.2d 20, 30 (Minn. 2006) (applying harmless-error test to *Blakely* violation). A *Blakely* error is harmless if a reviewing court can “say with certainty that a jury would have found the aggravating factors used to enhance [the defendant’s] sentence had those factors been submitted to a jury in compliance with *Blakely*.” *Dettman*, 719 N.W.2d at 655. When all evidence presented at trial uncontrovertibly establishes the existence of the aggravating factor, the error is harmless. *State v. Essex*, 838 N.W.2d 805, 813 (Minn. App. 2013), *rev. denied* (Minn. Jan. 21, 2014).

Here, the undisputed evidence in the record establishes with certainty that a jury would have found that the state proved beyond a reasonable doubt that Matusovic was a level-III sex offender. A BCA agent and police officer testified at trial that Matusovic was a level-III offender. The state introduced into evidence a transcript of Matusovic's interview with law enforcement where he admitted that he is a level-III offender. The state also introduced into evidence multiple notices sent to Matusovic relating to his sex-offender registration which list him as a level-III sex offender. Although Matusovic argues that it is "unclear" what evidence the state would have used to establish his level-III status, he does not argue that any other evidence exists to show that he was *not* a level-III offender at the time of the violation and does not deny on appeal that he is, in fact, a level-III sex offender. The record contains incontrovertible evidence that Matusovic was a level-III sex offender at the time of the offense, and we conclude that although a *Blakely* violation occurred, the violation was harmless.

III. No violaton of Matusovic's right to a speedy trial occurred.

Matusovic also argues that his right to a speedy trial was violated. The Sixth Amendment to the United States Constitution provides an accused "the right to a speedy and public trial." U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. "Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

"[T]he central question that we must answer when assessing a Sixth Amendment speedy trial claim is this: Did the State bring the accused to trial quickly enough so as not to endanger the values that the right to a speedy trial protects?" *State v. Mikell*, 960 N.W.2d

230, 244 (Minn. 2021). “While the speedy trial right protects the individual interests of the accused, the speed with which an accused must be brought to trial must be considered with regard to the practical administration of justice.” *Id.* (quotation omitted). “Criminal prosecutions are designed to move at a deliberate pace both to protect the rights of the accused and to ensure the ability of society to protect itself by allowing for thorough and prepared prosecutions; whether a trial is prompt enough must be assessed in light of both interests.” *Id.* (quotation omitted). “[A]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case.” *Barker v. Wingo*, 407 U.S. 514, 522 (1972). “Accordingly, whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends on the circumstances.” *Mikell*, 960 N.W.2d at 244 (quotation omitted).

In determining whether a defendant’s right to a speedy trial has been violated, we apply the four-factor balancing test set forth in *Barker*. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker*, 407 U.S. at 530). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant’s assertion of his right to a speedy trial, and (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. None of these factors are dispositive; they must be considered together along with any other relevant circumstances. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). “This balancing test allows the court to accommodate the sometimes competing interests between the orderly prosecution of crimes that is fair to both sides and the prompt resolution of the case by trial.” *Mikell*, 960 N.W.2d at 245. We address each factor in turn.

A. Length of the Delay

Matusovic argues that presumptive prejudice occurred because more than 60 days elapsed between the date that he entered his speedy-trial demand and the date that his trial commenced. “A defendant must be tried as soon as possible after entry of a plea other than guilty. . . . [T]he trial must start within 60 days unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). The supreme court has interpreted this rule “to mean that delays beyond the 60-day limit simply raise the presumption that a violation has occurred and require the trial court to conduct a further inquiry to determine if there has been a violation of the defendant’s right to a speedy trial.” *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). “We determine whether good cause exists for a later trial date under Rule 11.09 by applying the *Barker* factors.” *Mikell*, 960 N.W.2d at 246 (quotation omitted).

Matusovic correctly notes that more than 60 days elapsed between when he made his renewed demand for a speedy trial and when his trial commenced. But the “threshold conclusion that a delay is presumptively prejudicial does not end our consideration of the length of the delay in the weighing of the *Barker* factors.” *Id.* at 250. We instead consider the reasons for the delay, noting that “a longer delay may be justified if there are good reasons for the delay.” *Id.*

B. Reason for the Delay

We next consider who bears responsibility for the delay: the state or the defendant. *Taylor*, 869 N.W.2d at 19. Negligence or overcrowded courts are considerations that weigh against the state. *Barker*, 407 U.S. at 531. However, delays related to the COVID-19

pandemic are not attributable to the state. *State v. Jackson*, 968 N.W.2d 55, 61 (Minn. App. 2021), rev. *granted and stayed* (Minn. Jan. 18, 2022).

Matusovic argues that, although COVID-19 was generally responsible for delays at the beginning of the pandemic, COVID-19 did not prevent the commencement of trial within 60 days of his December 14 demand because procedures were in place in early 2021 to allow jury trials to safely occur. Specifically, he argues that the district court and the state could have applied for his trial to begin as early as February 1, 2021, with permission from the district chief and the chief justice. *See Order Governing Continuing Operations of the Minnesota Judicial Branch*, ADM20-8001, at 2 (Minn. Nov. 20, 2020). He argues that delaying the start of the trial, despite the November 20 order allowing for some jury trials to occur, is more akin to the general court congestion described in *Barker* than to the delays caused by COVID-19 described in *Jackson*. The state notes that the district court did not seek for permission to conduct his trial because Matusovic initially requested, and was granted, a February 8 trial date, which was within 60 days of his demand. Between the demand and the scheduled trial date, the chief justice instituted another COVID-19-related moratorium on jury trials until March 15, 2021, unless an exception was requested and granted. *See* January jury-moratorium order, *supra*, at 2. The state also argues that even if the delay is attributable to the state, the concerns and challenges posed by COVID-19 provided good cause to delay the trial and this factor should be given little weight.

We find the state's argument to be more persuasive. Between Matusovic's speedy-trial demand on December 14, 2020, and his scheduled trial date of February 8,

2021, the chief justice issued an order delaying the start of any new jury trials, absent special permission, until March 15, 2021, due to COVID-19. *Id.* At the February 8 hearing, both the state and Matusovic requested that the district court seek permission to schedule the jury trial before March 15. The district court then asked Matusovic to formally request in writing that an exception to the order be approved. But the record contains no evidence that such a request was made. Thus, it appears that the only reason Matusovic’s trial did not commence within the 60 days of his speedy-trial demand was because of the chief justice’s order delaying jury trials due to COVID-19, which we have determined to be a neutral factor in our analysis. *Jackson*, 968 N.W.2d at 61. Even so, we agree with the state that the chief justice’s order on trial moratoriums issued because of the then-current pandemic circumstances constitute good cause to delay trial. *See Mikell*, 960 N.W.2d at 251 (explaining that delays supported by good cause, such as unavoidable occurrences, are given little weight and will generally not be held against the state).

C. Assertion of the Speedy-Trial Right

Although a “defendant’s assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant was deprived of the right,” the inquiry “is necessarily contextual.” *Mikell*, 960 N.W.2d at 252 (quotation omitted). Minnesota courts consider “other signals in the case to assess whether a demand for a speedy trial is serious,” *id.*, and consider “the frequency and force of a demand,” which is likely “to reflect the seriousness and extent of the prejudice which has resulted” from an alleged violation, *Friberg*, 435 N.W.2d at 515.

Here, Matusovic clearly asserted his speedy-trial right at the December 14 hearing. However, at the February 8 hearing, Matusovic did not object to the March 29 trial date and conceded that it was “within the speedy time requirements.” As noted above, Matusovic did not appear to seek an exception to the jury-trial moratorium to have his trial occur before March 15 as permitted by the chief justice’s January jury-moratorium order. We also note that during the pendency of this action, Matusovic asserted and then withdrew his demand for a speedy trial on multiple occasions, requested continuances of his trial even when the state was prepared to proceed, and caused delays in trial due to changes in counsel. These factors impact the overall strength of his speedy-trial demand, and we do not weigh this factor strongly in his favor. *See Friberg*, 435 N.W.2d at 515.

D. Prejudice Due to the Delay

We next consider whether Matusovic was prejudiced by the delay, focusing on three interests: “(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.” *Mikell*, 960 N.W.2d at 253 (quotation omitted). An impairment of the defense is the “most serious” of these interests and is typically “suggested by memory loss by witnesses or witness unavailability.” *Taylor*, 869 N.W.2d at 20 (quotation omitted).

Although Matusovic alleges that he faced oppressive pretrial incarceration and increased anxiety about his trial, Matusovic delayed the start of his trial multiple times despite the state being ready to proceed. Matusovic does not argue, and the record does not show, that he suffered any tangible or documented harm due to his confinement during COVID-19 or from his anxiety. Matusovic also does not allege that his defense was

impaired in any way by the delay. *See Taylor*, 869 N.W.2d at 20. Thus, this factor also does not weigh in Matusovic’s favor.

E. Balancing the Factors

In the final step, we conduct “the delicate and sensitive balancing required to answer” whether the state brought the defendant to trial “quickly enough so as not to endanger the values that the speedy trial right protects.” *Mikell*, 960 N.W.2d at 255. The supreme court, extrapolating from the *Barker* factors, identified “a series of commonsense questions . . . to determine whether the values embedded in the speedy trial right were protected.” *Id.* at 244-45. These questions are:

Who is responsible for the delay? Is the justification for the delay good or bad? Is the length of the delay consistent with, and proportionate to, the justification for the delay? Were the defendant’s interests harmed by the delay itself and did that harm increase as the delay lengthened? Was the defendant serious about getting to trial promptly, which is good evidence that he perceived the delay as harmful?

Id. at 245.

Here, the delays in bringing Matusovic to trial were largely due to his own actions or COVID-19-related delays. The court trial occurred within six weeks of the agreed-upon date, and two weeks after the expiration of the chief justice’s moratorium on trials. And Matusovic did not demonstrate measurable harm attributable to this delay. In balancing these interests, we do not conclude that a speedy-trial violation occurred.

Affirmed.