

*This opinion is nonprecedential except as provided by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
A21-1238**

State of Minnesota,
Respondent,

vs.

Duke Ogeto Maroko,
Appellant.

**Filed August 15, 2022
Affirmed
Johnson, Judge**

Scott County District Court
File No. 70-CR-20-6185

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and John P.
Smith, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Scott County jury found Duke Ogeto Maroko guilty of first-degree assault based on evidence that he attacked a woman with a knife, injuring her left hand and her face. We conclude that the evidence is sufficient to prove that the woman sustained great bodily harm, as required for assault in the first degree. We also conclude that Maroko was not denied his constitutional right to a speedy trial. We further conclude that Maroko's *pro se* arguments do not warrant appellate relief. Therefore, we affirm.

FACTS

This case arises from an incident that occurred in an apartment in the city of Shakopee. Shortly after midnight on April 27, 2020, Maroko and C.A. argued and had a physical altercation involving a kitchen knife. A resident of a nearby apartment called 911. Officer Carlson of the Shakopee Police Department responded to the call. He found C.A. in the second-floor hallway, bleeding from cuts on her face and her left hand. C.A. was taken by ambulance to a hospital, where she was treated for cuts on her lip, her left cheek, and her left hand. The injuries to her left hand were the most serious and required ongoing specialty care, as described further below.

The state charged Maroko with several offenses and amended the complaint 11 months later. In the amended complaint, the state charged Maroko with attempted second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2018); first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2018); and stalking, in violation of Minn. Stat. § 609.749, subd. 5(a) (2018).

The case was tried to a jury on five days in April 2021. The state called 14 witnesses. C.A. testified as follows. Maroko insulted her and then slapped her face and punched her in the head. She ran out of her apartment to the hallway, intending to go somewhere else for the night, but she returned to the apartment when she realized that she had forgotten her children and her car keys. Maroko stood in front of the door to prevent her from leaving again and punched her in the face. He pointed a knife at her neck. She grabbed the knife with her left hand to keep it away from her. Maroko pushed the knife toward her, causing cuts to her face. She used her right hand to open the apartment door and screamed for help. A neighbor entered the hallway, and Maroko fled.

The state also introduced the testimony of two persons living in nearby apartments, which generally corroborated C.A.'s testimony. In addition, the state introduced a surveillance video-recording that corroborated C.A.'s testimony by showing both her and Maroko in a different part of the hallway at different times.

During the defense case, Maroko testified as follows. He and C.A. had recently moved into the apartment and had transported their belongings in several tightly tied garbage bags, which were not yet unpacked. He and C.A. argued about household chores and child care. He later grabbed a knife from the kitchen to open a garbage bag containing some of his clothing. C.A. saw him holding the knife and began to scream and move toward the apartment door. He held her arm to prevent her from leaving. She tried to take the knife from him, and he pulled it away from her, not realizing that she was holding the sharp edge of the knife. He testified that he did not know how she was cut on her face.

In closing argument, Maroko’s trial attorney argued that the state did not prove beyond a reasonable doubt that Maroko intended to hurt C.A. The jury acquitted Maroko of attempted second-degree intentional murder but found him guilty of first-degree assault and stalking. The district court imposed concurrent prison sentences of 206 months for first-degree assault, which is an upward durational departure, and 23 months for stalking. Maroko appeals.

DECISION

I. Sufficiency of the Evidence

We begin by considering Maroko’s argument that the evidence is insufficient to support his conviction of first-degree assault on the ground that his conduct did not cause C.A. to suffer great bodily harm.

In analyzing an argument that the evidence is insufficient to support a conviction, this court generally undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). 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 of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). If a criminal defendant argues on appeal that the state’s evidence is insufficient because the facts proved by the state do not

satisfy the requirements of the applicable law, our appellate review focuses on the applicable law. *See State v. Smith*, 899 N.W.2d 120, 122 (Minn. 2017). If a criminal defendant’s sufficiency-of-the-evidence argument is based on the meaning of a statute, we must engage in statutory interpretation, which presents a question of law that is subject to a *de novo* standard of review. *See State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017).

A person is guilty of first-degree assault if he “assaults another and inflicts great bodily harm.” Minn. Stat. § 609.221, subd. 1. The term “great bodily harm” is defined by statute to mean “bodily injury [1] which creates a high probability of death, or [2] which causes serious permanent disfigurement, or [3] which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or [4] [which causes] other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2018); *see also State v. Moore*, 699 N.W.2d 733, 738 (Minn. 2005) (inserting four numerals to identify four alternative definitions).

The relevant evidence was provided by C.A. and two medical professionals. A forensic nurse examiner testified that C.A. had several cuts on multiple fingers of her left hand, including two avulsions (or flaps of skin) on her left index finger and her left middle finger. C.A. required surgery on both of those fingers. An orthopedic hand surgeon testified that she repaired the cut on C.A.’s middle finger with a suture after determining that the nerves and tendons were intact. But on C.A.’s index finger, the digital nerve, which supplies sensation from the finger pad, was “completely lacerated.” A lacerated nerve may cause an inability to sense temperature, a dysregulated sweat response, an inability to sense

where the finger is in space, and an inability to sense how much pressure the finger is exerting. The surgeon testified that a “good recovery” for an adult who sustains a lacerated nerve would be to regain approximately half of the nerve function with some continuing cold sensitivity. In addition, the tendon on C.A.’s index finger was 30 percent severed. The surgeon testified that, for most people, the tendon “would heal naturally” but that some people might experience stiffness or decreased motion and weakness as the tendon heals. The surgeon repaired C.A.’s digital nerve using a micro-suture technique and let her tendon heal naturally.

Consistent with the surgeon’s recommendation, C.A. kept her left hand bandaged for a month after the surgery and limited her activity by not using her left hand for lifting, pushing, or pulling. The surgeon testified that, two weeks after the surgery, C.A. still had stitches, numbness, and some stiffness but had recovered some motion. One month after surgery, C.A. reported to the surgeon that she had “almost full motion,” which indicated that the tendon was healing. But C.A. still was unable to use her left hand to perform tasks such as buttoning her shirt. At trial, one year after the injury, C.A. testified that the fingertip of her left index finger could not feel cold, could feel hot only after prolonged exposure, and sometimes felt numb.

At trial, the prosecutor argued to the jury that C.A. suffered great bodily harm pursuant to the third clause of the definition on the ground that the injuries to her left index finger caused a “permanent or protracted loss or impairment of the function of [a] bodily member.” *See* Minn. Stat. § 609.02, subd. 8. On appeal, Maroko contends that the impairment of C.A.’s left index finger during the four-week period after her surgery was

not “permanent” and not sufficiently “protracted.” Maroko also contends that the “slight nerve damage to the tip of one finger on [C.A.’s] nondominant hand,” which Maroko concedes is protracted or permanent, is not great bodily harm for three specific reasons, which we discuss below.

In response, the state contends that the evidence satisfies the definition of great bodily harm in multiple ways. First, the state contends that C.A.’s inability to use her left hand for more than a month after the incident was a protracted loss or impairment of the function of a bodily member or organ and, thus, satisfies the third clause of the definition. Second, the state contends that C.A.’s permanent loss of feeling in the fingertip of her left index finger is a permanent loss or impairment of the function of a bodily member or organ and, thus, also satisfies the third clause of the definition. Third, the state contends that the cuts to C.A.’s lip and cheek, both of which required stitches and may have left scars, constitute serious permanent disfigurement and, thus, satisfy the second clause of the definition. Fourth, the state suggests that C.A.’s scars on her left hand also constitute serious permanent disfigurement, satisfying the second clause of the definition. Fifth, the state contends generally that “the cumulative effect of all of these injuries constitutes ‘other serious bodily harm,’” thereby satisfying the fourth clause of the definition.

We believe that the second category of evidence identified by the state is the strongest evidence of great bodily harm. The bodily member at issue is C.A.’s left index finger and, more specifically, the nerve in that finger. A loss or impairment of the function of the nerve in that finger may be inferred from the surgeon’s testimony that a person with C.A.’s injuries likely will be less able to sense temperature, to sense where the finger is in

space, and to sense how much pressure the finger is exerting. That the loss or impairment is permanent may be inferred from C.A.'s testimony that she did not have a normal sense of touch and from the surgeon's testimony that an adult who sustains a lacerated nerve can expect to regain only half of the nerve function. All of this evidence is sufficient to satisfy the third clause of the definition of great bodily harm: "a permanent or protracted loss or impairment of the function of any bodily member or organ." *See* Minn. Stat. § 609.02, subd. 8.

Maroko asserts three reasons why the second category of evidence identified by the state is insufficient. First, Maroko contends that such a conclusion is foreclosed by *State v. Gerald*, 486 N.W.2d 799 (Minn. App. 1992), in which the victim, who was stabbed in the neck, had "a tightening or sensation" when he yawned or chewed. *Id.* at 802. This court concluded that the evidence was insufficient to satisfy the third clause of the definition of great bodily harm because a physician testified that the victim's "ability to perform bodily functions such as hear, chew, eat or breathe were not impaired by the injuries." *Id.* The facts of *Gerald* are distinguishable from the facts of this case. C.A.'s left index finger is impaired in its ability to sense temperature and by occasional numbness.

Second, Maroko contends that great bodily harm exists only if an injury is "extremely serious" and that "[a]n injury that results in a partial loss of sensation on the tip of one finger on a person's non-dominant hand, even if permanent, does not meet this threshold." But there is no requirement in the third clause of the definition that the loss or impairment of the function of a bodily member or organ be "serious," let alone "extremely

serious.” The word “serious” is used in the second and fourth clauses of the definition but not in the third. *See* Minn. Stat. § 609.02, subd. 8.

Third, Maroko contends that the nature of C.A.’s injury is more appropriately classified as second-degree assault, which requires only “substantial bodily harm” and calls for less-severe punishment. *See* Minn. Stat. § 609.222, subd. 2 (2018). This argument does not supersede an analysis based on the text of the third clause of the definition of great bodily harm and the evidence directly relating to the requirements of that clause.

Thus, the evidence is sufficient to satisfy the third clause of the statutory definition of “great bodily harm.” Therefore, the evidence is sufficient to support the conviction of first-degree assault.

II. Right to Speedy Trial

Maroko also argues that the district court erred by denying him his constitutional right to a speedy trial by not commencing the trial until 204 days after he first demanded a speedy trial.

Maroko first demanded a speedy trial on June 3, 2020. At a hearing on June 24, 2020, Maroko waived his speedy-trial demand so that his attorney could have additional time to review the state’s evidence against him. On August 5, 2020, Maroko re-asserted his speedy-trial right. But on August 20, 2020, Maroko again waived his speedy-trial demand to allow his attorney additional time to review discovery materials and to investigate potential immigration issues. On September 28, 2020, Maroko again re-asserted his speedy-trial demand. The district court noted that “the next available trial date

in Scott County given the COVID-19 pandemic is December 14th” and set trial for that date.

On November 20, 2020, the chief justice issued a statewide order stating that no criminal jury trials could begin before February 1, 2021, without special permission granted by the chief judge of the district court, in consultation with the chief justice. *Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001 (Minn. Nov. 20, 2020). On December 1, 2020, the district court found good cause to extend the trial by 120 days. Maroko did not object to the district court’s finding. On January 14, 2021, Maroko again asserted his right to a speedy trial. The district court scheduled the trial for March 22, 2021. On March 24, 2021, the district court continued the trial because the district court was “unable to bring in jurors yet due to the pandemic.” Maroko asked the district court to consider releasing him from custody with “significant conditions” but without bail. The district court denied Maroko’s request. On March 31 and April 5, 2021, Maroko filed *pro se* motions to dismiss the case, arguing that the delay in bringing him to trial violated his right to a speedy trial. At a pre-trial hearing on April 20, 2021, which was the first day of trial, Maroko told the district court that, after being in custody for nearly a year, he had lost his job, had experienced housing problems, and had lost his ability to provide for his family. The district court denied Maroko’s motion to dismiss.

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. I, § 6. In determining whether a delay has deprived a defendant of the

Sixth Amendment right to a speedy trial, Minnesota courts apply the four-factor balancing test outlined in *Barker v. Wingo*, 407 U.S. 514 (1972). See *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021); *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015); *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). The four factors are (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. *Barker*, 407 U.S. at 530. The four factors must be considered together in light of the relevant circumstances, and no one factor is dispositive or necessary to a finding that a defendant has been deprived of the right to a speedy trial. *Id.* at 533. This court applies a *de novo* standard of review to the question whether a defendant has been deprived of his or her constitutional right to a speedy trial. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017); *Taylor*, 869 N.W.2d at 19.

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.” *Windish*, 590 N.W.2d at 315 (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.* A delay beyond this 60-day period is presumptively prejudicial. *Mikell*, 960 N.W.2d at 246; *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989).

In this case, Maroko demanded a speedy trial—and did not subsequently waive his right—on September 28, 2020. His trial began 204 days later on April 20, 2021. Consequently, his trial was delayed for 144 days beyond the 60-day period imposed by rule 11.09(b). A delay of 144 days beyond the 60-day period is “presumptively prejudicial,” which triggers further inquiry into the remaining factors. *See Mikell*, 960 N.W.2d at 246. Thus, the first factor weighs in favor of Maroko.

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. *Id.* at 250-51. If a defendant’s actions have 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.

A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than the defendant.

Id. (quoting *Barker*, 407 U.S. at 531). “And if there is good cause for the delay . . . the delay will not be held against the State.” *Id.*

In *State v. Paige*, ___ N.W.2d ___, 2022 WL 2826253 (Minn. July 20, 2022), the supreme court recently clarified that “delays due to circumstances arising from *internal* factors (court congestion) . . . weigh moderately against the State, and those arising from

external factors (the death of judge or a burned down courthouse) . . . are not weighed against that State.” *Id.* at *5. The supreme court reasoned that the “statewide orders issued in response to the COVID-19 global pandemic reflected a policy decision prompted by an *external* public health crisis” because “the orders were responding to a deadly and virulent illness over which the court had no control.” *Id.* at *6. Accordingly, the supreme court determined that “trial delays caused by the orders do not weigh against the State.” *Id.*

In this case, Maroko asserts that the delay in the commencement of his trial was due exclusively to the COVID-19 pandemic. Specifically, he asserts that the delay was caused by the chief justice’s order restricting in-person jury trials due to the COVID-19 pandemic. But “the emergency prompting the COVID-19 orders was an external factor outside of the court’s control,” and a delay caused by the orders does not weigh against the state. *See id.* Thus, the second factor is neutral.

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.*

In *State v. Jackson*, 968 N.W.2d 55 (Minn. App. 2021), *rev. granted and stayed* (Minn. Jan. 18, 2022), the defendant requested a speedy trial twice during the pandemic, and his trial was continued because of the statewide suspension of jury trials. *Id.* at 61-62. This court concluded that because “the context of the demand illustrates that all parties were aware that a safe trial could not occur within the 60-day period,” the circumstances

“weaken the strength of Jackson’s demand for a speedy trial in our overall balancing.” *Id.* at 62.

In this case, Maroko’s assertions of his right to a speedy trial were similar to those made in *Jackson*. Although Maroko utilized additional means of asserting his right, such as arguing for reduced bail and filing a motion to dismiss, the record clearly demonstrates that “all parties were aware that a safe trial could not occur within the 60-day period” when the demands were made. *Id.* Thus, the third factor weighs only slightly in Maroko’s favor.

D. Prejudice

The fourth *Barker* factor requires consideration of whether Maroko was prejudiced by the delay. *See id.* 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 first and second interests are “not implicated” if a defendant is “already in custody for another offense.” *Mikell*, 960 N.W.2d at 253 (quotation omitted). 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). “The prejudice a defendant suffers must be due to the delay.” *Osorio*, 891 N.W.2d at 631 (quotation omitted). And “the stress, anxiety and inconvenience experienced by anyone who is involved in a trial” is insufficient to demonstrate prejudice. *See Friberg*, 435 N.W.2d at 515.

Maroko contends that he experienced all three types of prejudice and that his situation was exacerbated by the pandemic. He specifically contends that his prolonged pre-trial detention prejudiced him because it cost him his job, resulted in housing problems, and impeded his ability to provide for his family. These are valid subjects of concern, but Maroko was detained without bail on other charges until January 14, 2021, 96 days prior to trial in this case, which limits the strength of his argument. *See Mikell*, 960 N.W.2d at 253. Maroko also contends that the COVID-19 pandemic caused him to have an oppressive and anxiety-producing incarceration as compared to an incarceration not during a pandemic. But, for the purposes of the right to a speedy trial, the oppression and anxiety must be caused by delay, not by conditions experienced by a defendant in pre-trial detention during the COVID-19 pandemic. *See Paige*, 2022 WL 2826253, at *8; *see also Osorio*, 891 N.W.2d at 631; *Friberg*, 435 N.W.2d at 515. Lastly and most importantly, Maroko does not sufficiently allege the third type of prejudice, which is the most serious. *See Doggett*, 505 U.S. at 654. He generally contends that the delay negatively affected his defense, but he does not state how or why this was so. *See Paige*, 2022 WL 2826253, at *8 (reasoning that defendant did not provide specific evidence that delay impaired defense). Thus, the fourth factor weighs in favor of the state.

E. Summary

To resolve Maroko'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. The delay in Maroko's trial was moderately long. Maroko asserted his right to a speedy trial in

the district court but not with great strength. Because of the chief justice's orders suspending jury trials due to the pandemic, the state and the district court could not have tried Maroko within the 60-day period, for external reasons that are attributable to neither party. Indeed, the district court found that there was good cause for a delay beyond the 60-day period, and Maroko did not object to that finding in the district court, and he does not contend on appeal that the good-cause finding was erroneous. Importantly, Maroko has identified only limited prejudice arising from the delay and does not argue with the required specificity how the delay negatively affected his defense.

Thus, Maroko's constitutional right to a speedy trial was not violated.

III. *Pro Se* Arguments

Maroko has filed a *pro se* supplemental brief in which he presents three arguments.

A. Supplemental Jury Instruction

Maroko argues that the district court erred in giving a supplemental jury instruction in response to a written question from the jury.

During the jury's deliberations, the district court received a question from the jury asking, "Can we listen to C.A.'s testimony?" Outside the presence of the jury, the district court presented the following proposal to counsel: "As the attorneys are likely aware, the Court cannot provide testimony. So, my proposal is to respond in this way: 'The Court cannot provide the trial testimony to you in deliberations. You must rely on your own memory of the testimony as you heard it.'" Neither attorney objected to the district court's proposed answer.

Maroko contends that the district court's supplemental instruction is inconsistent with an instruction given by the district court before the jury began its deliberations. The prior instruction stated: "If you should have any question about any part of the testimony, or a desire for information on a point of law in the case, or if you wish to view or listen to any audio or video evidence that's been received, you must communicate that request to the Bailiff in writing."

A district court may answer a jury's request to review evidence in various ways. *See* Minn. R. Crim. P. 26.03, subd. 20(2). A district court has broad discretion in formulating a response to a jury's question. *See State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986); *State v. Harlin*, 771 N.W.2d 46, 51-52 (Minn. App. 2009), *rev. denied* (Minn. Nov. 17, 2009). Because Maroko's attorney did not object to the district court's proposed response to the jury's question, the plain-error test applies. Minn. R. Crim. P. 31.02. Under the plain-error test, this court will reverse a conviction only if the appellant shows (1) an error, (2) that the error was plain, and (3) that the plain error affected his substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

The district court properly exercised its discretion by not allowing the jury to listen to C.A.'s testimony a second time. The district court's supplemental instruction is not necessarily inconsistent with its prior instruction allowing the jury to ask "any question about any part of the testimony" because the district court did not promise the jury that it would grant all such requests. Indeed, the district court instructed the jury at the outset of trial that a transcript of the proceedings would *not* be available during deliberations and

that “it’s important that you listen attentively to the testimony and take notes as you deem necessary during the trial.”

Thus, the district court did not plainly err in its supplemental instruction in response to the jury’s question.

B. Claim of Prosecutorial Misconduct

Maroko also argues that the prosecutor engaged in misconduct by introducing into evidence an edited surveillance video-recording instead of the complete, unedited video-recording. Because Maroko did not object to the introduction of the video-recording, the plain-error test applies. *See Griller*, 583 N.W.2d at 740. We note that the complete, unedited video-recording is not in the district court record. Consequently, it is impossible for this court to determine whether the district court plainly erred by admitting it and, if so, whether the edited version adversely affected Maroko’s substantial rights. *See State v. Grigsby*, 806 N.W.2d 101, 114 (Minn. App. 2011), *aff’d on other grounds*, 818 N.W.2d 511 (Minn. 2012).

C. Effectiveness of Counsel

Maroko last argues that his trial attorney provided him with ineffective assistance of counsel. Specifically, Maroko argues that his attorney did not effectively communicate or meet with him, did not investigate exculpatory evidence on his cell phone, did not object to the prosecutor’s edited version of the surveillance video-recording, did not object to conflicting jury instructions, and did not impeach a key witness.

“Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal.” *State v. Gustafson*, 610

N.W.2d 314, 321 (Minn. 2000). A post-conviction proceeding allows for the development of “‘additional facts to explain the attorney’s decisions,’ so as to properly consider whether a defense counsel’s performance was deficient.” *Id.* (quoting *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997)). An appellate court may consider an ineffectiveness argument on direct appeal only if the trial record is sufficiently developed such that the claim can be decided based on the trial record. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004).

In this case, the trial record, by itself, does not allow for a determination of Maroko’s multiple claims of ineffective assistance of counsel. Thus, we decline to consider the issue on direct appeal. Maroko’s right to assert the claim in a future post-conviction action is preserved. *See State v. Christian*, 657 N.W.2d 186, 194 (Minn. 2003); *Gustafson*, 610 N.W.2d at 321; *State v. Xiong*, 638 N.W.2d 499, 504 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002). We note that Maroko specifically asks this court to “remand this case back to the district court for a hearing addressing ineffective assistance of counsel before [it] make[s] a ruling on this case.” Maroko may request such a hearing after filing a post-conviction petition. *See* Minn. Stat. §§ 590.01-.04 (2020).

Affirmed.