

*This opinion is nonprecedential except as provided by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
A21-1724**

State of Minnesota,
Respondent,

vs.

Terrence Davone Olive,
Appellant.

**Filed October 3, 2022
Affirmed
Ross, Judge**

Stearns County District Court
File No. 73-CR-20-292

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Terrence Olive struck his teenage daughter's face inside the Stearns County courthouse. A jury found Olive guilty of gross misdemeanor domestic assault. He appeals from his conviction, arguing that the district court violated his right to a speedy trial. We reject that argument. The 325-day delay in getting Olive to trial after he first asked for a speedy trial was solely attributable to the COVID-19 pandemic and the delay did not prejudice his defense. All the additional issues Olive raises in his pro se supplemental brief are forfeited. We therefore affirm.

FACTS

Olive struck his daughter on the side of her face in January 2020 while they were at the Stearns County courthouse. The state charged Olive with gross misdemeanor domestic assault. Olive was arraigned that same day and released from custody while he awaited his jury trial.

Seven months later, on August 10, 2020, Olive filed a written speedy-trial demand, and on August 19, he entered a not-guilty plea and reasserted the demand. The district court set his jury trial for September 8. On August 20 the state requested a continuance, citing a witness's unavailability. The district court found good cause and granted the state's motion to continue the trial past Olive's October 18, 2020 speedy-trial deadline. The district court stated that, while ordinarily it would reschedule the trial for late September, it had to schedule the trial for after November because of the COVID-19 pandemic-caused courtroom shortages. The district court set a trial date for December 15.

But before Olive’s trial could take place, the supreme court chief justice suspended jury trials. *Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001, at 2 (Minn. Nov. 20, 2020). She later ordered that jury trials could proceed after March 15, 2021. *Order Governing the Continuing Operations of the Minnesota Judicial Branch*, No. ADM20-8001, at 2 (Minn. Jan. 21, 2021). The district court scheduled Olive’s trial for May 17, 2021.

During a pretrial hearing on May 7, the state moved for a second continuance, again citing the unavailability of a witness. On June 17, the district court issued a second order finding that there was good cause to continue the trial, this time resting solely on COVID-19-related reasons. The district court set the trial for July 1.

Olive’s jury trial occurred 325 days after he first made his speedy-trial demand. The jury found him guilty. He appeals.

DECISION

Olive’s appeal raises four issues. We first decide whether the district court violated his constitutional right to a speedy trial. And we then decide whether to address arguments he forwards in his supplemental brief.

I

Olive argues that we must reverse his conviction because the lengthy delay between his speedy-trial demand and his trial violated his right to a speedy trial. We review de novo a claimed speedy-trial violation. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). 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. A defendant must be tried as soon as

possible after he pleads not guilty, and if he demands a speedy trial, the trial must start within 60 days unless good cause justifies a delay. Minn. R. Crim. P. 11.09(b). Whether a delay violates a defendant's constitutional right to a speedy trial depends on the four-factor test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). We consider (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his speedy-trial right; and (4) whether the delay prejudiced the defendant's case. *Id.*

The first and third *Barker* factors are not disputed here. Regarding the third, Olive asserted his right to a speedy trial first on August 10, 2020, and again on at least four other occasions. This factor favors Olive. Regarding the first, Olive's trial began on July 1, 2021, 316 days after he entered a not-guilty plea and 325 days after he demanded a speedy trial—long after the presumed prejudice that results automatically 60 days after a speedy-trial demand. *See id.* at 315–16. The first factor also favors Olive.

The second *Barker* factor considers who bears responsibility for the delay. *Id.* A deliberate delay to hinder the defense would weigh heavily against the state. *Barker*, 407 U.S. at 531. We have reasoned that a neutral reason, like the pandemic, is attributable neither to the state nor the defendant. *State v. Jackson*, 968 N.W.2d 55, 58 (Minn. App. 2021), *rev. granted* (Minn. Jan. 18, 2022) *and ord. granting rev. vacated* (Minn. Sept. 22, 2022). Olive contends that *Jackson* was wrongly decided, but the supreme court has also recently held that “trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State.” *State v. Paige*, 977 N.W.2d 829, 838 (Minn. 2022). He also argues against a neutral factor here, contending that the state's

requested continuances rested on witness availability rather than the pandemic. We reject the argument. Although the state's requests for a continuance prompted the district court's orders, the district court delayed the trial beyond the 60-day timeframe because of the pandemic. The second *Barker* factor favors neither Olive nor the state.

The final *Barker* factor also does not favor Olive. Assessing whether a delay prejudiced a defendant, we consider 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." *Windish*, 590 N.W.2d at 318. The most prejudicial of these interests is the possibility that the defense will be impaired. *Id.* Only the second and third interests are implicated here because Olive was not incarcerated pending his trial.

Olive argues that he was prejudiced by the long delay because it "undoubtedly caused him anxiety and concern." The argument faces two obstacles. First, no evidence in the record supports his argument asserting anxiety and concern. Adding the adverb "undoubtedly" does not substitute for evidence, and it is not self-evident that he "undoubtedly" suffered any anxiety or concern. Every week that passed without trial added to the potential fading of witness memories and afforded more opportunity for witness unavailability and the possibility that he might never risk conviction. And second, Olive has asserted only a type of stress associated with all defendants awaiting trial, suggesting no unique facet of his own circumstances. This generalized claim is insufficient to show prejudice. *See State v. Strobel*, 921 N.W.2d 563, 571 (Minn. App. 2018), *aff'd*, 932 N.W.2d 303 (Minn. 2019). Olive adds a nuance to his prejudice argument by maintaining that his

defense was impaired by the delay because the state could not locate his daughter and, therefore, he could not confront his accuser. But the fact that the state could not locate the alleged victim to testify in support of the state's case does not directly implicate his defense, and he offers nothing to support his counterintuitive argument that he was more hindered than the state by the unavailability of the victim. Olive's twist on his Sixth Amendment confrontation rights also does not advance his speedy-trial claim for another reason: the record does not suggest that *he* sought to continue the trial to locate his daughter to testify or even that he attempted to subpoena her to testify. Olive has not shown prejudice.

On balance, despite Olive's demand and the lengthy delay, we will not reverse based on a speedy-trial violation. We turn to his supplemental arguments.

II

Olive's supplemental brief asserts that video footage from the courthouse should have been produced and admitted, he should have received copies of the evidence, and he should have been allowed to compel witnesses to testify. These arguments are unsupported by legal authority or legal reasoning with analysis, and they are therefore forfeited. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (observing that arguments based on mere assertion and unsupported by argument or authority are forfeited on appeal). Although with considerable force, one might shoehorn Olive's arguments into a claim that he received ineffective assistance of counsel for neglecting to submit evidence, we have not read the argument that way. We therefore clarify that our opinion should not be read to

prejudice any future postconviction claim on that theory, and of course we express no opinion as to its merit.

Affirmed.