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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0763**

State of Minnesota,
Respondent,

vs.

Joshua William Dwyer,
Appellant.

**Filed March 27, 2023
Affirmed
Larkin, Judge**

Rice County District Court
File No. 66-CR-18-2387

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

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for domestic assault, arguing that (1) his right to a speedy disposition under the Uniform Mandatory Disposition of Detainers Act (UMDDA) was violated, (2) he received ineffective assistance of trial counsel, and (3) the

district court abused its discretion by giving an implicit-bias jury instruction over the objection of both parties. In a pro se supplemental brief, appellant raises additional arguments for reversal. We affirm.

FACTS

In October 2018, respondent State of Minnesota charged appellant Joshua William Dwyer with second-degree assault with a dangerous weapon, gross-misdemeanor domestic assault—fear, and, by amended complaint, gross-misdemeanor domestic assault—harm. The charges stemmed from an altercation between Dwyer and the mother of his children, who alleged that Dwyer had threatened her with a knife. On February 4, 2020, Dwyer appeared before the district court, waived his right to a speedy trial, and requested a jury trial. Dwyer also informed the district court that he felt he was “not properly represented” by his assigned public defender.

On January 25, 2021, Dwyer was committed to the Department of Corrections (DOC) on an unrelated charge. On February 19, 2021, the state received a handwritten letter from Dwyer requesting that the underlying assault charges be scheduled for trial or dismissed under UMDDA, Minn. Stat. § 629.292 (2022). The state promptly forwarded the letter to Dwyer’s public defender. At a hearing on July 28, 2021, Dwyer’s public defender informed the district court that “[a]pparently, [Dwyer] filed a detainer request” and that “it is [Dwyer’s] request that the files be dismissed.” The district court indicated that it had not received such a request. Dwyer stated that he mailed the request to the prosecutors but did not send the request to the district court. The district court explained that “[t]he reason why you serve the court is so that the court can make sure that your

detainer is being upheld, and we can set it on for hearings. That hasn't been done." The court noted that "nothing in the file" indicated that a detainer-related motion had been filed and thus denied the motion for dismissal.

On August 12, 2021, Dwyer filed a pro se motion to dismiss the underlying charges under UMDDA. On September 15, 2021, Dwyer's public defender orally moved for dismissal under UMDDA. The public defender did not file a written motion to dismiss. Instead, he joined Dwyer's motion. The district court asked the public defender if he had "done any independent investigation into" Dwyer's UMDDA filings and service deficiencies. The public defender replied, "other than checking the register of actions together with the representations by counsel at court, I've done no other independent investigation." After reviewing written briefs from the parties, the district court ruled that Dwyer was not entitled to dismissal under UMDDA.

Dwyer's jury trial on the underlying charges began on September 20, 2021. The parties agreed at the outset of trial that if Dwyer were found guilty of either gross-misdemeanor domestic-assault charge, he would be sentenced to a misdemeanor so long as his prior qualifying domestic-assault conviction for stalking had been vacated. Throughout the trial, Dwyer regularly expressed his displeasure with his public defender to the district court, but he did not discharge his public defender.

After empaneling the jury and before opening statements, the district court instructed the jury regarding implicit bias. Neither party objected. But both parties later objected to the court giving a second implicit-bias instruction in its final instructions to the

jury. The district court overruled the joint objection and read a model implicit-bias instruction to the jury.

The jury found Dwyer not guilty of second-degree assault with a dangerous weapon, but it found him guilty of both counts of domestic assault. On December 30, 2021, the parties appeared for sentencing. Before the hearing ended, Dwyer’s public defender requested to be discharged, explaining that Dwyer had “made a number of allegations about [his] representation” that were “creating such a conflict as to prohibit [him] from being able to zealously represent [Dwyer] in this regard.” The district court discharged Dwyer’s public defender and continued the sentencing hearing.

On March 24, 2022, Dwyer’s prior qualifying domestic-assault conviction for stalking was vacated. On May 5, 2022, the parties appeared for the continued sentencing hearing. Dwyer moved the district court to dismiss the case, alleging ineffective assistance of counsel. The court denied the motion. The court entered judgment of conviction for misdemeanor domestic assault—harm and sentenced Dwyer to 90 days in jail with credit for time served.

Dwyer appeals.

DECISION

I.

Dwyer contends that the district court erred by refusing to dismiss the underlying assault charges under UMDDA. “UMDDA is designed to provide a speedy trial for prisoners who face additional criminal charges” and addresses concerns that they may be unable to participate in work and rehabilitative programs. *State v. Vonbehren*, 777 N.W.2d

48, 50-51 (Minn. App. 2010), *rev. denied* (Minn. Mar. 16, 2010). Generally, if a prisoner properly requests final disposition of a pending matter under UMDDA and a trial is not held within 180 days, the district court loses jurisdiction and the case is dismissed. The relevant sections of UMDDA provide that:

(a) Any person who is imprisoned in a penal or correctional institution or other facility in the [DOC] of this state *may request final disposition* of any untried indictment or complaint pending against the person in this state. *The request shall be in writing addressed to the court in which the indictment or complaint is pending and to the prosecuting attorney charged with the duty of prosecuting it*, and shall set forth the place of imprisonment.

Minn. Stat. § 629.292, subd. 1 (emphasis added).

The request shall be delivered to the commissioner of corrections or other official designated by the commissioner having custody of the prisoner, who shall forthwith:

(a) *certify the term of commitment* under which the prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the commissioner of corrections relating to the prisoner; and

(b) *send by registered or certified mail*, return receipt requested, *one copy of the request and certificate to the court* and one copy to the prosecuting attorney to whom it is addressed.

Id., subd. 2 (emphasis added).

Within six months after the receipt of the request and certificate by the court and prosecuting attorney, or within such additional time as the court for good cause shown in open court may grant, the prisoner or counsel being present, the indictment or information shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for the attorney to be heard. *If, after such a request, the indictment or information is not brought to trial within that*

period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment or information be of any further force or effect, and the court shall dismiss it with prejudice.

Id., subd. 3 (emphasis added).

Generally, whether a defendant's right to speedy disposition under UMDDA has been violated is a question of law reviewed de novo. *State v. Mikell*, 960 N.W.2d 230, 238, 242 (Minn. 2021).

In refusing to dismiss Dwyer's case under UMDDA, the district court reasoned:

In the present case, [Dwyer] has failed to meet the requirements of the act on several levels. First, there is not a certification of the term of commitment of [Dwyer]. Second, there is no notification of time served, time remaining to be served, good time earned, [or] the parole eligibility of [Dwyer]. Most importantly, there was no service of the request to the [district] court.

Dwyer asserts that the district court misapplied the law because it solely blamed him for the UMDDA violations. He argues that even though he "may not have followed subdivision 1 and served his UMDDA request on the court, this error should not be fatal." Dwyer further argues that subdivision 2 "does not specify whose duty it is" to send the request to a DOC official and "does not place the burden of providing sentencing information on Dwyer." Dwyer asserts that it was the state's responsibility to send his UMDDA request to the district court and to the commissioner of corrections. The state counters that it was Dwyer's responsibility to file his UMDDA request with the district court and to forward the request to the commissioner of corrections.

We need not determine who had the duty to deliver Dwyer's request to the district court and the commissioner of corrections because Dwyer's request for relief under UMDDA is foreclosed by this court's decision in *Resendiz v. State*, 832 N.W.2d 860 (Minn. App. 2013), *rev. denied* (Minn. Aug. 20, 2013).

In *Resendiz*, an inmate submitted a UMDDA request to a prison official, who then mailed the request to the wrong prosecuting authority. 832 N.W.2d at 862. The inmate argued that both the prison official and the recipient prosecuting authority violated his rights under UMDDA by failing to send or forward his request to the proper prosecuting authority. *Id.* at 863. This court framed the issue as whether UMDDA imposes a duty on a prison official or prosecuting authority to send a speedy-disposition request to the correct prosecuting authority and whether UMDDA provides a remedy for a failure to do so. *Id.* This court held that *Resendiz* was not entitled to relief under UMDDA, reasoning that

UMDDA explicitly provides a remedy—dismissal of the complaint—in only two circumstances: (1) if a prisoner is not brought to trial within six months after the court and prosecuting authority receive the request and certificate, or within additional time for good cause shown; and (2) if a prison official fails to inform a prisoner of the charge and right to request final disposition within one year after a detainer has been filed. Minn. Stat. § 629.292, subds. 1(c), 3. Thus, the legislature has clearly demonstrated its intent and included unequivocal language to provide a remedy in certain cases. It has neither demonstrated an intent nor included language to provide a remedy for failure of the duty alleged here.

Id. at 865. This court therefore adhered “to the letter of the law” and declined “to venture into a discussion of its spirit.” *Id.* at 867. This court noted that it was “not insensitive to or immune from a reaction that the statutory language at present does not supply an answer

to the common-sense question raised by *Resendiz*,” but it concluded that “[t]he answer to his question lies . . . with the legislature and not with our court.” *Id.* at 867-68.

Under the reasoning of *Resendiz*, it does not matter who had the duty to send Dwyer’s UMDDA request to the district court and the commissioner of corrections because UMDDA does not set forth a remedy for the failure to do so, and this court “do[es] not have the authority to read into UMDDA a remedy where none exists.” *Id.* at 867. It is undisputed that the district court did not receive the request and certificate. And because that requirement was not met, the UMDDA six-month period was not triggered. *See State v. Hamilton*, 268 N.W.2d 56, 61 (Minn. 1978) (stating that “the [six]-month period begins with *receipt* of the request and certificate”). Thus, the district court correctly applied the law in concluding that, because it had not received Dwyer’s request and the commissioner’s certificate as set forth in UMDDA, it did not lose jurisdiction over the case.

Dwyer’s arguments to the contrary are unavailing. We recognize that the Minnesota Supreme Court has looked to other states with similar UMDDA laws for interpretive guidance. *State v. Wilson*, 632 N.W.2d 225, 230 (Minn. 2001). But in this case, there is no need for interpretive guidance because this court has held that it does not have “authority to read into the UMDDA a remedy where none exists.” *Resendiz*, 832 N.W.2d at 867.

In sum, Dwyer is not entitled to relief under UMDDA.

II.

Dwyer contends that he received ineffective assistance of counsel in district court. The right to effective assistance of counsel is guaranteed to all criminal defendants by the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const. art. I,

§ 6. To establish a claim that an attorney provided ineffective assistance of counsel in violation of this constitutional right, a defendant must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, the defendant must prove that counsel’s performance “fell below an objective standard of reasonableness.” *Id.* at 687-88. Second, the defendant must prove prejudice resulting from counsel’s inadequate performance. *Id.* at 694. To prove prejudice, the defendant must show that, but for counsel’s deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Id.*; *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). A defendant bears the burden of establishing both elements of an ineffective-assistance-of-counsel claim. *State v. Nowels*, 941 N.W.2d 430, 443 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020).

Appellate courts “review a district court’s application of the *Strickland* test de novo. . . . If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (citation omitted).

The preferred method for raising an ineffective-assistance-of-counsel claim is to petition for postconviction relief in district court. *State v. Christian*, 657 N.W.2d 186, 194 (Minn. 2003). “[A]n appeal from a judgment of conviction is generally not the proper method of raising an issue concerning the effectiveness of defense counsel because of the difficulty an appellate court has in determining the facts regarding the representation.” *Id.* However, this court may consider an ineffective-assistance-of-counsel claim for the first

time on direct appeal if the record is adequate to permit review. *See Roby v. State*, 531 N.W.2d 482, 484 n.1 (Minn. 1995).

Dwyer argues that he received ineffective assistance of counsel because his public defender failed to research application of UMDDA or independently advocate for relief under UMDDA. In February 2021, Dwyer sent his initial UMDDA request directly to the state, and the state promptly forwarded the request to Dwyer’s public defender. At the July 2021 hearing, Dwyer’s public defender stated that Dwyer “apparently” was seeking to have his charges dismissed under UMDDA. Dwyer acknowledged that he did not seek his public defender’s counsel on this issue but stated that he “kind of [felt] like [the public defender] should have checked into this.”

At the September 15, 2021 hearing, Dwyer’s public defender orally moved for dismissal under UMDDA. The following exchange occurred:

PUBLIC DEFENDER: I think the court advised that if [there] was going to be a request for [dismissal under UMDDA] . . . that [Dwyer would] have to file written motions relative to that. I believe [Dwyer] did follow up with a written motion relative to that case and --

COURT: Did [Dwyer] or did you . . . ?

PUBLIC DEFENDER: [Dwyer] did.

COURT: So it is not your motion at this point in time.

PUBLIC DEFENDER: [Dwyer] is bringing this motion believing that under these circumstances that the detainer act has not been followed

. . . .

COURT: . . . I'm going to press you on this a little bit. As you are representing [Dwyer], is it your motion that you are bringing forward here today?

PUBLIC DEFENDER: I would so move.

After a brief argument by the state, the court asked Dwyer's public defender if he had done any independent investigation into Dwyer's UMDDA filings and service deficiencies. The public defender stated that he had not. The court took the matter under advisement and requested the parties submit "whatever they feel is necessary." The public defender submitted a written memorandum in support of dismissal that largely mirrored Dwyer's pro se motion.

On this record, we question whether counsel's representation was objectively reasonable, but we are not willing to decide the issue without a fully developed record. The court would benefit from hearing the public defender's explanation for his decisions regarding Dwyer's UMDDA claim. Moreover, Dwyer must show prejudice to obtain relief. At oral argument to this court, appellate counsel argued that Dwyer was prejudiced because the pending charges prevented him from accessing services while incarcerated. Appellate counsel posited that if the UMDDA claim had been properly submitted in February 2021, the trial on the underlying charges could have commenced at least one month earlier, potentially allowing Dwyer to access an additional month of services. Appellate counsel referred this court to communications between Dwyer and prison officials as proof of prejudice. Assuming, without deciding, that such prejudice would justify relief, findings are necessary regarding the relevant facts. This court cannot make factual findings on appeal. *See State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002).

For those reasons, we decline to address Dwyer’s UMDDA-based ineffective-assistance-of-counsel claim in this appeal. Dwyer may pursue his claim in a petition for relief under the statutes and laws governing postconviction proceedings.

III.

Dwyer contends that the district court abused its discretion by providing a second jury instruction regarding implicit bias over the objection of both parties. District courts are allowed “considerable latitude” in the selection of language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). “[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case.” *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). Model jury instructions (JIGs) are prepared by the Minnesota District Judges Association (MDJA) Committee on Criminal Jury Instructions and are meant to reflect the current case law of the Minnesota Supreme Court and the Minnesota Court of Appeals, as well as current legislation at the time of publication. 10 *Minnesota Practice*, CRIMJIG—Preface (Supp. 2022). “Although district courts may favor pattern jury instructions, their use is not required.” *State v. Thao*, 875 N.W.2d 834, 842 (Minn. 2016).

We review a district court’s jury instructions for an abuse of discretion. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

The district court first instructed the jury regarding implicit bias after the jury was sworn. The instruction generally matched the language in 10 *Minnesota Practice*,

CRIMJIG 1.01 (2020). The parties did not object. During review of the final jury instructions, the state asked about the implicit-bias instruction and whether it was new. The district court stated, “[i]t’s a newer instruction that has been . . . given throughout the [s]tate.” Dwyer objected to its inclusion in the final jury instructions, arguing that it encroached on “the ability of the jury to be able to render a decision” and “direct[ed] them [on] how to conduct themselves in the jury room.” The state joined Dwyer’s objection. The court overruled the joint objection, stating that the instruction “is approved by the Minnesota Supreme Court as part of the jury instructions.” The district court further explained:

I will note for the record and part of my ruling is that I instruct the jury on what they’re supposed to do on pretty much everything. I also tell them they can’t use sympathy, prejudice, all those things that I tell them that they can’t do in rendering a decision. I tell them they can’t use sympathy for the individuals. I tell them that they have to rely on the facts that are set forth. The implicit bias just sets out the same things that I would be discussing with them on any other thing. I am not invading on their finding of fact or how they find their facts. I’m asking them to do it in accordance with the instruction that is given, so over both parties’ objections, I’m going to continue and leave the implicit bias [instruction] in.

The district court provided the following model instruction on implicit bias in its final instructions to the jury:

We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not fully be aware of, which is why they are called implicit or unconscious bias. No matter how unbiased we think we are, our brains are hardwired to make unconscious decisions. We look at others and filter what they say through the lens of our own personal experience and background. Because we all do this, we often see life and evaluate evidence

in a way that tends to favor people who are like ourselves or who have had life experiences like our own.

We can also have biases about people like ourselves. Biases can affect our thoughts, how we remember what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors, you're being asked to make an important decision in this case. You must take the time you need to reflect carefully and thoughtfully about the evidence.

Think about why you're making the decision you are making and examine it for bias. Reconsider your first impressions of people and the evidence in this case. If the people involved in this case were different -- were from different backgrounds, for example, richer, poorer, more or less educated, older or younger, or of a different gender, gender identity, race, religion, or sexual orientation, would you still view them and the evidence the same way.

Listen to one another. Resist and help each other resist any urge to reach a verdict influenced by bias. Each of you have different backgrounds and will be viewing this case in light of your own insights, assumptions, and biases. . . . [L]istening to different perspectives may help you to better identify the possible effects these hidden biases may have on decision-making.

Resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or unconscious biases. The law demands that you make a fair decision based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions.

See 10 Minnesota Practice, CRIMJIG 3.35 (Supp. 2022).

Dwyer argues that by giving a second implicit-bias instruction, the court could have invaded “the province of the jury’s deliberations” and placed “unintended emphasis . . . on the concept of bias and fairness.” The state responds that “there is no conflict between the

model instructions that were given by the district court below and any statute or case law,” noting that “the implicit bias jury instructions are relatively new, and there is not yet any case law interpreting them.” The state notes that “the district court precisely followed the [MDJA] Committee recommendation that an implicit bias instruction be given in every case.” *See* CRIMJIG 3.35 cmt., ¶ 4.

The comments to CRIMJIG 3.35 recognize that “Minnesota case law does not require an implicit-bias instruction.” *See* CRIMJIG 3.35 cmt., ¶ 4 (further noting that “the Minnesota Supreme Court has recognized the importance of training judges about implicit bias”). Moreover, the model jury instructions “are not the law,” they are merely a MDJA committee’s “attempt to summarize the law for the convenience of the parties and the [district] court.” *State v. Pierce*, 792 N.W.2d 83, 86 (Minn. App. 2010). Because use of the model jury instructions is not mandated by law, a district court should not overrule an objection to the use of a particular instruction solely because it is a model jury instruction.

In this case, we are not persuaded that the district court abused its discretion by giving the second implicit-bias instruction over the parties’ objection. Dwyer’s objection was stated in general terms. He did not argue or explain how the particular facts of his case made the instruction inappropriate or prejudicial. Thus, the district court’s general explanation for overruling the objection reflects a proper exercise of discretion.

IV.

Dwyer submitted a pro se brief raising several additional issues. We address each in turn.

Due Process

Dwyer argues that he was “misled” by the DOC because they “gave [him] the wrong information” regarding how to submit a UMDDA request and he “relied on that information that turned out to be wrong.” Dwyer’s argument suggests a due-process claim, but he did not raise that issue in district court. “This court generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.” *Roby*, 547 N.W.2d at 357. Moreover, resolution of that issue requires fact-finding, and we are not a fact-finding court. *See Colvin*, 645 N.W.2d at 453 (stating that “[a]ppellate courts have no . . . business finding facts”). In sum, we will not consider Dwyer’s assertion of a due-process violation because it is not properly before us on appeal.

Speedy Trial

Dwyer argues that his constitutional right to a speedy trial was violated. Both the United States and Minnesota Constitutions provide a criminal defendant 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 subject to de novo review.” *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). When evaluating a speedy-trial claim, we consider the length of the delay, the reason for the delay, the defendant’s assertion of his right to a speedy trial, and the prejudice to the defendant. *Mikell*, 960 N.W.2d at 245.

“The length of the delay is a triggering mechanism which determines whether further review is necessary.” *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (quotation omitted). “Where the length of the delay is presumptively prejudicial, there is a necessity for inquiry into the remaining factors of the test.” *Id.* (quotation omitted). “In

Minnesota, delays beyond 60 days from the date of demand raise a presumption that a violation has occurred.” *Id.* at 315-16; *see* Minn. R. Crim. P. 11.09(b) (“On demand of any party . . . trial must start within 60 days unless the court finds good cause for a later trial date.”).

Dwyer made a speedy trial demand on the underlying charges on July 28, 2021. On September 20, 2021, within 60 days of that demand, a jury trial commenced on the charges. Dwyer does not explain how his right to a speedy trial was violated when he in fact had a trial within 60 days of his demand. We therefore reject this claim.

Ineffective Assistance of Counsel

Dwyer argues that he “repeatedly asserted that [his] counsel was not providing effective assistance.” During sentencing, after the district court dismissed Dwyer’s public defender, Dwyer argued for dismissal based on ineffective assistance of counsel. Dwyer claimed that his public defender was not responsive to his phone calls and letters and did not inform him of this court’s holding in *State v. Peterson* and its potential effect on his case.¹ 936 N.W.2d 912 (Minn. App. 2019), *rev. denied* (Minn. Feb. 26, 2020). The district court denied his motion as follows:

You did have a jury trial. Frankly, you got a not guilty on the most serious prison commit file. You chose to testify yourself. You got an opportunity to tell the jury what your story was.

I think [the public defender] gave you kind of an open-ended opportunity to testify. Obviously the jury took some of what you said because they found you not guilty on the [second-degree assault]. You called your mother as a witness as part of that.

¹ We address the *Peterson* issue in the next section of this opinion.

. . . . I think [the public defender] did everything that he could possibly do in this -- in this case and, in fact, procured a not guilty on a felony level for you. I don't think anything that he did rose to ineffective assistance of counsel . . . so your motion is denied at this point.

The record shows that Dwyer and his public defender had a difficult attorney-client relationship and that Dwyer regularly criticized his public defender on the record. Dwyer's arguments largely center on his limited contact with his public defender and his disagreements with his public defender's trial decisions. But at trial, the public defender thoroughly cross-examined the state's witnesses, made relevant and successful objections, and ultimately secured a not-guilty verdict on the most serious charge.

The Sixth Amendment does not guarantee a "meaningful relationship" between an accused and his counsel. *State v. Caldwell*, 803 N.W.2d 373, 387 (Minn. 2011) (quotation omitted). The length of the relationship and number of meetings with the client do not in themselves define effectiveness. *Id.* The benchmark for judging ineffectiveness is whether counsel's conduct so undermined "the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019) (quotation omitted). An appellate court generally will not review challenges to trial strategy. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004).

Setting aside the issue of whether Dwyer received ineffective assistance on his request for speedy disposition under UMDDA, the record does not support a finding that his public defender's defense on the merits fell below an objective standard of reasonableness or that Dwyer was prejudiced by the public defender's performance. He is

therefore not entitled to relief. *See Nowels*, 941 N.W.2d at 443 (stating that a defendant must satisfy both performance and prejudice parts of the *Strickland* standard to obtain relief).

Peterson Claim

Dwyer argues that he was prejudiced by the use of his 2017 stalking conviction in charging and at trial. Dwyer was previously convicted of stalking-by-telephone under Minn. Stat. § 609.749, subd. 2(4) (2016). The underlying 2018 charges of domestic assault were enhanced to gross misdemeanors based on that prior conviction. In 2019, this court invalidated the stalking-by-telephone statute as facially overbroad in violation of the First Amendment. *Peterson*, 936 N.W.2d at 920. When Dwyer’s 2021 trial on the gross-misdemeanor assault charges began, his stalking conviction had not been vacated. Dwyer complains that his public defender “did nothing to inform [him] of this [*Peterson*] ruling that directly affected [him],” framing the issue as ineffective assistance of counsel.

During Dwyer’s trial on the underlying charges, there was a lengthy discussion between the parties and the district court regarding the state’s use of the stalking conviction to enhance Dwyer’s domestic-assault charges to gross-misdemeanor levels. Dwyer questioned why the state would not amend the domestic-assault charges to misdemeanor levels. Dwyer’s public defender explained that the state was not willing to amend the charges because Dwyer’s stalking conviction had not yet been vacated. However, the state agreed that if Dwyer’s prior stalking conviction were vacated, he would only receive a misdemeanor sentence for any conviction resulting from the domestic-assault charges. The district court affirmed this agreement, explaining to Dwyer:

Your conviction, the conviction that is out there right now has not been vacated. There has been no motion to vacate it, there's been no ruling by any [c]ourt that it is vacated. You still have that conviction out there. If . . . it gets reversed, then you'd be sentenced on a misdemeanor if you were convicted.

After an extended discussion between Dwyer and the district court, Dwyer agreed to stipulate to the existence of his stalking conviction.

Dwyer was found guilty of both counts of gross-misdemeanor domestic assault, but his stalking conviction—which was the prior qualifying domestic-assault conviction—was vacated before sentencing. The district court therefore entered judgment of conviction for misdemeanor domestic assault—harm. Thus, Dwyer was not prejudiced by his attorney's actions related to the stalking conviction, and he is not entitled to relief for ineffective assistance of counsel on this basis. *See Nowels*, 941 N.W.2d at 443 (stating that a defendant must satisfy both performance and prejudice parts of the *Strickland* standard to obtain relief).

Dwyer argues that he was prejudiced because the jury was “allowed to hear that [he] had another qualifying domestic abuse case” and that despite his repeated objections the district court “went ahead anyways to include it in the jury instructions.” But the record shows that the district court did not refer to Dwyer's stalking conviction when instructing the jury. When the district court read the charges against Dwyer during its final jury instructions, the court did not state the associated offense levels; the court referred to the charges only as assault in the second degree and two counts of domestic assault. And because Dwyer stipulated to the existence of his prior stalking conviction, the district court did not mention that conviction in its jury instructions. Thus, the jury was never informed

that Dwyer had been convicted of stalking-by-telephone or that he was facing enhanced domestic-assault charges based on that conviction.

In sum, the record refutes Dwyer's assertion of error based on the use of his stalking conviction, and Dwyer is not entitled to relief.

Sufficiency of the Evidence

Dwyer argues that his conviction should be vacated based on the “lack of evidence and [the victim’s] incredibility.” When considering a challenge to the sufficiency of the evidence to sustain a guilty verdict, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the fact-finder believed the state’s witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the fact-finder’s credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant’s guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Dwyer was found guilty of domestic assault—intent to cause fear of immediate bodily harm, and domestic assault—intent to cause bodily harm, under Minn. Stat. § 609.2242 (2018). To prove his guilt, the state had to show that Dwyer committed an act with intent to cause fear of immediate bodily harm, and intentionally inflicted or attempted

to inflict bodily harm, against a family or household member. *Id.*, subd. 1. A family or household member is defined to include persons who have a child in common. Minn. Stat. § 518B.01, subd. 2(b)(5) (2018)

At trial, the state provided testimony from the victim, a neighbor, and two police officers who responded to the crime scene. The state also presented audio evidence from one of the officer's body-worn cameras. Dwyer called his mother as a witness and testified on his own behalf.

The victim testified that she and Dwyer have two children in common and that Dwyer came over to spend time with their daughter. Dwyer began arguing with the victim about their relationship. She stated that Dwyer slapped her at the start of the visit, later began "talking more aggressively," and then grabbed a knife and threatened her. The victim stated that Dwyer's mother came over, and she asked Dwyer's mother to remove him from her home. She testified that Dwyer remained in her home and began assaulting her, and that Dwyer's mother "told him to knock it off and tried to pull him off" of the victim. The victim stated that Dwyer's mother managed to pull Dwyer away and began arguing with him, at which point the victim grabbed their daughter and ran to a neighbor's house for help. The neighbor testified that the victim told him that "she had been hit and then someone had come after her with a knife," but that he did not remember who she identified as her assailant.

Dwyer's mother testified that she did not recall being present for any argument between the victim and Dwyer. Dwyer testified that he was arguing with the victim about her "using opioids and the fact that her [relative is] a sex offender," after which, the victim

then became aggressive towards him. Dwyer testified that the victim grabbed a knife and that he “calmed her down, took away the knife” and called his mother for a ride home. Dwyer testified that the victim punched him and told him that “she was going to call the police and say that [he] had a knife.” The jury ultimately found Dwyer guilty of both counts of domestic assault.

Dwyer acknowledges that the case “was based on [his] word against [the victim’s].” Dwyer argues that the victim lied to the police, that her testimony did not match the evidence, and that the victim is “a malicious female trying to slander [his] reputation.” But under our standard of review, we assume the jury believed the state’s witnesses and rejected Dwyer’s testimony that he did not assault the victim. *Brocks*, 587 N.W.2d at 42. Viewing the record in the light most favorable to the conviction as we must, we conclude that the jury, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved Dwyer guilty of domestic assault—fear, as well as domestic assault—harm. We therefore do not disturb the verdicts.

Affirmed.