

*This opinion is nonprecedential except as provided by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
A25-0499**

State of Minnesota,
Respondent,

vs.

Joshua Bennett Byker,
Appellant.

**Filed December 15, 2025
Affirmed
Frisch, Chief Judge**

Sherburne County District Court
File No. 71-CR-21-409

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

Dawn R. Nyhus, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Brian A. Gravely, Dudley & Smith, P.A., Mendota Heights, Minnesota (for appellant)

Considered and decided by Frisch, Chief Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Chief Judge

Appellant challenges his convictions for first-degree drug possession, fleeing a police officer in a motor vehicle, and fleeing a police officer by means other than a motor vehicle, arguing that the district court erred in denying his continuance request and violated his right to counsel. Because we discern no error by the district court, we affirm.

FACTS

In March 2021, respondent State of Minnesota charged appellant Joshua Bennett Byker with first-degree drug possession, in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2020); fleeing a police officer in a motor vehicle, in violation of Minn. Stat. § 609.487, subd. 3 (2020); and fleeing a police officer by means other than a motor vehicle, in violation of Minn. Stat. § 609.487, subd. 6 (2020). Although initially represented by a public defender, in April, Byker's public defender was discharged due to Byker's financial ineligibility.

In late August, attorney Joseph Kaminsky appeared with Byker at a hearing. Kaminsky represented to the district court that he would file a certificate of representation on all of Byker's pending cases.¹ Kaminsky reiterated that he was representing Byker on all cases at a hearing in November.

Between December 2021 and March 2022, Byker appeared with Kaminsky in other pending cases. Kaminsky asked the district court to set a jury trial in one of Byker's other cases, with this matter tracking. In November 2022, Kaminsky appeared before the district court for the first day of the jury trial in that case, but Byker failed to appear.

In December 2022, Byker again applied for a public defender but was not financially eligible. Shortly thereafter, Byker informed the district court at a pretrial hearing—without Kaminsky present—that attorney Ryan Garry would likely represent him on all pending

¹ During the pendency of this matter, Byker had at least six additional cases pending against him in Sherburne County. The same district court judge presided over all of Byker's pending cases.

cases. The district court set a May 8, 2023, jury trial date in this matter and directed Byker to coordinate with his counsel.

In early April 2023, Byker submitted a third application for a public defender, which was denied. Also in April, Kaminsky filed a notice of withdrawal as counsel in this matter.

On the May 8 jury trial date, Byker appeared without counsel. Byker informed the district court that he did not know why Kaminsky was not present and that he had not received notice of Kaminsky's withdrawal as counsel. Byker asked the district court for a lengthy continuance and informed the district court that Garry would act as counsel in this matter. Although the district court questioned Byker as to why he applied for representation by a public defender if Byker thought that Kaminsky was still his attorney, the district court ultimately granted Byker's request for a continuance of the trial.

At a July hearing to address all pending cases, including this matter, Garry appeared with Byker. Garry informed the district court that he only represented Byker on one case, though he was attempting to secure a global resolution of all pending cases and would "assume representation" on all cases should a global resolution be reached. The district court continued all cases, including this matter, until August. The district court subsequently granted a continuance until October.

In October, Garry appeared at a hearing to again attempt to secure a global resolution of all pending cases. Garry again informed the district court that he only represented Byker on one case and that he did not represent Byker in the matter that is the subject of this appeal. As no global resolution was reached, the district court scheduled

the case for which Garry represented Byker for a jury trial, with this matter and the other cases tracking.

The district court set a jury trial in this matter to begin on August 19, 2024—three years and five months after the state filed charges.

In June 2024, Byker submitted a fourth application for a public defender, which was again denied. A few days later, the district court held a pretrial hearing in this matter, and Byker appeared without counsel. Byker informed the district court that

I will be within the next three or four days I'll have an attorney or formal representation, and I don't see any need to—I'm not trying to stall, I don't see any need to push that jury trial, the August one, back for any reason because it'll be Ryan Garry again. He's plenty familiar with the cases.

No certificate of representation was filed, and Garry did not appear at any other hearings associated with this matter.

The district court held an omnibus hearing three weeks later, during which Byker informed the district court that Garry had a conflict with the trial date. The district court informed Byker that the jury trial would proceed as scheduled and instructed Byker to “make a decision here within the next couple of weeks whether or not you're going to represent yourself.”

On Monday, August 19—the first day of trial—Byker appeared without counsel. The state informed the district court that it had been sending information related to the trial directly to Byker because no certificate of representation had been filed on Byker's behalf, and Garry had not contacted the state about this matter. Byker stated:

I spoke with [Garry] about—right after our court date about representing me, and he had to bring his kids to school, both kids to college in Iowa and Indiana, and said that he wouldn't—I couldn't retain him because it was risky as far as if I was going to get a continuance, but he couldn't do it. But he said if I could get—if I could get some time for him to look at the case. We talked about getting some sort of global resolution. Like you said it's been going on forever.

I found out my girlfriend is pregnant a few days ago. I need to get this behind me, and I can't run this out any longer. So [Garry] said he would facilitate a global resolution on some or all cases if you could get some sort of a brief continuance. I have money to pay him. He just wouldn't take it because of the risk he says.

The district court responded:

Yeah, and again this is not new information for me. We had at least three occasions based upon my recollection, and I think the record is clear that in anticipation of the jury trial that you had with Mr. Ryan Garry, which led to a successful result for you there were delays several times with an eye towards reaching a global resolution, and that global resolution was never reached, and I guess the bottom line is, you know, I've been patient here with you with or without an attorney, whether it be Joseph Kaminsky and/or Ryan Garry, but I told you shortly after that result in that other jury trial several months ago that you needed to be ready to go with this particular case. . . . The bottom line is I'm not going to be continuing the trial for the file ending in 409 absent any significant representation here that the matter is going to get resolved because, you know, I've been presented that in the past.

The district court continued the case until Wednesday, affording Byker with another opportunity to secure counsel. But the district court also informed Byker that “if that attorney is going to be asking for a continuance again I'll be reluctant to grant the continuance at this late date, but I'll certainly in the interest of fairness allow the matter to be heard.”

Byker appeared two days later for jury trial. Byker again was without counsel. He informed the district court:

I spoke to Mr. Garry several times throughout—he wouldn’t—I have money to retain him. He wouldn’t take money if it wasn’t—if I couldn’t get a continuance here. He was going to—I can hire him on this case and then he would do pro bono for the—some or all of the global resolution. Like I say he’s going to call me at—11:00 he gets out of court today. Like I talked to him just minutes before he went and over this weekend and such, but I don’t have the—and I talked to other attorneys as well today, just last three, you know, and some hours and nobody would—nobody wanted—they just said you get a continuance and give me a call, you know, and I say well it’s not—

The jury trial did not proceed because one of the state’s material witnesses was unavailable.

The district court continued the jury trial for a third time, to begin on October 21.

On October 21, the parties appeared for jury trial and again, Byker appeared without counsel. The district court indicated that Byker was self-represented. The district court asked: “Okay. So, Mr. Byker, we’ve been through this on at least one occasion if not more. You’re rejecting the offer here, and you still want your trial, correct?” Byker responded: “Yes, Your Honor, I would like mine yes.” After a discussion of pretrial issues, the trial proceeded.

Byker expressed various concerns to the district court on the second day of trial, including not having a hearing to release Kaminsky as his attorney. The district court responded with a detailed account of the history of the case, including:

The bottom line is this case has been going on for several years. It shouldn’t be a surprise to you that, you know, from your own standpoint you’ve rejected any offers that were made by the State. Even Mr. Garry indicated at the time that

the trial began in the case for which you were acquitted that a global resolution of these charges in Sherburne County were considered and were rejected by you. So you shouldn't be feigning surprise that we're at the point now where we're going ahead with the jury trial.

I understand that you feel like you're disadvantaged because you're not represented here but, you know, that's by your own choosing. You don't qualify for a public defender, and you've chosen not to hire a private lawyer even though you've known about this trial for some time.

Trial proceeded.

On the third day of trial, Byker again raised concerns about Kaminsky. And the district court, again, recounted the history of Byker's representation. The trial proceeded thereafter. The jury found Byker guilty of all three charges. Byker appeals.

DECISION

Byker asks us to reverse his convictions and remand for a new trial, arguing that the district court abused its discretion in denying his request for continuance, and erred in denying Byker his right to counsel. We disagree because the district court did not abuse its discretion in denying Byker's continuance request, and Byker forfeited his right to counsel by engaging in extremely dilatory conduct.

I. The district court did not abuse its discretion in denying Byker's continuance request.

We first address whether the district court abused its discretion in denying Byker's purported request for a continuance on October 21, the first day of his jury trial. "The granting of a continuance is a matter within the discretion of the district court and its ruling will not be reversed absent a showing of clear abuse of discretion." *State v. Smith*, 932

N.W.2d 257, 268 (Minn. 2019) (quotation omitted). We therefore consider “the circumstances before the trial court when the motion was made to determine whether the defendant was so prejudiced in preparing or presenting his defense as to materially affect the outcome of the trial.” *State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984). When determining the extent of any prejudice, we may consider factors such as the time the case was pending, the proximity of the request to the start of trial, and the number of requests for continuances requested by the moving party. *See id.* (considering the time between the indictment and trial); *State v. Beveridge*, 277 N.W.2d 198, 199 (Minn. 1979) (considering the number of requests for continuances and the proximity of the request to the start of trial); *State v. Courtney*, 696 N.W.2d 73, 82 (Minn. 2005) (“A motion for a continuance is properly denied when the defendant has not been diligent in procuring counsel or in preparing for trial.”).

This case was pending for more than three years before the jury trial. During that time, the district court held multiple bail hearings, at least eight omnibus hearings, at least eight pretrial hearings, and set the case for jury trial on at least four different dates. The district court continued the trial date on three occasions and expressly warned Byker in advance that it was disinclined to further continue the trial date. Our review of the record confirms the district court afforded Byker ample notice and multiple opportunities to secure counsel and prepare for trial before commencing the trial proceedings.

Notwithstanding these accommodations, Byker argues that the district court’s denial of his continuance request on October 21, 2024—the day of trial—was error. We note that the record does not reflect that Byker requested a continuance on October 21, but even if

he did, the district court acted well within its discretion to deny such a request because Byker has not shown that he suffered material prejudice affecting the outcome of the trial. *See Lloyd*, 345 N.W.2d at 247. Accordingly, we conclude that the district court did not abuse its discretion to the extent it denied a continuance request.

II. Byker forfeited his right to counsel.

Byker next argues that the district court violated his right to counsel by failing to secure a proper waiver of his right to counsel and in proceeding with the trial while Byker was unrepresented. Because the record unequivocally shows that Byker engaged in extreme dilatory conduct, we conclude that Byker forfeited his right to counsel.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to counsel. U.S. Const. amend. VI; Minn. Const. art. I § 6. This right applies at all critical stages of a criminal proceeding. *State v. Rosenbush*, 931 N.W.2d 91, 95 (Minn. 2019). “Though the right to counsel is a constitutional requirement, it may be relinquished in three ways: (1) waiver, (2) waiver by conduct, and (3) forfeiture.” *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009).

We review the forfeiture of a defendant’s right to counsel under a clearly erroneous standard of review. *State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012). “[A] defendant who engages in extremely dilatory conduct may be said to have forfeited his right to counsel.” *Jones*, 772 N.W.2d at 505 (quotation omitted). “Forfeiture is usually reserved for severe misconduct, when other efforts to remedy the situation have failed.” *Id.* “The rationale behind applying the forfeiture doctrine is that courts must be able to preserve their ability to conduct trials.” *Id.* In *Jones*, the supreme court reasoned that appellant forfeited

his right to counsel because, among other reasons, (1) over one year passed between appellant's first bail appearance and trial, (2) appellant appeared without counsel eight times, (3) the district court told appellant to retain counsel at least seven times, and (4) the district court granted appellant three continuances solely to retain counsel. *Id.* at 506.

Byker's conduct during the pendency of this matter was more dilatory than that reflected in *Jones*. *See id.* (identifying additional examples of dilatory conduct, including lengthy continuances to enable retention of counsel, multiple rejected applications for public-defender representation, and repeated representations of plans to hire private counsel). Nearly three years and seven months passed between Byker's first appearance and trial. On at least five occasions, Byker told the district court that he was hiring a lawyer. The district court specifically directed Byker to confirm his legal representation on at least seven occasions. Byker applied for and was denied a public defender on at least three occasions. And Byker benefited from multiple continuances to secure adequate legal representation. The district court provided ample warning to Byker that it was disinclined to further delay commencement of trial. Notwithstanding such notice and opportunity to secure counsel, Byker did not do so. This extreme dilatory conduct results in a forfeiture of Byker's right to counsel. We therefore discern no error by the district court.²

Affirmed.

² Because we conclude that Byker forfeited his right to counsel, we do not address the adequacy of any waiver of the right to counsel.