*This opinion is nonprecedential except as provided by Minn.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**
**A25-1857**

State of Minnesota,
Respondent,

vs.

Jorge Olivares,
Appellant.

**Filed August 24, 2026**
**Affirmed**
**Frisch, Chief Judge**

Ramsey County District Court
File No. 62-CR-23-4994

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Frisch, Chief Judge; and Bond, Judge.

**NONPRECEDENTIAL OPINION**

**FRISCH**, Chief Judge

In this direct appeal, appellant Jorge Olivares challenges the district court's judgment of conviction for unlawful possession of a firearm, arguing that his constitutional right to a speedy trial was violated. Because we conclude that Olivares was not deprived of his constitutional right to a speedy trial, we affirm.

## FACTS

On August 25, 2023, respondent State of Minnesota charged Olivares with one count of unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2022), and two counts of second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2022). The statement of probable cause alleged that Olivares engaged in a physical altercation with a friend of his girlfriend's mother and that Olivares fired a gun at the mother and the friend.

Olivares pleaded not guilty on November 6. Six months later, on May 15, 2024, Olivares's appointed counsel filed a speedy-trial demand. At a hearing two days later, Olivares's counsel informed the first assigned judge that Olivares was in custody in Anoka County on a probation violation originating from the charges in this matter. Counsel requested that the case be placed on call during the first week of the trial calendar in July due to her unavailability during the second week.

The register of actions reflects that the first assigned judge conducted a proceeding on July 11, but that proceeding occurred off the record. The minutes of the proceeding indicate that the first assigned judge continued the trial date for good cause and rescheduled the trial to begin on September 5. There is no contemporaneous record regarding the basis for the good-cause finding.

At a hearing on September 5, counsel moved to dismiss the case, arguing that Olivares's constitutional right to a speedy trial had been violated. The first assigned judge denied the motion to dismiss, reasoning that Olivares's trial was set to begin on September 9, which was before the expiration of Olivares's speedy-trial demand on September 15. The first assigned judge also stated that she had previously found good cause to extend the trial date based on unavailability of the victim—a finding that appears to have been made off the record on July 11. The July 11 continuance for good cause extended the speedy-trial demand period by 60 days.

The parties appeared before a different judge on September 9 for the first day of trial. At the beginning of the hearing, the second assigned judge addressed Olivares:

> Mr. Olivares, you should know that I've had—there's been a couple of different off-the-record conversations with your counsel and the State's counsel regarding what we would call the procedural posture of this case, primarily the fact that you are here this morning for trial. As you are likely aware, your counsel is today in a position where, realistically, she's not available to proceed to trial and to work with you on presenting—getting the jury, presenting the case to the jury, and taking it all the way to the conclusion.
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> I think you understand the reasons for that; so I'm not gonna rehash them at this point. But my understanding is that you have demanded a speedy trial, you do in fact want your trial, you want to get this case in front of a jury and get it to resolution, but you are currently not sure how best to proceed and there's a question as to whether or not you would represent yourself at this proceeding. My understanding based on the conversation with both attorneys is that you're seeking a little bit of additional time to hopefully talk with your family and make what is going to be an important decision with respect to the posture of this case. All right?

The state noted that all witnesses were available for trial and that the state was ready to proceed. The second assigned judge directed Olivares to speak with his counsel regarding the scope of responsibilities of self-representation at trial and to "[m]ake sure she answers any questions that you may have." The second assigned judge directed the parties to return the next day.

The next day, counsel for Olivares informed the second assigned judge:

> I had a prolonged conversation with [Olivares] yesterday, explaining that his options were essentially that, if he wanted to proceed to trial this week, he would have to do that on a pro se basis with standby counsel given the fact that I am not going to be his attorney going forward; or if he wanted to have an attorney from my office, that there would not be someone who could be prepared to represent him to start with trial this week and that Your Honor would be making findings that a continuance would be necessary. . . . And this morning [Olivares] has reiterated that he does not want to proceed pro se and understands, with that decision, that the Court would make the necessary findings for the trial to be continued.
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> [Olivares] is maintaining his desire to have a speedy trial, and I understand that the only reason the trial would not be able to commence and finish this rotation is because I am leaving. And so [Olivares] is not waiving any rights but understands that the decision is somewhat outside of his hands.

Olivares confirmed the accuracy of these representations and that he did not intend to waive his speedy-trial demand. The second assigned judge asked the state if it objected to "what is now a defense request to continue this trial," and the state said yes. The state argued that defense counsel would be able to finish the trial before she left the public defender's office. Counsel for Olivares responded that she had "120-plus other cases and clients that I need to transition, and I can't do that for a plethora of reasons if I'm in trial through that time." Counsel also stated that she could not be "effective and competent" for Olivares given the circumstances.

The second assigned judge found good cause to continue the trial, stating:

> I understand that you have a speedy trial demand. I understand that the 120 days expires, I think, either this Thursday or this Friday and that we are now moving beyond even that window—which is generally what the case law considers the outer bounds of the speedy trial demand window.
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> In this particular case, I do believe good cause exists, especially given that this is coming, then, from the defense side of things and it does inculpate your ability to have, I think, a fair trial. That being said, you've maintained your speedy trial demand, which puts us at a little bit of a quandary with respect to scheduling of this matter.

In setting a date for trial, the state informed the second assigned judge that the victim would not be back in the state until "after the end of December 2024." Counsel for Olivares asked for an earlier trial date. The second assigned judge acknowledged Olivares's speedy-trial demand but stated that given witness unavailability, the trial could not effectively be scheduled before December. Olivares and the second assigned judge then had the following exchange:

> THE DEFENDANT: So I've been in Anoka County eight months already, and I can't leave because I have alleged pending charges. I've been fighting this case for a whole year. . . . It's out of my control, too, that this stuff is going on. It ain't fair for me. . . . I got a speedy trial already in since May or March, and I just feel like it ain't fair to push it out all the way to December. Like, this is out of my ability. I should have been had a jury trial. We should have started it yesterday. But, again, it's out of my control with my lawyer.
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> . . . .
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> THE COURT: I know. I know. And I think what this comes down to, what this is indicative of, is the fact that this is an important case. Right? And the Court has a responsibility not just to ensure that you get a fair trial and that you get to trial but that the State has an opportunity to put on a fair trial as well. All right?

> And in terms of balancing both of those issues, as I said, it doesn't make sense to me to schedule a hearing for you back here in October knowing that nothing is going to happen—because I could do that. And you'd come back here, and then what would happen is [the state] would say, "Well, Judge, we don't have our witness. We knew we didn't have our witness. We need a continuance until December." That's all that's gonna happen.
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> THE DEFENDANT: I mean, whose fault is that, though?
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> THE COURT: It's not yours.

Olivares then asked how his speedy-trial demand will "come in play again," and the second assigned judge responded:

> So here's the issue that you're running into on the speedy trial issue, and I'm sure you and [your counsel] have had this conversation: The remedy to the—you know, the quote, unquote, "violation of speedy trial demand" in your case is release. It's release from custody. But you're not in our custody. So the remedy that the Court would typically employ to fix the speedy trial issue is something that is not available to you.

The second assigned judge set the next hearing for December 20, with the understanding that trial would proceed in January 2025.

Olivares appeared at the December 20 hearing with new appointed counsel. Counsel stated her intent to file a motion to dismiss the charges based on a violation of Olivares's speedy-trial rights and thereafter filed a written motion to that effect, also asserting ineffective assistance of counsel.

Trial was set to begin before a different judge on January 21, 2025. The third assigned judge denied the motion to dismiss, finding that "the prejudice to the defendant is not great in this case and that the delay is attributable to the defendant and the defendant's counsel, although the initial delay from . . . July to September is attributable to the State."

Trial proceeded. On the fourth day of trial, the jury found Olivares guilty of unlawful possession of a firearm, and not guilty on the two counts of second-degree assault with a dangerous weapon. The district court entered judgment of conviction on the single count of unlawful possession of a firearm and sentenced Olivares to 60 months in prison.

Olivares appeals.

**DECISION**

Olivares argues that his conviction must be reversed for a violation of his constitutional right to a speedy trial.

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. Under Minn. R. Crim. P. 11.09(b), a trial must start within 60 days of a speedy-trial demand "unless the court finds good cause for a later trial date." If a defendant has been deprived of their constitutional right to a speedy trial, the criminal case against them must be dismissed. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). We review a claimed speedy-trial violation de novo. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015).

We apply a four-factor test to determine whether a defendant's right to a speedy trial was violated. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (applying test established in *Barker v. Wingo*, 407 U.S. 514 (1972)). These four *Barker* factors are: "(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant." *Id.*

"None of these factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *Taylor*, 869 N.W.2d at 19 (quotation omitted). "In other words, we must engage in a difficult and sensitive balancing process." *Id.* (quotation omitted). We address each factor in turn.

***Length of Delay***

The first *Barker* factor—the length of the delay—is the "triggering mechanism" that determines whether we must conduct further review. *Windish*, 590 N.W.2d at 315 (quotation omitted); *see also Taylor*, 869 N.W.2d at 19 ("A delay that exceeds 60 days from the date of the demand raises a presumption that a violation has occurred, and we must apply the remaining factors of the test."). The parties do not dispute that the first *Barker* factor weighs in favor of Olivares because the trial did not begin until over 60 days after his speedy-trial demand.

***Reason for Delay***

In assessing the second *Barker* factor—the reason for the delay—"the key question is whether the government or the criminal defendant is more to blame for th[e] delay." *Taylor*, 869 N.W.2d at 19 (quotation omitted). After determining which party is responsible for the delay, we consider the specific reason for the delay. *Osorio*, 891 N.W.2d at 628 (citing *Barker*, 407 U.S. at 531). "[A] deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." *Id.* (quotation omitted). And "[w]hen the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation." *Taylor*, 869 N.W.2d at 20 (quotation omitted). Olivares experienced two delays before trial.

The first delay originated from a July 11 appearance before the first assigned judge. This appearance was not held on the record. But at the September 5 hearing held on the record, the first assigned judge stated that on July 11, she had found good cause to continue the case because the victim was not available for trial, a finding that Olivares does not challenge on appeal.[1] Although a delay due to the unavoidable unavailability of the state's witness may be *attributable* to the state, such a delay is not *held against* the state. *State v. Mikell*, 960 N.W.2d 230, 251 (Minn. 2001); *see also Taylor*, 869 N.W.2d at 20 (describing a delay due to an unavailable witness as a delay that will not be held against the state).

The second delay occurred on September 10, 2024, when the second assigned judge continued the trial again for good cause. This continuance was necessitated by the unavailability of counsel for Olivares and Olivares's concurrent assertion of his right to representation by counsel at trial.

"Delays caused by defense counsel, whether appointed or privately retained, are attributable to the defendant." *State v. Jones*, 977 N.W.2d 177, 191 (Minn. 2022); *see also*

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[1] We emphasize that conducting all criminal proceedings on the record is the best practice, particularly where, as here, a proceeding implicates the constitutional rights of the accused. *Cf.* Minn. Stat. § 486.02 (2024) (requiring stenographic record of "all proceedings had before the judge upon the trial of issues of fact"); *State v. Whitson*, 876 N.W.2d 297, 307 (Minn. 2016) ("Complete and accurate transcripts are critical to a defendant's right to meaningful review of a conviction . . . ."); *State v. Casarez*, 203 N.W.2d 406, 408 (Minn. 1973) (reversing and remanding where transcript of guilty plea hearing "[was] so incomplete that there [was] no way of determining if defendant properly waived all of his rights").

*Vermont v. Brillon*, 556 U.S. 81, 90-91 (2009) ("Because the attorney is the defendant's agent when acting, or failing to act, in furtherance of the litigation, delay caused by the defendant's counsel is also charged against the defendant." (quotation omitted)); *State v. Chute*, 887 N.W.2d 834, 845 (Minn. App. 2016) (concluding that delay caused by counsel's decision to leave the public defender's office and request to reschedule the case is attributable to the defendant), *aff'd on other grounds*, 908 N.W.2d 578 (Minn. 2018); *State v. Smith*, 749 N.W.2d 88, 97 (Minn. App. 2008) (attributing defense counsel's "need for time to prepare an adequate defense" to the defendant). As such, we conclude that the second delay—caused by the unavailability of Olivares's counsel—is attributable to Olivares. Accordingly, we conclude that the second factor weighs slightly against Olivares.

***Assertion of Right***

As to the third *Barker* factor—whether Olivares asserted his right to a speedy trial—the parties do not dispute that Olivares repeatedly invoked his right to a speedy trial throughout pretrial proceedings. The record does not support the state's argument that we should afford less weight to this factor because Olivares diluted his right to a speedy trial through his own actions. Instead, the record reflects a particularly strong demand for a speedy trial because throughout the proceedings both Olivares and his counsel repeatedly invoked his speedy-trial rights both in person and in writing. This factor weighs in Olivares's favor.

***Prejudice***

As to the fourth *Barker* factor, the supreme court has identified "three interests to consider in determining whether a defendant suffered prejudice: (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." *Taylor*, 869 N.W.2d at 20 (quotation omitted). The supreme court has noted that "the third interest, preventing impairment of a defendant's defense, is the most serious." *Id.* (quotation omitted).

In light of these considerations, we discern no prejudice associated with the delay in bringing Olivares to trial. Olivares was not held in custody on this matter. The record shows that Olivares posted bond in this matter but was incarcerated on a probation violation in Anoka County, where the alleged violation was the conduct giving rise to this offense, and then later in McLeod County for reasons not apparent from this record. When a defendant "is already in custody for another offense . . . the first two interests are not implicated." *Id.* at 20. Olivares argues that because his incarceration in Anoka County was related to the charge in this case, the *Taylor* rule should not apply. But Olivares cites no authority in support of that proposition, which is at odds with existing authority. *See Mikell*, 960 N.W.2d at 253; *Windish*, 590 N.W.2d at 318 (concluding that first two prejudice interests were not implicated because appellant was in custody for another offense). In any event, Olivares does not argue that his defense was impaired. And there is nothing in the record to suggest that the delay was manufactured by the state. *See Taylor*, 869 N.W.2d at 20 (stating in the context of assessing the fourth *Barker* factor that "[n]otably, there is no allegation that the delay was manufactured by the State"). Thus, this factor weighs against a speedy-trial violation.

On balance, we do not discern a violation of Olivares's right to a speedy trial. Olivares's trial occurred "quickly enough so as not to endanger the values that the right to a speedy trial protects." *State v. Paige*, 977 N.W.2d 829, 843 (Minn. 2022). Thus, we conclude that Olivares was not deprived of his constitutional right to a speedy trial.

**Affirmed.**