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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0009**

State of Minnesota,
Respondent,

vs.

Cameron Oneal Clark,
Appellant.

**Filed December 12, 2022
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-21-8343

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

Michael O. Freeman, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following his convictions for first-degree attempted murder of an unborn child and first-degree aggravated robbery, appellant argues that he is entitled to a new trial because

the district court abused its discretion by admitting unauthenticated GPS tracking evidence. Appellant also raises several additional issues in a pro se supplement brief. Because the district court did not abuse its discretion in its evidentiary rulings and the issues raised by appellant in his pro se supplemental brief do not warrant relief, we affirm.

FACTS

The following facts were elicited during a jury trial. Appellant Cameron Clark and the victim had a sexual relationship. In December 2020, the victim learned that she was pregnant and notified Clark that he was the father. Clark told the victim that she “better handle that,” which the victim understood to mean that he wanted her to get an abortion. The victim refused to abort the pregnancy, and Clark began threatening her. Clark also sent the victim messages accusing her of lying about taking birth control and telling her that she was going to suffer. The victim understood his statement that she was going to suffer to mean that Clark was not going to be supportive of her or their child. Clark testified that he requested that the victim take a DNA test to confirm paternity, but the victim declined to do so. The victim blocked Clark’s phone number.

Around January 2021, the victim began receiving calls from an unknown number. The victim recognized the caller’s voice as belonging to Clark. During one such call, Clark told the victim that he was going to “stomp [the] baby out” of her. Clark also told her that he or someone else would beat her so that she would lose the baby. Eventually, the victim and Clark stopped communicating.

The Attack

Around April 2021, the victim initiated contact with Clark. She asked Clark to help her build a crib for the baby. Clark invited her to visit him at his apartment. The victim agreed.

On April 16, 2021, the victim planned to meet Clark at his apartment. She dropped her children off at school and ran various errands before driving to Clark's apartment. While the victim was driving to Clark's apartment, he called her and told her to meet him at a different location: his mother's apartment. The victim believed that Clark wanted to meet at his mother's home so that he could tell her about the pregnancy. She agreed to meet Clark at his mother's apartment. While the victim was on her way, she called her ex-husband's uncle (uncle), who lived in the same building, to ask for directions.

When the victim arrived at the apartment complex, she initially attempted to enter through a door that was locked. Clark called the victim and told her to enter through a different door. When the victim entered through the door identified by Clark, two people attacked her, one female and one male. The female attacker sprayed the victim with mace, which impaired the victim's vision and breathing. The victim reached for her firearm, which she had a permit to carry, but the male attacker tackled her to the ground and started beating her, causing her to drop the firearm. The attackers punched the victim in the stomach and kicked her all over her body. The male attacker tased the victim in the stomach and on her back. Throughout the attack, the victim called for help and tried to exit through the door, but the attackers prevented her from leaving.

After the attack, the victim discovered that her phone and her firearm were missing. The victim walked to a nearby liquor store and used the store's phone to call uncle. The victim and uncle went to the police station where the victim reported the attack. In her initial report and a subsequent interview, the victim reported to police that Clark was the male attacker. She recognized his physical build and eyes from their prior interactions.

At trial, the victim testified that she recognized the male attacker as Clark and identified him in court. Clark offered an alibi. He testified that on the day of the attack, he helped his neighbor move her television, purchased and smoked marijuana, played a game, returned home, and took a shower. He then started to walk to a grocery store but turned around when he realized that he forgot his wallet. Outside of his apartment building, he spoke to the alleged female attacker because she wanted some money. He did not report the same story to investigators. Clark also testified that the co-owner of his car was driving the car on the day of the attack.

Procedural History

The state charged Clark with second-degree attempted murder of an unborn child in violation of Minn. Stat. §§ 609.17, subd. 1, .2662(1) (2020), and first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2020). Later, the state amended the complaint to include a charge of first-degree attempted murder of an unborn child in violation of Minn. Stat. §§ 609.17, subd. 1, .2661(1) (2020).

Before trial, Clark moved in limine to exclude evidence in the form of screenshots of data from a Google tracking service purportedly showing the victim's cellphone at locations frequented by the victim before the attack, at Clark's mother's apartment complex

during the attack, and at Clark's residence after the attack (GPS tracking evidence). Clark argued that the GPS tracking evidence was hearsay and could not be properly authenticated. The district court denied the motion and admitted the evidence.

The jury returned a guilty verdict on all three counts. Clark moved for a new trial, arguing that the erroneous admission of the objected-to GPS tracking evidence was not harmless error. The district court denied Clark's motion for a new trial.

Clark now appeals.

DECISION

Clark argues that the district court abused its discretion by admitting GPS tracking evidence. He claims that the evidence was not properly authenticated and that the erroneous admission of the evidence was not harmless beyond a reasonable doubt. Clark also raises numerous additional issues in a pro se supplement brief. We address each argument in turn.

I. The district court did not abuse its discretion by admitting the GPS tracking evidence.

Clark argues that the district court abused its discretion by allowing the state to introduce GPS tracking evidence without proper authentication. Specifically, Clark argues the evidence was not properly authenticated in the absence of foundation describing the technology or establishing the accuracy of the information produced by the technology. On the facts of this case, we are not persuaded that the district court abused its discretion in admitting this evidence.

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “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. Garland*, 942 N.W.2d 732, 742 (Minn. 2020) (quotation omitted). “[W]e will not overturn a district court’s evidentiary rulings unless appellant shows a clear abuse of discretion and that this abuse resulted in prejudice.” *State v. Steward*, 645 N.W.2d 115, 120 (Minn. 2002).

Evidence is sufficiently authenticated if there is evidence “sufficient to support a finding that the matter in question is what its proponent claims.” Minn. R. Evid. 901(a). The Minnesota Rules of Evidence do not prescribe any particular means of authentication. *See* Minn. R. Evid. 901(b) (listing examples of authentication not by way of limitation). A party may authenticate evidence through “[t]estimony that a matter is what is it claimed to be.” Minn. R. Evid. 901(b)(1).

The state sought to admit exhibits containing GPS tracking evidence of the location of the victim’s phone on the day of the attack. The data was produced by Google and accessed by the victim. The state authenticated the GPS tracking evidence through the victim’s testimony. Before the evidence was admitted at trial, the victim testified about the manner in which she obtained the GPS tracking evidence. She testified that after her phone was stolen during the attack, she accessed tracking data associated with her phone through Google services. The victim testified that the GPS tracking evidence accurately showed the location of her phone both immediately before and during the attack, locations

she verified that she personally visited with her phone. The victim also testified that the same service tracked her phone to Clark's apartment after the attack. The district court determined that the GPS tracking evidence was properly authenticated because the state intended to offer testimony that the evidence was what it purported to be.

The district court also noted that concerns about the reliability of the GPS tracking evidence relate to the weight to be given to the evidence by the fact-finder but did not bear on the threshold question of authenticity. We agree. Foundation and probative value bear on the weight of the evidence and not admissibility, unless there is *no* foundation or probative value. *State v. Coy*, 200 N.W.2d 40, 44 (Minn. 1972). We also observe that the victim provided firsthand testimony of the reliability of the GPS tracking evidence data points by confirming that the evidence accurately identified locations she personally visited with her phone on the day of the attack before her phone was stolen. Clark asks us to adopt specific foundational requirements for GPS tracking evidence, including requiring evidence regarding the underlying tracking system and technological mechanism by which outputs are produced. But the rules of evidence do not require a specific method of authentication, and the testimony in this case established with sufficient reliability that the evidence was what it purported to be. We therefore see no abuse of discretion by the district court in admitting the GPS tracking evidence.

Even if the GPS tracking evidence lacked sufficient foundation, admission of the evidence was harmless error. "Under the harmless error standard, a defendant who alleges an error that does not implicate a constitutional right must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State*

v. Matthews, 800 N.W.2d 629, 633 (Minn. 2011) (quotation omitted). In deciding what effect erroneously admitted evidence had on the verdict, we consider “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

Clark failed to prove that there is a reasonable probability that the admission of the GPS tracking evidence had a significant effect on the verdict. The state’s case against Clark was very strong. The state introduced evidence that Clark repeatedly called and threatened the victim after he learned she was pregnant, specifically saying that he would “stomp [the] baby out” of her or recruit someone else to beat her so that she would lose her baby. The state introduced evidence that Clark invited the victim to meet at his apartment on the day of the attack, but he called her while she was traveling to meet him and changed the location to his mother’s apartment. The state introduced tracking evidence of Clark’s phone at the location of the attack. And the state presented video evidence suggesting that Clark left his apartment before the attack, arrived at his mother’s apartment building before the attack, was present at the time of the attack, and left his mother’s apartment building after the attack. We specifically disagree with Clark’s characterization that only circumstantial evidence identified him as the male attacker. The victim immediately identified Clark as the male attacker to police and again identified him as the male attacker at trial. This is direct evidence of identity, based on the victim’s personal knowledge or observation to prove a fact without inference. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017).

In addition, Clark attempted to impeach the reliability of the GPS tracking evidence. On cross-examination, the victim conceded that only she could vouch for the accuracy of the evidence. The victim also conceded that the mere existence of the GPS tracking evidence did not prove that Clark committed a crime.

Given these circumstances, Clark failed to prove that the admission of the GPS tracking evidence had a significant effect on the verdict. Therefore, even if the district court abused its discretion in admitting the GPS tracking evidence, the admission of such evidence was harmless error.

II. The issues raised in Clark’s pro se supplemental brief lack merit.

Clark set forth several additional arguments in his pro se supplemental brief, which we address below.

Speedy-Trial Violation

Clark first argues that his right to a speedy trial was violated. The Sixth Amendment to the United States Constitution provides an accused “the right to a speedy and public trial.” U.S. Const. amend. VI; *see also* 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).

In determining whether a defendant’s right to a speedy trial has been violated, Minnesota courts apply the four-factor balancing test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker*, 407 U.S. at 530-33). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant’s assertion of his right to a speedy trial, and (4) the prejudice to the

defendant. *Barker*, 407 U.S. at 530. None of these factors are dispositive; “[r]ather, they are related factors and must be considered together with such other circumstances as may be relevant.” *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quoting *Barker*, 407 U.S. at 533). “This balancing test allows the court to accommodate the sometimes competing interests between the orderly prosecution of crimes that is fair to both sides and the prompt resolution of the case by trial.” *State v. Mikell*, 960 N.W.2d 230, 245 (Minn. 2021). But when a defendant causes the overall delay in bringing a case to trial, there is no speedy-trial violation. *Id.* at 251.

The *Barker* factors do not establish a violation of Clark’s right to a speedy trial. Although Clark was not tried within 60 days of asserting a speedy-trial demand and he repeatedly demanded a speedy trial, much of the delay is attributable to the defense. Trial was delayed three times: once because defense counsel was scheduled to try a higher-priority case, then because the prosecutor was scheduled to try a higher-priority case, and finally because defense counsel did not want to risk the trial extending into a previously planned family vacation. Trial occurred 106 days after Clark asserted his demand for a speedy trial, and the defense was responsible for 29 days of the 46-day delay over the 60-day deadline. Clark identifies no prejudice to his defense associated with the delay. Thus, the balance of factors does not weigh in favor of a speedy-trial violation, and we see no reversible error by the district court.

Sufficiency of the Evidence

Clark argues that evidence at trial was insufficient to establish injury, identity, and intent. When considering a challenge to the sufficiency of the evidence, we will not

overturn a guilty verdict if the jury, applying the presumption of innocence and the state's burden to prove an offense beyond a reasonable doubt, "could reasonably have found the defendant guilty of the charged offense." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We view the evidence in the light most favorable to the verdict. *Id.* Our review of the record reveals that the direct evidence introduced by the state was sufficient to support the jury's verdict.

First, we note that the state was not required to prove injury to the victim or unborn child as an element of any of the charged crimes: attempted first-degree murder of an unborn child, attempted second-degree murder of an unborn child, and aggravated robbery. Minn. Stat. §§ 609.17, subd. 1 (attempt), .245, subd. 1 (aggravated robbery), .2661(1) (first-degree murder of an unborn child), .2662(1) (second-degree murder of an unborn child).

Second, the state introduced sufficient direct evidence of Clark's identity and intent. As to Clark's identity, the victim identified Clark as the male attacker. The victim reported to police that Clark attacked her, and she testified at trial that Clark attacked her. This is direct evidence of identity. While Clark questions the reliability of this evidence, such a challenge to the weight given to a specific piece of evidence is a determination for the jury. *See State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (stating appellate courts "assume that the jury believed the [s]tate's witnesses and disbelieved the defense witnesses" (quotation omitted)). As to Clark's intent, the state introduced direct evidence that Clark intended to "stomp [the] baby out" of the victim. The victim testified that Clark called her and made that threat, as well as a threat that he would beat her or have someone else beat her so that she would lose her baby. The victim estimated that Clark made these

threats about once a week for a period of time during her pregnancy. This is direct evidence of Clark's intent sufficient to sustain the verdict.

Alleged Perjured Statements

Clark argues that his convictions should be reversed because the complaint contains false statements. He argues that statements in the complaint must be false because (1) he could not have been identified as the male attacker at the time the documents were created, (2) the victim did not suffer a fractured or broken rib, and (3) the video evidence did not show the attackers taking the victim's phone or gun. But on appeal following a conviction, we do not reconsider the accuracy of the statements set forth in the charging documents. *See State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995) (reasoning that a postconviction challenge to probable cause is irrelevant where there was sufficient evidence for a conviction), *rev. denied* (Minn. Mar. 21, 1995). "The evidence necessary to support a finding of probable cause is significantly less than that required to support a conviction. . . . [It] requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *State v. Harris*, 589 N.W.2d 782, 790-91 (Minn. 1999) (quotation and citation omitted). Because sufficient evidence supported Clark's convictions, we see no reversible error associated with the allegedly false statements in the complaint. *Holmberg*, 527 N.W.2d at 103.

Confrontation Clause Violation

Clark argues that the victim's testimony that her mother created the GPS tracking evidence violated his confrontation rights. The United States and Minnesota Constitutions provide that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be

confronted with the witnesses against him.” U.S. Const. amend. VI; Minn. Const. art. I, § 6. A violation of the Confrontation Clause occurs when “the statement in question was testimonial, the statement was admitted for the truth of the matter asserted, and the defendant was unable to cross-examine the declarant.” *State v. Sutter*, 959 N.W.2d 760, 765 (Minn. 2021) (quotation omitted). We review de novo whether the admission of evidence violates a defendant’s rights under the Confrontation Clause. *Id.* at 764.

No violation of Clark’s confrontation rights occurred. The state did not admit a statement by an out-of-court declarant. Although the victim testified that her mother used the Google tracking application to track the victim’s phone to Clark’s home, the victim *also* testified that *she* performed the same search and that the GPS tracking evidence introduced at trial was generated by her search. Clark’s confrontation rights were fully vindicated because the victim was available for cross-examination.

Lesser-Included Offense Jury Instruction

Clark argues that the district court erred because it did not give an instruction on a lesser-included offense of fifth-degree assault. “We review a district court’s jury instructions for an abuse of discretion. A district court abuses its discretion if it fails to properly instruct the jury on all elements of the offense charged.” *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019) (quotation and citation omitted). When a defendant fails to request a jury instruction on a lesser-included offense, the defendant waives their right to receive the instruction absent plain error affecting their substantial rights. *State v. Dahlin*, 695 N.W.2d 588, 597-98 (Minn. 2005).

The record does not reflect that Clark requested that the district court instruct the jury on a lesser-included offense of fifth-degree assault. We note that the district court instructed the jury on the lesser-included offense of second-degree attempted murder of an unborn child, and that the jury found Clark guilty of the lesser-included offense.

Ineffective Assistance of Counsel

Clark argues that he received ineffective assistance of counsel because his counsel should have: (1) objected to the victim's in-court identification of Clark, (2) challenged the validity of evidence, (3) conducted a more fulsome investigation in preparation for trial, (4) challenged or objected to the charges, (5) prevented or stopped due-process violations, (6) objected to the court's subject-matter jurisdiction, and (7) failed to present certain witnesses. He contends that taking these actions would have (1) reduced the charges, (2) supported a determination that the evidence did not support murder or attempted murder, (3) revealed new witnesses in favor of Clark, (4) reduced his bond, and (5) achieved a different result.

We examine claims of ineffective assistance of counsel under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (*Strickland* test). *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). Under the *Strickland* test, Clark must show that: (1) his "counsel's representation fell below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). If Clark fails to show either prong, we need not address both. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

Clark has not identified any act or omission by counsel below an objective standard of reasonableness. We assign “a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). “An attorney’s representation meets the objective standard of reasonableness if the attorney exercises the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances. Strategic choices made by an attorney after a thorough investigation of the facts and law are virtually unchallengeable.” *Swaney*, 882 N.W.2d at 217 (quotation and citation omitted). We view nearly all of Clark’s complaints as matters of trial strategy, which we do not review on appeal. And Clark’s complaint that his counsel was ineffective because he did not challenge the charges also fails. Two months after filing the initial complaint, the state added a more serious charge, first-degree attempted murder of an unborn child. At trial, the district court did instruct the jury on a lesser-included offense, second-degree attempted murder of an unborn child, and Clark was convicted on both counts. Moreover, Clark does not cite any authority standing for the proposition that a counsel’s representation falls below an objective standard of reasonableness when counsel does not request every possible lesser-included offense.

Even assuming that any of the claimed errors demonstrate that counsel’s performance fell below an objective standard of reasonableness, Clark failed to meet his burden to show “a reasonable probability that, but for counsel’s [alleged] unprofessional errors, the result of the proceeding would have been different.” *See Zumberge*, 937 N.W.2d at 413 (quotation omitted). “A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome of the case.” *Swaney*, 882 N.W.2d at 217 (quoting

Strickland, 466 U.S. at 694). Clark did not establish how the result would have been different had his counsel taken action as he now claims.

Because Clark did not establish that his counsel's performance fell below an objective standard of reasonableness or that the result would have been different had counsel acted differently, his ineffective-assistance-of-counsel claim fails.

Sentencing

Clark argues that his sentence was illegal because the district court imposed sentences for multiples crimes that were part of the same behavioral incident and the sentence included an “unjustified sentencing enhancement.” We disagree. Clark correctly notes that, in general, a defendant may not be sentenced for multiple convictions arising out of the same conduct. Minn. Stat. § 609.035 (2020). But under Minn. Stat. § 609.2691 (2020), “a prosecution for or conviction under sections 609.2661 to 609.268 is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.” The district court sentenced Clark to 190 months in prison based on his conviction of first-degree attempted murder of an unborn child in violation of Minn. Stat. § 609.2661(1). Because this conviction falls within the multiple-convictions exception set forth in Minn. Stat. § 609.2691, the district court did not err in imposing a sentence for first-degree aggravated robbery arising out of the same behavioral incident. In addition, Clark does not identify and we do not discern from the record that the district court “enhanced” Clark’s sentence. To the contrary, the district court imposed concurrent guidelines sentences at the mid-point in the range for both convictions. *See* Minn. Sent’g Guidelines 2.G.13, 4.A (2021). We therefore discern no sentencing error.

Remaining Issues

Clark summarily raises numerous additional issues that are unmeritorious. We will not consider assertions without further argument or authority unless prejudicial error is obvious on mere inspection. *See State v. Anderson*, 871 N.W.2d 910, 915 (Minn. 2015) (holding that an assertion without further argument or supporting authority is waived unless prejudicial error is obvious upon mere inspection). Clark set forth several assertions of error without any authority or argument, including: (1) prosecutorial misconduct, (2) prejudice and bias by the district court, (3) improper in-court identification, (4) admitting pictures of the victim's stomach, and (5) conflicts of interest between Clark and the prosecutor and Clark and one of the judges who presided over the matter. We discern no obvious prejudicial error with respect to these issues, and we will not consider these issues on appeal.

Clark summarily alleges violations of his constitutional rights. He alleges that (1) the state violated his due-process rights by not placing him in a lineup with a ski mask, (2) a search warrant was executed 12 days after its issue, and (3) his bail was excessive.¹ But the record reflects that Clark did not timely raise specific issues related to the lineup or warrant. *State v. Pederson-Maxwell*, 619 N.W.2d 777, 780 (Minn. App. 2000) (stating that a constitutional challenge to the admission of evidence must be raised at the omnibus hearing to be timely). Moreover, because Clark is now convicted, his claim that bail was

¹ Clark also alleges that his constitutional rights were violated because he was arrested in his home without a warrant. But the record reflects that Clark was already in custody at the time the complaint in this matter was filed.

excessive is moot. *State v. LeDoux*, 770 N.W.2d 504, 515 (Minn. 2009) (reasoning that bail issues are moot after a conviction, including whether bail was excessive).

We therefore discern no reversible error associated with any of the issues identified by Clark in his pro se supplemental brief.

Affirmed.