Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: April 27, 2020 CASE NUMBER: 2019SC745
Certiorari to the Court of Appeals, 2016CA1311 District Court, Jefferson County, 2014CR572	
Petitioner: Nathan D. Knuth, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2019SC745
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, APRIL 27, 2020.

16CA1311 Peo v Knuth 08-22-2019

COLORADO COURT OF APPEALS

DATE FILED: August 22, 2019
CASE NUMBER: 2016CA1311

Court of Appeals No. 16CA1311
Jefferson County District Court No. 14CR572
Honorable Randall C. Arp, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nathan Daniel Knuth,

Defendant-Appellant.

JUDGMENT AND SENTENCE AFFIRMED

Division V
Opinion by JUDGE RICHMAN
Harris and Tow, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 22, 2019

Philip J. Weiser, Attorney General, Brock J. Swanson, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Suzan Trinh Almony, Alternate Defense Counsel, Broomfield, Colorado, for Defendant-Appellant

3

¶ 1 Defendant, Nathan Daniel Knuth, appeals the judgment of conviction entered upon jury verdicts finding him guilty of second degree assault, menacing with a deadly weapon, second degree kidnapping, false imprisonment, criminal mischief, driving while ability impaired, third degree assault, and violation of a protection order. He also appeals his adjudication and sentence as a habitual criminal. We affirm the conviction and sentence.

I. Background

¶ 2 All of the charges in this case arose from a series of events beginning with an alcohol-fueled celebration of defendant's birthday. Defendant and the primary victim were attempting to reconcile a long-term on-and-off relationship. The pair share two children, ages eleven and one.

¶ 3 According to the prosecution's evidence, and as relevant to the guilty verdicts in this case,[1] defendant and the victim consumed

---

[1] Defendant was found not guilty of (1) criminal mischief and obstruction of telephone service for allegedly breaking the victim's phone; (2) second degree assault for conduct toward the victim just after arriving at her house from the bar; (3) reckless driving for allegedly driving his truck dangerously near to bar patrons in the bar's parking lot; and (4) cruelty to animals for allegedly punching the victim's dog in the face. We do not discuss the evidence for these charges.

4

drinks at two locations before proceeding to a bar near the victim's house. There, defendant consumed more drinks, and he became angry. He punched the glass door of the bar, breaking it. Though he was intoxicated, he drove his truck from the bar parking lot to the victim's house. The record is unclear regarding what happened immediately after, while defendant and his friend were at the house with the victim, but certain things are clear. A dog crate, some glass items, and the victim's phone were broken; a pot was dented; and the victim sought refuge back at the bar.

¶ 4 After a time, the victim left the bar and ultimately decided that because the lights were out at her house, it was safe to return. She entered and went upstairs to her bedroom. Defendant was standing in the bedroom, waiting for her. As soon as she saw him, she tried to run. He caught her by the hair, dragged her downstairs to the front door, and said, "I'm going to bury you." She resisted, and he then dragged her back upstairs to the bedroom by the hair and threw her on the bed.[2] One of the victim's dogs attempted to

---

[2] Defendant is six feet three inches tall, and the victim is five feet three inches.

intervene, and defendant put him out of the room and closed the door.

¶ 5 The victim tried to escape the room when defendant put the dog out, but defendant threw her on the bed and got on top of her, saying, "You're not going anywhere. You're going to die. I hate you." After he appeared to doze off, the victim tried to slide out from under him, but he bit her upper arm, held her by his teeth, and pulled her back by her pant loops. He choked her until she lost consciousness. She woke to him saying, "Come on, baby, wake up, wake up." Before she managed to escape, defendant choked the victim a total of three times. She lost consciousness twice. As she struggled against him, defendant bit the victim's hands, once removing "all the skin" on her knuckle, and he punched her in the face and in the back of the head. He said, "I'm going to kill you" and "I'm not going to jail for nobody."

¶ 6 Eventually, defendant fell asleep, and the victim was able to get away. She rounded up her dogs, put them in her car, and drove to a nearby neighbor's house. She told her neighbor what had happened, and they called the police. Defendant was arrested that

6

morning, and a mandatory protection order prohibiting all contact with the victim was issued two days later.

¶ 7 Defendant was initially charged with second degree assault, menacing with a deadly weapon, second degree kidnapping, false imprisonment, criminal mischief, and third degree assault. He pleaded not guilty on July 7, 2014. Defendant moved to continue his trial twice before he moved to plead not guilty by reason of insanity (NGRI) on April 27, 2015. The trial court entered the NGRI plea and ordered a psychological evaluation. The evaluation concluded that defendant was legally sane at the time of the incidents in question; it was filed with the court on January 14, 2016.

¶ 8 Defendant decided to represent himself, with advisory counsel, after his fourth counsel of record[3] did not want to proceed with an

---

[3] Defendant's initial retained counsel moved to withdraw for a conflict, citing only the Colorado Rules of Professional Conduct. His first public defender was released from representation after defendant moved to dismiss the public defender's office and a court found a conflict due to a complete breakdown of communication. His alternate defense counsel was released because defendant moved to substitute counsel with retained counsel. Defendant moved for substitution of his second retained counsel after counsel told the court he would not be proceeding under the affirmative defense of NGRI.

NGRI defense. At trial, the victim testified to the facts recounted above. Her testimony was corroborated by a bouncer at the bar, her neighbor, multiple police officers and investigators, a doctor, audio recordings of defendant's calls from jail, and photographic evidence of her injuries. Defendant simply argued that the prosecution had not met its burden of proof. The jury found defendant guilty of nine charges.

¶ 9 The trial court found that defendant was a habitual criminal, and it sentenced him to a cumulative term of thirty-two years in the custody of the Department of the Corrections (DOC) — four times the maximum of the presumptive range for second degree assault.

¶ 10 On appeal, defendant contends that (1) there was insufficient evidence to support his conviction for second degree kidnapping; (2) the second degree assault statute is unconstitutional; (3) the trial court erroneously denied his motion for a mistrial after evidence of his prior incarceration was introduced; (4) his statutory and constitutional rights to a speedy trial were violated; (5) his right to a speedy trial under the Uniform Mandatory Disposition of Detainers Act (UMDDA) was violated; and (6) there was insufficient evidence that he committed the predicate crimes to support his adjudication

and sentencing as a habitual criminal. We address and reject each contention in turn.

II. Sufficient Evidence of Second Degree Kidnapping

¶ 11 Defendant first asserts that there was insufficient evidence for the asportation element of second degree kidnapping, because the victim was moved only from the hallway outside her bedroom to inside her bedroom, an insubstantial distance, and that the movement did not substantially increase her risk of harm. We disagree.

A. Standard of Review and Applicable Law

¶ 12 Evidence is sufficient to support a conviction if the direct and circumstantial evidence, viewed as a whole and in the light most favorable to the prosecution, could support a rational trier of fact's conclusion that the defendant is guilty of the offense beyond a reasonable doubt. *Clark v. People*, 232 P.3d 1287, 1291-92 (Colo. 2010). We give the prosecution the benefit of every reasonable inference which may fairly be drawn from the evidence, and we do not consider vague, speculative, or imaginary doubt to be reasonable doubt. *Id.* at 1292. We review the record de novo to make this determination. *Id.* at 1291.

¶ 13 Section 18-3-302(1), C.R.S. 2018, provides that second degree kidnapping occurs when a person "knowingly seizes and carries any person from one place to another." Colorado courts have interpreted the asportation element to mean that the defendant "moved the victim from one place to another." *People v. Harlan*, 8 P.3d 448, 476-77 (Colo. 2000), *overruled on other grounds by People v. Miller*, 113 P.3d 743 (Colo. 2005). Substantial movement of the victim is not required. *People v. Fuller*, 791 P.2d 702, 706 (Colo. 1990). Where the movement was insubstantial or doubtful, "[t]he prosecution must establish that the victim was moved and that the movement substantially increased the risk of harm to the victim." *Id.*; *see People v. Bondsteel*, 2015 COA 165, ¶ 95, *aff'd*, 2019 CO 26.

B. Application

¶ 14 Defendant argues that his movement of the victim from the hallway to the bedroom was insubstantial, and that the movement did not substantially increase her risk of harm. The People argue that the movement was not insubstantial or doubtful, and that we need not discuss whether the movement increased her risk of harm. We need not resolve whether the movement was substantial,

because we conclude that a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could find that defendant's movement of the victim from the hallway to the front door and back to the bedroom substantially increased her risk of harm.

¶ 15 The victim was at a lower risk of harm when she was proximate to her front door, where she may have alerted a passerby to her distress or escaped at ground level, than she was in her bedroom. *See People v. Owens*, 97 P.3d 227, 236 (Colo. App. 2004) (collecting cases; holding that victims taken from the entrance of a restaurant to a back office "where they were threatened with death and where they were no longer visible to members of the public" were subjected to a substantially increased risk of harm); *see also People v. Rogers*, 220 P.3d 931, 936 (Colo. App. 2008) (holding that movement to a place from which it was more difficult to escape substantially increased the victim's risk of harm).

¶ 16 Even when viewing the evidence as characterized by defendant, interpreting his movement of the victim as only from the hallway to the bedroom, a reasonable juror could find that this movement substantially increased her risk of harm because the

bedroom door enabled defendant to exclude the victim's dogs, a Labrador-pit bull mix and a Great Dane, from the room.

¶ 17 We are not persuaded that this case is like *People v. Bell*, 809 P.2d 1026, 1033 (Colo. App. 1990), where a division of this court concluded that movement of a victim from his living room to his bedroom, where he was left alone with a telephone and confined for only a few minutes, did not increase his risk of harm. The victim here was never left alone; her phone had been broken; and though the duration of her confinement is unclear, she was certainly trapped in the bedroom for more than a few minutes. We conclude that the evidence in this case, taken in the light most favorable to the People, supports a conviction of second degree kidnapping. *See Bondsteel*, ¶ 98 ("[T]hese cases are fact specific.").

III. Second Degree Assault Statute Constitutional

¶ 18 Next, defendant contends that section 18-3-203, C.R.S. 2018, is unconstitutional and violates his right to equal protection because there is no rational basis for punishing a defendant who intentionally causes bodily injury with a deadly weapon — under subsection (1)(b) — to the same extent as a defendant who intentionally causes *serious* bodily injury without a deadly weapon,

under subsection (1)(g), because the latter crime is more serious. He argues that the statute is unconstitutional on its face and as applied to him. We are not persuaded.

A. Standard of Review and Applicable Law

¶ 19 We review the constitutionality of statutes de novo. *People v. Lente*, 2017 CO 74, ¶ 10. We presume that statutes are constitutional, and a party asserting otherwise bears the burden of proving that claim beyond a reasonable doubt. *People v. Helms*, 2016 COA 90, ¶ 15.

¶ 20 Statutory classifications of crimes comport with equal protection guarantees if they are "based on differences that are real in fact and reasonably related to the purposes of the legislative enactments." *People v. Nardine*, 2016 COA 85, ¶ 31 (quoting *People v. Wilhelm*, 676 P.2d 702, 704 (Colo. 1984)). When two different statutes proscribe the same criminal conduct with different criminal sanctions, it violates equal protection, *see People v. Stewart*, 55 P.3d 107, 115 (Colo. 2002), but "[h]arsher penalties for crimes committed under different circumstances than those which accompany the commission of other crimes do not violate equal protection guarantees if the classification is rationally based upon

the variety of evil proscribed," *People v. Montoya*, 196 Colo. 111, 113, 582 P.2d 673, 675 (1978).

B. Analysis

¶ 21 As an initial matter, none of the cases cited by defendant, and none that we are aware of, suggest that the constitutional right of equal protection is violated when arguably "less serious" conduct incurs the same penalty as arguably "more serious conduct." Rather, equal protection "assures that those who are similarly situated will be afforded like treatment." *People v. Slaughter*, 2019 COA 27, ¶ 11. A defendant charged with second degree assault under subsection (1)(b) is similarly situated to a defendant charged under subsection (1)(g). *Cf. People v. Suazo*, 867 P.2d 161, 164 (Colo. App. 1993) (applying a non-traditional equal protection analysis regarding the penalties implicated by different offenses, where the "persons charged under them are not 'similarly situated'").

¶ 22 Facially, section 18-3-203(1)(b) and (1)(g) describe two courses of conduct which may incur the same penalty. The statute provides a rational basis for this — a defendant who intentionally causes non-serious bodily injury with his hands is subject to the same

penalty as one who intentionally causes serious bodily injury with his hands *only* when the former uses his hands *as a deadly weapon.* A deadly weapon may accidentally cause serious bodily injury or death — an outcome the General Assembly may rationally seek to avoid — even when the wielder of the weapon intends to cause only non-serious bodily injury. "The General Assembly may . . . prescribe more severe penalties for acts it perceives to have graver social consequences, even if the differences are only a matter of degree." *People v. Jefferson*, 748 P.2d 1223, 1226 (Colo. 1988).

¶ 23 "Objects which are not inherently deadly, such as . . . hands, can become deadly weapons when used to start an unbroken, foreseeable chain of events capable of producing serious bodily injury or death." *People v. Saleh*, 45 P.3d 1272, 1276 (Colo. 2002). Section 18-1-901(1)(e)(II), C.R.S. 2018, dictates that hands can be a "[d]eadly weapon" when they, in the manner they are used, are "capable of producing death or serious bodily injury." Because defendant used his hands in such a manner, twice strangling the victim to the point of unconsciousness, the second degree assault statute is constitutional as applied to him. Only a small amount of

time separates bodily injury and serious bodily injury or death when hands are used for strangulation.

¶ 24 Defendant is wrong that published Colorado case law considers hands to be deadly weapons only when hands cause a victim to actually suffer death or serious bodily injury. In *People v. Castro*, 10 P.3d 700, 703 (Colo. App. 2000), a division of this court, citing section 18-1-901(1)(e), found that the "jury should be instructed on the issue of whether the victim's fists could be considered a deadly weapon in the context of self-defense" for a murder charge. And in *Slaughter*, a division of this court discussed at length the fact that, in the abstract, strangulation causing bodily injury may be charged as second degree assault based on the use of hands as a deadly weapon. *See, e.g.*, ¶¶ 3, 48; *see also* § 18-3-203(1)(b).

¶ 25 We conclude that defendant has not met his burden of proving beyond a reasonable doubt that the second degree assault statute is unconstitutional.

IV. Evidence of Prior Incarceration Did Not Necessitate Mistrial

¶ 26 At trial, the prosecution played an audio recording of a phone call between defendant and the victim that took place the day after

the assault. In the recording, the victim says that she did not want defendant to go *back* to prison. Defendant objected and requested a mistrial, arguing that he was prejudiced because the recording revealed a prior incarceration. He ultimately declined the trial court's offer of a jury instruction to disregard, concluding that it would "create more damage."

A. Standard of Review and Applicable Law

¶ 27 We review a trial court's decision to deny a mistrial for an abuse of discretion and will not disturb its ruling absent an abuse of discretion and prejudice to the defendant. *See People v. Santana*, 255 P.3d 1126, 1130 (Colo. 2011). An abuse of discretion occurs when a trial court's ruling is manifestly arbitrary, unreasonable, or unfair, or contrary to law. *People v. Relaford*, 2016 COA 99, ¶ 25.

¶ 28 A "trial court is in a better position to evaluate any adverse effect of improper statements or testimony on a jury, [so] it has considerable discretion to determine whether a mistrial is warranted." *People v. Tillery*, 231 P.3d 36, 43 (Colo. App. 2009), *aff'd sub nom. People v. Simon*, 266 P.3d 1099 (Colo. 2011). Because it is "the most drastic of remedies," a mistrial is "only warranted where the prejudice to the accused is too substantial to

be remedied by other means." *People v. Abbott*, 690 P.2d 1263, 1269 (Colo. 1984).

B. Application

¶ 29 Defendant reviewed the recordings prior to publication, and he did not raise the issue of a reference to his prior incarceration. During publication of the recording to the jury, the trial court "didn't catch" that the victim said "*back* to prison." (Emphasis added.) Not only was the mention brief, and easy to miss, but evidence of defendant's prior criminality was introduced on multiple other occasions during trial. Defendant introduced evidence of a text message from the victim saying "that's all you'll ever be" accompanying a photo of him in jail clothing, and two law enforcement witnesses testified that they had responded to prior domestic disturbances caused by defendant in 2007 and 2008.

¶ 30 For these reasons, in addition to the overwhelming evidence of defendant's guilt of the crimes against the victim, we conclude that any prejudice to defendant was negligible, and we perceive no abuse of discretion in the trial court's denial of defendant's motion for a mistrial. *See People v. Everett*, 250 P.3d 649, 663 (Colo. App. 2010).

V. Defendant Received a Legally Speedy Trial

¶ 31 Just over twenty-one months passed between defendant's entry of a not guilty plea and his trial. Defendant argues that this passage of time violated his statutory and constitutional rights to a speedy trial and caused the trial court to lose jurisdiction for failure to comply with the time limits of the UMDDA. We perceive no merit to this argument.

¶ 32 We conclude that because every continuance was granted for the benefit of the defendant and with his agreement that he was waiving or tolling his right to a speedy trial, the resulting delays did not implicate his speedy trial rights.[4] We summarize the relevant dates and events as follows:

- March 1, 2014: defendant was arrested.
- July 7, 2014: the trial court accepted defendant's not guilty plea through his first appointed counsel, in defendant's presence.

---

[4] In addition to the events referenced in the body of this opinion, defendant's effort to delay trial is illustrated by his filing of countless pro se motions, at least "eight to ten inches thick," in addition to numerous motions filed by his multiple attorneys pending trial.

- September 18, 2014: the trial court denied defendant's motion to dismiss appointed counsel and set trial for December 15, 2014.
- December 10, 2014: defendant moved to continue trial to conduct additional investigation and to subpoena a witness. Defendant expressly waived his right to speedy trial, and trial was re-set for March 23, 2015.
- February 18, 2015: the trial court granted defendant's motion for replacement counsel with defendant's understanding that his trial may be continued as a result, and the court tolled his right to a speedy trial. Defendant first mentions, to a different judge in a sealed proceeding, his desire to enter a NGRI plea.
- March 2, 2015: newly appointed Alternate Defense Counsel (ADC) moved to continue the trial because he could not do the trial on March 23, and the trial court found that speedy trial would begin to run anew.
- March 10, 2015: defendant filed a pro se motion (UMDDA motion) requesting final disposition of his case within 182 days pursuant to the UMDDA.

- April 3, 2015: defendant requested a hearing regarding a conflict requiring removal of ADC. The trial court found no such conflict and no legal basis for an NGRI plea; it set trial for July 13, 2015.
- April 13, 2015: defendant moved to substitute counsel.
- April 27, 2015: defendant moved for the court to accept an NGRI plea through his second retained counsel.
- May 8, 2015: defendant first asserted his right to a speedy trial.
- May 26, 2015: the trial court accepted defendant's NGRI plea, finding that defendant had "always wanted to enter such a plea"; it ordered a psychological evaluation after defendant expressed his understanding that he would be delaying trial "by as long as seven months."
- June 8, 2015: defendant asked that the UMDDA motion "be tolled pending the [NGRI] evaluation."
- January 14, 2016: the completed sanity evaluation was filed, concluding that defendant did not have a "qualifying mental disease of condition" and that he "maintained the ability to distinguish right from wrong

and form the culpable mental state" on the date of the crime.

- February 1, 2016: defense counsel told the trial court that defendant would not be proceeding with NGRI; defendant moved to remove his second retained counsel and for the trial court's recusal.
- February 25, 2016: the chief judge of the district court found no basis for recusal of the trial judge and set trial for April 12, 2016.
- March 17, 2016: defendant fired his second retained counsel, declined the court's offer to appoint ADC, and refused to waive his speedy trial rights. He would proceed pro se, with advisory counsel.
- March 28, 2016: trial was re-set to April 18, 2016, per defendant's request for more time without waiving his right to speedy trial.
- April 18, 2016: trial began.

A. Statutory Speedy Trial

¶ 33 The speedy trial statute entitles a defendant to dismissal of the charges against him if he is not brought to trial within six months

22

of entering a not guilty plea, unless the delay qualifies for an exclusion from the speedy trial calculation set forth in the statute. § 18-1-405, C.R.S. 2018, *see Mosley v. People*, 2017 CO 20, ¶ 17.

¶ 34 "[S]ubsection (1) establishes the criminal defendant's basic statutory right to a speedy trial and the remedy for violation of that right," while "the other subsections of the statute, in turn, implement or clarify that basic right." *Mosley*, ¶ 29. Subsections (6)(f) and (6)(a), respectively, clarify that "[t]he period of any delay caused at the instance of the defendant" and "[a]ny period during which the defendant . . . is under observation or examination . . . after the issue of the defendant's . . . insanity . . . is raised" shall be excluded. § 18-1-405(6)(a), (f).

¶ 35 Defendant concedes that his speedy trial calculation began anew when he moved to continue trial on March 2, 2015. He further agreed to toll his speedy trial and UMDDA calculation during his NGRI evaluation, and trial began on April 18, 2016. Four hundred and fourteen days passed from March 2, 2015, to April 18, 2016. The psychological evaluation, ordered on May 26, 2015, and filed on January 14, 2016, took 234 days. After tolling,

defendant's trial began 180 days after his March 2, 2015, motion to continue, which is within six months.

¶ 36 We disagree that the speedy trial calculation should begin on July 7, 2014, based on defendant's argument that, when defendant's first appointed counsel entered a not guilty plea, defendant allegedly wished to enter a NGRI plea. Defendant provides no legal support for such a conclusion, and we are not aware of any. Moreover, even if defendant had entered an NGRI at the outset, his speedy trial calculation would have begun anew, as calculated above, when he moved for continuances for his public defender and ADC to further prepare for trial. *See* § 18-1-405(6)(f).

¶ 37 We need not address defendant's argument that the district court should have accepted his NGRI plea on April 3, 2015, because any delay caused by the court's acceptance on the plea on May 26, 2015, was not counted against him.

¶ 38 Defendant's statutory right to a speedy trial was not violated.

B. Constitutional Speedy Trial

¶ 39 In determining whether a delay in bringing a defendant to trial violates his constitutional rights, the court balances (1) the length of the delay; (2) the reason for the delay; (3) the defendant's

assertion of his rights; and (4) the prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 531 (1972); *People v. Brewster*, 240 P.3d 291, 299 (Colo. App. 2009). The defendant has the burden of demonstrating that his constitutional right to a speedy trial was violated. *People v. Chavez*, 779 P.2d 375, 376 (Colo. 1989).

¶ 40 The constitutional right to a speedy trial attaches when a defendant is arrested or formally charged, whichever comes first. *United States v. Seltzer*, 595 F.3d 1170, 1176 (10th Cir. 2010); *Chavez*, 779 P.2d at 376. Delays longer than one year are generally presumptively prejudicial and require the court to examine the remaining three factors set forth under *Barker*. *See Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). The initial presumption of prejudice intensifies as more time elapses. *Id.* at 652.

¶ 41 However, no single factor is indispensable to a finding that the defendant's speedy trial right was denied, nor is any factor sufficient for such a finding. Rather, each factor is interrelated with the others and should be considered along with the circumstances of the case. *People v. Glaser*, 250 P.3d 632, 635 (Colo. App. 2010).

¶ 42 There was a twenty-five-month delay from when defendant was arrested on March 1, 2014, to the start of trial on April 18, 2016. Although this delay is presumptively prejudicial, the remaining three Barker factors do not support finding a constitutional speedy trial violation. *See Doggett*, 505 U.S. at 652 n.1; *see also Glaser*, 250 P.3d at 644 (A presumptively prejudicial delay "only opens the door for analysis of the remaining *Barker* factors; it does not shift the ultimate burden of proof.").

¶ 43 More than fifteen months of the pretrial delay is attributable to defendant. We conclude that fourteen months resulted directly from defendant's requests to continue, his request for an NGRI evaluation, and his request to remove the trial judge. More than thirteen months passed between December 10, 2014, when he first requested a continuance, and January 14, 2016, when his psychological evaluation was filed with the court; twenty-four days are attributable to the defendant for the hearing on his motion to remove the trial judge; and defendant's last request for a continuance consumed six days. An additional forty-one days may be charged to defendant for the time period between his first retained counsel's withdrawal and his arraignment with a public

defender. *See Glaser*, 250 P.3d at 635 (delay caused by a defendant's counsel is attributable to the defendant under the second *Barker* factor). We do not accept defendant's argument that any delay is attributable to the trial court's failure to accept an NGRI plea that was not offered on July 7, 2014.

¶ 44 Defendant did not promptly demand a speedy trial. He asserted his speedy trial rights for the first time on May 8, 2015 — more than fourteen months after his arrest and less than three weeks before he entered an NGRI plea requiring substantial additional delay. *See People v. Small*, 631 P.2d 148, 156 (Colo. 1981) ("A defendant's delay in asserting his right to a speedy trial is a significant factor to weigh in determining whether he was denied his constitutional right to a speedy trial.").

¶ 45 And finally, we are not persuaded by defendant's allegation that the unavailability of his deceased stepfather was prejudicial. Defendant does not allege that his stepfather was present during any of the charged events, and the evidence presented at trial overwhelmingly demonstrated his guilt.

¶ 46 In sum, we conclude that defendant has not met his burden of proving that his constitutional right to a speedy trial was violated.

27

C. UMDDA

¶ 47 Section 16-14-104(1), C.R.S. 2018, provides that a prisoner must be brought to trial within 182 days after the receipt of a request, "or within such additional time as the court for good cause shown in open court may grant." It also provides that "the parties may stipulate for a continuance." *Id.* Section 16-14-104(2) additionally provides that if a prisoner makes a waiver, "the time for trial of the indictment, information, or criminal complaint shall be extended as provided in section 18-1-405(4), C.R.S., concerning waiver of the right to speedy trial."

¶ 48 The parties agree that defendant was in custody of the DOC for purposes of the UMDDA, because while he was in county jail on unrelated charges, he was also on parole for a previous offense. *See People v. Gess*, 250 P.3d 734, 736 (Colo. App. 2010). We do not need to decide if the UMDDA applied here, but even if it does, we conclude that defendant's rights under it were not violated.

¶ 49 Defendant first filed a UMDDA request for final disposition of his case within 182 days on March 10, 2015. Defendant was tried 405 days after his request. Two hundred and thirty-four days were tolled for the NGRI evaluation, with defendant's express agreement

28

on the record that the UMDDA motion be tolled pending the evaluation, and six days were tolled for the parties' stipulated continuance for defendant to prepare to proceed pro se at trial. *See People v. Fleming*, 900 P.2d 19, 23 (Colo. 1995) ("[I]f a continuance is granted for good cause, the [UMDDA] period is effectively tolled for the length of the continuance."); *see also Gess*, 250 P.3d at 737-38 (trial delays for substitution of counsel and for pro se preparation toll the UMDDA deadline).

¶ 50 Subtracting the days properly tolled under the UMDDA, defendant was tried 165 days after his request.

VI. Habitual Criminal Adjudication

¶ 51 Defendant argues that the People presented insufficient evidence to support his adjudication as a habitual criminal for two reasons: (1) there was insufficient evidence of his identity as the person convicted in the cases underlying the habitual criminal counts because there were not fingerprint cards for every case; and (2) an insufficient number of felony convictions supported the adjudication because two of the four convictions did not arise from separate and distinct episodes. We disagree.

¶ 52 The prosecution charged defendant with six habitual criminal counts: two from Illinois and four from Colorado. Though the evidence of felony convictions in Illinois indicated a Nathan Knuth with the same birthdate as defendant, the trial court found the evidence insufficient to establish beyond a reasonable doubt that the felonies had been committed by defendant, and it did not consider them for purposes of its habitual criminal findings.

¶ 53 Regarding the Colorado convictions, the trial court found beyond a reasonable doubt that defendant had been previously convicted "of four separate and distinct felonies in four separate and distinct criminal episodes and prosecutions" for purposes of sentencing under the habitual criminal statute. *See* § 18-1.3-801, C.R.S. 2018. The felony convictions are represented by case number 01CR0394 from Larimer County and case numbers 03CR3457, 07CR3010, and 08CR3161 from Jefferson County. Regarding defendant's identity for each conviction, the court relied on the following pen pack evidence from the People:

- four mittimuses with felony convictions naming Nathan Daniel Knuth, with the same birthdate and state identification number as defendant;

- fingerprints taken at the jail after his arrest on the charges in this case and testimony that the fingerprints were taken from defendant;
- fingerprint cards and pictures which the court found to depict defendant at the DOC on April 8, 2005, a few days after sentencing defendant in case number 03CR3457;
- a mittimus showing that defendant's original probation sentence in 01CR394 was revoked shortly after his sentence in 03CR3457 and that his 01CR394 sentence was to run concurrent with his sentence in case 03CR3457;
- fingerprint cards and pictures which the court found to depict defendant at the DOC two days after sentencing defendant in case numbers 07CR3010 and 08CR3161; and
- testimony that defendant's fingerprints matched those on the two fingerprint cards.

A. Law

¶ 54 A challenge to the sufficiency of the evidence requires us to determine whether the evidence, viewed in the light most favorable

to the People, is sufficient to support a conclusion by the fact finder that the defendant is guilty of the count charged beyond a reasonable doubt. *People v. Cooper*, 104 P.3d 307, 310 (Colo. App. 2004).

¶ 55 In habitual criminal proceedings, the People must prove beyond a reasonable doubt that the defendant is the person named in the prior convictions. *People v. Mascarenas*, 666 P.2d 101, 110 (Colo. 1983). This burden requires more than proof that the defendant shares the same name as the person previously convicted, even if that name is unusual. *Cooper*, 104 P.3d at 312.

¶ 56 Section 18-1.3-801(2)(a)(I) provides, as relevant here, that "every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, . . . of a felony . . . , shall be adjudged an habitual criminal."

B. Analysis

¶ 57 Defendant argues that the evidence is insufficient to prove his identity for 01CR394 because no fingerprint card refers to that case, and fingerprints were taken four years after the charge.

However, fingerprints are not the only way to prove identity. *See People v. Bernabei*, 979 P.2d 26, 31 (Colo. App. 1998). From the mittimuses, the trial court rationally concluded that defendant was in continuous custody in the DOC between sentencing in 03CR3457 (with a photograph and fingerprint card) and re-sentencing in 01CR394. The mittimus in the latter case refers to a sentence concurrent with the former, and reflects the same name, birth date, and state identification number — each identical to defendant. Moreover, the photographs in the pen pack link the person they depict to all of the other documents in the pen pack, including the mittimuses for each felony conviction.

¶ 58 Viewed in the light most favorable to the People, the evidence is sufficient to identify defendant, beyond a reasonable doubt, as the felon convicted in 01CR394.

¶ 59 We need not address either of defendant's arguments with respect to 08CR3161, because we find sufficient evidence of 01CR394 and defendant does not challenge the sufficiency of the evidence for 03CR3457 or 07CR3010. Only three prior felony convictions are required to adjudicate defendant a habitual criminal. *See* § 18-1.3-801(2)(a)(I). We conclude that the People's

exhibits contain sufficient evidence to sustain defendant's convictions on at least three habitual criminal counts and therefore affirm his sentence as a habitual criminal.

VII. Conclusion

¶ 60 The judgment and sentence are affirmed.

JUDGE HARRIS and JUDGE TOW concur.

Additional material from this filing is available in the Clerk's Office.