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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0029**

State of Minnesota,
Respondent,

vs.

Robert Edward Workman,
Appellant.

**Filed May 13, 2008
Affirmed
Poritsky, Judge***

Kandiyohi County District Court
File No. 34-CR-06-250

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Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PORITSKY, Judge

Appellant challenges his convictions, arguing that his constitutional right to a speedy trial was violated. We affirm.

FACTS

In March 2005, the state charged appellant Robert Edward Workman with a first-degree controlled substance crime (sale of methamphetamine) in violation of Minn. Stat. § 152.021, subd. 1(1) (2004), and aiding and abetting a first-degree controlled substance crime in violation of Minn. Stat. §§ 152.021, subd. 1(1), 609.05 (2004). The charges were based, in part, on information supplied by a confidential informant. Trial was set for June 2005, but the state was unable to locate the confidential informant to testify at trial, and, after receiving a continuance, the state dismissed the charges against Workman in July 2005. In February 2006, the state had located the confidential informant and filed a second complaint against Workman, recharging him with the same offenses. Workman objected to the filing of the second complaint by moving to have it dismissed in March 2006. The district court denied his motion, finding that the delay was not within the state's control.

Trial on the second complaint was set for June 2006, but the confidential informant failed to appear under subpoena, and the district court granted the state's request for a continuance. The trial was reset for a date in August, but the state requested another continuance because the investigating officer would be on vacation during the

rescheduled trial date. Trial eventually occurred in September 2006, and the jury found Workman guilty of the charged offenses. This appeal follows.

D E C I S I O N

Whether a defendant's speedy-trial right has been violated is a constitutional question subject to de novo review. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

Criminal defendants enjoy a constitutional right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Whether the right has been violated depends on an analysis of four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether and when the defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972); *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). "We regard none of the four factors identified above as 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." *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193.

A. The length of the delay

The length of the delay is a triggering mechanism that determines whether further review is necessary. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Here, the state recognizes that the length of the delay warrants further review, but argues that the seven-month period between the dismissal of the first complaint against Workman and the filing of the second complaint should be excluded from consideration. We agree. If

the state dismisses a criminal charge and then files a new complaint alleging the same offenses at a later date, the interim period is not considered for speedy-trial purposes, provided the state acted in good faith. *See In re Welfare of G.D.*, 473 N.W.2d 878, 882 (Minn. App. 1991) (“Appellant’s right to speedy trial lapsed during that interim period when he was not charged with an offense . . .”). Because there is no allegation that the state acted in bad faith in dismissing and later refileing the charges against Workman, the interim period is not counted.

B. The reason for the delay

In assessing the reasons for the delay, the Supreme Court has outlined three different categories that are assigned “different weights”:

A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but . . . should be considered since the ultimate responsibility . . . rest[s] with the government rather than with the defendant. Finally, a valid reason, *such as a missing witness*, should serve to justify appropriate delay.”

Barker, 407 U.S. at 531, 92 S. Ct. at 2192 (emphasis added).

Here, the state was granted continuances in June 2005 and June 2006 because the confidential informant could not be located to testify and then failed to show up for trial while under subpoena. A missing witness is a valid reason for delay. *Id.*

The state received a third continuance because the investigating officer was scheduled for vacation on the trial date. “Normally, the unavailability of a witness constitutes good cause for delay. However, a prosecutor must be diligent in attempting to

make witnesses available[.] . . . Th[e] lack of diligence weighs against the state.” *Windish*, 590 N.W.2d at 317 (citation omitted). Although this delay weighs against the state, the weight is relatively minor because the third continuance postponed the trial only from August 2006 to September 2006.

C. Workman’s assertion of his right

“The defendant’s assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” *Barker*, 407 U.S. at 531-32, 92 S. Ct. at 2192-93.

Workman demanded a speedy trial on the first complaint in May 2005, but that complaint was dismissed in July 2005. The second complaint was filed in February 2006. Workman did not demand a speedy trial on that complaint until June 2006, and he withdrew that demand in July 2006 in order to pursue an alibi defense. Workman’s assertion of his right was not particularly forceful, and it weighs little, if at all, in his favor. We agree with Workman that “this *Barker* factor should weigh neither for nor against Mr. Workman.”

D. Prejudice caused by the delay

There are three interests protected by the speedy-trial right: “(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.” *Windish*, 590 N.W.2d at 318. A defendant does not have to affirmatively prove prejudice; prejudice may be suggested by likely harm to the defendant’s case. *Id.*; see also *Doggett v. United States*, 505 U.S. 647, 655, 112 S. Ct. 2686, 2692-93 (1992) (“[C]onsideration of

prejudice is not limited to the specifically demonstrable” because “time’s erosion of exculpatory evidence and testimony can rarely be shown.” (quotation omitted)).

We recognize that Workman was prejudiced by being subjected to the stress and anxiety inherent when one is charged with a felony. But in addition, Workman argues that he has also shown prejudice because the delay likely harmed his alibi defense. Workman’s defense at trial was that he was at his stepfather’s house on the night in question, watching videos with his stepfather, brother, and girlfriend. Workman’s stepfather testified consistent with this alibi, but admitted that he could not account for Workman’s whereabouts between 10:00 p.m. and 2:00 a.m. Workman argues: “It is entirely possible that, had the state prosecuted Mr. Workman in a timely manner, his girlfriend or his brother could have provided favorable testimony because the day’s event would have been much fresher in their minds.” But this argument is undercut by the fact that Workman offered an entirely different alibi when he was initially charged. In his “Notice of Defense(s) and Defense Witnesses” filed after the first complaint, Workman asserted that he was at the home of his aunt when the offense occurred and listed his aunt as the only person he intended to call as a defense witness. Thus, had the trial occurred as originally scheduled, it is unlikely that Workman’s girlfriend or brother would have provided favorable testimony.

In sum, although the delay in this case was not insubstantial, it was mostly attributable to circumstances beyond the state’s control and does not appear to have

seriously prejudiced Workman. Weighing the *Barker* factors, we conclude that Workman's right to a speedy trial was not violated.

Affirmed.