STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0463

State of Minnesota,
Respondent,

vs.

Jay Joseph Woodruff,
Appellant.

Filed June 17, 2008
Affirmed
Toussaint, Chief Judge

Olmsted County District Court
File Nos. 55-CR-06-3517; 55-CR-06-3518

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mark A. Ostrem, Olmsted County Attorney, 151 Fourth Street Southeast, Rochester, MN 55904-3712 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jessica Benson Merz Godes, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Lansing, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Following a court trial, appellant Jay Joseph Woodruff was convicted on charges of first-degree burglary, fourth-degree assault, fifth-degree assault, and obstructing legal process, which arose from appellant's entry of a home without permission, physical altercation with the home's resident, and assault of a responding police officer. Appellant argues that he was denied his constitutional right to a speedy trial by a nearly three-month delay. Because the delay (1) was caused by the unavailability of the state's witness, defense counsel, the prosecutor, and the judge; (2) was for good cause; and (3) did not violate appellant's constitutional right to a speedy trial even though he was then in custody, we affirm.

D E C I S I O N

The federal and Minnesota constitutions establish that in "all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI; Minn. Const. art. I, § 6. Determining whether a defendant has been denied the constitutional right to a speedy trial is a question of law, which we review de novo. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

In order to determine whether a delay deprived the accused of the right to a speedy trial, we apply the four-factor balancing test announced by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). The four factors are (1) length of the delay, (2) the

reason for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the delay prejudiced the defendant. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). No one factor is dispositive to finding that the defendant was denied the right to a speedy trial; the factors must be considered together in light of the relevant circumstances. *Id.* These factors are each analyzed in turn.

When some delay that is presumptively prejudicial has occurred, it has a triggering effect and consideration of the other factors is required. *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). Criminal defendants are entitled to a trial within 60 days from a demand in writing or orally on the record. Minn. R. Crim. P. 11.10. A delay beyond 60 days from the speedy-trial demand raises a presumption that the defendant's right to a speedy trial was violated. *Windish*, 590 N.W.2d at 315-16. On July 6, 2006, in an appearance on an unrelated traffic matter, appellant asserted his desire to receive a speedy trial. His trial did not begin until October 3, nearly three months after his initial request. The state does not dispute that the facts of this case trigger the presumption because the trial date was more than 60 days after the July 6 hearing. Because this factor is met, we consider the other *Barker* factors.

The second *Barker* factor requires an inquiry into the reasons for the delay. 407 U.S. at 531, 92 S. Ct. at 2192. Courts and prosecutors have the primary duty to assure that speedy-trial requests are honored. *Id.* at 529, 92 S. Ct. at 2191. The weight we give to this factor depends on the reason for the delay. *Cham*, 680 N.W.2d at 125. The state's deliberate attempt to delay the trial to hamper the defense would weigh heavily against the state, while negligent or administrative delays are given less weight. *Barker*, 407

U.S. at 531, 92 S. Ct. at 2192; *State v. Huddock*, 408 N.W.2d 218, 220 (Minn. App. 1987). In *Barker*, the prosecution obtained numerous continuances, initially in order to convict Barker's accomplice and use his testimony, and then due to a key prosecution witness's illness, which largely contributed to a five-year delay. 407 U.S. at 516, 92 S. Ct. at 2185. Here, nothing in the record indicates a deliberate attempt to delay trial, as the delay was caused by the unavailability of a key witness, defense counsel, judge, and prosecutor.

After appellant asserted his right to a speedy trial, the district court scheduled trial for August 16. Within days, the state requested a continuance because one of its essential witnesses – the police officer whom appellant assaulted – was going to be on vacation at that time. The district court rescheduled trial for August 30. The unavailability of a witness constitutes good cause for delay. *See State v. Terry*, 295 N.W.2d 95, 96 (Minn. 1980). But the state must be diligent in attempting to make the witness available and the unavailability must not prejudice the defendant. *Windish*, 590 N.W.2d at 317. Appellant argues that the state has not produced any evidence of its effort to ensure witness availability. *See id.* (weighing reason factor against state when the state did not produce evidence of its efforts to ensure witness availability). But when the state notified the district court of the unavailability of its witness, it attached a list of dates that its witnesses were unavailable "[i]n an effort to avoid further scheduling conflicts." At a later hearing, the state explained its efforts to ensure the availability of its witnesses.

The August 30 trial was not held because appellant's attorney was on vacation. The trial was rescheduled for September 5, but the judge was not available that day. At a

September 7 motion hearing, the attorneys and court discussed scheduling. Appellant's counsel was not available the week of September 11, and the prosecutor stated that he was not available the week of September 18 due to out-of-state training. The trial was re-scheduled for October 2, and trial commenced on October 3.

Appellant argues that an overcrowded calendar does not establish good cause for delay. *See Jones*, 392 N.W.2d at 235 (holding that overcrowded court calendar is not good cause for delay). But there is no indication in the record that the delay was caused by an overcrowded court calendar. He also argues that individual attorneys' personal scheduling conflicts do not establish good cause for delay. But one of those attorneys was appellant's own attorney. In *Windish*, the unavailability of defense counsel was a partial reason for delay attributed to the defendant. 590 N.W.2d at 316. When a defendant's actions are responsible for the overall delay, there is no violation of the right to a speedy trial. *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005). The delay caused by defense counsel's unavailability—August 30 and the week of September 11—was therefore attributable to appellant.

The reasons for the judge's unavailability on September 5 are unclear from the record. But the district court clearly attempted to bring the case to a resolution in a timely manner in August and September, and the delay was a result of scheduling conflicts between an essential witness and attorneys. The prosecutor's unavailability the week of September 18 does not appear to be in bad faith. Prosecutors are obligated to make a good faith effort to bring a defendant to trial. *Windish*, 590 N.W.2d at 316-17. In this case, the record is clear that the state was "ready to go" on August 30 and September

5. All of the delays are administrative or negligent, rather than an attempt to hamper appellant's defense. *See Barker*, 407 U.S. at 531, 92 S. Ct. at 2192; *Huddock*, 408 N.W.2d at 220. Because there is no evidence that the state intentionally delayed the proceeding and appellant, through his defense counsel, contributed to the delay, this factor does not weigh in favor of appellant's argument that he was denied a speedy trial.

Assertion of the right to a speedy trial need not be formal or technical, and it is determined by the circumstances. *Windish*, 590 N.W.2d at 317. We consider the "frequency and force" of the speedy-trial demand because "the strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989) (citing *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192).

Appellant asserted his right to a speedy trial at an unrelated hearing on July 6. The state argues that appellant failed to object to the rescheduled trial dates. *See State v. Rachie*, 427 N.W.2d 253, 257 (Minn. App. 1988) (noting that defendant's failure to object to continuances weighed against the argument that he asserted his right to a speedy trial), *review denied* (Minn. Sept. 20, 1988). But "[a] defendant has no duty to bring himself to trial." *Barker*, 407 U.S. at 527, 92 S. Ct. at 2190. It is unclear why appellant did not object to the rescheduled trial dates, but it may be due to the fact that his defense counsel contributed to the delay. This factor appears to be neutral because, despite appellant's clear demands, his attorney contributed to the continued trial dates.

The final factor of prejudice is measured in light of the interests that the speedy-trial right was designed to protect. *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. Those

interests are identified in *Barker*: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired. *Id.* The third interest, possible impairment of the defense, is the most important. *Id.* "A defendant does not have to affirmatively prove prejudice; rather, prejudice may be suggested by likely harm to a defendant's case." *Windish*, 590 N.W.2d at 318 (quotation omitted).

Appellant argues that the delay during his five-month pretrial incarceration caused the unconditional bail to become oppressive. But at the time he was charged with the crimes in this case, he was already released on bail on a theft-from-person offense involving two elderly victims at the Mayo Clinic. And five months of pretrial incarceration has previously been upheld as nonprejudicial. *See State v. Givens*, 356 N.W.2d 58, 62 (Minn. App. 1984) (finding no prejudice when defendant was in custody for five months prior to trial and he claimed that witnesses had lost memory of events), *review denied* (Minn. Jan. 2, 1985).

Appellant also argues that the delay caused him anxiety and concern. He claims that the pretrial incarceration caused him to miss a medical appointment that was a condition precedent to determining his eligibility for Social Security disability benefits and that he became homeless because he lost his place in a foster home. But these losses are not a result of the delay to meet his speedy-trial demand because they were raised as objections to unconditional bail, in May 2006, a month before he asserted his right to a speedy trial. Prejudice is not shown when an appellant has failed to show evidence of greater inconvenience than that experienced by anyone who is involved in a trial.

Friberg, 435 N.W.2d at 515.

Appellant does not show how the delay impaired his defense. When a "delay in no way affect[s] the strength of defendant[']s] case, the final *Barker* factor does not favor defendant . . . ." *Id.* Because the record does not support appellant's claim that he was prejudiced by the delay, this factor does not weigh in his favor.

Because the circumstances demonstrate that good cause existed for continuing his trial date and that he was not prejudiced, appellant has not shown that the district court erred by failing to provide a speedy trial.

Affirmed.