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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1054**

State of Minnesota,  
Respondent,

vs.

Shane Eugene Larson,  
Appellant.

**Filed June 9, 2009  
Affirmed  
Connolly, Judge**

Blue Earth County District Court  
File No. 07-CR-07-1712

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101; and

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Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

## UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant contends that his convictions should be vacated because 119 days elapsed between his request for a speedy trial and the commencement of his trial. Because appellant's right to a speedy trial was not violated, we affirm.

### FACTS

The facts in this case are not in dispute. Appellant Shane Eugene Larson was convicted of fleeing a peace officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2006), driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5(1) (2006), and fleeing a peace officer in violation of Minn. Stat. § 609.487, subd. 6 (2006). Appellant demanded a speedy trial on October 3, 2007. Appellant's trial commenced on January 31, 2008, or 119 days after appellant requested a speedy trial. Immediately prior to the start of his trial on January 31, appellant brought a motion to dismiss his case due to a speedy-trial violation. This motion was denied by the district court. This appeal follows.

### DECISION

**I. The district court did not err when denying appellant's motion to dismiss on speedy-trial grounds.**

Because the right to a speedy trial is a constitutional right, the standard of review of a district court's denial of a motion to dismiss because of a speedy-trial violation is de novo. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009) ("A speedy-trial challenge presents a constitutional question subject to de novo review.").

To determine whether a delay deprived the accused of the right to a speedy trial, Minnesota courts apply the United States Supreme Court's four-factor balancing test announced in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972), in which a district court weighs the pretrial conduct of both the state and the defendant. *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). The four factors are (1) the 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 necessary to or dispositive of 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.

A. *Length of delay.*

Length of delay functions as a “triggering mechanism” in the speedy-trial analysis in that, until some delay is evident, “the other factors need not be considered.” *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). A criminal defendant is entitled to a trial within 60 days after a demand in writing or orally on the record. Minn. R. Crim. P. 6.06, 11.10. A delay beyond 60 days after the date a defendant demands a speedy trial is presumptively prejudicial and will trigger consideration of the remaining *Barker* factors to determine whether good cause exists for the delay. *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989).

Both parties agree that the presumption of prejudice attached in this case as a result of the 119-day delay between appellant's demand for a speedy trial on October 3, 2007, and the start of trial on January 31, 2008. But it is important to note that delay

alone, even for a period as long as 15 months, is insufficient to demonstrate that an accused's constitutional right to a speedy trial was denied. *See, e.g., State v. Givens*, 356 N.W.2d 58, 61-62 (Minn. App. 1984) (concluding that 15-month delay was "sufficient to trigger further inquiry"), *review denied* (Minn. Jan. 2, 1985).

*B. Reason for the delay.*

The weight given to this factor depends on the reason for the delay. *State v. Cham*, 680 N.W.2d 121, 125 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). 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).

Here, appellant does not allege, and nothing in the record indicates, that the delay was attributable to a deliberate attempt by the state to hamper appellant's defense. While the record is unclear, it appears that the delay in the start of appellant's trial is attributable to administrative reasons. The reason for the delay in the start of appellant's trial weighs slightly in favor of finding a speedy-trial violation.

*C. Assertion of right to a speedy trial.*

It is uncontested that appellant filed a formal request for a speedy trial during his omnibus hearing on October 3, 2007. He then moved for dismissal immediately prior to the commencement of trial on January 31, 2008 on the ground that his right to a speedy trial had been violated. Appellant's unequivocal request for a speedy trial weighs slightly in favor of finding a speedy-trial violation.

*D. Prejudice.*

When determining whether a defendant was prejudiced by a delay, we consider those interests that the right to a speedy trial was intended to protect: avoiding oppressive pretrial incarceration; minimizing the defendant's anxiety and concern; and preventing impairment of the defendant's defense. *Windish*, 590 N.W.2d at 318. The last consideration, possible impairment of a defendant's defense, is the most important. *Id.* A defendant does not have to affirmatively prove prejudice, but instead may suggest it by showing "likely harm to a defendant's case." *Id.* Pretrial incarceration alone is not enough to demonstrate prejudice. *Jones*, 392 N.W.2d at 235-36; *State v. Helenbolt*, 334 N.W.2d 400, 405-06 (Minn. 1983). And when a defendant is in custody for an unrelated matter, the first two prejudice considerations—preventing oppressive pretrial incarceration and minimizing the defendant's anxiety—are rendered moot. *Windish*, 590 N.W.2d at 318 ("The first two concerns regarding prejudice do not apply under the unique facts of this case as *Windish* was already in custody for another offense.").

Unlike the defendant in *Griffin*, the delay in the start of appellant's trial did not result in onerous pretrial restrictions to his liberty. *See Griffin*, 760 N.W.2d at 341 ("[F]or much of that time *Griffin*'s freedom was severely restricted by the standby-status requirements imposed on her by the district court as the case was alternately placed on-call and continued some 30 times. Because of the prejudicial impact of the severity of these restrictions, this factor weighs heavily in *Griffin*'s favor."). In fact, because appellant was in custody on another matter while awaiting the start of his trial, the first two prejudice concerns are rendered moot. *See Windish*, 590 N.W.2d at 318. Thus, the

only remaining prejudice factor left for this court to consider is whether the delay impaired appellant's ability to mount a defense. Here, appellant has failed to allege any specific prejudice to his defense, and there is no evidence that witnesses became unavailable as a result of the delay or that the delay caused evidence to become stale.

After considering the four relevant factors, we conclude that appellant's right to a speedy trial was not violated. The first three factors weigh slightly in favor of finding a speedy-trial violation: appellant's trial was only delayed 59 days beyond the 60-day window specified in the Minnesota Rules of Criminal Procedure, the delay in the trial was not due to a deliberate attempt by the state to hamper appellant's ability to mount a defense, and appellant demanded a speedy trial during his omnibus hearing. The fourth factor, however, weighs strongly against finding a speedy-trial violation. There is no evidence that appellant was prejudiced by the delay. Because appellant was in custody on an unrelated matter during the delay, the first two prejudice factors, avoiding oppressive pretrial incarceration and minimizing a defendant's anxiety and concern, are rendered moot. The third, and most important, prejudice factor weighs against a finding of prejudice because there is no evidence that the delay impaired appellant's ability to mount a defense.

**Affirmed.**