STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1039

State of Minnesota,
Respondent,

vs.

Derek Alan Anderson,
Appellant.

Filed June 6, 2011
Affirmed
Ross, Judge

Hubbard County District Court
File No. 29-CR-09-274

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

Donovan D. Dearstyne, Hubbard County Attorney, Park Rapids, Minnesota (for respondent)

Jacob T. Erickson, Vermeulen Law Office, P.A., St. Cloud, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Harten, Judge.*

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

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

ROSS, Judge

In 2006 Derek Alan Anderson sold methamphetamine to an undercover police officer, which led to his 2010 conviction of first-degree controlled substance crime. Anderson argues that the state violated his constitutional right to a speedy trial because of the longer-than-two-year period between his initial arrest and the state's filing charges in 2009 and also because of the nine-month period between the charges and his second arrest. Because any constitutionally relevant delay was attributable to Anderson's concealing himself rather than to any failure by the state, the state did not violate his speedy-trial right. We affirm.

FACTS

Derek Anderson sold 2.1 grams of methamphetamine to a confidential informant and an undercover drug task force agent in December 2006. Agent Matthew Grossell asked for more and Anderson said he could get 14 grams from his supplier in Bemidji, which would cost $1,300 dollars. They arranged to meet at midnight for the exchange.

Anderson arrived as promised and sold Agent Grossell 14 grams of methamphetamine. The agent asked to purchase still more and Anderson said that his supplier would have more in a few days. Anderson drove away and a state trooper stopped his car. Anderson was arrested and gave a recorded statement to Agent Chad Museus. He admitted that he received drugs from his supplier twice a week and that he sold them to support his drug habit.

Anderson purportedly agreed to work with law-enforcement officers to investigate his supplier. He was immediately released, and he drove to his supplier's home carrying the $1,300 in buy money and wearing a police wire. His supplier had no more methamphetamine. A month later Anderson and an undercover officer went to the supplier's home together to discuss future drug transactions. The supplier said he did not have any methamphetamine for sale. Again that month Anderson went to the supplier's home wearing a wire but the transmitter shut off while he was there. Anderson told the officers that his supplier's friend had threatened him because they suspected that he was working with police. After this January 2007 incident, Anderson fell out of contact with the officers, who learned that he had warned the supplier that he was working for the task force.

Anderson began hiding out in his home; he often kept the lights off to make the house appear unoccupied. He also spent time out of town with friends and family.

On February 23, 2009, still unaware of his whereabouts, the state executed a criminal complaint charging Anderson with first-degree sale of a controlled substance for the December 2006 methamphetamine sale, and police obtained a warrant for his arrest. Agent Museus attempted to locate Anderson. He stopped by Anderson's residence several times and left his business card at least once. Anderson never contacted police.

Anderson was arrested on the warrant on November 15, 2009. He posted bond and was released on November 30. On December 14, he pleaded not guilty and the district court scheduled trial for January 13, 2010. Four days after his plea, Anderson hired a new attorney, and on December 30, he moved to dismiss the complaint for violation of his

speedy-trial rights. He also demanded a speedy trial. On February 11, the district court concluded that the state had not violated Anderson's right to a speedy trial. It found Anderson guilty after a February 18 stipulated facts trial. Anderson appeals.

D E C I S I O N

Anderson argues that he was denied his constitutional rights when the state failed to bring him to trial within a reasonable time following either his initial arrest or the issuance of the complaint. 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. Whether a defendant has been denied the right to a speedy trial is a question of constitutional law that we review de novo. *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004).

To determine whether a delay deprived the accused of the right to a speedy trial, Minnesota courts generally apply a four-factor balancing test announced in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972), in which the court weighs the conduct of 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. *Id*. Our decision today turns on the first factor.

We must consider whether the length of the delay triggers any constitutional concern. It does not. Anderson maintains that the delay was longer than two years, beginning when he was first arrested. But it is the filing of criminal charges against an accused that activates the constitutional protection and marks the starting point for

calculating the length of the delay. *United States v. Marion*, 404 U.S. 307, 313, 92 S. Ct. 455, 459 (1971); *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). The period between Anderson's first arrest and the criminal complaint is therefore constitutionally irrelevant, leaving us to consider only the nine-month period between the criminal complaint and the trial.

In many situations, a nine-month delay is presumptively prejudicial. *See Barker*, 407 U.S. at 530–31, 92 S. Ct. at 2192 (holding that to trigger analysis of other speedy-trial-violation factors the delay must be presumptively prejudicial under the circumstances); *State v. Corarito*, 268 N.W.2d 79, 80 (Minn. 1978) (concluding that six-month delay is sufficient to trigger further inquiry in the speedy-trial analysis). But when the defendant rather than the state is responsible for the delay, there is no speedy-trial violation. *State v. DeRosier*, 695 N.W.2d 97, 109 (Minn. 2005). We therefore must consider whether Anderson or the state caused the nine-month delay.

Anderson argues that the state's lax efforts to locate him were the sole cause of the delay. But the district court found otherwise. It found that the state tried to find Anderson and that its inability to locate him was "primarily due to the defendant hiding out." That finding is factually supported; Agent Museus went to Anderson's residence several times, left his business card, and also attempted to contact him during an unrelated investigation.

Anderson's reliance on *Doggett v. United States* for a contrary conclusion is misplaced. In *Doggett*, the Supreme Court held that an eight-year delay between an indictment and the arrest violated the accused's speedy-trial right because the

government made no real attempt to find Doggett while even minimal efforts would have located him. 505 U.S. 647, 653–54, 112 S. Ct. 2686, 2691 (1992). It gave considerable deference to the trial court's determination that the government acted negligently when investigators made no serious effort to find the defendant but could have found him "within minutes." *Id*. at 654, 112 S. Ct. at 2691. The district court here found the opposite—that the state *did* make a sufficient effort to locate Anderson. We too defer to a district court's findings of fact unless they are clearly erroneous. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). Like the Supreme Court's view of the findings in *Doggett*, "we see nothing fatal to them in the record" here. *Doggett*, 505 U.S. at 653, 112 S. Ct. at 2691.

Anderson asserts that he cannot be blamed for the delay because he was unaware of the charges and did not intentionally avoid arrest. But a defendant need not intentionally avoid trial for a court to conclude that he was the reason for the delay. *See State v. Helenbolt*, 334 N.W.2d 400, 405 (Minn. 1983) (noting that defendant was responsible for five months of a 14-month delay when he agreed to delay trial to obtain a BCA report). We are not primarily concerned about whether Anderson intentionally or unintentionally caused the delay, but about whether he, rather than the state, was the actual cause. Anderson testified that he did not "show [his] face around town" and he "didn't want anybody to know he was [home]." He spent time with friends and family in other counties. Whether he was hiding from the criminals he had crossed or from the police he had double-crossed, according to the factually supported findings of the district court, his hiding, and not the state's negligence, delayed his arrest.

A defendant's delaying conduct "is deemed a temporary waiver of his speedy trial demand, which can only be revived when the defendant reasserts his speedy trial right." *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993); *see Barker*, 407 U.S. at 530, 92 S. Ct. at 2191 ("We hardly need add that if delay is attributable to the defendant, then his waiver may be given effect under standard waiver doctrine."). Anderson effectively waived his right to a speedy trial until he was rearrested at the end of November 2009. Once he made a speedy-trial demand in December, he was tried two months later. Because the delay between the state's charging Anderson and its arresting him for trial resulted from Anderson's own behavior, the state did not violate his speedy-trial right by failing to try him during that period. And the remaining three-month period from rearrest to trial is constitutionally insignificant.

Affirmed.