STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1922

State of Minnesota,
Respondent,

vs.

Christopher Michael Clark,
Appellant.

Filed December 17, 2012
Affirmed
Hooten, Judge

Anoka County District Court
File No. 02-CR-10-2460

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Renee Bergeron, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Huspeni, 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

HOOTEN, Judge

After his conviction for possession of methamphetamine precursors with intent to manufacture, appellant challenges the denial of his motion to suppress. Appellant claims that the district court erred by upholding the legality of the stop of his vehicle, his custodial arrest, the impoundment and inventory search of his vehicle, and the seizure of methamphetamine precursors. We affirm.

FACTS

On March 27, 2010, at approximately 1:30 a.m., Officer Cameron Gustafson of the Coon Rapids Police Department was on patrol in a marked squad car with the Anoka County DWI task force when he noticed a vehicle traveling eastbound on Coon Rapids Boulevard approaching Mississippi Boulevard. The vehicle had Louisiana license plates and was driving in front of his vehicle in the far left lane. Officer Gustafson testified that "the vehicle quickly turned on its turn signal and, without waiting the 100 feet, it just jerked into the right lane" and then "immediately went into the right turn lane also from the right lane, not giving the appropriate amount of distance to signal the turn." Officer Gustafson noted that the vehicle traveled less than 100 feet in the right turn lane before turning right to travel southbound on Mississippi Boulevard. After turning, the vehicle signaled a left turn into the parking lot of a closed McDonald's. This turn required the vehicle to cross over double yellow lines, crossing over the northbound lane and over a northbound turn lane into McDonald's.

In describing appellant's driving conduct, Officer Gustafson noted that appellant made the lane changes and turns "too quickly" and failed to properly initiate his signal for the lane changes and turns. As to the lane changes, Officer Gustafson stated that appellant only turned on his signal to "blink once" or "less than a second, . . . and then he would go over a lane. And in that time frame, that's when he would move."

As evidenced by the camera in the squad car, Officer Gustafson activated his lights as soon as the vehicle pulled into the employee parking lot. Appellant parked his vehicle in the dark empty lot, quickly exited his vehicle, closed the door to his vehicle, and approached Officer Gustafson's squad car. Officer Gustafson testified that appellant seemed "very fidgety, excited." For safety reasons, he told appellant to return to his vehicle, but appellant refused, explaining that he had locked his keys in the vehicle because he had been bitten by a spider on his thumb. While Officer Gustafson acknowledged that he observed a small mark on appellant's thumb, he testified that appellant's explanation as to why he locked his keys in the vehicle did not make sense to him. Appellant then indicated that he had a spare set of keys and returned to his vehicle. Upon further investigation, Officer Gustafson learned that appellant's driver's license and license plates were revoked.

When Officer Gustafson asked for proof of automobile insurance, appellant responded that he had insurance and provided an expired insurance card. Upon receipt of the card, Officer Gustafson indicated that he would contact the insurance company to confirm the insurance coverage. At that point, appellant first said someone else was

paying the insurance premium for him, but ultimately admitted that he did not have insurance on the vehicle.

Officer Gustafson escorted appellant to his squad car and placed him in the back seat without handcuffs. Officer Gustafson noted that throughout the stop, appellant's hands were shaking, and that he was constantly fidgeting and shuffling while breathing quickly. Officer Gustafson indicated that he was suspicious that appellant was under the influence of drugs or alcohol. Although Officer Gustafson initially planned to issue a citation and tow the vehicle, he changed his mind when appellant was unable to produce any information to substantiate his claim that he lived in Minneapolis and had difficulty responding to questions about his residency. Officer Gustafson indicated that, under the circumstances, he was concerned whether appellant would respond to a citation and therefore decided to arrest him.

Because appellant was under arrest and did not have a legal driver's license or license plates, and because the vehicle could not be driven without insurance, Officer Gustafson, in compliance with his department's policies, decided to tow the vehicle and initiate an inventory search. In so doing, he observed what he suspected were the components of a methamphetamine laboratory inside the vehicle after finding suitcases and backpacks, along with glass beakers, bottles with chemicals, funnels, and tubing. Officer Gustafson halted the search and called in the Anoka-Hennepin Drug Task Force, which obtained a warrant and seized the components of a suspected methamphetamine laboratory.

Appellant moved to dismiss and suppress evidence based upon his claims of an illegal stop, arrest, search, and seizure. Following a contested omnibus hearing, the district court denied appellant's motion and upheld the investigatory stop of appellant's vehicle, finding that the officer had "observed at least three traffic violations" prior to the stop which gave him an objective basis for the stop. The district court also upheld the arrest, and the search and seizure of appellant's vehicle.

Appellant was later found guilty by a jury of possession of methamphetamine precursors with intent to manufacture and was sentenced to the commissioner of corrections for 18 months, with a stayed execution of the sentence. In this appeal from his conviction, appellant challenges the district court's denial of his motion to suppress evidence obtained as a product of an illegal stop, arrest, search, and seizure.

D E C I S I O N

Both the United States Constitution and the Minnesota Constitution protect the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. "The United States Supreme Court has held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). The "principles and framework of *Terry* [apply when] evaluating the reasonableness of [searches and] seizures during traffic stops even when a minor law has been violated." *Id.* (alteration in original) (quoting *State v.*

Askerooth, 681 N.W.2d 353, 363 (Minn. 2004)). Police must articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Id.*

"When this court reviews a trial court's order following an omnibus hearing, determinations of reasonable suspicion and probable cause as they relate to searches and seizures should be reviewed de novo on appeal." *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007) (quotation omitted). We apply the clear-error standard of review to the district court's underlying factual findings. *State v. Chavarria–Cruz*, 784 N.W.2d 355, 363 (Minn. 2010).

1. Legality of Investigatory Stop of Appellant's Vehicle

Appellant challenges the district court's finding that his driving conduct provided a legitimate basis for the investigatory stop of his vehicle. "Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). A police officer's "honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003). An actual violation of the vehicle and traffic laws is not required. *Marben v. Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980); *see also State v. Sanders*, 339 N.W.2d 557, 560 (Minn. 1983) (upholding stop of a vehicle based on a reasonable mistake of fact as to identity). We will not reverse findings of fact as clearly erroneous if there is reasonable evidence to support them. *See State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010) ("Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred.").

Appellant argues that the stop of his vehicle was illegal due to Officer Gustafson's erroneous understanding that a driver is required to signal for 100 feet prior to changing lanes. Appellant is correct that the requirement that a driver signal for 100 feet, as set forth in Minn. Stat. § 169.19, subd. 5 (2010), only pertains to turns, not lane changes. *See State v. Bissonette*, 445 N.W.2d 843, 845 (Minn. App. 1989) (holding that, in requiring that a signal of intention to turn be given continuously for at least the last 100 feet prior to a turn, the legislature "failed to provide similar restrictions for lane changes"). Minn. Stat. § 169.19, subd. 4 (2010) merely establishes that a driver shall not change lanes "unless and until the movement can be made with reasonable safety after giving an appropriate signal."

While Officer Gustafson indicated on direct examination that he believed a driver must signal 100 feet prior to both lane changes and turns, he later indicated that he was not sure if a signal is required for 100 feet prior to a lane change or just prior to a turn. However, he also explained that appellant's signal for both of his lane changes were insufficient in that the signal was made simultaneously with, or "less than a second" before quickly changing lanes.

Notwithstanding Officer Gustafson's inconsistent testimony about the law with regard to lane changes, we conclude that there was substantial evidence supporting the district court's conclusion that Officer Gustafson had a reasonable, articulable suspicion to support an investigatory stop for the violation of multiple traffic laws. As found by the district court, and as seen on police video, appellant's lane changes were made without appropriate signals as required under the statute. This finding is not clearly erroneous.

The record also supports the district court's implicit finding that appellant failed to signal at least 100 feet prior to his initial turn.[1] In addition, appellant made his left-hand turn across solid double yellow lines in the roadway and entered into the left side of the roadway, crossing over the northbound lane, as well as a right-turn lane, of Mississippi Boulevard. "[N]o vehicle shall . . . be driven to the left half of the roadway . . . where official signs are in place prohibiting passing, or a distinctive centerline is marked, which distinctive line also so prohibits passing, as declared in the Manual on Uniform Traffic Control Devices." Minn. Stat. § 169.18, subd. 5(b)(3) (2010). Chapter 3B-1 of the Manual on Uniform Traffic Control Devices indicates that "[t]wo-direction no-passing zone markings consisting of two normal solid yellow lines where crossing the centerline markings for passing is prohibited for traffic traveling in either direction." Any one of these violations observed by Officer Gustafson would have formed a sufficient basis for a legal stop of appellant's vehicle. *See Berge v. Comm. of Pub. Safety*, 374 N.W.2d 730, 733 n.1 (Minn. 1985) ("Because of our conclusion that the reason given by the officer

[1] The failure of the district court to directly address a particular issue can warrant a remand for additional proceedings. *See, e.g.*, *State v. Lieberg*, 553 N.W.2d 51, 58 (Minn. App. 1996). However, no remand may be necessary where it is possible "to infer the findings from the trial court's conclusions." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). The district court found that appellant, without signaling for 100 feet prior to getting into the right-turn lane, was in violation of section 169.19, subdivision 5. Since that statute deals with signaling prior to turns, and Officer Gustafson's testimony was supportive of a finding that appellant violated the law with regard to signaling his lane changes and his turn, we can infer that the district court was referring to both violations. *See State v. Grunig* 660 N.W.2d 134, 137 (Minn. 2003) (declaring that pursuant to Minn. R. Crim. P. 29.04, "[a] respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted").

was adequate, we need not and do not decide whether any of the other facts provided an independent objective basis for the stop.").

2. Appellant's pro se Arguments

a. Engendered Driving

Appellant's pro se supplemental brief raises a number of additional arguments. He first argues that Officer Gustafson's aggressive driving "engendered" the suspicious driving conduct resulting in the investigatory stop, citing *State v. Brechler*, 412 N.W.2d 367 (Minn. App. 1987). In *Brechler*, this court affirmed the district court's suppression of evidence obtained from a vehicle search because there was no particularized and objective basis for the investigatory stop, which was the product of whim and caprice because the police "engendered" or "precipitated" the stop by following about one car length after observing the vehicle swerve inside the lane. *Id.* at 368–69. The current matter is distinguishable in that Officer Gustafson's squad was driving a significant distance behind appellant's vehicle at the time that appellant initiated his lane changes. Thus, there is no merit to appellant's claim that Officer Gustafson engendered his driving conduct simply because Officer Gustafson was driving behind him.

b. Expansion of Investigatory Stop/Inventory Search/Custodial Arrest

Appellant next argues that he was illegally subjected to a pat-down search and placed in the back of the squad car during the course of the investigatory stop, citing *State v. Varnado*, 582 N.W.2d 886, 889–92 (Minn. 1998), and *Askerooth*, 681 N.W.2d at 364–67. However, this argument has no merit because, unlike the facts in *Varnado* and *Askerooth*, no incriminating evidence was obtained as a result of the search of appellant's

pockets and the requirement that he sit in the backseat of the squad. *See State v. Merrill*, 274 N.W.2d 99, 109 (Minn. 1978) (cursory search of defendant's apartment prior to arrival of search warrant, if unconstitutional, did not result in admission of evidence requiring reversal of conviction); *Broberg v. State*, 287 Minn. 66, 73, 176 N.W.2d 904, 909 (1970) ("[N]o prejudice as a result of the search, since petitioner fails to state in what respect he was prejudiced thereby and since none of the evidence seized during the search was introduced at trial."); *see also City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 393 (Minn. 1980) ("[T]here is no standing to raise a constitutional challenge absent a direct and personal harm resulting from the alleged denial of constitutional rights.").

Appellant also argues that he was illegally placed under custodial arrest for misdemeanor offenses and that the inventory search of his vehicle was illegal. "Generally, warrantless searches are per se unreasonable." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "[A]n inventory search conducted pursuant to a standard police procedure prior to lawfully impounding an automobile is not unconstitutional under the Fourth Amendment." *Id.* (alternation and quotation omitted). "[T]he threshold inquiry when determining the reasonableness of an inventory search is whether the impoundment of the vehicle was proper." *Id.* The state has the burden of demonstrating that this exception applies. *Id.*

Appellant challenges the inventory search because he was not under custodial arrest at the time of the search, the vehicle was parked in a private parking lot, and the inventory was simply a pretext to search the vehicle. In support of this argument, appellant emphasizes that prior to the inventory search, Officer Gustafson commented

that appellant was "weird" and asked appellant if he had anything illegal inside his vehicle. Shortly thereafter, Officer Gustafson informed appellant that he was under arrest because he did not have information establishing that he would respond to a ticket.

Appellant questions the legality of his arrest for misdemeanor charges, arguing that such arrest was merely a pretext for the impoundment and inventory of his vehicle. "In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears: . . . a substantial likelihood exists that the person will not respond to a citation." Minn. R. Crim. P. 6.01, subd. 1(a)(3).[2] "The arresting officer is to decide whether to issue a citation using the information available at the time." Minn. R. Crim. P. 6.01 cmt.

Appellant provided a revoked Louisiana driver's license, had revoked license plates, did not have a valid Minnesota license, and Officer Gustafson "could not verify whether [appellant] had a permanent Minnesota address." While appellant admitted that he had not lived in Minnesota for very long, he was not able to provide a reasonable or coherent explanation as to why he lived in Minneapolis and had a storage unit in Coon Rapids. Under these circumstances, the decision to place appellant under custodial arrest did not violate rule 6.01. *See Carradine v. State*, 494 N.W.2d 77, 83 (Minn. App. 1992)

[2] Appellant also argues that the arrest violated Minn. Stat. § 629.31 (2010), which limits arrests for misdemeanor offenses to Monday through Saturday between 8:00 a.m. and 10:00 p.m. However, a police officer can make a warrantless arrest at any time of day when a misdemeanor was committed in the officer's presence. *Smith v. Hubbard*, 253 Minn. 215, 224, 91 N.W.2d 756, 764 (1958); *see also* Minn. Stat. § 629.34, subd. 1(c)(1) (2010) (providing that a peace officer may arrest without a warrant when a public offense has been committed or attempted in the officer's presence); *State v. Richmond*, 602 N.W.2d 647, 653 (Minn. App. 1999) (describing misdemeanors as public offenses for purposes of section 629.34), *review denied* (Minn. Jan. 18, 2000).

(concluding that "a reasonably competent law enforcement officer" could find a substantial likelihood that an individual would fail to respond to a citation by highlighting, in part, that individual was a resident of California and had a California driver's license), *aff'd in part, rev'd in part on other grounds*, 511 N.W.2d 733 (Minn. 1994).

A vehicle may be towed if "the driver, operator, or person in physical control of the vehicle is taken into custody and the vehicle is impounded for safekeeping." Minn. Stat. § 169.041, subd. 5(b)(12) (2010). Inventory searches are reasonable "if police followed standard procedures in conducting the search, and only if police conducted the search, at least in part, for the purpose of obtaining an inventory." *State v. Holmes*, 569 N.W.2d 181, 188 (Minn. 1997). "[S]earches conducted 'in bad faith or for the sole purpose of investigation' are not otherwise valid as inventory searches." *Id.* (quoting *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987)). Such is the case "when an inventory search that otherwise would not have occurred is brought about." *Id.*

Officer Gustafson testified that it is his department's policy to tow uninsured vehicles. It is a misdemeanor for the driver or owner of a vehicle to operate a vehicle on a public highway in Minnesota "who knows or has reason to know that the" vehicle or owner does not have insurance complying with section 65B.48. Minn. Stat. § 169.797, subd. 2, 3, 4(a) (2010 & Supp. 2011). Without insurance, no individual would have been permitted to legally drive appellant's vehicle from the parking lot, a consideration that justifies impoundment in order to "'protect[ ] the [defendant's] property from theft and

the police from claims arising therefrom.'" *Gauster*, 752 N.W.2d at 503 (alteration in original) (quoting *State v. Goodrich*, 256 N.W.2d 506, 511 (Minn. 1977)).

Appellant argues that the inventory search in this case is unreasonable since there was not a sufficient basis to impound the vehicle. In support of his claim, appellant relies upon *Gauster*, which determined in part, that an inventory search of the vehicle was not conducted in furtherance of law enforcement's legitimate caretaking function or the nature of the violations arising from the investigatory stop. 752 N.W.2d at 504–08. Specifically, the court highlighted the fact that the suspect in *Gauster* was not under arrest and never relinquished control of the vehicle, asked to make arrangements for the vehicle, and was cited for driving with a suspended license and failing to provide proof of vehicle insurance. *Id.* at 504–06.

This situation is distinguishable from *Gauster* insofar as appellant was confined to the back of the squad car and was informed that he was under arrest prior to the initiation of the inventory search. There is no indication that appellant had the ability to make his own arrangements to insure and legally transport the vehicle from the private parking lot. Moreover, *Gauster* involved impoundment based upon a failure to provide proof of vehicle insurance and specifically noted that "[f]ailure to produce proof of vehicle insurance is a different offense than a failure to have vehicle insurance." *Id.* at 504 n.2. Appellant admitted that his vehicle was uninsured, and Officer Gustafson had confirmed that appellant's driver license and the license plates were revoked. Because the impoundment of appellant's vehicle was conducted pursuant to department policy and in furtherance of a legitimate caretaking function, necessitated in part by appellant's

custodial arrest, the inventory search of appellant's vehicle was proper and not solely a pretext for an investigatory.

c. Speedy Trial

Finally, appellant argues that he was denied his right to a speedy trial. Appellant, who discharged his public defender and proceeded with standby counsel appointed by the court, demanded a speedy trial on March 1, 2011. Trial was scheduled for April 25, 2011. However, after jury selection was completed, but before the jury was sworn, the district court was advised by the prosecutor that appellant's urinalysis test was positive for methamphetamine. Based upon this report, the district court released the jury, continued the trial, and summarily convicted appellant of direct contempt of court, sentencing him to 21 days in the Anoka County jail. On appeal from the contempt order, we reversed the district court on the basis that appellant was sentenced and convicted for constructive criminal contempt without the required constitutional safeguards. *State v. Clark*, No. A11-948, 2012 WL 2202924, at *3 (Minn. App. June 18, 2012). However, we further held that the "decision to continue the trial and dismiss the jury was appropriate once it had reason to believe that appellant had a controlled substance in his system." *Id.*

Appellant argues that because this court reversed his direct criminal contempt sentence necessitating the delay of trial, and because 105 days passed between his initial speedy-trial demand on March 1, 2011, and the beginning of trial on June 13, 2011,[3] he

[3] Appellant does not take issue with any delay prior to asserting his speedy-trial demand on March 1, 2011, since a portion of this delay was due to appellant's motion to suppress

was denied his right to a speedy trial. "A speedy-trial challenge presents a constitutional question subject to de novo review." *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009). "The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Minnesota Constitution." *Id.* (quotation omitted). "By rule in Minnesota, trial is to commence within 60 days from the date of the demand unless good cause is shown upon the prosecuting attorney's or the defendant's motion or upon the court's initiative why the defendant should not be brought to trial within that period." *State v. DeRosier*, 695 N.W.2d 97, 108–09 (Minn. 2005).

> To determine whether a delay constitutes a deprivation of the right to a speedy trial, a court must balance the following four factors: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his or her right to a speedy trial, and (4) whether the delay prejudiced the defendant.

Griffin, 760 N.W.2d at 339–40 (quotation omitted). No individual factor is determinative; they must be considered together with any other relevant circumstances. *Id.* at 340.

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and dismiss and the discharge of his public defender. While appellant's motion to suppress and dismiss was filed May 3, 2010, the contested omnibus hearing was not held until October 5, 2010, after being continued from June 30, 2010. The transcript from the June 30 hearing establishes that both parties agreed to continue the hearing in order to provide appellant with a copy of the squad car video and to permit continued chemical testing by the BCA. At a hearing on December 13, 2010, at which time appellant discharged his public defender, the district court explained that appellant's advisory counsel would need time to become acquainted with the details of the case, thus necessitating a continuance. *See State v. Smith*, 749 N.W.2d 88, 97 (Minn. App. 2008) (in rejecting the defendant's claims of an untimely trial, the court concluded that most of the delays in scheduling the trial were attributable to the need of defendant's new public defender for more time to prepare an adequate defense").

"We measure the length of delay from the time when the police arrest the defendant." *State v. Cham*, 680 N.W.2d 121, 125 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). "A delay of six months is sufficient to trigger further inquiry." *State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012), *review denied* (Minn. March 28, 2012). "[A] delay of more than 60 days from the date of the speedy trial demand is presumptively prejudicial" and thus triggers review of the remaining factors. *Griffin*, 760 N.W.2d at 340. "[A] formal demand is not necessary to put the constitutional right at issue." *Johnson*, 811 N.W.2d at 144.

In this case, but for appellant's actions during his first trial, his speedy-trial demand would have been satisfied. If a defendant's own actions caused the delay, there is no violation of the right to a speedy trial. *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993); *Smith*, 749 N.W.2d at 97–98. There is no merit to appellant's claim that the delay in his trial was solely caused by the district court by illegally finding him in contempt. Such argument misconstrues the prior holding of this court, which reversed appellant's contempt conviction on the basis that the constitutional procedures were not followed. By remanding the case for further proceedings, consistent with constitutional safeguards, we acknowledged that appellant's actions in taking drugs during the pendency of his trial, if true, were subject to contempt proceedings. Thus, it was appellant's positive urinalysis test, not the district court's initiation of contempt proceedings, which necessitated the delay in his trial.

The remaining delays of trial involved the state's attempt to permit its law enforcement witnesses to be available for trial. Appellant reasserted his speedy-trial

demand on May 2, 2011. Due to issues in scheduling the state's witnesses, appellant's trial did not take place until June 13, 2011. Appellant was found guilty on June 15, 2011. "Normally, the unavailability of a witness constitutes good cause for delay." *State v. Windish*, 590 N.W.2d 311, 317 (Minn. 1999). "[A] prosecutor must be diligent in attempting to make witnesses available and the unavailability must not prejudice the defendant." *Id.* Appellant does not contest that the prosecutor was diligent in the attempt to make the state's witnesses available for trial.

Appellant is also unable to show that he was prejudiced by the delays. "[A] defendant does not have to prove specific prejudice." *Griffin*, 760 N.W.2d at 341. "To determine whether a delay prejudices a defendant, this court considers three interests that the right to a speedy trial protects: (1) preventing lengthy pretrial incarceration; (2) minimizing the defendant's anxiety and concern; and (3) preventing possible impairment to the defendant's case." *Id.* at 340–41. The third interest is the most important. *Id.* at 341. "Generally, an excessive delay presumptively compromises the reliability of a trial in ways that cannot be identified." *Id.* (quotation omitted).

Prior to the first trial in late April 2011, appellant was released on bail with conditions. During the time between his speed-trial demand on March 1, 2011, and trial, appellant's only significant pretrial incarceration was imposed as a result of his own misconduct during the course of the first aborted trial, not as a result of the contempt charge. There was no showing that appellant's ability to defend himself was impaired by the delay. Appellant called only one witness, and he was able to schedule that witness for

trial. There was no evidence that appellant was unable to defend himself as a result of the delay or was unduly anxious or concerned by the delay.

Because the record establishes that the delays of trial resulted from appellant's own misconduct, or for good cause due to witness unavailability, and because appellant is unable to show that he was prejudiced by the delay, we conclude that there has been no violation of appellant's right to a speedy trial.

Affirmed.