STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1975

State of Minnesota,
Respondent,

vs.

James Franklin Patten,
Appellant.

Filed November 20, 2017
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-16-4099

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

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

BRATVOLD, Judge

On review from appellant's conviction of receiving profits from prostitution, he first argues that he was denied his right to a speedy trial. Although appellant's trial was

postponed beyond the 60-day speedy-trial deadline, his defense was not prejudiced by the delay, thus, we affirm his conviction. Second, appellant argues that the district court erred by imposing a ten-year conditional release term and ordering him to register as a predatory offender. The state agrees with appellant's second argument. We reverse the challenged terms of appellant's sentence and remand to the district court for resentencing.

FACTS

This appeal arises out of appellant James Franklin Patten's conviction of receiving profits from prostitution in violation of Minn. Stat. § 609.322, subd. 1a(3) (2014).

On December 23, 2014, a hotel employee informed police that he believed Patten, who had rented a room with E.H., was selling illegal drugs and was engaged in prostitution activities. Police questioned E.H. and Patten, found narcotics in their hotel room, and arrested them. E.H. told officers in a recorded statement that she worked for Patten as a prostitute while in the hotel. Patten denied that he knew about E.H.'s prostitution activities.

E.H.'s recorded statement was consistent with her prior statements to police. In September 2014, police arrested E.H. for drug possession and she told police that she was Patten's girlfriend and his "bottom," a term that refers to the top woman in the hierarchy of women promoted by a pimp. E.H. also said that she was a heroin addict and supported her drug habit by prostitution. E.H. told officers that she supported Patten financially and gave him money to buy drugs for the two of them.

On February 10, 2016, the state charged Patten with three counts stemming from the December 23, 2014 incident: (1) promotion of prostitution in violation of Minn. Stat. § 609.322, subd. 1a(2); (2) receiving profits from prostitution in violation of Minn. Stat.

§ 609.322, subd. 1a(3); and (3) engaging in sex trafficking in violation of Minn. Stat. § 609.322, subd. 1a(4). Patten made his first appearance on March 16, 2016. On April 13, 2016, Patten appeared again, entered a plea of not guilty, and made an in-custody speedy-trial demand. The court scheduled the case for trial on June 13, 2016, and Patten remained in custody.

Patten's case was called for trial on June 14, 2016. The state requested a continuance because the prosecutor was already in trial in a case involving another in-custody defendant who had made a speedy-trial demand. Following questions from the district court, the prosecutor stated "every one of my colleagues is occupied in this building this week it seems." The court noted Patten's speedy-trial demand and found good cause to extend Patten's trial date.

Patten then waived his right to a jury trial and the parties discussed rescheduling the trial. The judge told the parties that she was starting a double homicide trial and would be unavailable for the next two weeks. Patten declined the option of going on "standby," which would have allowed a different judge to try his case. Patten's trial was rescheduled for Friday, July 8, 2016.

Patten's trial began as rescheduled and E.H. testified. E.H. recanted her prior statements to investigators and testified that Patten was not aware of her prostitution activities. E.H. explained that if she arranged a prostitution encounter while at the hotel, she told Patten she had "to do something" and Patten would leave the hotel room. E.H. also testified that she gave money to Patten to buy drugs, and Patten never asked how she earned the money.

In response to questions about her prior statements, E.H. testified that after charges were filed, Patten's friends and relatives attempted to "discourage" her from testifying. E.H. also testified that others, whom she could not name, called her "bad names" and "threatened" her to stop her from participating in the trial. Additionally, E.H. testified that while Patten was in custody, he called E.H. on May 15, 2016, and told her that she "just talked a little bit too much" [to the police] and that she just "ha[d] to fix it."

At the end of the morning on July 8, the prosecutor informed the court that although they were supposed to resume trial on Tuesday (July 12), the state's "key witness," a Bloomington investigator, was unavailable. Patten repeated his speedy-trial objection, but the trial was continued to July 22. Patten's trial resumed and was completed on July 22. On July 25, the state dismissed the sex trafficking charge in its written closing argument.

The district court announced its verdict in open court on August 2, 2016, and filed a written decision. The court found Patten not guilty of promoting prostitution but found Patten guilty of receiving profits from prostitution. The court sentenced Patten to 180 months in prison, imposed a 10-year conditional-release term, and ordered Patten to register as a predatory offender. This appeal follows.

D E C I S I O N

I. Patten was not denied his constitutional right to a speedy trial.

"Criminal defendants have the right to a speedy trial under the constitutions of both the United States and Minnesota." *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (citing U.S. Const. amend. VI; Minn. Const. art. I, § 6). To determine whether a defendant's speedy-trial right has been violated, Minnesota has adopted the four-factor test articulated

by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530-33, 92 S. Ct. 2182, 2192-93 (1972). *See Taylor*, 869 N.W.2d at 19. Under this test, we consider: "(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." *Taylor*, 869 N.W.2d at 19. No single factor is either necessary or sufficient. *Id.* Instead, appellate courts must "engage in a difficult and sensitive balancing process," considering all the factors together with any other relevant circumstances. *Id.* (quotation omitted.) This court reviews a claimed speedy-trial violation de novo. *Id.*

A. Length of the delay

"The length of the delay is a 'triggering mechanism' which determines whether further review is necessary." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). The length of delay is calculated from "when a formal indictment or information is issued against a person or when a person is arrested and held to answer a criminal charge." *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). Under Minn. R. Crim. P. 11.09(b), a "trial must start within 60 days" of a speedy-trial demand, unless good cause is shown. "A delay that exceeds 60 days from the date of the demand raises a presumption that a violation has occurred, and we must apply the remaining factors of the test." *Taylor*, 869 N.W.2d at 19.

The state concedes that Patten has satisfied the first *Barker* factor because his trial began after the 60-day speedy-trial deadline. Patten demanded a speedy trial on April 13, 2016, but his trial did not begin until July 8, 2016, which was 86 days after his demand. Because a presumption is raised that a violation occurred, this court must examine the remaining factors.

B. Reason for the delay

The right to a speedy trial attaches at the time a defendant is arrested or charged; therefore, we consider the reasons for the entire delay, not merely delay after the speedy-trial demand. *See State v. Osorio*, 891 N.W.2d 620, 629 (Minn. 2017) (considering the reason for delay before the defendant demanded a speedy trial). "The responsibility for promptly bringing a case to trial rests with the state," but different weights are assigned for different reasons causing a delay. *State v. Hahn*, 799 N.W.2d 25, 30 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). Any deliberate attempts to delay weigh heavily against the state, while more "neutral reason[s]," such as the state's negligence or overcrowded courts, weigh only slightly against the state. *Taylor*, 869 N.W.2d at 20 (alteration in original) (quotation omitted). In contrast, the Minnesota Supreme Court has "held on numerous occasions that when the overall delay in bringing a case to trial is the result of the defendant's actions, there is no speedy trial violation." *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993).

First, we consider the predemand delays.[1] Patten objects to the delay between the date that the state filed its complaint (February 10, 2016) and the date of his first appearance (March 16, 2016). Patten was serving time in the workhouse on a different matter during

[1] Patten does not directly argue that delay between the date of the offense and the date that the complaint was filed should be weighed against the state, but does point to the "fourteen months" between the offense date (December 23, 2014) and charging date (February 10, 2016). The right to a speedy trial "does not apply to the period before a defendant is indicted, arrested, or otherwise officially accused." *United States v. MacDonald*, 456 U.S. 1, 6, 102 S. Ct. 1497, 1501 (1982). Therefore, the delay before Patten was charged does not weigh against the state.

this time period. Patten argues that the state's failure to bring him to court earlier was a failure to diligently pursue and prosecute its claim. At trial, the state explained that the delay was not deliberate because the state investigated Patten's case until March 2016. The record does not support the state's claim. The state filed its complaint in February and did not amend it. Presumably, the state had the evidence that it needed to prosecute when it filed the complaint. Even assuming the state procured additional evidence after the complaint was filed, that does not explain the delay in setting Patten's first appearance. Patten's objection is valid, but there is no evidence the delay was intentional. Thus, the predemand delay weighs only slightly against the state.

Next, we consider postdemand delays. Patten objects to the delay between the scheduled trial date (June 14, 2016) and when the trial actually began (July 8, 2016), which caused Patten's trial to fall outside of the 60-day deadline. A speedy-trial date may be continued for good cause. Minn. R. Crim. P. 11.09(b). On the first day of Patten's scheduled trial, the state sought a continuance because the prosecutor had begun a trial the day before in another speedy-trial case and the court found good cause. But good cause does not include calendar congestion unless exceptional circumstances exist. *State v. Griffin*, 760 N.W.2d 336, 340 (Minn. App. 2009) ("[O]vercrowding in the court system is not a valid reason for denying a defendant a speedy trial."); *see generally McIntosh v. Davis*, 441 N.W.2d 115, 119-20 (Minn. 1989) (describing exigent circumstances as "the death of the trial judge or if the courthouse burned and there was no immediate space available"). Here, the state failed to articulate any exceptional circumstances. While we recognize the high demands placed on prosecutors and district courts to manage heavy

criminal trial calendars, a district court abuses its discretion in finding good cause based on a single prosecutor's trial schedule when the in-custody defendant's case was set for trial more than 60 days earlier with the state's acquiescence. After a careful review of the record, we cannot discern any exceptional circumstances that provide good cause to continue Patten's speedy-trial date.

The state argues that the delay from June 14 to July 8 is partly attributable to Patten because he was aware the assigned judge was unable to reschedule quickly and declined "standby" status. We are not persuaded because the "standby" status brings no guarantee that Patten would have begun trial before July 8.

Thus, the state is responsible for delaying the start of Patten's trial. Because there is no evidence that the state deliberately delayed trial, the delay weighs slightly against the state. *See Taylor*, 869 N.W.2d at 20 (stating that unintentional causes for delay "weigh less heavily" against the state). In sum, the predemand and postdemand delays weigh slightly against the state, because the state was responsible for those delays but did not intentionally cause either delay.[2]

[2] Patten argues that the state is responsible for the "lengthy delay" in completing the trial. After the trial began on July 8, the prosecutor requested, and the court granted, a continuance due to the unavailability of a state witness. Patten acknowledges that witness unavailability supports a district court's discretionary decision to continue a trial. *Windish*, 590 N.W.2d at 317. Because Patten cites no legal authority for a speedy-trial violation based on a good-cause continuance *after* a trial has begun, we do not consider this argument further. *State v. Butcher*, 563 N.W.2d 776, 780-81 (Minn. App. 1997) (explaining that issues not adequately briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

C. Strength of speedy-trial demand

A defendant's assertion of the right to a speedy trial "is entitled to strong evidentiary weight." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989) (quoting *Barker*, 407 U.S. 514 at 531-32, 92 S. Ct. 2192-93). Courts evaluate "[t]he circumstances surrounding the frequency and intensity of a defendant's assertion of a speedy trial demand." *Windish*, 590 N.W.2d at 318. Patten made his first speedy-trial demand on April 13, 2016. Patten's initial demand was clear and unequivocal and he reasserted the demand twice. The third *Barker* factor weighs in favor of finding a speedy-trial violation.

D. Prejudice

Whether a defendant is prejudiced by trial delay is determined in light of three interests served by the right to a speedy trial: "(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." *Taylor*, 869 N.W.2d at 20 (quotation omitted). The third interest, impairment of the defense, is the most important. *Id.*

First, regarding pretrial incarceration, Patten concedes that he was already serving time on an unrelated matter when he was charged in February 2016. Patten remained in custody until May 3, 2016, and argues that after May 3, the February charges were the only reason for his continued incarceration. Second, regarding the accused's anxiety, Patten argues that his anxiety was heightened because he had just survived cancer and feared delay in his treatment and programing, although he provides no details. The state contends that Patten's previous incarceration diminishes the likelihood he experienced any anxiety waiting for trial.

Regarding the third interest, Patten does not identify how the delay impaired his defense. Because it is difficult to prove exactly how a case was impaired by delay, "[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. To establish that a delay harms the defense, a defendant must "suggest evidentiary prejudice." *Taylor*, 869 N.W.2d at 20 (quotation omitted). Evidentiary prejudice may include damage to a witness's ability to recall "essential facts," the unavailability of a witness, or impairment of representation. *Jones*, 392 N.W.2d at 235-36.

Patten fails to suggest *any* evidentiary prejudice. The state argues that Patten used this pretrial period to procure E.H.'s retraction of her statements to police officers. The state's position has ample support in E.H.'s testimony and the district court's findings of fact. *See State v. Patten*, No. 27-CR-16-4099, at *5, *9 (Minn. Dist. Ct. Aug. 2, 2016) (finding that while incarcerated, Patten pressured E.H. to "fix" her testimony). Because Patten suggests no evidentiary impairment, the fourth *Barker* factor weighs against a speedy-trial violation.

Upon balancing the *Barker* factors, we conclude that Patten was not denied his right to a speedy trial. Although the length of delay raises a presumptive violation, the state's responsibility for the delay only weighs slightly against it because there was no evidence that the state intentionally delayed to gain an advantage. Patten affirmatively demanded his speedy-trial right, but he has not suggested any evidentiary prejudice from the delay. In fact, Patten used the delay to pressure a witness to recant. Therefore, we conclude that the balance of the *Barker* factors overcomes the presumption of a speedy-trial violation.

II. Patten's sentence should be modified to remove the conditional release and predatory offender terms because neither is authorized by law.

Patten argues that his sentence should be modified to vacate the predatory offender and conditional release terms because neither is authorized by law. The state concedes that the predatory-offender statute and the conditional-release statute do not apply to Patten's conviction and agrees that these sentencing terms should be vacated. Interpreting a sentencing statute is a question of law, which appellate courts review de novo. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016).

Minn. Stat. § 609.3455, subd. 6 (2014), provides that persons convicted of certain enumerated offenses shall be placed on conditional release for ten years. In addition, the Minnesota legislature requires persons charged with or convicted of certain offenses to register as predatory offenders.[3] *See* Minn. Stat. § 243.166, subd. 1b (2014); Minn. Stat. § 243.167, subd. 2 (2014). Patten was convicted of receiving profits from prostitution in violation of Minn. Stat. § 609.322, subd. 1a(3), which is not enumerated as a qualifying offense in either the conditional-release statute or in the predatory-offender statutes. We conclude, therefore, that the ten-year conditional-release term and the predatory-offender registration requirement term should be vacated from Patten's sentence.

[3] We note that Minn. Stat. § 243.166, subd. 1b(a)(2), requires persons charged with violating Minn. Stat. § 609.322, subd. 1(a)(2), promotion of the prostitution of a minor and Minn. Stat. § 609.322, subd. 1(a)(3), engaging in sex trafficking of a minor to register as predatory offenders. Patten was not charged with either of these offenses.

Thus we affirm Patten's conviction, reverse the contested terms of Patten's sentence, and remand to vacate the conditional release and predatory offender registration terms, consistent with this opinion.

Affirmed in part, reversed in part, and remanded.