STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0484

State of Minnesota,
Appellant,

vs.

Jessy Alejandro Aguilar Garcia,
Respondent.

Filed October 1, 2018
Affirmed
Jesson, Judge

Olmsted County District Court
File No. 55-CR-17-5296

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

Mark A. Ostrem, Olmsted County Attorney, Byron H. Black, Assistant County Attorney, Rochester, Minnesota (for appellant)

Drake D. Metzger, Metzger & Nyberg, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant State of Minnesota challenges the district court's pretrial order denying both its motion to amend the complaint and its request for a continuance of trial. Because the district court appropriately weighed the state's desire to prosecute respondent for

additional drug-related charges, including importing a controlled substance across state lines, against Garcia's right to a speedy-trial, and did not abuse its discretion, we affirm.

FACTS

On August 10, 2017, the state charged respondent Jessy Alejandro Aguilar Garcia with two counts stemming from alleged criminal activity that occurred from September 21, 2016 to August 8, 2017: (1) conspiracy to commit first-degree controlled-substance crime (sale of 17 grams or more cocaine or methamphetamine);[1] and (2) first-degree aiding and abetting controlled-substance crime (sale of 17 grams or more cocaine or methamphetamine).[2] The complaint alleged that in September 2016, officers from a drug task force conducted a controlled buy of approximately one pound of methamphetamine, "as part of an investigation into drug trafficking in Rochester, Minnesota." In August 2017, the task force arranged another controlled buy with the same confidential informant. The complaint alleged that during the August 2017 buy, Garcia and an accomplice flew from Arizona to Minnesota to deliver two pounds of methamphetamine. According to the complaint, Garcia and his accomplice received the methamphetamine in Rochester, drove to St. Paul, and sold the methamphetamine at a St. Paul business. Garcia and his accomplice were arrested.

At a pretrial hearing on February 13, 2018, Garcia pleaded not guilty and entered a speedy-trial demand. Pursuant to Minn. R. Crim. P. 11.09, which requires that a trial begin

[1] In violation of Minn. Stat. § 152.021, subd. 1(1) (2016).
[2] In violation of Minn. Stat. § 152.021, subd. 1(1).

within 60 days of the defendant's demand for a speedy trial, Garcia's speedy-trial demand expired on April 13, 2018. The district court scheduled a jury trial for March 19, 2018.

On March 14, 2018, the state filed an amended complaint adding three charges: (1) aiding and abetting racketeering;[3] (2) conspiracy to commit aggravated first-degree controlled-substance crime;[4] and (3) importing a controlled substance across state borders.[5]

In the evening of March 14, Garcia filed a motion requesting that the district court deny the state's request to amend the complaint. On March 15, a district court judge signed and filed the amended complaint. Later that day, the parties appeared for a pretrial conference with a different district court judge. The second district court judge determined that it was unlikely that the first district court judge was aware of Garcia's motion objecting to the amended complaint when she signed it. The district court decided that it would consider the amended complaint as a "motion to amend" by the state and informed the parties that it would hear arguments on whether it should allow the amended complaint the next day.

On March 16, the state dismissed the racketeering charge, recognizing that it "introduce[d] a new and complex dimension to the case." But the state argued that the district court should grant its request to amend the complaint because the additional counts were based on the same discovery previously disclosed to Garcia and dealt with "issues that have been known." The prosecutor also stated that the additional counts relied on facts

[3] In violation of Minn. Stat. § 609.903, subd. 1(1) (2016).
[4] In violation of Minn. Stat. § 152.021, subd. 2b(2) (2016).
[5] In violation of Minn. Stat. § 152.0261, subd. 1 (2016).

that were known "at a minimum, since November [2017]," and thus, were not "of surprise to anyone." The state also explained its delay in amending the complaint, stating that the original prosecutor had retired, and the new prosecutor did not realize until "fully review[ing] the files" that the complaint needed to be amended.[6] Finally, the state asked the district court to grant a continuance of trial "so that perhaps amendment can be allowed."

Garcia strongly objected to the motion to amend the complaint. Garcia argued that if the district court granted the state's motion to amend the complaint, his trial would be delayed for several reasons. First, Garcia would be provided the opportunity to assert probable cause challenges on the additional counts, many of which, he argued, occurred before his alleged involvement in the criminal activity. Second, Garcia's trial counsel asserted that he would need to complete further investigation to defend against the additional counts. Third, Garcia's counsel stated that he had several upcoming schedule conflicts. Due to these potential delays, Garcia contended that his right to a speedy-trial would be violated if the court allowed the state to amend the complaint and granted the continuance.

On March 16, the district court denied the state's request to amend the complaint. The district court reasoned that the amended complaint would bring the case "back to the pre-omnibus hearing stage," double the number of charges, increase the severity level of the offenses from "D8 to D9," and would not allow the parties sufficient time to prepare

[6] The state also contended that, because there was the possibility of settlement, the new prosecutor did not "pay particular attention to amending the complaint."

for trial and "honor the speedy trial demand." The district court also denied the state's request for a continuance of trial.

The state appeals.

D E C I S I O N

I. The district court's denial of the state's motion to amend had a critical impact on the state's ability to prosecute the case.

The state's right to appeal in a criminal matter is limited. *State v. Rourke*, 773 N.W.2d 913, 923 (Minn. 2009). When the state appeals a pretrial order of the district court, the state must show that the district court's order will have a critical impact on its ability to prosecute the case. *State v. Zais*, 805 N.W.2d 32, 35-36 (Minn. 2011).

The state argues that the district court's decision will have a critical impact on the state's ability to prosecute Garcia. Garcia concedes that the critical-impact threshold is met. Although the parties agree on this legal question, we conduct an independent inquiry. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (noting that it is the responsibility of appellate courts to decide cases in accordance with the law, regardless of whether counsel chooses to contest an issue).

We conclude that the district court's decision will have a critical impact on the state's ability to prosecute Garcia for two reasons. First, to establish critical impact, the state must demonstrate that the district court's ruling will significantly reduce the likelihood of a successful prosecution; it is enough if it impacts the state's ability to prosecute only a specific charge. *Zais*, 805 N.W.2d at 36. The district court's denial of

the amended complaint resulted in the dismissal of two counts alleged in that complaint and satisfies the critical-impact requirement.

Second, this court has determined that "[t]he state satisfies the critical-impact test when the district court's order is based on an interpretation of a rule that bars further prosecution of a defendant." *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). In what is called the single-behavioral-incident rule, Minnesota law provides that "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2016). In other words, the state would not be able to prosecute Garcia in the future for the offenses in the amended complaint if the course of conduct "consists of a single behavioral incident." *Baxter*, 686 N.W.2d at 851.

In determining whether a course of conduct consists of a single behavioral incident, this court considers time, place, and "whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000) (quotation omitted). The record shows that the offenses in the original and amended complaint all occurred in the same locations, in the "identical period of time," and were motivated by the same criminal objective: "importing and distributing methamphetamine in Minnesota." The series of incidents that formed the basis for the charges in the original complaint, "are the exact same incidents that are the basis for the added counts," and therefore, we agree with the parties that these offenses were part of the same behavioral incident. *Baxter*, 686 N.W.2d at 851. As a result, the state would be barred from prosecuting the additional counts in the future.

In sum, because the denial of the amended complaint resulted in dismissal of two counts and the offenses in the original and amended complaints occurred as part of a single behavioral incident, the state has demonstrated a critical impact. We turn to consider whether the district court abused its discretion by denying the state's motion to amend the complaint.

II. The district court did not abuse its discretion by denying both the state's motion to amend the complaint and its request for a continuance.

Amending the complaint

The district court has broad discretion to grant or deny a motion to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion. *Baxter*, 686 N.W.2d at 850. "The inquiry into whether a court should grant or deny such a motion is factual and case specific." *Id.* at 852.

Here, the district court denied the state's motion to amend because it found that the amended complaint was untimely. "Pre-trial proceedings may be continued to permit a new complaint to be filed . . . if the prosecutor *promptly* moves for a continuance." Minn. R. Crim. P. 3.04, subd. 2 (emphasis added). Under rule 3.04, subdivision 2, "the trial court is relatively free to permit amendments to charge additional offenses before trial is commenced, provided the trial court allows continuances where needed." *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990). The state argues that, because rule 3.04 allows it to amend the complaint at any point prior to trial, the district court abused its discretion in denying the motion to amend.

But, as this court decided in *Baxter*, rule 3.04, subdivision 2 "does not state that any motion to amend a complaint made prior to trial *must* be granted. Instead, the rule gives the district court discretion to allow amendments to the complaint and the continuance of pretrial proceedings." *Baxter*, 686 N.W.2d at 852 (emphasis added). Rule 3.04 recognizes the "importance of timeliness," and provides that the state must "promptly" move for a continuance pursuant to the amended complaint. *Id.* at 853 (citing Minn. R. Crim. P. 3.04, subd. 2). The district court has a "responsibility" to consider the timeliness of the amended complaint in criminal actions to avoid prejudice against the defendant. Id.

Here, the state completed its investigation in November 2017 and failed to amend the complaint in a prompt manner. In fact, the state waited over four months, until three days before the jury trial was scheduled to begin, to amend the complaint. In a careful, thorough analysis, the district court concluded that the amended complaint was untimely, would have brought the case "back to the pre-omnibus hearing stage," and ultimately, denied the state's motion to amend.

On appeal, the state argues that it is not clear "why a hypothetical omnibus challenge could not be resolved before [Garcia's] speedy-trial demand expired." But the district court considered this argument, and determined that, based on both attorneys' availability, the potential delay for further necessary investigation, and Garcia's right to make probable cause challenges, it would not be able to honor Garcia's speedy-trial demand if it granted the motion to amend.[7] The district court retains broad discretion over a case once it is filed,

[7] The state further argues that the parties could have met the speedy-trial deadline, even with the delays for investigation, probable cause challenges, and attorney schedule

and the district court did not abuse its discretion denying the motion to amend the complaint in this case. *Baxter*, 686 N.W.2d at 852.

Nor are the state's attempts to distinguish *Baxter* from this case persuasive. In *Baxter*, the state amended its complaint three months after a speedy-trial demand, on the morning of the trial. *Id.* at 853. As the state points out, in contrast to this case, Baxter's speedy-trial demand had already expired when the state sought to amend the complaint. *Id.* But these factual distinctions do not require a different result. The district court concluded that, like in *Baxter*, the amended complaint was not a "housekeeping amendment" because the additional charges would result in delays for necessary investigation by Garcia's attorney and probable cause challenges, would permit the presentation of additional defenses, and would allow greater penalties.[8] *Id.* In addition, like the appellant in *Baxter*, Garcia had been in custody for "six or seven months" at the time of the motion to amend. Finally, similarly to *Baxter*, the state had completed its investigation based on interviews with Garcia's accomplice in November 2017, and yet

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conflicts. But since we have already determined that the district court did not abuse its discretion in deciding that the omnibus challenges may not have been resolved before the speedy-trial deadline expired, we also conclude that it was not an abuse of the district court's discretion to decide that the delays would have violated Garcia's right to a speedy-trial.

[8] On appeal, the state asserts that it was not "clear what—if any—additional investigation [was] necessary for [Garcia] to meet the new charges in the amended complaint." But, as pointed out by Garcia, the additional counts in the amended complaint "changed the landscape of the case." Garcia's counsel indicated that, due to the additional charge of importing a controlled substance across state lines, he would need to interview out-of-state witnesses, research the routes allegedly taken, and "develop potential defenses to the new charges." We conclude that the district court's determination that additional time would be needed to investigate the new charges was not an abuse of its wide discretion.

failed to amend the complaint until March 2018. The district court properly exercised its discretion to deny the state's motion to amend.

Continuance of trial

Next, the state argues that the district court abused its discretion by denying the state's request to continue the trial to allow it to amend the complaint. The decision to grant or deny a continuance is reviewed under a clear abuse-of-discretion standard. *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). "Furthermore, the appellate court will not reverse the denial of a motion for continuance unless the moving party shows that the ruling prejudiced him." *Id.*

The district court determined that if it continued the trial, Garcia would be deprived of his right to a speedy trial for the reasons described above. Because only 30 days remained before Garcia's speedy-trial demand expired, the district court appropriately exercised its wide discretion when it denied the state's request for a continuance.

The state argues, however, that it is prejudiced by the district court's refusal to continue the trial because it is now precluded "from ever presenting the new offenses in the amended complaint to a jury." But the state, which waited four months after completing its investigation to move to amend the complaint, is entirely responsible for any prejudice it now faces. *See State v. Sistrunk*, 429 N.W.2d 280, 282 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988) (providing, in the speedy-trial context, that a reviewing court must consider whether the delay is attributable to the defendant or to the state). We further note that Garcia will still be tried for two first-degree drug charges, based on the original complaint. Therefore, although the state is prejudiced in that it cannot prosecute Garcia

for each additional count, it is not prejudiced in that it loses the ability to pursue the case entirely.

Because a continuance could result in a violation of Garcia's right to a speedy trial, we conclude that the district court did not abuse its discretion by denying the state's motion for a continuance to amend the complaint.

Affirmed.