STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1159

State of Minnesota,
Respondent,

vs.

Dean Allen Benter,
Appellant.

Filed May 20, 2019
Affirmed
Klaphake, Judge[*]

Mahnomen County District Court
File No. 44-CR-18-23

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Carl Malmstrom, Mahnomen City Attorney, Isaiah P. Volk, Assistant City Attorney, Thorwaldson & Malmstrom, PLLP, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Klaphake, 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

KLAPHAKE, Judge

Appellant Dean Allen Benter argues that the district court deprived him of his right to a speedy trial. We affirm.

D E C I S I O N

Benter was charged with and convicted of fifth-degree assault and disorderly conduct after a driving conduct dispute resulted in a physical altercation at a local grain elevator. At his first court appearance on January 30, 2018, Benter asserted his right to a speedy trial.

The United States and Minnesota Constitutions guarantee criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Minn. R. Crim. P. 11.09 ("On demand of any party after entry of [a] plea [other than guilty], the trial must start within 60 days unless the court finds good cause for a later trial date."). Because the right to a speedy trial is a constitutional right, this court reviews whether a defendant has been denied a speedy trial de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) "If a defendant has been deprived of his or her right to a speedy trial, the only possible remedy is dismissal." *Id.*

To determine whether a violation of a speedy-trial right occurred, Minnesota courts analyze four factors established by the United States Supreme Court in *Barker v. Wingo*: (1) length of the delay; (2) reason for the delay; (3) whether the defendant asserted his or her speedy-trial right; and (4) whether the delay prejudiced the defendant. 407 U.S. 514, 522, 92 S. Ct. 2182, 2188 (1972). "None of the *Barker* factors is either a necessary or

sufficient condition to the finding of a deprivation of the right of a speedy trial . . . they are related factors and must be considered together with such other circumstances as may be relevant." *Id*. at 628 (quotation omitted). Analyzing the *Barker* factors therefore involves a "difficult and sensitive balancing process in which the conduct of both the [s]tate and the defendant are weighed." *Id*. (quotations and citations omitted).

Length of delay

"In Minnesota, a delay of more than 60 days from the date of the speedy-trial demand is presumptively prejudicial, triggering review of the remaining three [*Barker*] factors." *State v. Hahn*, 799 N.W.2d 25, 30 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011); *see also State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). Here, appellant's trial occurred on April 5, 2018, 66 days after his speedy-trial demand. Because appellant's trial occurred more than 60 days from his speedy-trial demand, the first factor weighs in appellant's favor.

Cause of delay

A "deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government," but a "more neutral reason such as negligence should be weighted less heavily but nevertheless should be considered since the ultimate responsibility . . . must rest with the government." *Osorio*, 891 N.W.2d at 628. Here, the cause of delay was largely due to one of respondent's two witnesses being unavailable to testify on the designated trial date of March 30, 2018.

The unavailable witness was the responding officer, whose testimony was critical, because appellant admitted to the officer that he struck the victim. There is no evidence in

the record as to why the officer was unavailable, but there is also no indication that respondent was deliberately attempting to delay trial through his absence.

"Normally, the unavailability of a witness constitutes good cause for delay." *State v. Windish*, 590 N.W.2d 311, 317 (Minn. 1999). "However, a prosecutor must be diligent in attempting to make witnesses available and the unavailability must not prejudice the defendant." *Id.* Here, respondent did not produce any evidence of its efforts to ensure the officer's appearance. This lack of diligence weighs against respondent. *Id*.

Appellant's assertion of his speedy-trial right

"[A] defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Osorio*, 891 N.W.2d at 629 (quotation omitted). Respondent argues that a waiver of appellant's speedy-trial demand could be inferred from his actions. *State v. Vonbehren*, 777 N.W.2d 48, 53 (Minn. App. 2010), *review denied* (Minn. Mar. 16, 2010). But, appellant's motions were all made orally before the court at already scheduled hearings. And none of these motions delayed the proceedings. Therefore, appellant made his speedy-trial demand 66 days prior to trial and this factor weighs in his favor. *See Taylor*, 869 N.W.2d 1 at 20 (concluding that defendant's assertion of his speedy-trial right over 100 days before trial weighed in his favor).

Prejudice

"[U]nreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by

dimming memories and loss of exculpatory evidence." *Doggett v. United States*, 505 U.S. 647, 654, 112 S. Ct. 2686, 2692 (1992) (quotation omitted). "Of these forms of prejudice, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id*. (quotation omitted). Appellant argues that the delay prejudiced him by increasing his anxiety and concern. He also asserts that the prejudicial harm he suffered was "to him as a person, his employment, and his perception of the fairness of the proceedings."

We conclude that there is no evidence of prejudice to appellant from the delay at issue. In fact, appellant stated on the record at the February 27, 2018, hearing that it "[didn't] matter to [him]" whether the trial was scheduled for March 30, 2018, or April 6, 2018. Importantly, April 6, 2018 would have been one day later than the actual trial date that appellant now claims prejudiced him.

Appellant was not in custody during the delay and he suffered no prejudice to his defense. And appellant does not identify any examples of anxiety he faced as a result of the delay. He does state that he lost his job as a result of his conviction, but the conviction happened as a result of the trial, not as a result of the delay. Appellant's arguments regarding his loss of faith in judicial proceedings are not a valid basis upon which to assert prejudice. Additionally, because the continuance was granted at a pre-trial hearing, rather than at the scheduled date of trial, appellant was not even forced to come to court any more than he would have otherwise. Therefore, the fourth factor weighs heavily against appellant.

Balancing of the Factors

Appellant demanded a speedy trial at his first opportunity. The start of appellant's trial more than 60 days from the date of his demand raises a presumption that a speedy-trial violation occurred. Respondent appears primarily responsible for the delay, due to the unavailability of its witness. However, appellant has not shown any prejudice resulting from the six-day delay.

The supreme court has previously held that even though the first three *Barker* factors weighed in a defendant's favor, the defendant's right to a speedy trial had not been violated because he had not suffered any unfair prejudice as a result of the delay. *State v. Jones*, 392 N.W.2d 224, 234-36 (Minn. 1986). We reach the same conclusion here.

Affirmed.