STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0732

State of Minnesota,
Respondent,

vs.

Roosevelt Mikell,
Appellant.

Filed May 26, 2020
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CR-18-26380

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

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

COCHRAN, Judge

Appellant challenges his convictions of violating a domestic-abuse no-contact order (DANCO), arguing that his convictions should be reversed because his speedy-trial rights

were violated under the state and federal constitutions, and the Uniform Mandatory Disposition of Detainers Act (UMDDA). Appellant also argues that the district court abused its discretion by not dismissing the case under Minn. R. Crim. P. 30.05. Finally, in his pro se supplemental brief, appellant raises the same arguments presented in his primary brief. We affirm.

FACTS

On June 6, 2017, respondent State of Minnesota charged appellant Roosevelt Mikell with domestic assault. The next day, the district court issued a DANCO, which prohibited Mikell from having contact with the victim. After the DANCO was issued, Mikell twice called the victim from jail. Mikell was subsequently charged with two counts of violating a DANCO.

On August 21, 2017, Mikell appeared pro se for a scheduled jury trial on the domestic-assault charge. Mikell was also scheduled to make his first appearance related to the DANCO charges later that afternoon. In an effort to avoid an interruption of the jury selection in the domestic-assault case, the district court proceeded with Mikell's arraignment on the DANCO charges prior to the beginning of the jury trial on the domestic-assault charges. During his arraignment, Mikell requested a speedy trial related to the DANCO charges, and the district court noted that "a speedy [trial] demand will be entered." Mikell then proceeded pro se in his jury trial for the domestic-assault charges, and was found guilty.

On October 5, 2017, the district court sentenced Mikell to 60 months in prison for domestic assault. That same day, Mikell reminded the district court of his speedy trial

demand in the DANCO cases. And on November 7, 2017, the state received Mikell's request under the UMDDA, Minn. Stat. § 609.292 (2018), for final disposition of the DANCO charges. The state responded by dismissing the DANCO charges on November 13, 2017.

Mikell appealed his domestic-assault conviction. In September 2018, this court, in an order opinion, reversed Mikell's domestic-assault conviction and remanded for a new trial. *State v. Mikell*, No. A18-0028 (Minn. App. Sept. 14, 2018). Shortly thereafter, on October 25, 2018, the state filed a new complaint alleging the same two DANCO violations that were alleged in the August 18, 2017 complaint. Mikell moved to dismiss the new complaint on November 2, 2018, asserting a violation of his right to a speedy trial. The district court denied the motion. The state subsequently dismissed the domestic-assault charges and agreed to resolve the DANCO charges with a 30-month sentence. Mikell accepted the offer, agreeing to waive his right to a jury trial and stipulate to the state's evidence under Minn. R. Crim. P. 26.01, subd. 4, thereby preserving his right to appeal the speedy-trial issue.

Based on the stipulated evidence, the district court found Mikell guilty of both of the alleged DANCO violations. The district court then sentenced Mikell to a 30-month sentence on each count, to run concurrently.

This appeal follows.

D E C I S I O N

I. Mikell's constitutional right to a speedy trial was not violated.

The United States and Minnesota Constitutions afford criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This court reviews a claimed speedy-trial violation de novo. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). "If a defendant has been deprived of his or her right to a speedy trial, the only possible remedy is dismissal of the case." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017) (quotation omitted).

"To determine whether a speedy-trial violation has occurred, we apply the four-factor balancing test set forth by the Supreme Court of the United States in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972)." *Id.* The four factors are: "(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." *Id.* (quotation omitted). "None of these factors is 'either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Taylor*, 869 N.W.2d at 19 (quoting *Barker*, 407 U.S. at 533, 92 S. Ct. at 2182). It is "a difficult and sensitive balancing process" in which the court considers "the conduct of both the State and the defendant." *Osorio*, 891 N.W.2d at 628 (quotations omitted). We consider each of the four factors in turn.

A. The Length of the Delay

In Minnesota, if a defendant demands a speedy trial under Minn. R. Crim. P. 11.09, a delay of just 60 days is presumptively prejudicial. *State v. Windish*, 590 N.W.2d 311, 315-16 (Minn. 1999). "The length of the delay is a triggering mechanism which determines whether further review is necessary." *Osorio*, 891 N.W.2d at 628 (quotations omitted). Analysis of the other three factors is only required if the length of the delay is presumptively prejudicial. *See State v. Johnson*, 498 N.W.2d 10, 15-16 (Minn. 1993).

Mikell argues that analysis of the other three factors is triggered because the length of the delay between the filing of the DANCO charges in August 2017, and the trial in January 2019, consisted of over 500 days. The state agrees that analysis of the other three factors is triggered because the delay exceeded 60 days but argues that the length of the delay should be calculated at only 120 days.[1] Because the parties agree that the length of the delay exceeded 60 days, we conclude that the length of the delay weighs in Mikell's favor and the analysis of the other *Barker* factors is required.

B. The Reason for the Delay

"Under the second prong of the *Barker* test, the key question is whether the government or the criminal defendant is more to blame for the delay." *Osorio*, 891 N.W.2d

[1] The state argues that the length of the delay should be calculated at only 120 days because (1) the length of the delay should not include the time between dismissal of the original set of charges and refiling of the second set of charges; and (2) the earliest date Mikell could demand a speedy trial under the rules of criminal procedure was at the October 5, 2017 rule 11 hearing, not his August 21, 2017 first appearance. We need not address the parties' disagreement at this juncture because, regardless of whether the delay is 120 days, or in excess of 500 days, the delay is presumptively prejudicial.

at 628. Once we have determined which party is responsible for the delay, we must consider the specific reasons for the delay. *Id.* Various reasons for the delay are weighed differently. *Id.* Negligent or administrative reasons for delay are given less weight than deliberate attempts by the state to delay trial. *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192.

Mikell argues that the reason for the delay should weigh against the state because after being charged with the DANCO violation, he "immediately" and "repeatedly" demanded a speedy trial and "did nothing to contribute to the delay." Mikell also contends that "there is conduct by the state that indicates that filing a second complaint was legal maneuvering after [Mikell] succeeded on appeal in [the domestic-assault] case and rejected a plea offer."

To support his argument, Mikell cites *State v. Kasper*, 411 N.W.2d 182 (Minn. 1987). In that case, the defendant demanded a speedy trial in writing to require the state to bring him to trial within 60 days under the applicable procedural rule. *Kasper*, 411 N.W.2d at 183. Approximately one month before the trial date, the prosecutor moved for a continuance. *Id.* After the district court denied the motion, the prosecutor dismissed the tab charges and then immediately filed a formal complaint alleging the same charges, in an attempt to restart the 60-day period. *Id.* The *Kasper* court admonished the prosecutor's attempted "legal maneuvering" around the 60-day speedy-trial requirement. *Id.* at 185.

Mikell's reliance on *Kasper* is misplaced. In *In re Welfare of G.D.*, this court distinguished *Kasper*, noting that in *Kasper*, the state's attempt to avoid the defendant's formal speedy-trial demand contained an element of bad faith. 473 N.W.2d 878,

881 (Minn. App. 1991). This court then held that, absent bad faith, the length of delay does not include the time during which charges have been dismissed. *Id.* at 882.

Here, unlike in *Kasper*, the record lacks the element of bad faith. The record reflects that after Mikell was convicted of domestic assault and received a 60-month sentence, Mikell filed his request for final disposition of the DANCO charges under the UMDDA. The state then dismissed the DANCO charges on November 13, 2017, "because the State had obtained a lengthy prison sentence on the domestic assault." As Mikell concedes, the decision to dismiss the DANCO charges "benefitted [him] at that time." It was only after Mikell's domestic-assault convictions were reversed that the state refiled the charges in the DANCO case. Although the state first attempted to obtain a plea agreement before refiling the DANCO charges, there is no indication of bad faith by the state. The domestic-assault charges were interrelated with the DANCO charges, and the record indicates that the state intended to hold Mikell responsible for his conduct without necessarily obtaining convictions and sentences for all the pending charges. In fact, Mikell admits in his reply brief that the state ultimately "dismissed the domestic assault case." Because there is no evidence of bad faith on the part of the state, the length of the delay does not include the time during which the DANCO charges were dismissed. *See G.D.*, 473 N.W.2d at 882.

The remaining time periods to be considered consist of: (1) the period between the August 21, 2017 filing of the DANCO charges, and the November 13, 2017 dismissal of the DANCO charges; and (2) the October 25, 2018 refiling of the DANCO charges, and the January 14, 2019 trial date. The state argues Mikell's first speedy-trial demand on August 21, 2017, was premature under the rules of criminal procedure and, therefore, the

45-day period between August 21, 2017, and October 5, 2017, should not weigh against the state. The state further argues that the 62-day delay between November 13, 2018, and the trial on January 14, 2019, should not be held against the state because Mikell requested a continuance. Even assuming we disagree with the state, we conclude that the weight due to the delays during periods (1) and (2) identified above is not heavy.

"Where calendar congestion is the reason for delay, it weighs less heavily against the state than would deliberate attempts to delay trial." *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). Here, there is nothing in the record indicating that any of the delay was an attempt by the state to hamper the defense. Rather, as the state points out, much of the delay "appears to be typical court scheduling." Moreover, the record reflects that in November 2018, Mikell requested that the domestic-assault case be continued because he "need[ed] a little more time." Although Mikell never requested that the DANCO case be continued, the record reflects that because the DANCO case was interrelated with the domestic-assault case, a continuance in the domestic-assault case necessitated a delay in the trial of the DANCO case. In fact, Mikell's attorney stated at the November 5, 2018 motion hearing that she would object to trying the DANCO case before the domestic-assault case. Therefore, even if the state is responsible for the delay, it does not weigh heavily against the state.

C. Whether Mikell Asserted the Right to a Speedy Trial

"Whether and how a defendant asserts his right is closely related to the other [*Barker*] factors . . . ." *Osorio*, 891 N.W.2d at 629 (quotation omitted). "The 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." *Id.* (quotation omitted). "[T]he frequency and force of a demand must be considered when weighing this factor and the strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." *Friberg*, 435 N.W.2d at 515. Here, the record reflects that Mikell made timely and repeated requests for a speedy trial under Minn. R. Crim. P. 11.09(b). Thus, as the state concedes, this factor weighs against the state.

D. Whether Mikell was Prejudiced by the Delay

"Three types of prejudice may result from an unreasonable delay between formal accusation and trial: oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired." *Osorio*, 891 N.W.2d at 631 (quotations omitted). The most serious form of prejudice is the possibility that the defense will be impaired because the inability of a defendant to adequately prepare his case "skews the fairness of the entire system." *Id.* (quotations omitted).

If a defendant is already in custody for another offense, as Mikell is here, the first two interests are not implicated. *Taylor*, 869 N.W.2d at 20. Consequently, the only remaining question is whether Mikell's defense was likely harmed by the delay. *Id.* "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. Such prejudice is typically suggested "by memory loss by witnesses or witness unavailability." *Taylor*, 869 N.W.2d at 20.

Mikell argues that he suffered prejudice because a material witness to the charged offenses "was no longer in custody," and because "the delay resulted in [Mikell] losing the

opportunity to have any DANCO violation sentence be imposed more favorably to the [domestic] assault sentence." But as the state points out, the sentencing issue is moot because the state dismissed the domestic-assault case. And the availability-of-the-witness argument is speculative because, although the witness is no longer in custody, there is no evidence in the record indicating that the witness is not available to testify. Therefore, the fourth factor weighs against Mikell.

In sum, the first three *Barker* factors weigh in favor of Mikell. But even where the first three factors weigh in favor of an appellant, there may not be a violation of the appellant's right to a speedy trial. In *State v. Jones*, the supreme court held that the defendant's right to a speedy trial was not violated even though the first three *Barker* factors weighed in a defendant's favor because he had not suffered any prejudice as a result of the delay. 392 N.W.2d 224, 234-36 (Minn. 1986). The same reasoning applies here. As discussed above, Mikell has not suffered any prejudice as a result of the delay. Moreover, the state did not act in bad faith and the delays were not excessive. Accordingly, Mikell was not denied his constitutional right to a speedy trial.

II. Mikell was not denied his right to a speedy trial under the UMDDA.

Mikell also contends that the state violated his speedy-trial rights under the UMDDA. The purpose of the UMDDA is to "establish a prisoner's right to a speedy disposition of untried charges." *State v. Miller*, 525 N.W.2d 576, 583 (Minn. App. 1994). Under the UMDDA, detained persons charged with a crime may request a final disposition of an untried indictment or pending complaint. Minn. Stat. § 629.292, subd 1. Once a petition is received by the court and prosecuting attorney, the case must be "brought to

trial" within six months unless additional time is granted by the court for "good cause." Minn. Stat. § 629.292, subd. 3. If a trial is not held within that period, "no court of this state shall any longer have jurisdiction . . . and the court shall dismiss [the indictment] with prejudice." *Id.*

Here, the record reflects that the state received Mikell's request for final disposition of the DANCO charges under the UMDDA on November 7, 2017, and then dismissed the charges less than a week later on November 13, 2017. The record also reflects that the state refiled the DANCO charges in October 2018, after Mikell's convictions in the domestic-assault case were reversed. And the record reflects that Mikell's stipulated-facts trial on the DANCO charges was held in January 2019. Thus, Mikell's trial on the DANCO charges was held outside of the six-month period prescribed in the UMDDA as measured from the date that the state received his request.

The state argues that the UMDDA was not violated because the six-month time period was tolled by the dismissal of the DANCO charges. Indeed, our supreme court has determined that the six-month time-period prescribed in the UMDDA may be tolled by a defendant's motion that causes a delay. *State v. Wilson*, 632 N.W.2d 225, 230 (Minn. 2001) (holding that the six-month statutory time period under the UMDDA may be tolled when the defendant causes or creates a delay in bringing the matter to trial, such as filing a motion to dismiss the complaint); *see also State v. Kurz*, 685 N.W.2d 447, 448-51 (Minn. App. 2004) (recognizing a tolling exception to the UMDDA when the delay in disposition is caused by the defendant's motion to dismiss for lack of probable cause), *review denied* (Minn. Oct. 27, 2004). But the state cites no case law holding that the state's

dismissal of charges tolls the six-month statutory time period prescribed under the UMDDA, nor have we found any such published case.

Moreover, in *Miller*, this court addressed the defendant's alleged violation of the UMDDA where the charges were dismissed and later refiled. 525 N.W.2d at 576. In that case, the state twice dismissed and refiled charges against the defendant after the defendant requested a speedy disposition of the charges under the UMDDA. *Id.* at 578-79. The defendant was eventually brought to trial more than six months after his request under the UMDDA. *Id.* In determining whether the UMDDA was violated, this court noted that no appellate court had previously addressed whether the dismissal and refiling of charges starts the UMDDA time period anew. *Id.* at 580. This court then found guidance from the supreme court's decision in *Kasper*, where the supreme court rejected a claim that the 60 days required by Minn. R. Crim. P. 6.06 to bring a defendant to trial on misdemeanor charges "'should be calculated afresh'" from the refiling of charges. *Miller*, 525 N.W.2d at 580 (quoting *Kasper*, 411 N.W.2d at 184). The *Kasper* court reasoned that "[t]he dismissal and refiling of the charges did not shorten [the defendant's] wait for trial and so should not affect the calculations." *Kasper*, 411 N.W.2d at 184-85.

Under *Miller*, we conclude that the six-month period prescribed in the UMDDA did not start afresh after the state dismissed and refiled the DANCO charges against Mikell. *See Miller*, 525 N.W.2d at 580. And we note that the state did not seek a good-cause extension of Mikell's trial date beyond the UMDDA's six-month time period, nor did the district court make a good cause determination. *See Kurz*, 685 N.W.2d at 449 (recognizing that a "good cause" determination to extend the six-month period under the UMDDA must

be made within the six-month period). Therefore the date on which Mikell was brought to trial on the DANCO charges runs afoul with the UMDDA.

The state argues that if we determine that the length of time exceeds the mandate of the UMDDA, then we should analyze the *Barker* factors to determine if Mikell is entitled to relief. We agree. In *Miller*, this court stated that "the *Barker* factors are applicable to our UMDDA statute." 525 N.W.2d at 581. And Mikell makes no argument that the *Barker* factors are not applicable to the UMDDA statute. We therefore analyze the *Barker* factors as applied to Mikell's claimed UMDDA violation to determine if he is entitled to relief.

The first and third *Barker* factors—the length of the delay and Mikell's assertion of his speedy-trial rights—weigh in favor of Mikell. As addressed above, Mikell was brought to trial on the DANCO charges more than six months after he requested disposition of his case under the UMDDA, and it is undisputed that Mikell made the required request for final disposition under the UMDDA.

The second factor—the reason for the delay—also weighs in favor of Mikell because the state dismissed the DANCO charges and then refiled them. But unlike in *Miller*, where this court determined that there was "no legitimate reason" for the state's first dismissal and subsequent refiling of the charges against the defendant, the record here reflects that the state had a good faith reason for dismissal. *See Miller*, 525 N.W.2d at 580. The record reflects that after receiving his request for final disposition under the UMDDA, the state dismissed the DANCO charges "because the state had obtained a lengthy prison sentence on the domestic assault." In other words, the state decided that the interests of justice did not require pursuing the DANCO charges because Mikell was convicted and

sentenced on the domestic-assault charges. Mikell benefited from this decision because, notwithstanding his conviction and sentence in the domestic-assault case, the state could have pursued a conviction in the DANCO case. It was only after the domestic-assault case was reversed and remanded that the state decided to refile the DANCO charges. Therefore, the reason for the delay does not weigh heavily against the state because the state dismissed the DANCO charges against Mikell in good faith and Mikell, at the time, benefitted from that decision.

Mikell also cannot establish that he was prejudiced by the delay. Although Mikell remained in custody after the DANCO charges were dismissed, he was serving a prison sentence on the domestic-assault conviction. And Mikell has not argued or alleged that he was prejudiced in his programming while incarcerated on the domestic-assault conviction due to the delay in bringing his DANCO charges to trial. *Cf. Miller*, 525 N.W.2d at 583 (concluding appellant was prejudiced, in part, because appellant's prison programming was affected by the delay). Finally, as addressed above, Mikell is unable to show that his defense to the DANCO charges was harmed by the delay. Accordingly, based on our review of the *Barker* factors, Mikell is not entitled to relief under the UMDDA.

III. The district court did not abuse its discretion by denying Mikell's motion to dismiss under rule 30.02.

Finally, Mikell argues that the district court should have dismissed the DANCO charges under Minnesota Rule of Criminal Procedure 30.02. Rule 30.02 provides that "[t]he court may dismiss the complaint . . . if the prosecutor has unnecessarily delayed bringing the defendant to trial." Minn. R. Crim. P. 30.02. In addition to the

unnecessary-delay element, the challenger must also establish that the delay prejudiced him. *State v. Banks*, 875 N.W.2d 338, 341 (Minn. App. 2016), *review denied* (Minn. Sept. 28, 2016). We review a district court's decision on a rule 30.02 motion for an abuse of discretion. *State v. Olson*, 884 N.W.2d 395, 398 (Minn. 2016).

Mikell argues that the district court abused its discretion in denying his rule 30.02 motion because it erroneously focused on the *Barker* factors without considering "the state's conduct in re-charging [Mikell] only after he rejected the state's plea offer and whether that circumstance may have suggested bad faith in re-filing the charges." We disagree. The record reflects that the district court considered this bad-faith argument in addressing the *Barker* factors and determined that the state did not act in bad faith. The district court found that there were "good reasons for the delay" because the state pursued the "more serious" domestic-assault charges and "wanted to see what they were going to get for a sentence" on those charges. The district court also found that the state ultimately dismissed the DANCO charges because Mikell "went to prison" on the domestic-assault charges and the state "didn't feel any need to prosecute him any more" for the alleged DANCO violations. The district court then noted that it would be "kind of an absurd result" to determine that the state "couldn't have dismissed the [DANCO charges] because of the situation we're in now, that to avoid that they would have had to try those cases even though there was no good reason at the time to try them because of the 60-month sentence." And finally, the district court stated that the DANCO charges were essentially refiled "because of the Court of Appeals reversing me for my errors about dismissing counsel, and so I take full responsibility for that, but . . . that shouldn't punish the State for just doing what they

felt right, which actually benefited [Mikell]." By rejecting Mikell's argument that the state did not act in bad faith in refiling the DANCO charges, the district court implicitly determined that the prosecutor did not unnecessarily delay bringing Mikell to trial for the alleged DANCO violations.

Moreover, as addressed above, Mikell is unable to demonstrate that the delay prejudiced him. *See Banks*, 875 N.W.2d at 345 (holding that "prejudice is required to justify dismissal under rule 30.02 for unnecessary pre-charge delay"). A defendant can show prejudice by demonstrating that he was incarcerated during the pre-charge delay, that he experienced anxiety over the possibility of potential charges, and that his defense would be impaired by the delay. *Id.* at 346.

Here, although Mikell was incarcerated, he was incarcerated on different charges. Moreover, as the district court found, although a defense witness was no longer in custody, it was "speculative" to conclude that the witness could not be located. And there is no evidence that Mikell suffered anxiety over the possibility of not being able to locate the witness. In fact, after Mikell was found guilty of the domestic-assault charges, the DANCO charges were dismissed, and Mikell offers no evidence that he suffered anxiety over the possibility of the DANCO charges being refiled. Accordingly, the district court did not abuse its discretion by denying Mikell's motion under Minn. R. Crim. P. 30.02.

IV. Mikell's pro se brief raises no additional issues.

Mikell filed a pro se supplemental brief raising the same issues as those raised in his main brief. For the reasons explained above, those arguments do not provide a basis for relief.

Affirmed.