This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0860

State of Minnesota,
Respondent,

vs.

Cayla Jean Sandven,
Appellant.

Filed April 18, 2022
Affirmed
Connolly, Judge

Kandiyohi County District Court
File No. 34-CR-19-160

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

Shane D. Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant seeks reversal of her conviction for a misdemeanor violation of a harassment restraining order, arguing that a delay of 197 days between her demand for a speedy trial and the commencement of her trial violated the Sixth Amendment. Because the greatest part of the delay was due to the moratorium on jury trials caused by the COVID-19 pandemic, we affirm.

FACTS

Respondent the State of Minnesota charged appellant with a misdemeanor violation of a harassment restraining order (HRO), pursuant to Minn. Stat. § 609.748.6(b) (2018), for an offense that occurred on January 27, 2019. Appellant was arraigned on March 27 and was not held in custody while she awaited her jury trial.

On November 22, 2019, appellant pleaded guilty to a different misdemeanor HRO violation charge in exchange for the state dismissing the charge in this case. However, she later asked to withdraw that guilty plea, and on May 21, 2020, the district court allowed her to withdraw the guilty plea and proceed to trial.

A jury found appellant guilty in the other HRO violation case. On November 5, 2020, at a hearing that covered sentencing in that case and pretrial scheduling in this case, appellant asserted her right to a speedy trial. The district court immediately scheduled her jury trial for November 24 or 25, which was 19 or 20 days later; a pretrial conference was scheduled for November 18.

One day before her pre-trial conference, appellant informed the court that she and her son were sick, and because of her concerns surrounding the ongoing COVID-19 pandemic, she requested to appear at the pre-trial conference remotely. The district court removed the pre-trial conference and the jury trial from the court calendar and asked appellant to advise the court when she could appear in person.

On November 20, 2020, the Chief Justice of the Minnesota Supreme Court issued an update to Order ADM20-8001, "Continuing Operations of the Judicial Branch under Emergency Executive Order No. 20-03." Under the updated guidance, no new jury trials were to commence before February 1, 2021.

On December 30, 2020, appellant's public defender asked the district court to order a Minn. R. Crim. P. 20.01 evaluation to determine appellant's competency to stand trial. The 60-day speedy-trial deadline passed on January 4, 2021, with the moratorium on new trials still in effect and defense counsel's rule 20.01 evaluation request still under consideration by the district court. On January 21, 2021, the Chief Justice extended the moratorium, prohibiting new jury trials until March 15. At a hearing on defense counsel's rule 20.01 evaluation request, appellant reasserted her right to a speedy trial, and the district court ordered the competency evaluation to proceed. On February 11, the district court issued an order finding that the exceptional circumstance of the COVID-19 pandemic provided good cause to delay appellant's trial. The order stated that the delay strikes an appropriate balance between two sources of appellant's "anxiety and concern:" first, in having her trial, and second, in having her proceedings impacted by pandemic conditions, "where jurors will likely be distracted or concerned with pandemic-related matters."

When appellant was found competent to stand trial about two weeks after the Chief Justice's ban on new trials expired, the district court ordered appellant's criminal proceedings to resume.

At her May 12, 2021, pre-trial hearing, appellant requested a continuance to potentially find new counsel, citing disputes with her public defender. The district court informed appellant that a continuance was inconsistent with her demand for a speedy trial, and appellant did not pursue her request for a continuance.

Appellant went to trial on May 21, 2021, 197 days after her speedy-trial demand, and was found guilty by a jury. She was sentenced to 90 days in jail (stayed for six months), six months of supervised probation, 20 hours of community service, and $190 in fines and fees. On appeal, she argues that her right to a speedy trial was violated and her conviction should be reversed.

DECISION

"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). A court determining whether a defendant's speedy-trial right has been violated balances four factors: (1) the length of the delay between the demand and the trial; (2) the reason for the delay; (3) the defendant's assertion of the speedy-trial right; and (4) the prejudice to the defendant caused by the delay. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The first factor is "to some extent a triggering mechanism" that, when it weighs in the defendant's favor, creates the need to inquire "into the other factors that go into the balance." *Id.* No single factor is dispositive on its own. *Id.* at 533; *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015).

Weighing the *Barker* factors is "not a check-the-box, proscriptive analysis," but rather is an assessment of "how the factors interact with each other . . . to answer the essential question of whether the State brought the accused to trial quickly enough to avoid endangering the values that the right to a speedy trial protects." *State v. Mikell*, 960 N.W.2d. 230, 245 (Minn. 2021).

Length of the delay

"In Minnesota, delays beyond 60 days from the date of demand raise a presumption that a violation [of the right to a speedy trial] has occurred." *State v. Windish*, 590 N.W.2d 311, 315–16 (Minn. 1999). Here, 197 days passed between appellant's initial demand and her trial. The first *Barker* factor favors appellant, necessitating an inquiry into the other three factors.

Reason for the delay

The primary burden of ensuring speedy trials rests upon the state. *Id.* at 316. For this factor, "the key question is whether [the State] or the defendant is more to blame for the delay." *Taylor*, 869 N.W.2d at 19 (quotation omitted).

After appellant demanded a speedy trial on November 5, 2020, the district court scheduled her trial for November 24 or 25, well within the 60-day window. The first segment of the delay arose on November 17, one day before the scheduled pre-trial hearing, when appellant informed the court that she was sick and had concerns about the ongoing COVID-19 pandemic. Appellant informed the district court that she would appear at the hearing remotely if allowed, but the district court instead asked her to advise the court when she could appear in person for a rescheduled hearing. Appellant's request to appear in a

manner that negated COVID-19 concerns was not unreasonable, but neither was the district court's decision to continue proceedings, since appellant had been expected to appear for an in-person jury trial one week later. This initial delay is therefore attributable to appellant.

On November 17, neither appellant nor the district court could have known that the Chief Justice would announce three days later that new jury trials were not to commence until February 2021, so appellant's trial could not possibly be held within 60 days of her speedy-trial demand (i.e., on or before January 4, 2021). The moratorium was later extended to March 15.

In *State v. Jackson*, a delay enforced by COVID-19 concerns and precautions in 2020 was held not to weigh against either the state or the defendant. 968 N.W.2d 55, 61 (Minn. App. 2021), *rev. granted* (Jan. 18, 2022). Where a district court "couldn't have a trial [if] it wanted to," good cause necessarily existed for a delay in trial. *Id.* Here, the district court similarly "couldn't have a trial [if] it wanted to" from November 20, 2020 to March 15, 2021, so that segment of the delay cannot be attributed to either side.

During the moratorium period, counsel for appellant requested and was granted a rule 20.01 evaluation on appellant's competency to stand trial, and an order finding appellant competent was issued by the district court on March 29. Since appellant's counsel requested the rule 20.01 evaluation, the delay of 14 days between March 15 and March 29 is attributable to appellant, not the state.

Appellant's jury trial was held on May 21, 53 days after she was found competent. There were no continuances or other delays between March 29 and the trial date, and

nothing in the record suggests any unusual delay in this period after the courts resumed holding trials.

If this delay were attributed to the state, it could best be described as a delay of the "calendar congestion" type, and "[w]here 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). Even if this segment of the delay from March 29 to May 21 is attributed to the state, by far the greater part of the overall delay, from November 20 to March 15, was caused by the pandemic-related moratorium on trials not attributable to either side, and two short portions of the overall delay, from November 17 to November 20, and from March 15 to March 29, are attributable to appellant. We conclude that this factor is therefore neutral.

Assertion of speedy-trial right

That appellant demanded a speedy trial is not in dispute, nor is the timing and manner of her demands. The state argues that her demand "was not particularly vigorous" because she briefly requested a continuance at her May 12, 2021 pre-trial conference to resolve issues she felt she had with her public defender and potentially find a new one. However, upon being informed that granting such a continuance would constitute waiver of her speedy-trial right, appellant stated that she was not withdrawing her speedy-trial demand, which suggests that her speedy-trial demand was her priority. The trial then went ahead as scheduled.

The state concedes that this factor weighs in appellant's favor, though it argues "only slightly." This factor weighs fully in appellant's favor because, although she briefly

asked for a continuance, she decided to maintain her speedy-trial demand when the district court advised her that granting the continuance would entail a waiver of her speedy-trial demand.

Prejudice to appellant

There are three interests protected 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." *Windish*, 590 N.W.2d at 318. Preventing impairment to the defense is "the most important" interest, *Griffin*, 760 N.W.2d at 341, and "is typically suggested by memory loss by witnesses or witness unavailability." *Jackson*, 968 N.W.2d at 62 (quotation omitted).

Appellant was not incarcerated during the delay of her trial, so the first interest was not violated. As to any anxiety and concern she had, "stress, anxiety and inconvenience experienced by anyone who is involved in a trial is insufficient to demonstrate prejudice." *Friberg*, 435 N.W.2d at 515. Appellant argues that the delay caused "emotional distress" and that she was "put through an emotional wringer" by the delayed proceedings, but says no more than that, and does not point to any experience of "anxiety or concern" beyond the ordinary level experienced by any criminal defendant.

Appellant states that the "delay and additional hearings interrupted her homeschooling [of her children] and caused her financial hardship by having to travel to court hearings." In addition to the pre-trial hearing, the jury trial, and the sentencing hearing that would be expected in any criminal case, after her speedy-trial demand appellant attended only hearings related to the competency investigation requested by her

own counsel. Thus, any financial hardship or missed homeschooling time appellant suffered from attending hearings was either (1) the same as would be experienced by any criminal defendant, or (2) derived from a request made by her own counsel. Appellant was able to attend her pre-trial conference and sentencing hearing remotely, avoiding at least the time and financial costs of traveling to and from the courthouse. Appellant thus "has not identified any heightened pretrial anxiety or concern that would suggest a constitutional violation." *State v. Strobel*, 921 N.W.2d 563, 571 (Minn. App. 2018), *aff'd*, 932 N.W.2d 303 (Minn. 2019).

Appellant makes no argument that her defense was impaired by the delay. At trial, appellant was the sole witness appearing on her behalf, so no prejudice resulted from witness unavailability. Nor does appellant argue that the delay caused any loss of memory as to relevant events and facts that could have been avoided by a more expeditious trial. Thus, appellant has not shown that any of the three interests protected by her speedy-trial rights was affected, and so she has not shown that she was prejudiced by the delay to her jury trial. This factor weighs against appellant.

Balance of the *Barker* factors

The delay between appellant's assertion of her speedy-trial right and her trial was much longer than 60 days, necessitating further investigation of the *Barker* factors. Appellant unambiguously asserted her speedy-trial rights, but the greatest part of the delay was due to a moratorium on jury trials necessitated by the COVID-19 pandemic, which renders this part of the delay attributable to neither the state nor appellant. At least some remaining portions of the delay can be attributed to appellant's inability to appear for her

original pre-trial date due to illness and to proceedings related to her counsel's request for a competency evaluation. Therefore, the state is responsible for, at most, a relatively small portion of the delay, 54 days.

Appellant also fails to show the delay prejudiced her. She was not incarcerated prior to trial, and no facts suggest she experienced heightened anxiety beyond what would normally be expected, given the required hearings in a criminal trial and the additional proceedings arising from defense counsel's request for a competency evaluation. She also does not argue that the delay hindered her ability to defend herself at trial. Therefore, on balance, appellant has not shown that her right to a speedy trial was violated.

State's motion-to-dismiss argument

The state argues that, regardless of how the *Barker* factors are weighed, appellant waived her right to appeal on a speedy-trial issue because she did not move to dismiss the charges in district court. Because appellant has not shown that her speedy-trial rights were violated, we decline to address that issue.

Affirmed.