

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060949-CA
v.)	
)	F I L E D
Edward Allen Walker,)	(May 21, 2009)
)	
Defendant and Appellant.)	2009 UT App 139

Third District, Salt Lake Department, 051903660
The Honorable John Paul Kennedy

Attorneys: Linda M. Jones, Salt Lake City, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,
for Appellee

Before Judges Greenwood, Thorne, and McHugh.

McHUGH, Judge:

Edward Allen Walker appeals the trial court's refusal to dismiss two felony charges stemming from his involvement with a clandestine methamphetamine laboratory, claiming that the court failed to provide him with a speedy trial. Walker relies upon Utah Code section 77-1-6(1)(h), which requires a trial court to conduct a trial within thirty days under certain circumstances. See Utah Code Ann. § 77-1-6(1)(h) (2008).¹ We affirm.

Appellate courts review a trial court's legal determinations regarding a demand for a speedy trial for correctness. See State v. Mejia, 2007 UT App 337, ¶ 8, 172 P.3d 315 (reviewing the defendant's speedy trial claim under the Sixth Amendment for correctness), cert. denied, 186 P.3d 957 (Utah 2008); Salt Lake City v. Roseto, 2002 UT App 66, ¶ 7, 44 P.3d 835 (applying a correctness standard when reviewing the trial court's denial of a jury trial under the same code section at issue in this appeal).

¹Utah Code section 77-1-6 has not been amended since it was enacted in 1980. See Utah Code Ann. § 77-1-6 (2008) (history). For the convenience of the reader, we cite to the 1980 version codified in the 2008 replacement volume of the Utah Code.

A defendant is guaranteed a speedy trial under the Sixth Amendment to the United States Constitution, see U.S. Const. amend. VI, and Article I, Section 12 of the Utah Constitution, see Utah Const. art. I, § 12. In addition, the Utah Legislature has adopted a speedy trial provision, which entitles a defendant "to a trial within 30 days after arraignment if [he is] unable to post bail and if the business of the court permits," Utah Code Ann. § 77-1-6(1)(h).² However, this provision remains "directory in nature, not mandatory," State v. Hoyt, 806 P.2d 204, 207 (Utah Ct. App. 1991), and we must consider the totality of the circumstances when determining whether a defendant's speedy trial right has been denied. See State v. Trafny, 799 P.2d 704, 708-09 (Utah 1990).

To make this determination, we consider four factors: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of his right, and (4) the prejudicial effect of the delay to the defendant. See Barker v. Wingo, 407 U.S. 514, 530 (1972); see also Trafny, 799 P.2d at 708 (applying Barker analysis to the defendant's claim of violation of his right to a speedy trial under the United States Constitution, the Utah Constitution, and Utah Code section 77-1-6). These factors do not support Walker's claim here.

Walker was arraigned and bound over for trial on April 7, 2005. After Walker asserted his right to a speedy trial, the trial court, with Walker's express agreement, set trial for May 16, 2005, which was thirty-nine days after his arraignment. The trial was subsequently postponed to June 6, 2005, approximately sixty days after arraignment and twenty-one days beyond the initial trial setting. Consequently, the length of delay for purposes of this appeal is twenty-one days. See generally State v. Cornejo, 2006 UT App 215, ¶ 28, 138 P.3d 97 (holding that a defendant cannot agree to a trial date beyond thirty days and then count those extra days towards a speedy trial violation claim). A twenty-one-day delay of trial on felony charges is not "presumptively prejudicial" because it is well "within the range of delays which have passed constitutional muster," Hoyt, 806 P.2d at 208 (concluding that a 124-day delay in a second degree felony case was not presumptively prejudicial); see also Barker, 407 U.S. at 531 (tolerating longer delays for more serious, complex charges); Trafny, 799 P.2d at 708 n.16 (citing cases with

²Utah Code "section 77-1-6(1)(h) is designed to implement the 'speedy trial' guaranty of the Sixth Amendment" to the United States Constitution and of Article I, Section 12 of the Utah Constitution. See State v. Hoyt, 806 P.2d 204, 207 n.2 (Utah Ct. App. 1991).

delays between three-and-a-half months and four-and-a-half years where no violations of the speedy trial right were found).

Furthermore, the delay was for "a valid reason," similar to the examples provided by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972), "such as a missing witness, [which would] serve to justify appropriate delay." Id. at 531. Walker complains of the delay caused by "an emergency situation at the last minute with the illness of [the prosecutor's] mother in a different state, necessitating his travel."³ As the trial court observed, there was no other prosecutor involved in the case and, thus, "[i]t would have been impossible for the State to have a new prosecutor assigned" just days before the trial was scheduled to begin. Further, the Utah appellate courts "ha[ve] recognized . . . witnesses['], defendants['], and counsel['s] . . . other obligations which necessitate some delay in getting a matter tried" as valid bases for postponing a trial date. Hoyt, 806 P.2d at 208 (citing Barker, 407 U.S. at 531). We agree that the reason for the delay was legitimate.

With respect to the third factor, we conclude that Walker did assert his right to a speedy trial and made a timely objection to the twenty-one-day delay.⁴ Walker first asserted his right to a speedy trial at the scheduling conference on April 19, 2005. Although Walker then agreed to a trial date beyond the thirty-day statutory requirement, he entered a timely objection to the court's allowance of an additional three-week continuance by filing a motion to dismiss based on the alleged violation of the speedy trial statute.

The State argues that Walker waived his right to a trial within thirty days because he affirmatively agreed to a trial date beyond that time frame. However, Walker's acquiescence to a specific delay of nine days does not convince us that he has waived his right to assert his speedy trial claim altogether.

³Walker claims that because "the prosecutor declined to 'put [the reasons for the delay] all on the record,'" the record fails to support a valid excuse for the delay. (Alteration in original.) The transcript of the jury trial, however, specifies that the matter was continued because of the prosecutor's family emergency. The trial court's docket also shows a May 13, 2005 entry that notes that the trial was continued due to the prosecutor being in California for an emergency and that Walker's counsel was a party to the phone conference where that continuance was granted.

⁴Indeed, Walker made "repeated requests for immediate scheduling" throughout the proceedings.

See generally Barker, 407 U.S. at 531 (giving the defendant's assertion of his speedy trial guaranty strong evidentiary weight).

Finally, we agree with the trial court that Walker has not been prejudiced by the delay. Walker claims to have been prejudiced because he was subjected to oppressive pretrial incarceration, because he suffered additional anxiety and concern, and because his defense was impaired. See generally id. at 532 (identifying three interests that the speedy trial right was designed to protect); State v. Snyder, 932 P.2d 120, 130 (Utah Ct. App. 1997) (recognizing these three interests as "[identifiable] areas of concern" in considering whether the defendant had been prejudiced by a twenty-month delay of trial (alteration in original) (internal quotation marks omitted)).

First, Walker asserts that he is a victim of oppressive pretrial incarceration because his parole was revoked when the charges in this case were brought, leading to incarceration for those "alleged parole violations." Walker argues that the parole board would not hold a hearing on his revocation until after the new felony charges were adjudicated. However, Walker has not provided any record evidence that sets forth the terms of his parole or the grounds for its revocation. Even if the parole board revoked Walker's parole as a result of the this incident, it would be unusual if his conceded activities did not justify the revocation of his parole. Walker has admitted that he smoked methamphetamine, shared a methamphetamine recipe with the other defendants, and helped disassemble the methamphetamine laboratory.

We also reject Walker's claim that the twenty-one-day delay caused him additional anxiety and concern. The record reflects that Walker neither complained about his anxiety nor sought a quicker resolution of the charges until three days before trial. See State v. Mejia, 2007 UT App 337, ¶ 14, 172 P.3d 315 (declining to conclude that defendant suffered prejudicial anxiety where he failed "to hasten the judicial process until five days before trial"), cert. denied, 186 P.3d 957 (Utah 2008).⁵

⁵Because this type of prejudice is not always easily identified, we must rely upon factual evidence, such as complaints, to support these claims. See State v. Miller, 747 P.2d 440, 443-44 (Utah Ct. App. 1987) ("The more serious the deprivation, the more likely a defendant is to complain." (internal quotation marks omitted)).

Walker's final claim of prejudice was that his defense was impaired by the delay. Specifically, he argues that "the delay and the passage of time affected or altered the detectives' perceptions of events to the detriment of Walker's defense." Despite Walker's claims to the contrary, we see nothing in the record that suggests the detectives had trouble recalling facts during their testimonies.⁶ Consequently, we conclude that Walker's defense was not prejudiced by the twenty-one-day delay.

Although Walker asserted his right to a speedy trial, the time of the delay was minimal, there was a valid reason for the delay, and Walker was not prejudiced by the delay. As a result, we hold that Walker was not denied his right to a speedy trial under Utah Code section 77-1-6(1)(h). Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

⁶Walker's argument on this point appears to be directed more toward the credibility of the detectives. Credibility determinations, however, are left to the jury, and we do not ordinarily reassess those determinations on appeal. See State v. Robbins, 2009 UT 23, ¶ 16.