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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0856**

State of Minnesota,
Respondent,

vs.

La'Marr Merrel Wade,
Appellant.

**Filed May 13, 2019
Affirmed
Klaphake, Judge***

Blue Earth County District Court
File No. 07-CR-17-258

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

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota; and

Scott A. Hersey, Special Assistant Blue Earth County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, 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.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant La'Marr Merrel Wade challenges his conviction of third-degree possession of a controlled substance, arguing the district court violated his constitutional right to a speedy trial. We affirm.

DECISION

Wade argues that he was not given a speedy trial because his case was not tried until over six months after he asserted this constitutional right. A criminal defendant has the right to a speedy trial under the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Minn. R. Crim. P. 11.09 requires that trial commence within 60 days of a demand for a speedy trial, unless the court finds good cause for a later trial date. We review this constitutional issue de novo. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

In determining whether a defendant's right to a speedy trial has been violated, courts employ a four-factor balancing test, considering: "(1) the length of the delay; (2) the reason for the delay; (3) whether and when the defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay." *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004); *see Barker v. Wingo*, 407 U.S. 517, 530, 92 S. Ct. 2182, 2192 (1972). We address each factor in turn.

A. Length of delay.

This factor is a "triggering mechanism which determines whether further review is necessary." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (quotation omitted). A

delay is presumptively prejudicial, necessitating inquiry into the remaining factors, when more than 60 days have passed since the defendant demanded a speedy trial. *Id.* at 315-16. Here, nearly six months passed between Wade’s speedy-trial demand on June 26, 2017, and the first day of his trial on January 3, 2018.

B. Reason for delay.

This factor requires the court to consider “whether [the delay] is attributable to [the defendant] or the state.” *State v. Sistrunk*, 429 N.W.2d 280, 282 (Minn. App. 1988), *review denied* (Minn. Nov. 23, 1988). “A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government.” *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192. The state failed to disclose all of the requested information about a confidential informant, necessitating multiple motions by Wade to obtain the information, and this scenario contributed to the delay in Wade’s requesting a *Franks* hearing.¹ Wade also asked to submit a written memorandum to the court post-hearing, which caused further delay because the district court was unable to immediately take the matter under advisement. The delay attributable to Wade, however, was minor in comparison to the overall timeframe.

Another source of delay was the overburdened district court calendar. At a pretrial hearing, the district court stated, “there’s just no way it’s going to get on the calendar

¹ *Delaware v. Franks*, 438 U.S. 154, 98 S. Ct. 2674 (1978) permits a defendant to request a hearing to challenge the factual basis for the claims made in an application for a search warrant.

because—I mean, the best case scenario would be to bump another speedy trial that I have.”

At commencement of the court trial, the district court stated:

[T]his did not get calendared properly. I’ll be blunt; I’ll be honest. This falls on the [c]ourt more than the [s]tate. As I said, there were some problems with disclosure; there was some problems with getting hearings set. But in any event, matters were not done, and the delay ultimately appears to me to be a court scheduling issue, not intentional delays.

“[A]dministrative delay, by itself, is generally insufficient to violate a defendant’s speedy-trial right in the absence of a deliberate attempt to delay trial.” *State v. Hahn*, 799 N.W.2d 25, 32 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). 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 (quoting *Barker*, 407 U.S. at 531, 92 S. Ct. at 2182). Here, the record contains no evidence of a “deliberate attempt to delay the trial,” or delay due to bad faith. *See Cham*, 680 N.W.2d at 125 (holding that 23-month “unusually long” delay due to district court’s failure to find a court interpreter weighed against speedy-trial violation because “the prosecution did not act in bad faith to delay the proceeding”).

Although the record does not show that the state deliberately attempted to delay the trial, the delay caused by the state, as well as the administrative delay, weigh slightly in favor of Wade on this factor.

C. Assertion of the right.

“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.” *Barker*, 407 U.S. at 531-32, 92 S. Ct. at 2192-93. When assessing this factor, the frequency and force of the defendant’s assertions may be weighed. *Id.* at 528-29, 92 S. Ct. at 2191. It is uncontested that Wade asserted his right to a speedy trial. Wade submitted a written speedy trial demand on June 26, 2017, and addressed it again on August 23, 2017 and October 19, 2017. On December 21, 2017, Wade moved for dismissal due to the violation of his right to a speedy trial. This factor weighs in favor of Wade.

D. Prejudice.

“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). Wade argues that the delay prejudiced him because he suffered “anxiety and concern.”

The “stress, anxiety and inconvenience experienced by anyone who is involved in a trial” is insufficient to demonstrate prejudice. *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Wade asserts that he experienced anxiety and concern over the prospect that he might be convicted, he wanted to handle his separate federal case before this case,

and “he had problems with his family because of the lengthy delay, that he had custody-related issues with a child that were difficult to address when he could not be present, and that he had lost his business.” But Wade did not present any evidence substantiating these assertions and demonstrated no impairment to his case due to the delay. Nor did he experience any loss of liberty attributable to the delay because, after he was released from custody in this case, he was immediately taken into federal custody.² On this record, Wade’s bare allegations of heightened pretrial anxiety or concern do not constitute prejudice. As such, the prejudice factor weighs against finding a speedy-trial violation.

The supreme court has previously held that even when the first three *Barker* factors weighed in a defendant’s favor, the defendant’s right to a speedy trial is not violated if the defendant suffers no 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. While several factors weigh in Wade’s favor, the fact that he was not prejudiced by the delay—and specifically that his ability to defend his case was not hampered—outweighs the other three *Barker* factors. Wade’s right to a speedy trial was vindicated.

Affirmed.

² Wade was released from custody on nonmonetary conditions because the district court could not find that exigent circumstances existed for trial not to start within 120 days of Wade’s speedy-trial demand, pursuant to Minn. R. Crim. P. 11.09(b). Wade was then taken into federal custody.