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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0793**

State of Minnesota,
Respondent,

vs.

Ricardo Dale Smith,
Appellant.

**Filed April 13, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-18-14187

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court violated his right to a speedy trial. We affirm.

FACTS

On June 1, 2018, police officers were dispatched to a residence on a report that an 11-year-old child had been inappropriately touched by a family member. Officers arrived at the residence and saw appellant Ricardo Dale Smith, who matched the description of the suspect that was given to police. Officers learned that Smith had a felony warrant and began placing him in custody. Smith struggled with officers and fled briefly before he was apprehended. Smith was charged with second-degree criminal sexual conduct and obstructing legal process.

On July 3, 2018, Smith appeared for an omnibus hearing and expressed concern that DNA testing was not completed. The DNA testing in the case was “extensive” and included swabs from the victim’s body and clothing, from Smith, and from the back of the squad car where Smith rubbed his hands. The prosecutor noted that part of the delay was due to Smith’s failure to cooperate. The district court explained that there was also a backlog at the Bureau of Criminal Apprehension (BCA). Smith demanded a speedy trial, and his trial was set for August 14, 2018.

On August 1, 2018, the BCA informed Smith’s attorney that the DNA testing may consume the samples. Smith moved to preclude the BCA from consuming any sample. The state moved for a continuance to complete DNA testing. At a hearing on August 13, the district court asked Smith’s attorney how she wanted to proceed, and Smith’s attorney stated that, rather than hire somebody to supervise the testing that would consume the samples, she wanted an explanation as to why the samples would be consumed. The district court noted that second guessing the BCA’s determination on consumption and requesting

an explanation would prolong the process. The district court stated that there was good cause for a continuance, and set Smith's trial for September 10, "seven days outside of the speedy demand." Smith gave approval for consumption of the samples soon after the hearing, and the parties received the DNA-testing report on September 5, 2018.

On September 10, 2018, the district court noted that, although Smith's trial was to begin, Smith appeared with a new attorney and moved to suppress the DNA-test results. Smith's attorney argued that the state should be precluded from using the new DNA evidence because the first DNA evidence was exculpatory, but the new DNA evidence, with respect to Y-chromosome testing, was inculpatory.

The district court denied Smith's motion to suppress the evidence. Smith's attorney requested a continuance to review the new evidence. The district court responded that Smith had been "adamant" about his right to a speedy trial, but noted: "The reality is DNA testing takes time. There are numerous samples in this case. . . . [T]his puts Mr. Smith in the position of choosing speedy trial or preparation. This happens all the time." The district court found good cause to continue Smith's trial to October 8, 2018.

On October 8, 2018, the district court was out due to a medical emergency, and Smith's attorney was in another trial. Smith's jury trial was placed on standby. On October 10, another district court judge was available for Smith's trial, but Smith requested a continuance. The district court granted Smith's request and set his trial for October 29.

On October 29, 2018, Smith discharged his attorney and requested to remove the district court judge. The district court told Smith that his motion would delay his trial. Smith replied: "I don't care." On November 8, the chief judge denied Smith's motion to

remove the district court judge. On November 13, the district court asked Smith, who was pro se, when he would be ready for trial. Smith replied that he would be ready in two months. The district court set Smith's trial for January 14, 2019.

On January 14, 2019, Smith's jury trial began. The jury found Smith guilty as charged, and the district court sentenced him to 60 months in prison for the second-degree criminal-sexual-conduct conviction, and 266 days in the workhouse for the obstructing-legal-process conviction. This appeal followed.

DECISION

Speedy trial

Smith first argues that the district court denied him his right to a speedy trial. This court reviews de novo whether Smith was denied his constitutional right to a speedy trial. *See State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). If a defendant has been denied his right to a speedy trial, he is entitled to dismissal of his case. *Id.*

In all criminal prosecutions, "the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI; Minn. Const. art. I, § 6. In determining whether a delay deprived a defendant of his constitutional right to a speedy trial, this court applies the four-factor balancing test set forth in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). *Osorio*, 891 N.W.2d at 627. The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right, and (4) whether the delay prejudiced the defendant. *Id.* No single factor is necessary or sufficient on its own in determining whether a defendant has been deprived his right; rather, these four factors are related and considered together in light of other relevant circumstances. *State v. Taylor*,

869 N.W.2d 1, 19 (Minn. 2015). The four-factor balancing test is “difficult and sensitive,” and includes consideration of the state’s conduct and the defendant’s conduct. *Osorio*, 891 N.W.2d at 628.

Length of delay

“The length of the delay is a triggering mechanism which determines whether further review is necessary.” *Id.* (quotations omitted). A delay exceeding 60 days from the defendant’s demand creates a presumption that a violation occurred. *Taylor*, 869 N.W.2d at 19; *see also* Minn. R. Crim. P. 11.09(b). Smith demanded a speedy trial on July 3, 2018, and his trial began on January 14, 2019. The parties agree that the 195-day delay necessitates review of the remaining factors.

Reason for delay

The second factor focuses on which party is more responsible for the delay—the defendant or the state. *Osorio*, 891 N.W.2d at 628. After this court determines which party is responsible for the delay, it considers the responsible party’s specific reason for causing the delay. *Id.* Different reasons carry different weights. *Id.* For example, the state is generally responsible for delays caused by the district court. *See State v. Cham*, 680 N.W.2d 121, 125 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). Thus, the state is responsible for an overburdened judicial system, but it weighs less heavily than a deliberate attempt to delay trial. *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). But the state’s prompt requests for DNA-testing results and reasonable requests for continuances to obtain those results may constitute good cause for delay. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990). A defendant’s motion filings may be attributable

to him, and weigh against a determination of a speedy-trial violation. *See State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993).

Here, Smith's trial was set for August 14, 2018. On August 1, the BCA informed Smith's attorney that DNA testing may consume some of the samples. Smith moved to preclude the consumption, which, the state contends, halted testing. The state moved for a continuance to complete the DNA testing. At a hearing on August 13, the district court stated that, because of the consumption issue, "the source of the delay is not the [s]tate," and further stated that Smith's strategy to question the BCA's consumption determination would "take longer." The district court determined that good cause existed to continue Smith's trial to September 10, "seven days outside of the speedy demand."

Based on *Stroud*, the state's request for a continuance in order to complete DNA testing constituted good cause for delay. *See* 459 N.W.2d at 335. And even if the delay was attributable to the state, it was a short delay and it was not deliberate; the state desired the DNA evidence for trial and the district court noted that there was a "huge" backlog at the BCA. Therefore, the state may be more responsible than Smith for this initial delay, but it was not deliberate, the district court found good cause for the continuance, caselaw supported the continuance, and the delay was short.

After the parties received the DNA-testing results on September 5, 2018, and the results were not favorable to Smith, he appeared at his September 10 trial date with a new attorney who moved to suppress the evidence. The district court denied the suppression motion and Smith's attorney requested a continuance. The district court continued Smith's trial to October 8. This delay is attributable to Smith.

On October 8, the district court and Smith's attorney were unavailable. Smith's trial was placed on standby until October 10. This two-day delay was equally attributable to the state and Smith.

On October 10, another district court judge was available for Smith's trial, but Smith requested a continuance. The district court continued Smith's trial to October 29. On October 29, Smith moved to remove the district court judge. The district court told Smith that his removal motion would delay his trial. Smith replied: "I don't care." At a hearing on November 13, Smith, appearing pro se, stated that he would not be ready for trial for two months and the district court continued his trial to January 14, 2019. Each of these delays was attributable solely to Smith.

Other than the first delay, every other delay was due to Smith or was equally attributable to both parties. Therefore, this factor weighs in favor of the state. *See Taylor*, 869 N.W.2d at 20 (stating that there is no violation of right to speedy trial when, overall, it is defendant's actions causing delay).

Asserted

Smith asserted his right to a speedy trial, and the state does not contest that this factor weighs in favor of Smith.

Prejudice

Under the fourth factor, this court considers whether the delay resulted in (1) oppressive pretrial incarceration; (2) heightened, rather than ordinary, levels of anxiety and concern in the defendant; and (3) an impaired defense. *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. Impairment of defense is the most serious form of prejudice. *Doggett v.*

United States, 505 U.S. 647, 654, 112 S. Ct. 2686, 2692 (1992). A defendant may establish that his defense was impaired by showing that the delay resulted in him being unable to raise specific defenses, elicit specific testimony, or produce specific evidence. *Id.* at 655, 112 S. Ct. at 2692.

Smith claims that he suffered each form of prejudice—he was incarcerated longer than prescribed by law, his anxiety and concern was evidenced in his persistence in litigating his speedy-trial violations, and his defense was impaired by the DNA results that were not disclosed until September 5, 2018.

However, the record supports the conclusion that Smith was not prejudiced. First, although Smith was incarcerated during the delay, he caused much of the delay. Second, the record does not show that Smith was inordinately anxious or concerned by the postponements. In fact, when the district court informed Smith that his motion filing would cause delay, he responded: “I don’t care.” Finally, Smith had a full jury trial and cross-examined witnesses, including the victim. There is nothing in the record showing that he was unable to raise a defense, elicit specific testimony, or produce specific evidence. He claims that the inculpatory DNA-test results hampered his defense, but that evidence was provided to Smith on September 5, 2018, and his trial was not held until January 14, 2019. The greatest part of the delay occurred after Smith had the evidence that he claims impaired his defense. Based on this record, Smith was not prejudiced, and this factor weighs in favor of the state.

Because the delay was mainly caused by Smith and he was not prejudiced by the delay, we conclude that the district court did not deny Smith his right to a speedy trial.

Pro se brief

In his pro se supplemental brief, Smith raises three issues: a speedy-trial violation, illegal consumption of DNA samples, and failure to arrest on a warrant supported by probable cause. We summarily dispose of each. We have already addressed the speedy-trial issue. Smith fails to cite authority, present legal argument, or point to anything in the record to support his DNA-consumption issue; thus, this claim is forfeited. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (“Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.”); *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (holding that unsupported assignments of error are forfeited “unless prejudicial error is obvious on mere inspection”), *aff’d*, 728 N.W.2d 243 (Minn. 2007). Finally, Smith raises his warrantless-arrest claim for the first time on appeal, and it is not properly before this court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that a party cannot raise a new issue on appeal).

Affirmed.