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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0939**

State of Minnesota,
Respondent,

vs.

Joshua Bernard Smith,
Appellant.

**Filed March 30, 2020
Affirmed
Reilly, Judge**

Dakota County District Court
File No. 19HA-CR-18-2000

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges his convictions for impaired driving and possession of a controlled substance on the ground that the district court violated his right to a speedy trial. We affirm.

FACTS

On May 4, 2018, a police officer arrested appellant Joshua Bernard Smith on suspicion of impaired driving. During a search incident to arrest, the officer discovered a small baggy containing methamphetamine. The state charged appellant with fifth-degree possession of a controlled substance, two counts of first-degree impaired driving, driving after revocation, and violation of a restricted driver's license.

Appellant appeared for a hearing on August 30, 2018 and demanded a speedy trial. During the hearing, appellant stated that he would not "admit to jurisdiction" of the court and indicated that he filed an "assumed name certificate" and "filed a brief on declaration of sovereignty and immunity nationality status." The district court noted appellant's demand for a speedy trial and set a trial date for October 22, 2018.

The district court held an omnibus hearing on September 12, 2018. Appellant indicated that he wanted to discharge his court-appointed attorney and proceed as a self-represented litigant. The district court discharged appellant's public defender. The state presented an offer for a plea deal. The district court attempted to discuss the state's plea offer with appellant, but appellant challenged the district court's jurisdiction and would not permit the district court judge to speak. The district court set the case on for a contested

omnibus hearing. At the next hearing, appellant again challenged the district court's jurisdiction and interrupted the judge and the prosecutor.

At the jury trial scheduled to begin on October 22, 2018, appellant continued to argue that the district court did not have jurisdiction. The judge repeatedly attempted to confirm that appellant wanted to proceed as a self-represented litigant, but appellant refused to answer any questions and asserted that he did not recognize the district court's jurisdiction. The district court judge continued, "I don't think you quite grasp the gravity of the situation that [is] going on here," and found appellant in direct contempt of court for repeatedly interrupting the judge and disrupting the courtroom. The district court continued the case until the following day.

The district court attempted to continue the trial the next day. Appellant accused the judge of treason, threats, duress, and coercion. The district court appointed a lawyer to represent appellant as advisory counsel under Minnesota Rule of Criminal Procedure 5.04, subd. 2(2). The judge stated:

One of the concerns I have by reason of your obstreperous and illogical behavior as to whether or not we need to conduct some sort of examination to determine your competence to proceed in connection with this matter. I'm very concerned about your obsessive reliance on matters that have previously been explained to you both orally and in writing. Your continued desire to interrupt these proceedings. I'm supposed to be impaneling a jury here today, sir, and I can't, frankly, get a word in edgewise.

...

So what I am going to do is have them take you back to your cell and I'm going to wait for that attorney to come back, and then we're going to proceed.

Following the recess, appellant stated that the district court did not have jurisdiction. The district court ordered evaluations under rule 20.04 which includes a competency evaluation under rule 20.01,¹ and set a review hearing for one week out. Appellant argued that the continuance violated his speedy-trial demand and accused the judge of assault, kidnapping, and “ransom.”

The district court held review hearings on October 30, November 2, and November 9, 2018. Appellant refused to appear at the November 9 hearing. The district court noted during the November 9 hearing that it was aware of appellant’s speedy-trial demand and wanted that demand to be “accommodated and honored.” However, the district court noted that the county was having difficulty completing the competency-evaluation report because appellant refused to meet with the county evaluator. The county filed the evaluation report with the district court on November 16, stating that appellant was competent to stand trial.

The district court held a review hearing on November 20, 2018. Appellant refused to appear at the hearing. The district court noted that appellant was competent to stand trial and scheduled a jury trial for January 7, 2019. This date was selected to allow appellant to appear before one of the two judges who had previously presided over his earlier hearings. The district court again appointed advisory counsel.

Appellant appeared for trial on January 7. Appellant challenged the district court’s jurisdiction. Appellant also indicated that he did not wish to remain in the courtroom during the trial, and left the room. Appellant was represented by advisory counsel.

¹ Minnesota Rule of Criminal Procedure 20 governs procedures for mentally ill and cognitively-impaired defendants.

Following trial, the jury returned a verdict finding appellant guilty of fifth-degree possession of a controlled substance and two counts of impaired driving, and the district court imposed a sentence. This appeal follows.

DECISION

Appellant contends that his constitutional right to a speedy trial was violated. The United States and Minnesota Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. In Minnesota, “trial is to commence within 60 days from the date of the demand unless good cause is shown . . . why the defendant should not be brought to trial within that period.” *State v. Hahn*, 799 N.W.2d 25, 29-30 (Minn. App. 2011); *see also* Minn. R. Crim. P. 11.09(b) (requiring trial within 60 days of demand “unless the court finds good cause for a later trial date”). “Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review.” *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

Minnesota courts use a four-factor balancing test to determine whether a delay in a case violates the speedy-trial right. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). “The test provides that a court must consider: (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.* (citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972)). “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.” *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quotation omitted).

Length of Delay

“The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192. Generally, “delays beyond 60 days from the date of demand raise a presumption that a violation has occurred.” *Windish*, 590 N.W.2d at 315-16; *see also State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012) (“Under Minnesota law, a delay of more than 60 days from the date of the speedy-trial demand is presumptively prejudicial, triggering review of the remaining three factors.”), *review denied* (Minn. Mar. 28, 2012). It is uncontested that the trial began over 60 days from the date of appellant’s speedy-trial demand, triggering appellate review of the remaining *Barker* factors.

Reason for Delay

Under the second factor, “the key question is whether the government or the criminal defendant is more to blame for th[e] delay.” *Taylor*, 869 N.W.2d at 19 (quotation omitted). Generally, the burden of protecting speedy-trial rights rests on the court system and the prosecutors. *Windish*, 590 N.W.2d at 317. But “[w]hen the overall delay in bringing a case to trial is the result of the defendant’s actions, there is no speedy trial violation.” *Taylor*, 869 N.W.2d at 20 (quotation omitted); *see also State v. Ray*, 659 N.W.2d 736, 748 (Minn. 2003) (concluding there is no violation when “the procedural history of the case makes clear that the delays were the result of [the defendant’s actions]”).

Here, the delays are largely attributable to appellant. On the scheduled trial date in October 2018, appellant interrupted the district court judge with such frequency that the

district court was unable to conduct business. Appellant repeatedly refused to provide his name and challenged the jurisdiction of the district court. On the following day, the district court judge expressed concern over appellant's "obstreperous and illogical behavior" and questioned "whether or not we need to conduct some sort of examination to determine [appellant's] competence to proceed in connection with this matter."

Based on these concerns, the district court ordered a competency evaluation. Rule 20.01 directs a district court to suspend the proceedings and order an examination of a defendant's mental condition if the district court has reason to doubt the defendant's competency. Minn. R. Crim. P. 20.01, subd. 3. A delay caused by competency proceedings is normally justified as necessary to protect the defendant's right to a fair trial. *State v. Bauer*, 299 N.W.2d 493, 498 (Minn. 1980). Here, the district court's decision to order a competency evaluation was based on concerns that appellant's cognitive abilities prevented him from participating in his trial. And if the court finds reason to doubt the defendant's competence, it "must suspend the criminal proceedings." Minn. R. Crim. P. 20.01, subd. 3 (emphasis added); *see also* Minn. Stat. § 645.44, subd. 15a (2018) (providing that the word "must" is mandatory). The district court acted properly by delaying the trial to ensure that appellant was competent to proceed to trial.

Appellant's refusal to appear in court and cooperate with the county evaluator further contributed to the delay. The district court held three review hearings in October and November 2018. Appellant refused to appear at one of the hearings. During this time, the county evaluator stated that she was having difficulty completing the competency report because appellant refused to meet with her. After receiving the report, the district

court held a hearing on November 20, 2018. Appellant refused to appear at this hearing. The district court rescheduled the jury trial for January 7, 2019, to ensure that appellant could appear before one of the two judges who had previously presided over his earlier hearings. Appellant's refusal to appear for scheduled hearings and cooperate with the county evaluator further contributed to the delay. Consequently, we conclude that this factor weighs against appellant's speedy-trial-violation claim.

Assertion of Right

A 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. Because it is uncontested that appellant asserted his right to a speedy trial, this factor weighs in his favor.

Prejudice Caused by Delay

"Prejudice . . . should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect," namely "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Id.* at 532, 92 S. Ct. at 2193. "Of these forms of prejudice, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Doggett v. United States*, 505 U.S. 647, 654, 112 S. Ct. 2686, 2692 (1992) (quotation omitted). Prejudice is "obvious" if a witness dies or disappears during the delay, or if defense witnesses "are unable to recall accurately events of the distant past." *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. Prejudice is not present here. Appellant did not call any witnesses at trial, and he does not contend

that anyone lost their memories, became unavailable, or forgot important events. The delay did not prejudice appellant's case. Accordingly, we conclude that this factor does not weigh in appellant's favor.

Balancing the Factors

On balance, we determine that good cause supported delaying the trial. Appellant asserted his right to a speedy trial, which began over 60 days from the date of his demand. However, the record reflects that the delay was largely attributable to appellant, and the delay did not impair appellant's ability to present a defense. Therefore, based upon our complete review of all the *Barker* factors, we determine that the record does not establish a violation of appellant's constitutional right to a speedy trial.

Affirmed.