

*This opinion is nonprecedential except as provided by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
A20-0414**

State of Minnesota,
Respondent,

vs.

Daniel Edward Nixon,
Appellant.

**Filed February 22, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-19-78

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree burglary, arguing that the
underlying charge was not brought to trial within the deadline for speedy disposition under

the Uniform Mandatory Disposition of Detainers Act (UMDDA) and that the district court erred by denying his motion to suppress. We affirm.

FACTS

In 2018, police investigated a string of burglaries that occurred at several locations in Minneapolis and St. Paul between February and September of 2018. One of the burglaries occurred at a BP gas station on May 21, 2018. The burglar used a tool to break a window. A video of the burglary depicted a Black male wearing a black jacket, a black baseball cap, jeans, a white surgical mask, distinctive gloves, and shiny boots. The clothing worn by the burglar resembled the clothing worn by an individual who had been recorded on video burglarizing several other buildings. The burglar stole cigarettes from the BP gas station and left a walkie-talkie radio at the scene.

On May 22, 2018, St. Paul police distributed an internal “Info Alert” regarding burglaries of the Ha Tien Market and Augustine’s in St. Paul. The alert stated:

The suspect has burglarized the HA TIEN MARKET . . . and Augustines . . . and possibly other businesses. Suspect usually has another person with him waiting in the area of the burglary then picks suspect up.

The suspect vehicle is a 2001 to 2006 White Chevrolet Impala with a distinctive rear spoiler.

If possible vehicle is located create your own PC for a stop and ID driver and occupants.

The alert contained a photo of a Black man wearing dark clothes, a dark baseball cap, gloves, and a white surgical mask; a close-up photo of black and red gloves worn by

the suspect; and two photos of the suspect vehicle. The pictures of the vehicle depicted its rear spoiler, a black strip down its side, and distinctive markings on its wheel rims.

At 1:37 a.m., on May 25, 2018, Officer Michael Tschida stopped a white Chevrolet Impala that resembled the vehicle depicted in the Info Alert photos. Like the Impala depicted in the Info Alert, the vehicle had a rear spoiler; dark, tinted windows; a black strip on its side; and “unique holes” in its wheel rims. Officer Tschida suspected that the vehicle’s occupants were connected to the string of burglaries because he knew that the burglar worked with an accomplice and because the Impala resembled the vehicle depicted in the alert. Officer Tschida identified appellant Daniel Nixon as the driver of the vehicle and identified the front-seat passenger as Nixon’s brother.

Officer Tschida asked Nixon to roll down the rear window. In the back of the Impala, Officer Tschida observed a black baseball hat, multicolored gloves, and a “yellow band-type thing which was later determined to be a slingshot.” Consistent with the close-up photo of the burglar’s gloves in the alert, the gloves in the back of the Impala were black with red and yellow accents, including the word “Hardy.” Based on his observations, Officer Tschida believed that Nixon and his brother were involved in the burglaries. After another officer arrived at the scene, Officer Tschida arrested Nixon and his brother.

The police impounded the Impala and obtained a warrant to search the vehicle. In addition to the items that Officer Tschida observed in the back of the Impala, officers recovered another baseball cap and two walkie-talkies. In the trunk of the Impala, officers found a black coat, a reciprocating saw, pry bars, and a yellow “RYOBI” bag with black handles that resembled the bag used during the burglaries. That bag contained a

sledgehammer, a screwdriver, and several reciprocating saw blades. One of the gloves recovered from the Impala was later tested and shown to contain Nixon's DNA.

Respondent State of Minnesota charged Nixon with second-degree burglary for the burglary of the BP gas station. The state also charged Nixon, by seven separate complaints, with additional charges of second-degree burglary for crimes that had occurred in St. Paul between April 10, 2018, and May 21, 2018.

On or about January 9, 2019, the state received Nixon's request under the UMDDA, Minn. Stat. § 629.292 (2018), for final disposition of the burglary charges. Subsequently, the district court granted Nixon's petition to proceed pro se. On April 28, 2019, Nixon moved the district court to suppress the evidence that was seized from the Impala, arguing that police did not have probable cause to search his vehicle. On May 8-9, 2019, the district court held a contested omnibus hearing and denied Nixon's suppression motion.

Because Nixon had filed a demand for speedy disposition of his cases under the UMDDA, the district court indicated that the court planned "to get all [eight burglary] cases tried in time before July." The first of the eight burglary cases was tried to the court on May 10, 2019.¹ Prior to the start of that trial, the district court ruled on the state's motion to admit *Spreigl* evidence² regarding the other burglary cases in each of the eight separate burglary trials. Following the bench trial, the district court found Nixon guilty of the first charged burglary offense. Nixon then demanded a jury trial on the second charged burglary

¹ The district court's order finding Nixon guilty of this offense incorrectly states that the matter was tried before the court on May 13, 2019. See 62-CR-19-74.

² See *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

offense. That trial began on May 13, 2019, and concluded on May 14, 2019, when the jury received the case. On May 15, 2019, while the jury was still deliberating in the second burglary case, the district court began the trial on the burglary charge in this case. That afternoon, the jury returned a guilty verdict on charges in the second burglary case.

The next day, Nixon appeared in court in his jail clothing. Nixon refused to change into civilian clothing, refused to cooperate, and referred to the proceedings as a “modern-day lynching.” Nixon informed the district court that he was “going [to] be disruptive. Disruptive verbally not physically, and so that’s in advance, knowledge of my actions.”

The parties engaged in off-the-record discussions, after which Nixon agreed to waive his right to jury trials on the remaining burglary charges and to submit those charges to the district court for a trial on stipulated evidence, including the *Spreigl* evidence that the district court had previously ruled admissible. The parties also agreed that the state would mail evidence packets and proposed stipulations for each of the individual cases to Nixon at the Department of Corrections (DOC) in Moose Lake. The parties agreed that the state would mail the evidence packets and stipulations in one-week intervals and that Nixon would sign and return the information, which would then be submitted to the district court. The state indicated that this procedure would “allow the [district] [c]ourt to have time to prepare findings and orders” for each of the cases before the deadline under the UMDDA.

The state mailed Nixon the first packet, which Nixon returned. Nixon received the second packet, but when he attempted to return the packet to the state, the DOC confiscated

it because it was deemed contraband. As a result, the state never received the second packet.

Because the state was concerned about losing jurisdiction in light of Nixon's assertion of his rights under the UMDDA, the state moved for a continuance on June 20, 2019. The state argued that Nixon's "failure to communicate with the state has caused a delay in having the pending matters reach a final determination" and that a continuance was "necessary to give the parties an opportunity to fully develop the stipulations for the agreed upon court trials that are pending before the court." Thus, the state argued that good cause existed to extend the disposition deadline under the UMDDA.

The district court held a hearing on June 26, 2019, at which the DOC's confiscation of the second packet was revealed. The district court asked Nixon if he was willing to withdraw his motion for speedy disposition under the UMDDA. Nixon declined and asked if the remaining packets could be submitted simultaneously so the charges could be resolved before the UMDDA deadline. The district court responded that the packets were to have been submitted on a staggered basis "for the [c]ourt's benefit so that I'm not writing five Findings of Fact simultaneously, so that I get the benefit of writing one at a time." The district court then considered the state's request for a continuance and determined that "based on everything that we've discussed, and the reality of this timeline, in order to give this [c]ourt an appropriate length of time . . . to render a thoughtful decision in the five remaining matters, the [c]ourt does find there is good cause to extend all of these matters."

The original deadline under the UMDDA expired in mid-July 2019. On August 26, 2019, Nixon signed the state's stipulation regarding the burglary charge in this case and

returned the packet to the state. The district court subsequently found Nixon guilty as charged and sentenced him to 90 months in prison. This appeal follows.

DECISION

I.

Nixon contends that his conviction must be reversed because his case was not brought to trial within the deadline for speedy disposition under the UMDDA. The UMDDA allows “[a]ny person who is imprisoned in a penal or correctional institution . . . [to] request final disposition of any untried indictment or complaint pending against the person in this state.” Minn. Stat. § 629.292, subd. 1(a). “Within six months after the receipt of the request . . . or within such additional time as the court for good cause shown in open court may grant,” a trial must be held on such indictment. *Id.*, subd. 3. If a trial is not held within that period, “no court of this state shall any longer have jurisdiction . . . and the court shall dismiss [the indictment] with prejudice.” *Id.* Whether a district court retains jurisdiction is a legal issue, which this court reviews de novo. *State v. Wilson*, 632 N.W.2d 225, 229 (Minn. 2001).

The purpose of the UMDDA is to “establish a prisoner’s right to a speedy disposition of untried charges.” *State v. Miller*, 525 N.W.2d 576, 583 (Minn. App. 1994). “The UMDDA is designed to provide a speedy trial for prisoners who face additional criminal charges,” and in so doing, the UMDDA “addresses the concerns of prisoners who, because of pending charges, are unable to participate in work programs and other rehabilitative prison services.” *State v. Vonbehren*, 777 N.W.2d 48, 50-51 (Minn. App. 2010), *review denied* (Minn. Mar. 16, 2010). But additional time may be added to the six-

month period if the district court finds good cause to do so. Minn. Stat. § 629.292, subd. 3. “Whether good cause exists for extending the UMDDA time limit is a subjective, factual question within the discretion of the [district] court.” *Miller*, 525 N.W.2d at 580.

The district court found that good cause existed to extend the statutory timeline based on the “reality” of the timeline set forth in the parties’ agreement, so the court would have “an appropriate length of time . . . to render a thoughtful decision in the five remaining matters.” Nixon argues that good cause did not exist to extend the UMDDA deadline. The state disagrees, but argues that even if good cause did not exist, Nixon’s conviction should be affirmed based on the four-factor balancing test used to determine whether the constitutional right to a speedy trial has been violated. *See Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972) (setting forth test).

A. *Good Cause*

The Minnesota Supreme Court has determined that good cause for extending the UMDDA time limit may be based on difficulties in locating crucial witnesses. *State v. Hamilton*, 268 N.W.2d 56, 62 (Minn. 1978). The supreme court has also suggested in dicta that complex discovery may establish good cause for extending the UMDDA time limit. *Wilson*, 632 N.W.2d at 226-27, 229. Moreover, delays caused by the defendant are tolled against the statutory period for a speedy disposition. *Id.* at 230. But delays caused by the prosecution, even if unintentional, are not good cause for a continuance. *Miller*, 525 N.W.2d at 582. And “good cause for delay does not include calendar congestion unless exceptional circumstances exist.” *State v. Griffin*, 760 N.W.2d 336, 340 (Minn. App. 2009).

Nixon argues that the district court's decision to extend the UMDDA time limit was an abuse of discretion because it was "based on [the judge's] own convenience" in order to "hold the stipulated-evidence trials on a staggered basis so [the judge] would have more time in each case to write the Findings of Fact."

The record reflects that the parties originally agreed to a process that would dispose of all of Nixon's burglary charges within the statutory time frame established in the UMDDA. The record also reflects that the agreed-on process was frustrated by the DOC's seizure of the second stipulation packet as contraband. That seizure was caused by neither the prosecution, nor Nixon. And, but for that seizure, the charges against Nixon were scheduled to be resolved in accordance with the parties' agreement.

After the DOC's seizure of the second stipulation packet was discovered, it was too late for the parties to complete the process set forth in their agreement before the deadline under the UMDDA. Although the state could have sent all the packets to Nixon simultaneously as he requested, the district court's refusal to accept simultaneous submissions was not unreasonable. Under the rules of criminal procedure, the district court was required to make separate, specific findings of fact relating to each of the charges. *See* Minn. R. Crim. P. 26.01, subd. 3 (setting forth the requirements for a trial based on stipulated evidence and referring to Minn. R. Crim. P. 26.01, subd. 2, requiring the district court to "make findings in writing of the essential facts" following a trial without a jury). As the district court found:

I want to take – have enough time to give to each case, because I look at it from the lens of, each matter is separate from each other. You just happen to have five of them remaining. But

those are five different cases in my eyes. And I have to look at each of those cases completely distinct and separate from each other.

I cannot and I will not confuse the facts of one case with – the alleged facts of one case with the alleged facts of another case. And so I . . . hope that you can appreciate that as well.

We cannot quarrel with the district court’s reasoning. At that time, five separate complaints charging Nixon with felony burglary were pending disposition under his UMDDA demand. The charges were interrelated and the state’s proof was based on circumstantial and *Spreigl* evidence, making the necessary findings more complicated. It was not unreasonable for the district court to allocate sufficient time to consider and make written findings in each of the five remaining cases. *See id.* Moreover, we note that the district court had originally scheduled all eight burglary cases for jury trials in a manner that would have complied with the UMDDA deadline. That schedule was disrupted by Nixon’s refusal to cooperate at the start of the third trial.

We note that the supreme court in *Hamilton* upheld a good-cause determination under the UMDDA because the additional delay was minimal—the trial began approximately a month after the end of the six-month period—and there was “no indication, or even a claim, that [the] defendant was prejudiced by the delay.” 268 N.W.2d at 62. Here, similar to *Hamilton*, the delay was minimal: the district court received the stipulated evidence on September 16, 2019, approximately two months after the end of the six-month period. And Nixon does not assert that he was prejudiced by the delay.

In sum, under the unique circumstances of this case, we conclude that the district court did not abuse its discretion by finding good cause to extend the 180-day disposition deadline under the UMDDA.

B. Application of the Barker Factors

Consistent with this court’s precedent, we consider whether Nixon’s constitutional right to a speedy trial was violated, using the following factors as set forth in *Barker*: “(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.”³ *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quotation omitted).

As to the fourth factor, “[t]hree 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.” *State v. Osorio*, 891 N.W.2d 620, 631 (Minn. 2017) (quotations omitted). The most serious form of prejudice is the possibility that the defense will be impaired because the inability

³ Nixon argues that the *Barker* factors are inapplicable when reviewing an alleged UMDDA violation. But in *Miller*, this court stated that “the *Barker* factors are applicable to our UMDDA statute.” 525 N.W.2d at 581. Moreover, in a recent nonprecedential opinion, this court relied on *Miller* and applied the *Barker* factors when reviewing an alleged violation of the UMDDA. *State v. Mikell*, No. A19-0732, 2020 WL 2703709, at *6 (Minn. App. May 26, 2020), review granted (Minn. Aug. 25, 2020). The supreme court has since granted review of *Mikell*. But this court’s opinion in *Miller* dictates that we apply the *Barker* factors when reviewing the alleged UMDDA violation in this case. See *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that this court “is bound by supreme court precedent and the [precedential] opinions of the court of appeals.”), review denied (Minn. Sept. 21, 2010).

of a defendant to adequately prepare his case “skews the fairness of the entire system.” *Id.* (quotations omitted).

When, as here, the defendant is already in custody for another offense, the first two types of prejudice are not present. *Taylor*, 869 N.W.2d at 20. Consequently, the only possible prejudice in this case was impairment to Nixon’s defense. *Id.* Such prejudice is typically suggested “by memory loss by witnesses or witness unavailability.” *Id.* Nixon’s defense was not impaired by the delay because Nixon agreed to a trial based on stipulated evidence. Thus, the prejudice factor weighs against Nixon.

The supreme court has held that even though the first three *Barker* factors weighed in a defendant’s favor, the defendant’s right to a speedy trial was not violated because he did not suffer any unfair prejudice as a result of the delay. *State v. Jones*, 392 N.W.2d 224, 234-36 (Minn. 1986). The same reasoning applies here. Nixon’s defense was not prejudiced by the delay. Moreover, there is no indication that the state acted in bad faith, and the delay was not excessive. Accordingly, the *Barker* factors do not support Nixon’s request for reversal.

II.

Nixon contends that the district court erred by denying his motion to suppress the items discovered in his vehicle as fruits of an unlawful search. “When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court

reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search or seizure without a warrant is per se unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). But if police have probable cause to search a vehicle, it is “constitutionally permissible” to impound the vehicle and search it later after a warrant is obtained. *State v. Jankowski*, 281 N.W.2d 717, 719 (Minn. 1979).

“Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *Id.* “[T]he totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *Id.* “Therefore, an appellate court must give due weight to reasonable inferences drawn by police officers and to a district court’s finding that the officer was credible and the inference was reasonable.” *Id.* (quotations omitted).

Nixon argues that because “police did not see evidence or proceeds of a burglary, the information the police had did not create probable cause to believe” that Nixon and his brother were burglars. Nixon’s argument focuses on the limited amount of evidence in

plain view *inside* the Impala when it was stopped by police. He ignores that fact that the Impala *itself* was a major factor in the probable-cause determination.

The record establishes that at the time of the seizure, St. Paul police were investigating several burglaries that appeared to be connected. An internal “Info Alert” was distributed to St. Paul police officers indicating that two establishments, and possibly others, had been burglarized, and that a “2001 to 2006 White Chevrolet Impala with a distinctive rear spoiler” was used to facilitate the burglaries. The Info Alert contained pictures of the Impala, which depicted its rear spoiler, a black strip down its side, and distinctive markings on its wheel rims. Officer Tschida stopped a vehicle that matched that description.⁴ In fact, Officer Tschida testified that when he first saw the Impala, he “immediately thought, that’s the vehicle” and that he was “95 percent confident” that the vehicle he stopped was the Impala depicted in the Info Alert. In addition, Officer Tschida observed the Impala in the same “general area” where the burglaries occurred at approximately 1:30 a.m., which was consistent with the timing of the burglaries.

The vehicle was occupied by two males, which was consistent with the Info Alert’s statement that the burglar worked with an accomplice who picked up the burglar after an establishment was burglarized. Nixon’s race was consistent with the race of the burglar depicted in the Info Alert photos. Moreover, after asking Nixon to roll the back window down,⁵ Officer Tschida observed a black baseball cap and distinctive black and red gloves with the word “Hardy” in the vehicle. The cap and gloves were consistent with the hat and

⁴ Nixon does not challenge the basis for the stop in this appeal.

⁵ Nixon does not challenge the expansion of the stop.

gloves worn by the burglar pictured in the Info Alert. And Nixon was wearing a black “hoody or a jacket,” which was consistent with the clothing worn by the burglar depicted in the Info Alert.

When taken together, the totality of the circumstances were sufficient to cause a reasonably prudent person to believe that the vehicle contained contraband. Thus, there was probable cause to search the Impala, and the district court did not err by denying Nixon’s motion to suppress.

Affirmed.