

*This opinion is nonprecedential except as provided by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
A22-0339**

State of Minnesota,
Appellant,

vs.

Jason Bruce Lloyd,
Respondent.

**Filed August 15, 2022
Affirmed
Klaphake, Judge ***

Morrison County District Court
File No. 49-CR-21-12

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

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for appellant)

Kenneth L. Wilson, Law Offices of Kenneth L. Wilson, PA, St. Cloud, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant State of Minnesota challenges the district court's grant of respondent Jason Bruce Lloyd's motion to dismiss the criminal charge filed against him for a second time. The state dismissed Lloyd's original charge on the second day of trial because a witness became ill. After the state refiled the charge 70 days later, Lloyd moved to dismiss it for unreasonable delay. The district court granted the motion and the state appealed. We reversed and remanded because the district court did not conclude that the state's delay prejudiced Lloyd. On remand to the district court, Lloyd renewed his motion to dismiss. The district court concluded that Lloyd was prejudiced and granted the motion. Because the record supports the district court's conclusion, we affirm.

DECISION

The state contends that the district court abused its discretion by granting Lloyd's motion to dismiss the refiled threats-of-violence charge.¹ We begin by considering the rule used by the district court and our standard for reviewing the dismissal of a criminal charge and then turn to the facts of Lloyd's case and the district court's decision to dismiss the charge.

A district court may dismiss a criminal complaint "if the prosecutor has unnecessarily delayed bringing the defendant to trial." Minn. R. Crim. P. 30.02. Rule

¹ To appeal a pretrial order, the state must make a threshold showing that that the district court's ruling was erroneous and that the ruling had a "critical impact" on its ability to prosecute the case. *State v. Serbus*, 957 N.W.2d 84, 87 (Minn. 2021). Because the court dismissed the charge, the state has met this burden here. *Id.*

30.02 applies to pre-charge as well as to pre-trial delay. *State v. Banks*, 875 N.W.2d 338, 345 (Minn. 2016). To dismiss a complaint under rule 30.02, the district court must find that the state unnecessarily delayed bringing the defendant to trial, and that the defendant was prejudiced by the delay. *State v. Hart*, 723 N.W.2d 254, 257 n.5 (Minn. 2006).

We review a district court’s dismissal of a complaint under rule 30.02 for an abuse of discretion. *State v. Mikell*, 960 N.W.2d 230, 256 (Minn. 2021). To determine whether a district court abused its discretion by granting a request for a rule 30.02 dismissal, we assess whether the record supports the district court’s factual findings and whether the district court applied the legal standard correctly. *State v. Olson*, 884 N.W.2d 395, 399 (Minn. 2016). The record supports the district court’s factual findings unless the findings are clearly erroneous. *Id.* (citing *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011)). With this caselaw in mind, we consider the circumstances surrounding the district court’s dismissal of the charge here.

The state first charged Lloyd with threats of violence² in August 2019. The state alleged that in 2019, Lloyd threatened a city employee at the employee’s home after Lloyd’s water was shut off. The matter proceeded to trial in October 2020, and the parties selected a jury.³ But the afternoon of the first day of trial, the city employee’s wife—who was also a witness—presented COVID-19-like symptoms. On the second day, the state

² In violation of Minnesota Statutes section 609.713, subdivision 1 (2018).

³ As part of its original case, the state sought to introduce two prior convictions of Lloyd’s. The district court excluded the evidence, ruling that the state failed to comply with the notice requirements for prior convictions. The parties disputed the accuracy of this ruling below, but because they do not challenge it on appeal, we do not reach it.

requested a continuance, but the district court denied the request because other witnesses who observed the alleged conduct were still available. The state chose to dismiss the charge against Lloyd without prejudice and stated its intent to refile the charge later.

In January 2021, the state charged Lloyd with threats of violence again for the same incident. Lloyd moved to dismiss the charge, arguing that the state unnecessarily delayed refiling it. The district court granted Lloyd's motion, and the state appealed. We reversed and remanded in an order opinion because while the district court concluded that the state unnecessarily delayed refiling the charge, the district court did not conclude that Lloyd was prejudiced by the delay. On remand, Lloyd moved to dismiss the charge once again, arguing that he had been prejudiced by the delay. The district court granted Lloyd's motion.

The state argues that the district court abused its discretion by concluding that Lloyd was prejudiced by the 70-day delay from its dismissal of the original charge. The district court concluded that Lloyd was prejudiced by the delay in two ways. First, Lloyd was subject to a no-contact order during the pendency of the case.⁴ Second, witnesses' memories of the underlying incident had faded in the intervening time.

The state argues that the record does not support the district court's conclusions. We disagree. With respect to the no-contact order, the court reasoned that the restriction created "limited areas where [Lloyd] could visit without the concern of encountering the alleged victim." In context of living in a small town, the record supports the district court's

⁴ When the district court dismissed the refiled charge, 29 months had elapsed since the alleged offense.

conclusion that abiding by the no-contact order for 29 months prejudiced Lloyd. And because the nature of the charge here—threats of violence—depends on the tone, exact wording, and posturing of the speaker, the district court reasoned that the witnesses’ memories were impaired by the delay. The record supports this conclusion as well. The district court was entitled to rely on common sense in reasoning that witnesses’ recollections of the tone, wording, and body posture used by Lloyd had faded since the incident.⁵ Accordingly, the district court did not abuse its discretion by dismissing the refiled charge.

Affirmed.

⁵ The state challenges two further reasons relied upon by the district court: that the state sought to introduce the prior convictions the court excluded in the first case and Lloyd’s assertion that the state could have dismissed the case to avoid having an unfavorable jury. But because the record supports the district court’s determination that Lloyd was prejudiced by the delay in the form of the no-contact order and faded memories, we do not reach these arguments.