

*This opinion is nonprecedential except as provided by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
A23-1775**

State of Minnesota,
Respondent,

vs.

Ismeldo Isai Nolasco-Salanic,
Appellant.

**Filed January 6, 2025
Affirmed
Harris, Judge**

Hennepin County District Court
File No. 27-CR-21-23205

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

Mary F. Moriarty, Hennepin County Attorney, Nicholas G. Kimball, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges the denial of his motion to dismiss the complaint, arguing that the district court (1) erred by denying his motion to dismiss on the ground that retrial would violate his rights under the Double Jeopardy Clause; (2) erred by denying his motion to dismiss as a sanction for the prosecution's violation of its obligations under Minnesota Rule of Criminal Procedure 9.01 and *Brady v. Maryland*, 373 U.S. 83 (1963), for failing to disclose medical records possessed by law enforcement; (3) abused its discretion by failing to dismiss due to the prosecution's unnecessary delay in prosecuting this case; and (4) abused its discretion by failing to dismiss in the interest of justice. Because we conclude that the district court appropriately denied the motion to dismiss the complaint, we affirm.

FACTS

In December 2021, respondent State of Minnesota charged appellant Ismeldo Isai Nolasco-Salanic with two counts of first-degree criminal sexual conduct, alleging that he sexually abused the victim, his daughter, between 2014 and 2018. Following a series of continuances, the jury trial began in April 2023.¹ At trial, the state presented testimony

¹ The record demonstrates that both parties requested continuances in this matter. Nolasco-Salanic appeared in court on April 21, 2022, when he entered a plea of not guilty on both charges and made a demand for a jury trial, which was set for August 9, 2022. On May 3, 2022, Nolasco-Salanic demanded a speedy trial. On August 8, 2022, Nolasco-Salanic moved to dismiss for the state's failure to disclose a redacted electronic copy of the contents of his phone, which he withdrew at a hearing the following day. Nolasco-Salanic also withdrew his request for a speedy trial. The district court set the matter for trial on October 10, 2022. In October 2022, Nolasco-Salanic requested a continuance of the trial, which was granted, and the district court continued the jury trial to March 6, 2023. The state

from five witnesses: the victim, the victim's mother, the victim's therapist, a forensic interviewer, and a police officer.

At trial, the victim testified that Nolasco-Salanic began sexually abusing her when she was about six years old. She stated that the abuse continued for four years until 2018, when Nolasco-Salanic and the victim's mother separated. The victim disclosed the abuse to her therapist during a therapy session in 2021. The therapist reported the allegations to McLeod County Child Protection, who, in turn, contacted the Eden Prairie Police Department. An Eden Prairie Police Officer investigated the victim's report of sexual abuse. As part of the investigation, the victim agreed to participate in an interview at CornerHouse² with a forensic interviewer.

The officer observed the CornerHouse interview with the victim as it was occurring. After the interview, the officer spoke with the victim's mother. The officer testified about some of the victim's medical appointments her learned from her mother. The officer testified that the victim stated during the interview that Nolasco-Salanic kicked her in the stomach. The officer also testified about another incident when the mother took the victim to the pediatrician because the victim's hips were hurting. The officer provided the name of the victim's doctor and testified that the victim saw her doctor for annual exams. On

subsequently requested a continuance, and the trial was continued another month to April 17, 2023.

² CornerHouse is a nonprofit organization that conducts forensic interviews and provides advocacy and therapy services. A forensic interview is "a way to talk with children, teens, and even adults about . . . a crime," including sexual and physical abuse.

cross-examination, the officer referenced some of the victim's medical records. Defense counsel and the officer engaged in the following exchange:

COUNSEL: It also says you got a signed release from [the victim's mother] to obtain medical records from [the victim's] therapist, Park Nicollet Clinic, and Saint Francis, slash, Allina Hospital; is that right?

WITNESS: Yes.

COUNSEL: Did you get the records then?

WITNESS: Yes.

COUNSEL: Did you provide those to the County Attorney's Office?

WITNESS: Yes.

Defense counsel indicated that he had not received these medical records. The prosecutor also stated that he had not seen the files and did not have them in his possession. The district court asked, "Am I correct in understanding that nobody has those records?" Both the prosecutor and defense counsel agreed with that statement. Before the court ended the day's proceedings, defense counsel stated that none of the medical records referenced by the officer had been disclosed to the defense. He noted that, contrary to the officer's testimony, the county attorney's office also had not received these records. The officer later found the records in her electronic case file and provided them to counsel.

The following day, defense counsel moved to dismiss the case based on the state's failure to disclose the victim's medical records during discovery. The district court denied the dismissal motion and offered to grant a one-day continuance. Defense counsel indicated that a short continuance was not an adequate remedy and moved for a mistrial, which the district court granted. The district court explained that its decision was based on

“the error of the State in their failure to disclose medical records to the defense that were obtained by the police but for some reason not disclosed to the State.” The district court continued: “That is something that was revealed through testimony and through inquiry stemming from that testimony, and that ultimately resulted in the disclosure of 60 pages of medical records.” However, the district court found “that the error was neither willful or . . . intentional on the part of the prosecution, meaning they didn’t intentionally not disclose these medical records since they did not know of those medical records until all of us heard of the testimony of the officer.” Additionally, the district court found “that the error or misconduct was not . . . intended to provoke a mistrial by the defense. In other words, it wasn’t a deliberate act with the purpose of causing the defendant to bring a motion for a mistrial.” Based on these findings, the district court concluded that Nolasco-Salanic could be retried and rescheduled the trial for June 2023.

Prior to the new trial date, Nolasco-Salanic moved to dismiss the complaint on five grounds, alleging that: (1) further prosecution should be barred on double-jeopardy grounds; (2) the state violated his due-process rights; (3) the state delayed bringing the matter to trial; (4) dismissal is an appropriate sanction for the state’s violation of the rules of discovery; and (5) the interests of justice warrant dismissal. Following a hearing, the district court denied the motion. Nolasco-Salanic appeals.

DECISION

Nolasco-Salanic argues that the district court erred by declining to dismiss the complaint on the five grounds raised in his motion because: (1) double jeopardy bars retrial; (2) the late disclosure of the victim’s medical records violates his due-process right; (3) the

state unnecessarily delayed bringing the matter to trial; (4) the state should be sanctioned for violating the discovery rules; and (5) the interests of justice require dismissal. We address each argument in turn.

I. The district court did not err by denying Nolasco-Salanic’s motion to dismiss on the ground that retrial would violate his rights under the double jeopardy clauses of the Minnesota and U.S. Constitution’s.

Nolasco-Salanic asserts that the district court erred by denying his motion to dismiss on the ground that double jeopardy precludes retrial. The double-jeopardy clauses of the Minnesota and United States Constitutions protect criminal defendants from multiple punishments and multiple prosecutions. U.S. Const. amend V; Minn. Const. art. I, § 7; *see also State v. Chavarria-Cruz*, 839 N.W.2d 515, 520 (Minn. 2013); *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000). “[I]f a trial is terminated at the defendant’s request, the double jeopardy clause does not bar a second trial unless the mistrial resulted from governmental misconduct intended to provoke the mistrial request.” *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) (*Fuller II*) (citation omitted).

A defendant may appeal from an order “denying a motion to dismiss a complaint following a mistrial, [when] the defendant claims retrial would violate double jeopardy.” Minn. R. Crim. P. 28.02, subd. 2(2)(b)(3). An appellate court reviews double-jeopardy issues de novo, *State v. Leroy*, 604 N.W.2d 75, 77 (Minn. 1999), and reviews the district court’s findings of fact for clear error, *Fuller II*, 374 N.W.2d at 726. “A finding of fact is clearly erroneous when it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *State v. McCormick*, 835 N.W.2d 498, 509 (Minn. App. 2013) (citation omitted). “This standard is satisfied when the reviewing

court is left with the definite and firm conviction that a mistake was made, despite viewing [the] evidence in the light most favorable to the [district] court's findings." *Id.*

On appeal, Nolasco-Salanic asserts that the state committed grossly negligent conduct constituting bad faith because it does not have processes in place that require prosecutors to confirm and verify that the state has the same documents as the witnesses, including the police officer's. The defense learned during its cross-examination of the police officer that she had the victim's medical records. A paralegal with the attorney's office explained that the oversight occurred because "there is no formal policy regarding how paralegals obtain and disclose discovery in our office." The paralegal noted that "[m]any paralegals have a practice of requesting supplemental discovery as a trial date is approaching." But she stated that the paralegal assigned to this case "did not make a supplemental request to see if there were additional supplements or outstanding items of discovery."

Nolasco-Salanic argues that the failure to timely discover and disclose the victim's medical records illustrates the state's "gross indifference" to its legal duty to turn over discoverable evidence. He urges us to adopt a new rule "that the Minnesota Constitution gives a criminal defendant greater protection than the federal constitution against retrial following a mistrial provoked by prosecutorial misconduct." Nolasco-Salanic relies on *State v. Fuller*, 350 N.W.2d 382 (Minn. App. 1984) (*Fuller I*), in support of his argument. In that case, the district court declared a mistrial after the state failed to prepare its witness, who gave improper testimony on two occasions at trial. *Id.* at 385-86. On appeal, this court determined that, "[w]hether or not the testimony was elicited deliberately by the

prosecutor, his failure to adequately prepare his witness so she did not repeat her mistake can be viewed as gross negligence constituting bad faith.” *Id.* at 386. We noted that a state may interpret its own constitution differently than the United States Supreme Court’s interpretation of the federal double-jeopardy clause. *Id.* And, viewing Minnesota’s constitutional protections broadly, this court concluded that Minnesota’s Double-Jeopardy Clause barred retrial under a gross-negligence standard. *Id.* The Minnesota Supreme Court reversed our decision. *Fuller II*, 374 N.W.2d at 726-27. It determined that the prosecutor’s misconduct in preparing the witness was merely negligent and left open the question of whether the Minnesota Constitution provides more protection from the double-jeopardy clause than the United States Constitution. *Id.* at 727.

Given our role as an error-correcting court, we decline to broaden existing law to the extent Nolasco-Salanic suggests. Minnesota caselaw instructs that a second trial is barred only if “the mistrial resulted from governmental misconduct intended to provoke the mistrial request.” *Fuller II*, 374 N.W.2d at 726 (citation omitted); *see also State v. Barnes*, 618 N.W.2d 805, 814 (Minn. App. 2000) (concluding that a retrial is not barred unless the misconduct was committed with the intent to provoke a mistrial and that there was “no indication that the prosecutor’s apparently inadvertent pretrial discovery violation [of failing to disclose police reports to the defense] was intended to provoke a mistrial”), *rev. denied* (Minn. Jan. 16, 2001); *State v. Schroepfer*, 416 N.W.2d 491, 492-94 (Minn. App. 1987) (declining to bar the defendant’s retrial on double-jeopardy grounds when the prosecutor’s misconduct was merely negligent and did not rise to the level of gross negligence). “[T]he task of extending existing law falls to the supreme court or the

legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987). Here, the district court found that the state’s failure to produce the victim’s medical records was inadvertent and unintentional. These findings are supported by the record and are not clearly erroneous. Accordingly, because there has not been a showing that the state committed misconduct that was intended to provoke a mistrial, the federal and state double-jeopardy clauses do not bar Nolasco-Salanic’s retrial.

II. The district court did not err by denying Nolasco-Salanic’s motion to dismiss for alleged *Brady* violations because it granted Nolasco-Salanic a new trial which is the remedy he would be entitled to if a *Brady* violation occurred.

Next, Nolasco-Salanic argues that the complaint must be dismissed because the state’s untimely disclosure of the victim’s medical records constitutes a *Brady* violation. “A *Brady* violation occurs when the State suppresses material evidence favorable to the defendant despite a request for production by the defense.” *Griffin v. State*, 941 N.W.2d 404, 410 n.2 (Minn. 2020) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). “The State violates the constitutional guarantees of due process when, whether intentionally or unintentionally, it suppresses ‘material evidence favorable to the defendant.’” *Thoresen v. State*, 965 N.W.2d 295, 304 (Minn. 2021) (quoting *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010)). A district court’s ruling on a *Brady* violation involves mixed questions of fact and law, and an appellate court reviews whether the state violated *Brady* de novo. *Walen*, 777 N.W.2d at 216.

Based on our review, we conclude that Nolasco-Salanic is not entitled to dismissal of the complaint on *Brady* grounds because, even assuming a violation occurred, he has

already been afforded an adequate remedy for the state's late disclosure of the victim's medical records. "[T]he remedy for a *Brady* violation is a new trial." *State v. Hunt*, 615 N.W.2d 294, 299 (Minn. 2000) (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)). It is uncontested that the district court already granted Nolasco-Salanic a new trial—the remedy for a *Brady* violation. And Nolasco-Salanic has not identified any authority for his claim that a *Brady* violation warrants immediate dismissal of the case. Because Nolasco-Salanic has already received the remedy to which he would be entitled if a *Brady* violation occurred, we conclude that the district court did not err by denying Nolasco-Salanic's motion to dismiss.

III. The district court did not abuse its discretion by denying Nolasco-Salanic's motion to dismiss as a sanction for violation of Minnesota Rule of Criminal Procedure 9.01, subdivision 1.

Nolasco-Salanic contends that the complaint should be dismissed as a sanction for the state's violation of Minnesota Rule of Criminal Procedure 9.01, subdivision 1. This rule requires the prosecution to disclose all exculpatory evidence and all relevant documents to the defense. Minn. R. Crim. P. 9.01, subd. 1(3)(6). Failure to do so constitutes a discovery violation. *State v. Williams*, 593 N.W.2d 227, 235 (Minn. 1999). When a party fails to comply with a discovery rule, the district court may "order the party to permit the discovery, grant a continuance, or enter any order it deems just in the circumstances." Minn. R. Crim. P. 9.03, subd. 8. Because "the [district] court is in the best position to determine whether any harm has resulted from the particular violation and the extent to which this harm can be eliminated or otherwise alleviated," an appellate court

reviews the adequacy of discovery-violation sanctions for an abuse of discretion. *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979).

The district court determined that the state failed to disclose timely all of the victim's medical records and declared a mistrial. However, the district court declined to dismiss the complaint because "a new trial has already been granted." Accordingly, it declined to dismiss the complaint as an additional sanction for the discovery violation. The district court's decision does not constitute an abuse of discretion. "The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the [district] court." *Id.* Courts consider why the disclosure was not made, the extent of prejudice to the opposing party, whether that prejudice could be corrected by a continuance, and "any other relevant factors." *Id.* The district court's order as a whole shows consideration of these factors. The district court found that the disclosure was not made because the state was unaware of the existence of the victim's medical records "until all of us heard of the testimony of the officer." The district court specifically found that this delay in disclosing the records was inadvertent. It originally offered the defense a continuance to correct for this late disclosure, but then determined that a mistrial was the more appropriate sanction.

Based on this record, we conclude that the district court considered the relevant factors in addressing the state's discovery violation. Given the discretion afforded to a district court to create an appropriate remedy, we discern no abuse of discretion in the decision to grant a mistrial but to deny the motion to dismiss the complaint as a sanction for the state's discovery violation.

IV. The district court did not abuse its discretion by denying Nolasco-Salanic's motion to dismiss the complaint for the state's alleged unnecessary delay in prosecuting this case.

Nolasco-Salanic argues that the charges should be dismissed due to the state's delay in prosecuting the case. 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. The defendant must show that the state unnecessarily delayed the trial and that the defendant was prejudiced by that delay. *State v. Hart*, 723 N.W.2d 254, 257 n.5 (Minn. 2006). We review a district court's dismissal decision under rule 30.02 for an abuse of discretion. *State v. Olson*, 884 N.W.2d 395, 397-98 (Minn. 2016). To determine whether a district court abused its discretion, we assess whether the record supports the district court's factual findings and whether the district court applied the legal standard correctly. *Id.* at 399. The district court's factual findings are not clearly erroneous if they are supported by the record. *Id.* (citation omitted).

Here, the district court found that the state did not unnecessarily delay bringing Nolasco-Salanic to trial.³ We discern no abuse of discretion by the district court. "There is no fixed rule for all cases that defines how long is too long to wait for a trial." *State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021). Instead, reviewing courts consider the factors relevant to a speedy-trial analysis. *Id.* at 245 (citing *Barker v. Wingo*, 407 U.S. 514, 521, 529-33 (1972) (outlining speedy-trial factors)). As relevant here, these factors include the

³ The district court found that "there was some amount of prejudice" to Nolasco-Salanic due to the delay in prosecuting the case. Because we conclude that the state did not unnecessarily delay prosecution, we do not address the prejudice factor.

reason for the delay and the defendant's assertion of the right. *Id.* at 245 (citing *Barker*, 407 U.S. at 529-30). The record shows that there were multiple continuances in this case, several of which were prompted by Nolasco-Salanic's requests to delay trial to accommodate his motions for relief. Additionally, the record further reveals that Nolasco-Salanic initially demanded a speedy trial, but later waived that right. On this record, we are satisfied that the state did not unnecessarily delay prosecuting this matter based on Nolasco-Salanic's own continuance requests and his waiver of his speedy-trial right. We therefore conclude that the district court did not abuse its discretion by denying Nolasco's motion to dismiss under rule 30.02.

V. The district court did not abuse its discretion by denying Nolasco-Salanic's motion to dismiss the complaint in the furtherance of justice.

Finally, Nolasco-Salanic argues that dismissal should be granted in the interests of justice. A district court "may order a criminal action, whether prosecuted upon indictment or complaint, to be dismissed." Minn. Stat. § 631.21 (2022). The district court "may order dismissal of an action either on its own motion or upon motion of the prosecuting attorney and in furtherance of justice."⁴ *Id.* The use of the word "may" in the statute implies the exercise of discretion, and we therefore review a district court's decision on a dismissal in furtherance of justice for an abuse of discretion. *Hart*, 723 N.W.2d at 259-60; *see also* Minn. Stat. § 645.44, subd. 15 (2022) (noting that "may" is permissive).

⁴ "Although there is a technical difference between the phrase 'in furtherance of justice' from Minn. Stat. § 631.21 and 'in the interests of justice,' [appellate courts] treat these phrases similarly." *Hart*, 723 N.W.2d at 258 n.7.

While Nolasco-Salanic argues that the complaint should be dismissed in the interests of justice, the text of “section 631.21 does not authorize such a motion by the defense.” *State v. Sahr*, 812 N.W.2d 83, 98 n.3 (Minn. 2012) (Dietzen, J., dissenting); *see also* Minn. Stat. § 631.21 (stating the district court may order dismissal “either on its own motion or upon motion of the prosecuting attorney”). Nevertheless, the district court considered Nolasco-Salanic’s request. It recognized that dismissal of a case in the interests of justice may be appropriate “as a deterrent to continued failures to appear.” *Hart*, 723 N.W.2d at 259-60. The district court reasoned that its decision to grant Nolasco-Salanic a mistrial “impos[ed] a similar deterrent to the State.” *See Lee v. United States*, 432 U.S. 23, 30-31 (1977) (characterizing a dismissal order as “functionally indistinguishable from a declaration of mistrial”). Thus, the district court was not persuaded that dismissal of the complaint would further the interests of justice beyond ordering a mistrial. Again, we agree with the district court. Caselaw instructs us that dismissal of a complaint under section 631.21 “ordinarily would not have the effect of precluding the prosecutor from recharging the accused.” *State v. Streiff*, 673 N.W.2d 831, 838 (Minn. 2004). Thus, dismissal of the complaint in interests or furtherance of justice would not bar the state from prosecuting Nolasco-Salanic in the future. And the district court has already ordered a new trial in this matter. We therefore conclude that the district court’s decision to declare a mistrial instead of dismissing the complaint does not constitute an abuse of the district court’s broad discretion.

Affirmed.