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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1309**

State of Minnesota,
Respondent,

vs.

DeAngelos DeManye Cook a/k/a/ DeAngelas Cook,
Appellant.

**Filed June 11, 2012
Affirmed
Bjorkman, Judge**

Blue Earth County District Court
File No. 07-CR-10-287

Lori Swanson, Attorney General, Jennifer Coates, Assistant Attorney General, St. Paul, Minnesota; and

Ross Arneson, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of second-degree sale of a controlled substance, arguing that his right to a speedy trial was violated and the evidence is insufficient to support his conviction. We affirm.

FACTS

On January 29, 2010, appellant DeAngelos Cook was arrested and charged with second-degree sale of a controlled substance based on the total weight of cocaine he sold to confidential informant J.W. during three controlled buys. Two weeks later, Cook demanded a speedy trial. After multiple continuances, a jury trial occurred in October, which resulted in a mistrial. A new trial was held in March 2011. During trial, Cook moved to dismiss the charges against him, claiming his speedy-trial right was violated; the district court denied the motion. The jury found Cook guilty, and the district court sentenced Cook to 88 months' imprisonment. This appeal follows.

DECISION

I. Cook's speedy-trial right was not 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; *see also* Minn. R. Crim. P. 11.09. We review de novo whether a defendant's right to a speedy trial has been violated. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009).

In determining whether a defendant's speedy-trial right has been violated, we consider the four factors the United States Supreme Court identified in *Barker v. Wingo*,

407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972): “(1) the length of the delay; (2) the reason for the delay; (3) whether and when the defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay.” *State v. Cham*, 680 N.W.2d 121, 124 (Minn. App. 2004), *review denied* (Minn. July 20, 2004). No single factor is necessary or dispositive; the factors must be considered together in light of the relevant circumstances. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

Length of delay

We measure the length of delay from the time of arrest. *Cham*, 680 N.W.2d at 125. But we presume that a defendant’s speedy-trial right has been violated if trial did not take place within 60 days of a speedy-trial demand. *Windish*, 590 N.W.2d at 315-16; *see also* Minn. R. Crim. P. 11.09 (requiring that trial commence within 60 days of a speedy-trial demand unless good cause is shown). Cook demanded a speedy trial almost immediately after being arrested. His trial did not occur until nearly 14 months later. Accordingly, we presume that this delay violated his speedy-trial right and consider the remaining *Barker* factors. *See Windish*, 590 N.W.2d at 316 (stating that delay of 11 months raised presumption, then “turn[ing] . . . to the remaining three *Barker* factors”).

Reason for delay

The state and the court are responsible for promptly bringing a case to trial, but the reason for delay makes a difference in determining whether a defendant’s speedy-trial right has been violated. *Barker*, 407 U.S. at 529, 531, 92 S. Ct. at 2191-92; *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). Deliberate prosecutorial attempts to delay trial weigh heavily against the state. *Friberg*, 435 N.W.2d. at 514. Delay occasioned by

negligence or court congestion weighs less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances rests with the government. *Id.* at 513. And when trial delay “is the result of the defendant’s actions, there is no speedy trial violation.” *State v. Johnson*, 498 N.W.2d 10, 16 (Minn. 1993).

The first delay occurred when defense counsel asked to reschedule the March 10, 2010 jury trial because of a conflicting trial. Cook contends that this delay should be counted against the state because the state “still had additional discovery” to disclose. We disagree. The prosecutor indicated on March 1 that he would make the disclosures before the scheduled trial date. Thus, the only reason for the first trial delay was defense counsel’s scheduling conflict, which does not weigh in favor of Cook’s argument that he was denied a speedy trial. *See Aligah v. State*, 394 N.W.2d 201, 205 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986); *see also State v. Johnson*, ___ N.W.2d ___, ___, 2012 WL 254471, at *5 (Minn. App. Jan. 30, 2012) (deciding that defendant bore responsibility for delay occasioned by defense counsel’s unavailability), *review denied* (Minn. Mar. 28, 2012).

Additional delays occurred when the next two scheduled trial dates—April 6 and August 25—had to be postponed because the Bureau of Criminal Apprehension (BCA) witness was not available. Witness unavailability may establish a valid reason for delay, but “a prosecutor must be diligent in attempting to make witnesses available and the unavailability must not prejudice the defendant.” *Windish*, 590 N.W.2d at 317; *see also Barker*, 407 U.S. at 531, 92 S. Ct. at 2192 (stating that a missing witness “should serve to justify appropriate delay”). Cook does not argue and nothing in the record indicates that

the prosecutor was not diligent in trying to obtain the BCA witness for trial. And when trial did not go forward in April, the district court ordered Cook's release from custody, which substantially mitigated any prejudice from the delay. On this record, the delay due to the unavailability of the BCA witness weighs only slightly in Cook's favor.

The October 28 mistrial occasioned the next delay. The mistrial resulted from a juror's discovery of a connection to Cook that was not apparent during voir dire and was sufficient to raise doubts as to the juror's ability to be impartial. The mistrial delay does not weigh in favor of Cook. Cook also points out that busy court calendars prevented rescheduling of his trial for nearly two months after the mistrial. Delay occasioned by court congestion weighs slightly against the state. *Friberg*, 435 N.W.2d. at 513. But because the rescheduling was necessitated by the mistrial, for which neither party bore responsibility, the reason for this delay does not weigh in Cook's favor.

The final delay occurred on January 19, 2011, when trial was continued because the prosecutor was ill. Cook argues that this delay should count against the state because another prosecutor could have handled what Cook characterizes as a "straightforward, uncomplicated" case. *See Windish*, 590 N.W.2d at 316. We are not persuaded.

Cook's argument is premised on the fact that when the case was tried, there were "no evidentiary objections, the state only presented three witnesses, and the trial lasted just two days." But as the prosecutor stated when requesting the continuance, the case against Cook involved

a very serious controlled substance crime in the second degree charge. There are several witnesses and there is also in excess of twenty Exhibits including video, ah, maps, buy-

fund money. This is not a trial that can just be picked up by another attorney in our office and – and taken and brought to trial. That simply is unrealistic.

The district court concluded that a continuance was warranted, finding that the complexity of the trial would “depend[] on how the testimony flows; what is objected to; what isn’t objected to and that nature.” We will not disturb the district court’s finding, and we conclude that the reason for the final delay weighs only slightly in favor of Cook.

In sum, Cook’s trial was delayed several times for good cause, attributable to both Cook and the state or to factors beyond either party’s control. None of the delays resulted from the state’s deliberate action. On balance, this factor weighs only slightly in favor of Cook.

Assertion of the right

We next consider “the frequency and intensity of [the] defendant’s assertion of a speedy trial demand.” *Windish*, 590 N.W.2d at 318. It is undisputed that Cook asserted his speedy-trial right early and repeatedly. This factor weighs in favor of Cook.

Prejudice

Prejudice is measured in light of the interests that the speedy-trial right is designed to protect: (1) preventing oppressive pretrial incarceration, (2) minimizing the accused’s anxiety and concern, and (3) limiting the possibility that the defense will be impaired. *Id.* The third interest, possible impairment of a defendant’s defense, is the most important. *Id.* A defendant is not required to prove specific prejudice. *Id.*

The first two interests are not significantly implicated here because Cook was released from custody in April 2010. While he complains that he suffered “the anxiety of

pretrial incarceration and disruption of employment during that time,” these generalized allegations are insufficient to establish prejudice, particularly in light of his relatively brief detention. *See Friberg*, 435 N.W.2d at 515 (stating that normal anxiety experienced by all defendants is not enough to cause prejudice that weighs in favor of the defendant); *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990) (stating that pretrial incarceration, while unfortunate, “is not a serious allegation of prejudice”).

Cook argues that the third interest is implicated because two witnesses he subpoenaed for the October 2010 trial were not available for the March 9, 2011 trial. The record does not support this assertion. Cook subpoenaed the same witnesses for both trial settings and expected them to appear. One of the witnesses did testify during the March trial, and the record does not indicate whether the other witness was unavailable or Cook simply elected not to call the witness. In short, nothing in this record indicates that the trial delay impaired Cook’s ability to defend himself.

In weighing the *Barker* factors, only two—the length of the delay and assertion of the right—weigh substantially in favor of Cook. The reasons for the delay are attributable to Cook, the state, and reasons beyond the parties’ control. None of the reasons for delay weigh heavily against the state and Cook was not prejudiced by the delay. On this record, we conclude that Cook’s speedy-trial right was not violated.

II. Sufficient evidence supports Cook’s conviction.

Our review of a sufficiency-of-the-evidence claim is “limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the

offense charged.” *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009) (quotation omitted). We review the evidence in the light most favorable to the state and presume that the jury believed the state’s witnesses and disbelieved any contrary evidence. *Id.* We defer to the jury’s credibility determinations. *Id.*

A conviction of second-degree controlled-substance crime requires proof that the defendant (1) on one or more occasions within a 90-day period (2) unlawfully sold one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine. Minn. Stat. § 152.022, subd. 1(1) (2008).

The state presented evidence that J.W. exchanged a total of \$900 for a total of approximately 6.2 grams of cocaine between November 11, 2009, and January 28, 2010. Cook does not argue that this evidence fails to address the elements of the offense. Instead, he argues that the uncorroborated testimony of J.W.—the state’s primary evidence—was insufficient to support the jury’s guilty verdicts because he was a paid confidential informant and therefore lacked credibility. We are not persuaded.

As Cook acknowledges, Minnesota law does not require corroboration of a confidential informant’s testimony. *See State v. Hadgu*, 681 N.W.2d 30, 34 (Minn. App. 2004) (stating that state was not required to corroborate informant’s testimony because he was not an accomplice), *review denied* (Minn. Sept. 21, 2004). Rather, “[i]t is well established that a conviction can rest upon the testimony of a single credible witness.” *Id.* (quotation omitted). “[W]eighing the credibility of witnesses is a function exclusively for the jury.” *State v. Pippitt*, 645 N.W.2d 87, 94 (Minn. 2002). This means that the jury may choose to believe the testimony of witnesses who receive legal and economic

compensation for their cooperation. *See State v. Triplett*, 435 N.W.2d 38, 44-45 (Minn. 1989) (holding the jury could have relied upon testimony of a witness, even though evidence showed that she used drugs, lied to police, and forged checks).

The jury was made aware of all of the factors Cook highlights as undermining J.W.'s credibility. J.W. testified that he agreed to act as a confidential informant in exchange for the dismissal of driving-while-impaired (DWI) charges against him and that he "had to get two people arrested or charged" to get the charges dismissed. J.W.'s car was returned in exchange for a third arrest or charge, and he performed additional confidential-informant work in exchange for money. J.W. also admitted that he was "drinking pretty heavily" around the time of the controlled buys, that he had used cocaine around that time, and that he entered treatment in April 2010, although he later claimed that he was "completely sober" at the time of the purchases. And defense counsel encouraged the jury to reject J.W.'s testimony as lacking credibility based on his potential bias, his substance abuse, and the gaps in his testimony. The jury nonetheless found J.W. to be a credible witness. We will not second-guess that determination.

Moreover, the record contains evidence that corroborates J.W.'s testimony. Police seized materials associated with the sale of cocaine from Cook's residence shortly after his arrest. They also recovered the money used for the third controlled buy from Cook when he was arrested shortly after that transaction. This evidence supports J.W.'s testimony that he purchased cocaine from Cook. We conclude that the record as a whole amply supports Cook's conviction.

Affirmed.