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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1433**

State of Minnesota,
Respondent,

vs.

Dominique A. Jefferson,
Appellant.

**Filed July 9, 2012
Reversed
Hudson, Judge**

Hennepin County District Court
File No. 27-CR-05-053947

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Anjali Shankar, Certified Student Attorney, Minneapolis, Minnesota (for respondent)

William M. Ward, Chief Fourth District Public Defender, Peter W. Gorman, Assistant Public Defender, Jerrod Montoya, Certified Student Attorney, Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from his conviction of fourth-degree assault, appellant argues that the state's five-year delay in pursuing the complaint filed against him deprived him of his right to a speedy trial. Because we conclude that appellant's speedy-trial right was violated due to the excessive delay caused by the state's negligence, we reverse.

FACTS

In September 2005, appellant was charged with fourth-degree assault, pursuant to Minn. Stat. §§ 609.2231, subd. 1, .101, subd. 2 (2004). The complaint alleged that in August 2005, appellant punched a Hennepin County Sheriff's Deputy in the face with a closed fist following his sentencing on a second-degree murder conviction. The complaint listed appellant's address as Minnesota Correctional Facility (MCF-Rush City). Three days after the complaint was filed, the Hennepin County Sheriff's Office notified MCF-Rush City that there was an active warrant for appellant and requested that the prison place a detainer on him for Hennepin County.

Nearly five years later, in August 2010, appellant appeared in Hennepin County District Court to testify in an unrelated matter. While he was in the county jail waiting to be returned to prison, the sheriff's office discovered that he had an active warrant from 2005. A few days later, appellant appeared before the district court for a first appearance on the fourth-degree assault charges. Appellant moved to dismiss the charges, arguing that his right to a speedy trial had been violated. The district court denied the motion.

Following a stipulated-facts trial in May 2011, the district court found appellant guilty of fourth-degree assault and sentenced him to 13 months in prison, to be served concurrently with his sentence imposed for the second-degree murder conviction. This appeal follows.

D E C I S I O N

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. This court reviews de novo whether a defendant's speedy-trial right has been violated. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009).

In determining whether a defendant's right to a speedy trial has been violated, Minnesota courts have adopted the four-factor balancing test identified in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972). *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977). The four factors are: "(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). "None of the factors is either a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (quotation omitted).

Length of the delay

The length of the delay is a “triggering mechanism.” *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192. It is not necessary to consider the other factors unless the delay “is presumptively prejudicial.” *Id.* The length of delay is measured “from the point at which the sixth amendment right attaches: when a formal indictment or information is issued against a person or when a person is arrested and held to answer a criminal charge.” *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). The Minnesota Supreme Court has concluded that a six-month delay is sufficient to trigger application of the other factors. *State v. Corarito*, 268 N.W.2d 79, 80 (Minn. 1978). Here, the state filed a complaint against appellant in September 2005. The state took no action on the complaint, however, until August 2010, and appellant’s stipulated-facts trial was not held until May 2011. This more than five-year delay creates a presumption that appellant’s speedy-trial right was violated and triggers this court’s review of the other three factors. *See Barker*, 407 U.S. at 533, 92 S. Ct. at 2193–94 (stating that the five-year delay between the defendant’s arrest and trial “was extraordinary”).

Reason for the delay

“A defendant has no duty to bring himself to trial.” *Id.* at 527, 92 S. Ct. at 2190. Instead, the state has the primary burden of ensuring a speedy trial. *Windish*, 590 N.W.2d at 316. Different reasons for delays in trying a case are given different weights. *State v. Brooke*, 381 N.W.2d 885, 888 (Minn. App. 1986). The state’s deliberate attempts to delay a trial are weighed heavily against it. *Id.* “Delays caused by negligence or

overcrowded courts are also weighed against the State, but less heavily, because the State is ultimately responsible for such circumstances.” *Id.*

Here, it is undisputed that the state did not begin prosecuting the complaint against appellant for almost five years after it filed the complaint. The fact that the state listed appellant’s address on the complaint as MCF-Rush City indicates that the state knew appellant’s location. *Cf. State v. Sistrunk*, 429 N.W.2d 280 (Minn. App. 1988) (concluding that the defendant’s speedy-trial right was violated when the state did not attempt to locate the defendant for 12 years after filing the complaint), *review denied* (Minn. Nov. 23, 1988). In addition, the facts alleged in the complaint establish that the state knew appellant would remain in that location for a significant period of time because he was serving a 420-month prison sentence. Even with this knowledge, the only reason the proceedings were finally initiated five years after the complaint was filed was that the sheriff’s office inadvertently discovered an active warrant. While the state did not deliberately delay the proceedings, this factor weighs heavily against the state because of its negligence in prosecuting the case.

Assertion of speedy-trial right

A defendant’s assertion of his speedy-trial right does not need to be formal or technical, but instead is determined by the circumstances. *Windish*, 590 N.W.2d at 317. A defendant’s assertion of his right to a speedy trial “is entitled to strong evidentiary weight.” *Barker*, 407 U.S. at 531, 92 S. Ct. at 2192. “[T]he frequency and force of a demand must be considered when weighing this factor and the strength of the demand is

likely to reflect the seriousness and extent of the prejudice which has resulted.” *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989).

Here, appellant concedes that he received notice of the charges against him and that he did not assert his speedy-trial right. But he argues that his failure to invoke his right to a speedy trial should be weighed less heavily against him because he was in prison and unrepresented by counsel when the complaint was filed. A defendant who fails to assert his speedy-trial right does not forever waive that right. *Barker*, 407 U.S. at 528, 92 S. Ct. at 2191. In *Barker*, the Supreme Court stated that a “defendant’s assertion of or failure to assert” his speedy-trial right should be considered to determine if a defendant was deprived of that right. *Id.* The Supreme Court further suggested that a court could “attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed.” *Id.* at 529, 92 S. Ct. at 2191. Thus, we conclude that while this factor weighs against appellant, it is not heavily weighed against him because he was in prison and unrepresented by counsel at the time the complaint was filed.

Prejudice caused by the delay

This court considers three factors to determine whether a defendant suffers prejudice as a result of a delay in receiving a trial: “(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired.” *Windish*, 590 N.W.2d at 318. The third factor is the most important. *Id.*

Appellant contends that the district court erred by concluding that he did not demonstrate that the delay prejudiced him because his arguments were based on speculation. We agree. “[A] defendant does not need to prove specific prejudice.” *Griffin*, 760 N.W.2d at 341. Instead, “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or . . . identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim . . . it is part of the mix of relevant facts, and its importance increases with the length of delay.” *Doggett v. United States*, 505 U.S. 647, 655-56, 112 S. Ct. 2686, 2693 (1992) (citation omitted). Here, appellant was not required to demonstrate specifically how he was prejudiced because the five-year delay was excessive and caused by the state’s negligence. Thus, we presume that appellant was prejudiced by the delay.

In sum, while appellant failed to assert his speedy-trial right, the state’s negligent failure to bring him to trial for over five years presumptively caused him to be prejudiced by the delay. Accordingly, we conclude that appellant’s right to a speedy trial was violated.

Reversed.