

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-511**

State of Minnesota,
Respondent,

vs.

Gregory Scott Morgart,
Appellant.

**Filed February 15, 2011
Affirmed
Peterson, Judge**

Aitkin County District Court
File No. 01-CR-07-1093

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

James Paul Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

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

Considered and decided by Shumaker, Presiding Judge; Peterson, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of criminal vehicular operation, appellant argues that (1) his right to a speedy trial was denied and, therefore, the interest of justice requires

reversal; and (2) his due-process right to receive exculpatory evidence was denied when the vehicle was destroyed before appellant had an opportunity to conduct an independent investigation, which precluded him from advancing his defense theory that someone else was driving. We affirm.

FACTS

In November 2007, appellant Gregory Scott Morgart was charged with two counts of criminal vehicular operation. Defense counsel twice requested continuances of the omnibus hearing, first, because counsel needed additional time to review materials with appellant and, second, because the Bureau of Criminal Apprehension (BCA) had not completed testing on blood samples taken from the vehicle. Both times, appellant personally waived his right to have an omnibus hearing within 28 days of demand.

At the omnibus hearing in March 2008, appellant moved to dismiss for lack of probable cause based on the state's failure to provide the victim's medical records. Defense counsel stated that he understood that the victim had been rendered a paraplegic but requested documentation substantiating that fact. The district court allowed the state 30 days to obtain the medical records and explained to appellant that the court would have 90 days after receiving the medical records to make a determination on probable cause. In June 2008, the district court issued an order finding probable cause and denying appellant's motion to dismiss.

A settlement conference and trial were scheduled for October 2008. At the settlement conference, defense counsel requested that the case be rescheduled for December because he anticipated that the trial would take more than the two days that

had been scheduled for October and because he was unlikely to be prepared for trial by October 13. The court continued the case and scheduled it for a settlement conference and trial in December 2008.

At the state's request, due to witness unavailability and the prosecutor's trial schedule, the settlement conference and trial were continued until May 2009. Appellant failed to appear for the May settlement conference, and the district court struck the case from the trial calendar. Appellant turned himself in, and the district court increased bail and continued the settlement conference and trial until July 2009. On May 18, 2009, appellant demanded a speedy trial because he was unable to post the additional bail.

In July 2009, defense counsel requested a continuance because he had failed to request that the BCA analysts testify in person at trial under Minn. Stat. § 634.15 (Supp. 2007). Appellant waived his right to a speedy trial but stated that he would re-assert it at a later date. The district court continued the case to the September trial calendar and scheduled a settlement conference for August. Appellant reasserted his speedy-trial demand on July 9, 2009, but he failed to appear for the August 21 settlement conference, and the district court struck the case from the trial calendar. After appellant turned himself in, the district court again increased bail and scheduled a settlement conference and trial for November 2009.

In November 2009, the case was tried to a jury. The only issue at trial was the driver's identity. The jury found appellant guilty on only one count. The district court sentenced appellant to 18 months and executed the sentence at appellant's request. This appeal followed.

DECISION

I.

Appellant concedes that he did not move the district court to expedite trial or dismiss the charges against him based on the violation of his right to a speedy trial and that generally an issue that was not raised before the district court is waived on appeal. But, citing *State v. Bradley*, 629 N.W.2d 462, 464 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001), appellant argues that the interest of justice requires review. “We may review constitutional issues for the first time on appeal when required in the interests of justice, when the parties have adequate briefing time, and when the issue is implied in the district court.” *Bradley*, 629 N.W.2d at 464.

The term “interest of justice” has been described as follows:

The phrase “in the interest of justice,” like the analogous one which occurs often in statutory enactments, “in the furtherance of justice,” has a broad meaning. It implies conditions which assist, or are in aid of or in the furtherance of, justice. Both call for the doing of things which bring about the type of justice which results when law is correctly applied and administered. They import the exercise of discretion which considers both the interests of the defendant and those of society.

United States v. Nat’l City Lines, 7 F.R.D. 393, 397 (S.D. Calif. 1947).

Appellant states, “This Court should consider appellant’s speedy trial issue in the interests of justice because there is no good reason why it took the state two years to bring appellant to trial.” This statement does not identify interests of either appellant or society that would be furthered by our reviewing the speedy-trial issue for the first time on appeal.

Appellant has also failed to show that review is needed to ensure the correct application and administration of justice to him. Many of the delays were attributable to appellant. The first two continuances were at defense counsel's request, and appellant personally waived his speedy-trial right both times. Although the next continuance was due to the state's failure to provide the victim's medical records, appellant knew that the victim had been rendered a paraplegic, and the parties stipulated at trial that the victim had suffered great bodily harm. Two late delays were due to appellant's failure to appear for settlement conferences.

Appellant argues that he was prejudiced by the delays because the vehicle was destroyed without him having the opportunity to examine it for exculpatory evidence. But appellant cites to no evidence in the record showing when or why the vehicle was destroyed or that the vehicle was in the state's possession.

Appellant also argues that he was prejudiced by witness P.G.'s memory problems. But those memory problems tended to favor appellant. In a statement to police, P.G. said that appellant had stated that appellant was the driver. But at trial, P.G. testified that appellant did not say who was driving.

Appellant could have presented to the district court each argument that he makes on appeal. The record demonstrates that appellant asserted his right to a speedy trial but did not move to dismiss based on a violation of the right. Because appellant has failed to show that it is in the interest of justice to disregard the general rule that failure to raise an issue before the district court waives the issue on appeal, we decline to address whether appellant's speedy-trial right was violated.

II.

“When constitutional issues involving due process are raised, this court reviews the [district] court’s legal conclusions de novo.” *State v. Heath*, 685 N.W.2d 48, 55 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). Reversible error is established if the state intentionally destroyed evidence that had an apparent exculpatory value before it was destroyed. *Id.* (citing *California v. Trombetta*, 467 U.S. 479, 488, 104 S. Ct. 2528, 2533-34 (1984) (addressing state’s affirmative duty to preserve evidence on behalf of criminal defendants)).

Appellant argues that the vehicle’s destruction deprived him of his due-process rights. As already discussed, appellant cites no evidence in the record that shows when or why the vehicle was destroyed or that the vehicle was ever in the state’s possession. The district court found that “the state didn’t have any culpability with regard to the destruction of the vehicle and any evidence therein.” Because the record does not show that the state was involved in the destruction of the vehicle, appellant’s due-process claim fails.

Affirmed.