This opinion is nonprecedential except as provided by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
A24-1018

State of Minnesota,
Respondent,

vs.

Decarieon Dupra Scurlock,
Appellant.

Filed May 19, 2025
Affirmed
Slieter, Judge

Sherburne County District Court
File No. 71-CR-22-420

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction of fourth-degree assault, appellant argues that he was deprived of a speedy trial when it was delayed for nine months after his demand, and that the state did not establish good cause for the delay due to witness

unavailability. Because there was good cause for the delay, and appellant did not suffer prejudice due to the delay, appellant was not deprived of his speedy-trial right. We therefore affirm.

FACTS

In December 2021, appellant Decarieon Dupra Scurlock was incarcerated at the Sherburne County jail. On December 18, officers attempted to move Scurlock to a new cell. Scurlock was noncompliant and physically resisted the transfer, injuring several officers in the process.

On March 29, 2022, respondent State of Minnesota charged Scurlock with five counts of fourth-degree assault on a peace officer in violation of Minn. Stat. § 609.2231, subd. 1 (2020). On August 24, Scurlock made his first appearance in court.

On April 28, 2023, Scurlock appeared for a pretrial hearing and demanded a speedy trial. Accommodating Scurlock's demand, the district court scheduled trial for June 12.

On June 1, the state filed a motion for a continuance of trial. The state explained that "[t]he reason for the request is that one of the victims in this matter is unavailable as [he is] deployed on military duty until December of 2023" and another victim "is unavailable . . . for medical reasons."

The district court held a hearing on the state's motion and determined that the witnesses were unavailable through no fault of the state and that any prejudice suffered by Scurlock due to the delay was minimal. The district court "f[ound] good cause to continue the matter" and granted the state's continuance motion. Because one of the witnesses

would be unavailable through December 2023, the district court scheduled Scurlock's trial for January 2024.

On January 23, 2024, Scurlock's case proceeded to a jury trial. The jury found Scurlock guilty of four counts of fourth-degree assault and not guilty of one count of fourth-degree assault. The district court later imposed 12 months and one day consecutive prison sentences for each count.

Scurlock appeals.

DECISION

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. In Minnesota, "trial is to commence within 60 days from the date of the demand unless good cause is shown . . . why the defendant should not be brought to trial within that period." *State v. Hahn*, 799 N.W.2d 25, 29-30 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Aug. 24, 2011); *see also* Minn. R. Crim. P. 11.09(b) (requiring trial within 60 days of demand "unless the court finds good cause for a later trial date"). "When a defendant's speedy trial right is violated, the only possible remedy is dismissal of the indictment." *State v. Jones*, 977 N.W.2d 177, 190 (Minn. 2022) (quotation omitted). Whether there is a violation of a criminal defendant's constitutional right to a speedy trial is subject to *de novo* review. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

Minnesota courts use a four-factor balancing test to determine whether a delay in a case violates a defendant's speedy-trial right. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). We must evaluate "(1) the length of the delay; (2) the reason for the delay;

(3) whether the defendant asserted his . . . right to a speedy trial; and (4) whether the delay prejudiced the defendant." *Id.* (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). "None of these factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quotation omitted); *see also State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021) (explaining that "the central question" is whether the state brought "the accused to trial quickly enough so as not to endanger the values that the right to a speedy trial protects").

A. Length of Delay

In Minnesota, delays beyond 60 days from the speedy-trial demand presumptively satisfy the first factor. *See Windish*, 590 N.W.2d at 315-16.

Scurlock demanded a speedy trial on April 28, 2023. His jury trial commenced in January 2024. The state concedes, and we agree, that Scurlock's trial began over 60 days from the date of the speedy-trial demand, triggering review of the remaining factors. *See State v. Johnson*, 811 N.W.2d 136, 144 (Minn. App. 2012) ("Under Minnesota law, a delay of more than 60 days from the date of the speedy-trial demand is presumptively prejudicial, triggering review of the remaining three factors."), *rev. denied* (Minn. Mar. 28, 2012). We therefore turn to the remaining factors.

B. Reason for Delay

Under the reason-for-the-delay factor, "the key question is whether the government or the criminal defendant is more to blame for th[e] delay." *Taylor*, 869 N.W.2d at 19

(quotation omitted). We first consider which party caused the delay. *See id.* at 19-20; *Osorio*, 891 N.W.2d at 629. We then evaluate the reason for that delay, assigning "different weights . . . to different reasons." *Taylor*, 869 N.W.2d at 20 (quoting *Barker*, 407 U.S. at 531). "For instance, a [d]eliberate delay to hamper the defense weighs heavily against the prosecution, while neutral reason[s] such as negligence or overcrowded courts weigh less heavily." *Id.* (quotation omitted).

The state sought to continue Scurlock's June 2023 trial due to witness unavailability, which delayed trial until January 2024. Thus, the state is more to blame for the delay.

"Normally, the unavailability of a witness constitutes good cause for delay. . . . However, a prosecutor must be diligent in attempting to make witnesses available . . . ." *Windish*, 590 N.W.2d at 317.

There were two unavailable witnesses. One of the witnesses was deployed on military duty until December 2023 and the other was unavailable due to medical reasons.

Scurlock argues that the state failed to establish good cause for delay, claiming that the officer on deployment was not a necessary witness. The officer on deployment was the victim corresponding with count three of the complaint. Scurlock provides no authority, and we are aware of none, demonstrating that a victim is not a necessary witness. Moreover, Scurlock did not raise this argument at the hearing on the state's continuance request. A party cannot "obtain review by raising the same issue litigated below but under a different theory." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (applying *Thiele* to a criminal case). Scurlock forfeited this argument by failing to raise it below.

The record demonstrates one of the victims was "on active military duty" and was unavailable for trial because he was deployed until December 2023. The state therefore established good cause for the delay because the witness on active military duty could not attend trial while he was deployed.[1]

C. Assertion of the Right

Under this factor, a defendant's assertion of the speedy-trial right "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32. We consider "the frequency and intensity of a defendant's assertion" as evidence of the seriousness and potential prejudice at play. *Hahn*, 799 N.W.2d at 32 (quoting *Windish*, 590 N.W.2d at 318); *see also State v. Paige*, 977 N.W.2d 829, 840 (Minn. 2022) ("[T]he strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." (quotation omitted)).

Scurlock made his first appearance on August 24, 2022. Eight months later, on April 28, 2023, Scurlock demanded a speedy trial at a pretrial hearing, which was his fourth hearing in this case. On June 8, 2023, he reasserted the demand by objecting to the state's continuance request.

D. Prejudice

We consider three interests when assessing prejudice: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit

[1] Because we conclude that the deployed witness established good cause for delaying trial until January 2024, we need not consider whether the witness on medical leave also established good cause for delay.

the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532; *see also Windish*, 590 N.W.2d at 318-19. The third interest is the "most serious," as "the inability of a defendant adequately to prepare his case skews the fairness of the entire system," *id.*, but a defendant need not prove that the delay actually impaired their defense to show prejudice, *see Mikell*, 960 N.W.2d at 254 (explaining that courts may consider speculative harm to defendant because "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify" (quotation omitted)). Under this factor, "the prejudice a defendant suffers must be due to the delay," *Osorio*, 891 N.W.2d at 631, and "must be more than minimal to weigh in favor of a defendant," *Paige*, 977 N.W.2d at 841.

Scurlock claims he suffered prejudice due to pretrial incarceration. But the record shows that he was already serving a sentence and would remain incarcerated until May 2024. *See Osorio*, 891 N.W.2d at 631 (noting that the prejudice suffered must be due to the delay). Still, Scurlock states that the delay prevented him from being able to take advantage of programing while awaiting trial, but he provides no evidence in support of the loss and no legal authority demonstrating that not being able to take advantage of programing amounts to prejudice in this context.

Scurlock claims that the delay caused anxiety and concern, claiming he "was left to wonder when or if his trial would ever happen." But he has not shown how this "stress, anxiety and inconvenience [is any different from that] experienced by anyone who is involved in a trial." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989) (accepting that

all criminal defendants experience stress and anxiety while awaiting trial); *see also Osorio*, 891 N.W.2d at 631 (noting that the prejudice suffered must be due to the delay).

Scurlock also claims that the delay "meant that evidence was lost and the witnesses' memories diminished more than if the trial had occurred closer in time to the incident." Scurlock points only to the state's evidence. He presents no argument demonstrating how the delay impaired his defense. *Barker*, 407 U.S. at 532; *see also Windish*, 590 N.W.2d at 318-19.

Scurlock therefore has not shown that he has been prejudiced due to the delay.

E. Balancing the Factors

The length of delay requires additional inquiry into the remaining *Barker* factors. Though trial occurred nine months after Scurlock's speedy-trial demand, the unavailability of a witness created good cause for the delay. And although Scurlock asserted his speedy-trial right, the record suggests that he did not suffer prejudice due to the delay. We therefore conclude that Scurlock was not deprived of his speedy-trial right.

Affirmed.