

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36215/36766

STATE OF IDAHO,)	2011 Unpublished Opinion No. 474
)	
Plaintiff-Respondent,)	Filed: May 13, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
MIGUEL CHARLES JOYNER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy Hansen, District Judge.

Order of dismissal, affirmed; judgments of conviction for felony attempted strangulation and felony domestic battery, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant. Diane M. Walker argued.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent. Kenneth K. Jorgensen argued.

GUTIERREZ, Judge

In this consolidated appeal, Miguel Charles Joyner appeals from the dismissal of charges as well as the subsequent judgment of conviction for felony attempted strangulation and felony domestic violence. Case No. 36215 pertains to the initial prosecution of the case that ended in dismissal of the charges against Joyner. Case No. 36766 involves the re-filed charges, which resulted in a guilty verdict and convictions.

I.

BACKGROUND

On July 26, 2008, the state filed a complaint against Joyner and ultimately charged him by information with the felony crimes of attempted strangulation, domestic violence, and violation of a no-contact order, and the misdemeanor crimes of intentional destruction of a

telecommunication instrument and providing false information to a law enforcement officer. The state also alleged Joyner to be a persistent violator.

The district court scheduled trial to begin on January 26, 2009. A pretrial conference was held on January 16, 2009, in which both parties informed the district court that they were ready to proceed with trial, and defense counsel announced its intention to file a motion to dismiss the felony charge of violation of a no-contact order. The state requested that the trial be continued so the parties would have adequate time to properly address the motion to dismiss. However, the district court declined to continue the trial in the absence of Joyner waiving his right to a speedy trial.

On January 22, 2009, four days before trial was scheduled to begin, Joyner filed a motion to dismiss the felony charge of violation of a no-contact order. Joyner asserted that the charge should be dismissed because the no-contact order failed to meet the requirements in Idaho Criminal Rule 46.2 by providing notice of only the misdemeanor penalties, and not the felony penalties, for its violation. Joyner argued that as a result, the district court lacked subject matter jurisdiction over the felony offense. The next day, the state filed a motion to dismiss on the basis that the defense had presented a legal issue that was one of first impression and needed to be fully briefed and argued before proceeding with the trial. The state also gave notice of its intent to re-file the felony charges, but not the misdemeanor charges. The district judge dismissed the case pursuant to the state's request. Joyner filed a notice of appeal from the order of dismissal.

On January 27, 2009, the state re-filed the felony charges of attempted strangulation, domestic violence, and violation of a no-contact order, and added a second felony charge of domestic violence by amended complaint. Upon the case being bound over to the district court, the state re-filed the persistent violator allegation and a jury trial was set for June 1, 2009.

Joyner subsequently filed a motion to dismiss in which he alleged that his speedy trial rights had been violated because the state lacked good cause to delay his trial. In addition, Joyner argued that the felony charge of violation of a no-contact order was inappropriate and the state had no basis to obtain a conviction on the offense because it would violate double jeopardy. The state ultimately conceded that the prosecution of that offense would violate double jeopardy and the district court dismissed the charge prior to trial. However, the district court denied Joyner's motion to dismiss the case based on a speedy trial violation. The case proceeded to jury trial where Joyner sought a motion for mistrial after two potential jurors allegedly contaminated

the jury panel during voir dire. The district court denied Joyner's motion for mistrial and the jury found Joyner guilty of felony attempted strangulation and one count of felony domestic violence, but not the second charge of felony domestic violence. The jury also found Joyner to be a persistent violator. The district court subsequently entered judgment. Joyner appeals the judgments of conviction.

II. DISCUSSION

In Case No. 36215, Joyner challenges the dismissal of the case based on the district court's failure to provide notice, failure to conduct a hearing, and failure to identify its reasoning for dismissing the case. In Case No. 36766, Joyner challenges the district court's denial of his motion to dismiss based on the violation of his speedy trial rights, and the district court's denial of his motion for mistrial based on statements made by potential jurors during voir dire.

A. Dismissal of Case No. 36215

Joyner asserts that the district court erred when it failed to provide notice for the dismissal, failed to conduct a hearing under Idaho Criminal Rule 48(a) to determine whether the state's motion to dismiss should be granted with or without prejudice, and failed to identify its reasoning for dismissing the case. Ultimately, what Joyner argues is that there was no basis under Idaho Code § 19-3504 or I.C.R. 48 for dismissal. Idaho Code § 19-3504 and I.C.R. 48 both provide that it is within the district court's discretion to dismiss a criminal action on the state's motion in certain circumstances. Idaho Code § 19-3504 provides that the court may dismiss a criminal action if it determines it is in the "furtherance of justice." Similarly, Rule 48 provides that the district court may dismiss a criminal action if the court determines that the dismissal will "serve the ends of justice and the effective administration of the court's business." I.C.R. 48(a)(2). Furthermore, "[a]n order for dismissal of a criminal action is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony." I.C.R. 48(c); *see also* I.C. § 19-3506. After reviewing the record, we conclude that there was good cause to dismiss the case. Four days before trial was set to begin and after both sides had indicated that they were ready to proceed with the trial, Joyner filed a motion to dismiss the felony charge of violation of a no-contact order. The state requested that the trial be continued in order to have adequate time to properly address the motion to dismiss. However, Joyner objected and the district court denied the request for continuance in light of Joyner's

assertion of his speedy trial rights. In response, the state filed a motion to dismiss, which the district court granted. The district court agreed that the issue raised in Joyner's motion to dismiss needed to be fully briefed and argued before proceeding with trial because it involved an issue of first impression with potential implications not only for this case, but others as well. Based on the record, we are not persuaded by Joyner's attempt to characterize the district court's denial of the state's motion to continue as equating to a finding of a lack of good cause. Taking into account the timing of Joyner's motion to dismiss, the substantive issues raised, and the nature of the interrelated domestic violence charges, dismissal served the ends of justice and the effective administration of the court's business. Dismissal of Case No. 36215 was therefore not in error.¹

B. Violation of Speedy Trial Rights

With regard to Case No. 36766, Joyner first challenges the denial of his motion to dismiss. Joyner asserts that his statutory and constitutional rights to a speedy trial were violated when the state dismissed the charges against him without good cause and then immediately re-filed them in order to circumvent his speedy trial rights.² Since it is a stricter standard, we will address the statutory speedy trial issue. *State v. McKeeth*, 136 Idaho 619, 626, 38 P.3d 1275, 1282 (Ct. App. 2001) (noting that under I.C. § 19-3501, criminal defendants are given *additional* protection in regard to speedy trial requirements, beyond what is required by the United States and Idaho Constitutions). Idaho Code Section 19-3501 provides as follows:

The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

....

(2) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date the information is filed with the court;

¹ Joyner's claimed procedural errors are without merit as the state's motion was placed in inter-office mail. The court was not required to conduct a hearing under the circumstances and the court's reasoning is apparent. Even if the court erred procedurally since good cause existed to dismiss, Joyner's substantive rights were not altered. I.C.R. 52.

² Both the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho Constitution guarantee to criminal defendants the right to a speedy trial. *State v. Lopez*, 144 Idaho 349, 352, 160 P.3d 1284, 1287 (Ct. App. 2007). Joyner argues that the constitutional violation of his speedy trial rights amounts to the state failing to show good cause under Idaho's statutory speedy trial rights.

....

(4) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Whether there was an infringement of a defendant's right to speedy trial presents a mixed question of law and fact. *State v. Clark*, 135 Idaho 255, 257, 16 P.3d 931, 933 (2000). While we defer to the trial court's findings of fact if supported by substantial and competent evidence, we exercise free review of the trial court's conclusions of law. *Id.* When a defendant who invokes his statutory speedy trial rights is not brought to trial within six months and shows that trial was not postponed at his request, the burden then shifts to the state to demonstrate good cause for the court to decline to dismiss an action. *State v. Rodriguez-Perez*, 129 Idaho 29, 38, 921 P.2d 206, 215 (Ct. App. 1996). "Good cause" means that there was a substantial reason for the delay that rises to the level of a legal excuse. *State v. Young*, 136 Idaho 113, 116, 29 P.3d 949, 952 (2001); *Clark*, 135 Idaho at 260, 16 P.3d at 936. Analysis of whether there was good cause for a statutory speedy trial violation is not simply a determination of who was responsible for the delay and how long the case has been pending. *Young*, 136 Idaho at 116, 29 P.3d at 952. Rather, the analysis should focus upon the reason for the delay. *Id.* But the reason for the delay cannot be evaluated entirely in a vacuum and a good cause determination may take into account the additional factors listed in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). *See Clark*, 135 Idaho at 260, 16 P.3d at 936. Thus, insofar as they bear on the sufficiency or strength of the reason for the delay, a court may consider (1) the length of the delay; (2) whether the defendant asserted the right to a speedy trial; and (3) the prejudice to the defendant. However, the reason for the delay lies at the heart of a good cause determination under I.C. § 19-3501. *See Clark*, 135 Idaho at 260, 16 P.3d at 936.

The ultimate question of whether legal excuse has been shown is a matter for judicial determination upon the facts and circumstances of each case. A trial judge does not have unbridled discretion to find good cause, however, and on appeal we will independently review the lower court's exercise of discretion. *Id.* We first examine the reason for the delay and then address the remaining *Barker* factors as they apply in this case.

1. Reason for delay

In evaluating the reason for the delay, different weights are assigned to different reasons. *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986); *State v. Davis*, 141 Idaho 828, 837, 118

P.3d 160, 169 (Ct. App. 2005). Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. *Doggett v. United States*, 505 U.S. 647, 656 (1992); *Davis*, 141 Idaho at 837, 118 P.3d at 169. We attach great weight to considerations such as the state's need for time to collect witnesses, *oppose pretrial motions*, or locate the defendant in the event that he or she goes into hiding. *Id.* (emphasis added). A valid reason, such as a missing witness, should serve to justify appropriate delay. *Barker*, 407 U.S. at 531.

A deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the state. *Barker*, 407 U.S. at 531; *Davis*, 141 Idaho at 837, 118 P.3d at 169. A more neutral reason, such as negligence or overcrowded courts, should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the state rather than with the defendant. *Barker*, 407 U.S. at 531; *Davis*, 141 Idaho at 837, 118 P.3d at 169; *State v. Wavrick*, 123 Idaho 83, 89, 844 P.2d 712, 718 (Ct. App. 1992). While not compelling relief in every case where a bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him or her. *Doggett*, 505 U.S. at 657; *Davis*, 141 Idaho at 837-38, 118 P.3d at 169-70. Although negligence is weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution. *Davis*, 141 Idaho at 838, 118 P.3d at 170.

When discussing the reason for the delay, the district court stated:

Dealing with a last minute pretrial motion may be legitimate grounds for delay. Here, the defendant failed to offer any proof that the State dismissed and then re-filed the charges in bad faith or in a deliberate effort to hamper the defense. The defense requests the Court to draw that inference, but the Court declines to do so. The State was faced with an important motion three working days before trial. The motion to dismiss one count of the Information presented a novel legal issue with potential implications well beyond the bounds of a single case. The State was rebuffed in its request for a continuance to afford the State a sufficient opportunity to meet the motion. The defendant suggests the State could have moved to sever the single count that was subject to the motion and continue the trial as to the balance. The charges arose from the same circumstances as the other counts. The State made the decision to dismiss and start over rather than split its case into two trials. This Court is not going to second guess that decision. This factor weighs in favor of the State.

As the record indicates, the reason for the delay arose after Joyner filed a motion to dismiss the felony charge of violation of a no-contact order four days before trial. In his motion to dismiss, Joyner argued that the charge should be dismissed because the no-contact order failed to meet the requirements in Idaho Criminal Rule 46.2 by providing notice of only the misdemeanor penalties, and not the felony penalties, for its violation. He argued that since the no-contact order did not comply with I.C.R. 46.2, the district court lacked subject matter jurisdiction over the felony offense. The state sought continuance of the trial to fully brief and argue the issues raised in Joyner's motion to dismiss. The district court determined that the motion the defense had filed was important and that it presented a novel legal issue with potential implications not only for this case, but others as well. On appeal, Joyner seems to minimize the importance of his motion to dismiss the charge of violation of a no-contact order by stating that he filed the motion merely to support his request to limit the jury instruction to the elements of a misdemeanor violation instead of a felony. We conclude that in this case, the state's need for additional time to oppose Joyner's pretrial motion weighs heavily in favor of the state.

2. Length of delay

Because of the imprecision of the right to a speedy trial, the length of delay that will provoke an inquiry into whether those rights have been violated is necessarily dependent upon the peculiar circumstances of the case. *Barker*, 407 U.S. at 530-31. The nature of the case is also of import in determining the period of delay that can be tolerated, for the period that is reasonable for prosecution of an ordinary street crime is considerably less than for a complex conspiracy charge. *Id.* at 531; *State v. Lopez*, 144 Idaho 349, 353, 160 P.3d 1284, 1288 (Ct. App. 2007); *Davis*, 141 Idaho at 837, 118 P.3d at 169; *State v. McNew*, 131 Idaho 268, 272, 954 P.2d 686, 690 (Ct. App. 1998). "Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year." *Doggett*, 505 U.S. at 652 n.1.

After the first case was dismissed and the state re-filed the felony charges against Joyner, a new trial was set for June 1, 2009. Joyner argues that the dismissal and immediate re-filing must be treated as a continuation of the original filing, meaning the six-month requirement of Idaho Code § 19-3501 did not start anew upon the re-filing of the charges. Even assuming the time did not start over upon the re-filing of the charges, there is still only a delay of less than

eleven months here. Moreover, the fact that this case involved four interrelated felonies and a persistent violator charge all concerning domestic violence made the nature of this case more complex and less similar to an ordinary street crime. Therefore, this factor weighs in favor of the state.

3. Assertion of speedy trial rights

In the context of a constitutional speedy trial analysis, the assertion of the right to a speedy trial by the defendant weighs heavily in determining if the defendant was deprived of that right. *Barker*, 407 U.S. at 531-32. Nevertheless, a defendant may not take actions that require delay and then assert the speedy trial right as a “sword.” *State v. Livas*, 147 Idaho 547, 550, 211 P.3d 792, 795 (Ct. App. 2009). In regard to this factor, the district court determined that Joyner had clearly not acquiesced in the delay and has “unwaveringly insisted on his right to a speedy trial.” The district court’s emphasis on Joyner’s insistence compels this Court to weigh this factor in favor of Joyner. However, his filing of a motion just before trial and insistence of his speedy trial rights may be seen as inconsistent.

4. Prejudice

Prejudice is to be assessed in light of the interests that the right to a speedy trial is designed to protect: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *Barker*, 407 U.S. at 532; *Young*, 136 Idaho at 118, 29 P.3d at 954. The third of these is the most significant because a hindrance to adequate preparation to the defense “skews the fairness of the entire system.” *Barker*, 407 U.S. at 532.

On appeal, in addition to pretrial incarceration and anxiety, Joyner argues that a change of attorney and the state’s filing of an additional charge of felony domestic violence also prejudiced him. However, the fact that Joyner got a new attorney does not mean that it hindered his defense in any way, especially in light of the fact that the trial was scheduled for June 1, 2009. In addition, Joyner was afforded a probable cause hearing upon re-filing of the charges which addressed the second domestic violence charge. These claims are insufficient to establish prejudice. Moreover, on appeal Joyner does not assert, nor is there any evidence in the record, that the delay impaired his defense. This factor weighs in favor of the state.

5. Balancing

Under I.C. § 19-3501, the state bears the burden of establishing that there existed a substantial reason for the delay that rises to the level of a legal excuse. Weighing in favor of Joyner is the fact that he asserted his right to a speedy trial early on and continued to insist on that right throughout the entirety of the trial. However, the most important consideration is the reason for the delay and we conclude from the record that Joyner was the cause of most of the delay. Although Joyner argues that the state caused the delay by dismissing the case, the state did so upon Joyner's late filing of a pretrial motion to dismiss one of the felony charges. The state ultimately requested dismissal of the case after having failed to negotiate a continuance, and also after having its motion for continuance denied. Under these circumstances, great weight is assigned to the fact that the state needed more time to oppose Joyner's pretrial motion. Moreover, the length of the delay, although nearing eleven months, is not presumptively prejudicial when considering the nature of the charges. Further weighing against Joyner is the fact that he has failed to establish that he was prejudiced or impaired in his defense. After balancing the factors, we conclude that the state established that there was a substantial reason for the delay that rose to the level of a legal excuse. Accordingly, the district court did not err in denying Joyner's motion to dismiss on speedy trial grounds.

C. Motion for Mistrial

Joyner asserts that the district court deprived him of a fair trial when it denied his motion for mistrial after two jurors allegedly contaminated the jury panel during voir dire. In criminal cases, motions for mistrial are governed by I.C.R. 29.1. A "mistrial may be declared upon motion of the defendant, when there occurs during the trial an error or legal defect in the proceedings or conduct inside or outside the courtroom, which is prejudicial to the defendant and deprives the defendant of a fair trial." I.C.R. 29.1(a). Our standard for reviewing a district court's denial of a motion for mistrial is well established:

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a

mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Urquhart, 105 Idaho 92, 95, 665 P.3d 1102, 1105 (Ct. App. 1983). Error is not reversible if this Court can conclude beyond a reasonable doubt that the verdict would have been the same if the error had not occurred. *State v. Field*, 144 Idaho 559, 572, 165 P.3d 273, 286 (2007). The purpose of voir dire is to determine which potential jurors are not qualified to sit as jurors, and statements made by potential jurors during voir dire do not entitle the defendant to a mistrial unless there is a continuing impact on the trial. *State v. Laymon*, 140 Idaho 768, 771, 101 P.3d 712, 715 (Ct. App. 2004).

Joyner argues that his right to an unbiased jury was violated based upon the fact that during voir dire, one prospective juror revealed, “I’m a pre-sentence investigator for the Department of Correction, and I also used to supervise Mr. Joyner.” Shortly thereafter, another prospective juror revealed that he had prior experience in law enforcement, had been involved in domestic violence situations, and could not be a fair juror because he believed that there had been “priors” and that he would believe police officers over other witnesses. In effect, Joyner argues that the jury pool was irreparably tainted where all of the prospective jurors were informed that he had a prior criminal history, had been on probation, and had been supervised by the Department of Correction. Joyner did not raise any objections during voir dire with regard to these prospective jurors’ statements, but at a recess moved for a mistrial based on the statements made by the two prospective jurors. The district court denied Joyner’s motion for mistrial, but excused the two jurors.

In support of its argument that Joyner has failed to show error in the denial of his motion for mistrial, the state cites to *People v. Mersman*, 148 P.3d 199 (Colo. Ct. App. 2006). In that case, a potential juror stated during voir dire that she was familiar with the only defense witness because her brother knew him “through the drug scene.” In ruling on the defendant’s motion for mistrial, the court noted that there are three remedies when a potential juror has made a possibly prejudicial statement during voir dire: mistrial, which should be the remedy only when others are insufficient, curative instructions, or jury canvassing. The court concluded that because the defendant did not request a curative instruction or further inquiry of other potential jurors about the effect the statement might have had, and because there was no reason to believe the lesser remedies would not have been effective, she failed to show error. *Id.* at 203-04.

Similarly here, the error was harmless when viewed in the context of the full record. First and foremost, Joyner never established to what extent the other potential jurors heard or considered the statements. *See State v. Slater*, 136 Idaho 293, 301-02, 32 P.3d 685, 693-94 (Ct. App. 2001) (holding that the district court did not err in denying the defendant's motion for mistrial because the defendant failed to show that any juror saw him dressed in jail garb, let alone that he was actually prejudiced as a result); *State v. Wachholtz*, 131 Idaho 74, 76-77, 952 P.2d 396, 398-99 (Ct. App. 1998) (holding that there was no error in the denial of a motion for mistrial because the defense provided no evidence that any juror was aware of an incident, much less prejudiced by it, where the stun belt that the defendant was wearing accidentally activated in the courthouse library and caused the defendant to scream while the jurors were in the courtroom before voir dire). Next, Joyner did not inquire further about the effect the statements may have had on the other potential jurors. Finally, Joyner did not request a curative instruction. Based on the full record, we are confident beyond a reasonable doubt that the jury would have reached the same verdict even in the absence of the two prospective jurors' statements because Joyner failed to demonstrate that the statements had any continuing impact on the trial.

III.

CONCLUSION

In regard to Case No. 36215, we conclude that the district court did not err in dismissing the case because good cause existed for the dismissal. In regard to Case No. 36766, we conclude that the district court did not err in denying Joyner's motion to dismiss on speedy trial grounds or in denying Joyner's motion for mistrial. Accordingly, we affirm.

Chief Judge GRATTON and Judge MELANSON **CONCUR.**