A19-0732

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Roosevelt Mikell,

Appellant.

APPELLANT'S BRIEF

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STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

v. **APPELLANT'S BRIEF**

Roosevelt Mikell,

Appellant.

PROCEDURAL HISTORY

1. August 15, 2017: Date of alleged offenses.

2. August 18, 2017: Complaint filed in Hennepin County District Court File 27-CR-17-20553 charging appellant Roosevelt Mikell with two counts of violating a domestic-abuse no contact order (Minn. Stat. § 629.75.2(d)(1)) and two counts of third-degree tampering with a witness (Minn. Stat. § 609.498.2a(a)(1)).

3. August 21, 2017: First appearance before the Honorable Lyonel Norris; Mikell demanded speedy trial.

4. October 5, 2017: Hearing before the Honorable Fred Karasov; Mikell repeated his demand for speedy trial.

5. November 7, 2017: Mikell's request for final disposition under the Uniform Mandatory Disposition of Detainers Act (UMMDA) filed in district court and received by the state.

6. November 13, 2017: State dismissed the charges.

7. September 14, 2018: Court of Appeals filed an Order Opinion reversing Mikell's conviction for domestic assault in Hennepin County District Court File No. 27-CR-17-13791, Appellate File No. A18-0028, and remanding for a new trial.

8. October 25, 2018: State e-filed a complaint in File No. 27-CR-18-26380, charging Mikell with two counts of violating a domestic-abuse no-contact order for the same alleged conduct on August 15, 2017, that were charged in File No. 27-CR-17-20553 and dismissed by the state on November 13, 2017.

9. November 2, 2018: Mikell moved to dismiss the complaint.

10. November 5, 2018: Omnibus hearing before the Honorable Fred Karasov. Mikell's motion to dismiss the complaint denied.

11. January 12, 2019: Mikell filed pro se appeal/motion to dismiss in district court.

12. January 14, 2019: Mikell waived his jury trial rights and had a stipulated facts trial before Judge Karasov pursuant to Minn. R. Crim. P. 26.01, subd. 4.

13. January 18, 2019: Judge Karasov filed Findings of Fact, Conclusions of Law, and Verdict in Stipulated Facts Trial finding Mikell guilty of both counts.

14. February 11, 2019: Sentencing hearing; Judge Karasov sentenced Mikell to 30 months in prison for each count, to be served concurrently, with 545 days of jail credit.

15. May 13, 2019: Notice of Appeal filed with the clerk of appellate courts.

16. May 26, 2020: Decision filed by the Court of Appeals affirming Mikell's convictions.

17. August 25, 2020: This Court granted Mikell's Petition for Review.

LEGAL ISSUES

1. Did the state violate Mikell's speedy trial rights under the Uniform Mandatory Disposition of Detainers Act where, after Mikell filed his request for speedy disposition the state dismissed the complaint, and then filed a second complaint lodging the same charges eleven months later when Mikell's conviction in a different case was reversed on appeal and he rejected the state's plea offer on that offense?

The district court denied Mikell's motion to dismiss the complaint. (O.H. 10-17).[1] The Court of Appeals affirmed. *State v. Mikell*, 2020 WL 2703709 (Minn. App. May 26, 2020), *rev. granted* August 25, 2020.

Apposite Authority:

Minn. Stat. § 629.292
In re State v. Wilson, 632 N.W.2d 225 (Minn. 2001)
United States v. Mauro, 436 U.S. 340 (1978)

2. Did the state violate Mikell's state and federal constitutional right to a speedy trial where the state dismissed the charges after Mikell demanded a speedy trial and filed a request for final disposition under the UMDDA, and then re-charged Mikell eleven months later, resulting in Mikell's trial occurring 17 months after he was charged?

The district court denied Mikell's motion to dismiss the complaint. (O.H. 10-17). The Court of Appeals affirmed. *State v. Mikell*, 2020 WL 2703709 (Minn. App. May 26, 2020), *rev. granted* August 25, 2020.

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[1] "O.H." refers to the transcript of the Contested Omnibus hearing on November 5, 2018

Apposite Authority:

U.S. Const. amends. VI, XIV;
Minn. Const. art.1, § 6
Barker v. Wingo, 407 U.S. 514 (1972)
State v. Windish, 590 N.W.2d 311 (Minn. 1999)

3. Did the district court abuse its discretion by not dismissing the complaint under Minn. R. Crim. P. 30.02 based on the excessive and unreasonable delay in bringing Mikell to trial?

The district court denied Mikell's motion to dismiss the complaint. (O.H. 10-17). The Court of Appeals affirmed. *State v. Mikell*, 2020 WL 2703709 (Minn. App. May 26, 2020), *rev. granted* August 25, 2020.

Apposite Authority:

Minn. R. Crim. P. 30.02
State v. Olson, 884 N.W.2d 395 (Minn. 2016)

STATEMENT OF THE CASE

Appellant, Roosevelt Mikell was initially charged by complaint in Hennepin County District Court File No. 27-CR-17-20553 with two counts of felony violation of a domestic abuse no-contact order (DANCO) (Minn. Stat. § 629.75.2(d)(1)) and two counts of third-degree tampering with a witness (Minn. Stat. § 609.498.2a(a)(1)). He immediately requested a speedy trial. While imprisoned on a domestic-assault conviction, Mikell filed a request for final disposition under the Uniform Mandatory Disposition of Detainers Act (UMDDA). The state dismissed the complaint in November 2017.

In October 2018, after Mikell's domestic-assault conviction was reversed on appeal and remanded for a new trial, and Mikell refused the state's plea offer, the prosecutor filed a second complaint charging the felony DANCO violations that the state had previously dismissed. The new case was assigned File No. 27-CR-18-26380.

Mikell moved to dismiss the new complaint because of the undue delay in bringing the case to trial in violation of the UMDDA, his constitutional right to a speedy trial, and under Minn. R. Crim. P. 30.02. After a contested hearing, the Honorable Fred Karasov denied the motion. Mikell proceeded to trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve these dispositive issues for appeal. Judge Karasov found him guilty of the DANCO violations. Mikell was subsequently sentenced to 30 months on both counts, to be served concurrently.

On appeal, the court of appeals affirmed the district court's order denying Mikell's motion to dismiss the complaint for the recharged DANCO violations. This Court granted review.

STATEMENT OF FACTS

In 2017, Roosevelt Mikell was charged with a felony domestic assault (File No. 27-CR-17-13791), and a DANCO had been filed prohibiting Mikell from having any direct or indirect contact with the alleged victim, J.L. (Findings #1-3).[2] J.L. and Mikell had been in a long-term romantic relationship. *Id.* #4. On August 15, 2017, Mikell was in the Hennepin County Public Safety Facility awaiting trial in that case. *Id.* #5. Two phone calls were made to J.L. by another inmate and an outside third party. *Id.* #7. In both calls, once J.L. answered the phone, the inmate handed the phone to Mikell who then tried to communicate with J.L. *Id.* #7-14. For this conduct, the state charged Mikell on August 18, 2017, with two counts of felony DANCO violations and two counts of third-degree witness tampering. *Id.* #15; *see also* Complaint, Index #1, in File No. 27-CR-17-20553.[3]

At the first appearance for the DANCO violations on August 21, 2017, Mikell entered not guilty pleas and demanded a speedy trial. Index # 4 in File No. 27-CR-17-20553; (O.H. 3). That same day, Mikell's trial on the domestic assault began, and he was subsequently convicted of that offense and sentenced to 60 months in prison. (O.H. 11, 13); *see also* D.Ct. File No. 27-CR-17-13791; Appellate File No. A18-0028.

On October 5, 2017, Mikell appeared on the DANCO charges and made another speedy-trial demand. A trial date was set for November 13, 2017. *See* Index #10 in File

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[2] "Findings" refers to the Findings of Fact, Conclusions of Law, and Verdict of Guilty based on Stipulated Facts filed on January 18, 2019.

[3] A copy of the Register of Actions in File No. 27-CR-17-20553 in included in the Addendum, A6-A8.

27-CR-17-20553; Motion to Dismiss: Index #12, p. 2. Mikell, who was incarcerated on the assault conviction, had a detainer placed on him for the untried DANCO violations. Index #22 in Addendum, A13.[4] For a third time, on October 27, 2017, Mikell demanded a speedy trial by requesting final disposition of the charges under the Uniform Mandatory Disposition of Detainers Act (UMDDA). *Id.* at A14; Index #12, p. 2. The state received the notice of the request on November 7, 2017. Index #22, A13-14; (O.H. 3). When Mikell appeared for trial on November 13, 2017, the state dismissed all charges in the interests of justice. Findings # 16, Index #22, A12. The state decided not to pursue them because Mikell was serving a 60-month prison term on the domestic assault conviction (O.H. 8).

The court of appeals later reversed the domestic-assault conviction (File No. 27-CR-17-13791) and remanded for a new trial. *See State v. Mikell*, Order Opinion A18-0028, filed September 14, 2018; (O.H. 8). Mikell returned to district court on October 19, 2018. At that time, the state made him an offer to plead to the assault charge with an upward departure sentence of 48 months and the state would not re-charge the DANCO violations that were dismissed in November 2017. *See* Motion to Dismiss, Index #12 at 2; (O.H. 8-9). Mikell declined the offer. *Id.* The state then filed a complaint on October 25, 2018, alleging the two DANCO violations from 2017 under a new file number. *See*

[4] A copy of the Detainer forms and Dismissal by Prosecuting Attorney are in the Addendum, A12-A15.

Complaint, Index #1. The state acknowledges that these are the same charges dismissed after Mikell's UMDDA request. (O.H. 9).

On November 2, 2018, Mikell filed a motion to dismiss the complaint based on the state violating his speedy-trial rights under the UMDDA and the Sixth Amendment of the United States Constitution and Article 1, section 6 of the Minnesota Constitution. Index #12. Mikell also sought dismissal pursuant to Minn. R. Crim. P. 30.02 where the prosecutor has unnecessarily delayed bringing Mikell to trial. *Id.* A contested hearing was held on November 5, 2018. In addition to the presentation by counsel for both the defense and the state, Mikell questioned the fairness of the situation. (O.H. 20). He did not understand how he was now facing three charges when he only had one when he returned to court after the reversal and remand (O.H. 21). Mikell didn't know the DANCO violations were dismissed as part of the whole situation; he thought they were dismissed because his speedy-trial time had passed. (O.H. 22). He told the court that he was tired of playing this out and didn't understand how this happened (O.H. 23-24). At the end of the hearing, Judge Karasov denied the dismissal motion from the bench. (O.H. at 10-17).

Mikell appeared before the district court on November 13, 2018, for the re-trial on the domestic assault case. Both parties requested a continuance. (11/13/18 Hearing at 4, 8). With regard to the re-charged DANCO violations, Mikell again expressed his concern about the fairness of the proceeding. *Id.* at 5-6. He also filed a pro se appeal with the court asking again for dismissal of the charges for violation of his speedy-trial rights. Index # 16.

Mikell's trial commenced on the DANCO violations on January 14, 2019. This was about 17 months, or 515 days from the date he was first charged. The parties agreed to a stipulated facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, to preserve the issue of the district court's denial of Mikell's motion to dismiss the complaint. (T. 19-21).[5] The district court subsequently found Mikell guilty of the two felony DANCO violations. *See* Index #23: Findings of Fact, Conclusions of Law and Verdict based on Stipulated Facts Trial.[6] Mikell was then sentenced to two concurrent 30-month sentences. (S.T. 3).[7]

[5] "T." refers to the transcript of the Stipulated Facts Trial on January 14, 2019, before Judge Karasov.

[6] The state also dismissed the felony domestic assault charges in File No. 27-CR-17-13791 (T. 2).

[7] "S.T." refers to the transcript of the sentencing hearing held on February 11, 2019.

ARGUMENT

I. Mikell's convictions must be vacated because the state violated his speedy-trial rights under the Uniform Mandatory Disposition of Detainers Act.

In a different case, the state charged Mikell with the identical DANCO violations lodged here. Mikell signed a UMDDA request for final disposition or dismissal of those charges, which was filed the week before his trial was to begin. The state did not proceed to try him within six months of that request. Nor did it ask for a continuance. Instead, because it was satisfied with the long prison sentence Mikell received on a different conviction, the state dismissed the charges.

Under the UMDDA's plain language and settled precedent, this was a dismissal with prejudice. The state was not permitted to recharge Mikell with identical offenses, try him, and convict him over 14 months after his UMDDA request. Because doing so violated the UMDAA's 6-month time limit, the district court lacked jurisdiction to hear the case and was required to dismiss. The court of appeals erred by affirming the lower court's denial of dismissal, and Mikell's convictions must be vacated.

A. This Court reviews the construction of the UMDDA de novo.

Whether a district court retains jurisdiction and the interpretation of the UMDAA is a legal question, which this Court reviews *de novo*. *See In re State v. Wilson*, 632 N.W.2d 225, 229 (Minn. 2001). Reviewing courts strictly construe criminal statutes in deference to legislative bodies. *See generally Marinello v. United States*, 1138 S.Ct. 1101, 1106 (2018) (quoting *United States v. Aguilar,* 515 U.S. 593, 600 (1995)). The goal

in interpreting a statute is always to effectuate the Legislature's intent. *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014).

This Court has "consistently refused to assume a legislative intent in plain contradiction to words used by the legislature." *State v. Jesmer*, 196 N.W.2d 924, 924 (1972). When the language of a statute is unambiguous, the Court applies its plain meaning. Minn. Stat. § 645.16; *State v. Ortega Rodriguez*, 920 N.W.2d 642, 645 (Minn. 2018). The UMDDA's plain language shows the Legislature intended a dismissal of charges after a UMDDA demand to be with prejudice and a bar to any further prosecution of those charges.

B. The UMDDA provides strict time constraints on prosecutions to ensure prisoners' rights to a speedy trial.

The UMDDA is a speedy-trial statute applying exclusively to prisoners. Minn. Stat. § 629.292, subd. 1 (2018). Its primary purpose "is to provide a mechanism for prisoners to insist upon speedy and final disposition of untried charges that are the subjects of detainers so that prison rehabilitation programs initiated for the prisoners' benefit will not be disrupted or precluded by the existence of these untried charges." *See People v. Higinbotham*, 712 P.2d 993, 997 (Colo. 1986) (discussing Colorado's UMDDA); *In re State v. Wilson,* 632 N.W.2d at 230 (relying on guidance from other states' construction of their UMDDA statutes when interpreting Minnesota's UMDDA).

The UMDDA guarantees more stringent speedy-trial protection for prisoners than that provided generally by the state and federal constitutions. *State v. Hamilton*, 268 N.W.2d 56, 61 (Minn. 1978) ("[I]n adopting the act the legislature intended to go beyond

constitutional minimum standards"). The act requires dismissal of charges within six months of a prisoner's request for final disposition of untried charges. *Id.*; Minn. Stat. § 629.292, subds. 1, 3.

> Subd. 1. (a) Any person who is imprisoned in a penal or correctional institution or other facility in the Department of Corrections of this state may request final disposition of any untried indictment or complaint pending against the person in this state. The request shall be in writing addressed to the court in which the indictment or complaint is pending and to the prosecuting attorney charged with the duty of prosecuting it, and shall set forth the place of imprisonment.
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> * * *
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> Subd. 3. Within six months after the receipt of the request and certificate by the court and prosecuting attorney, or within such additional time as the court for good cause shown in open court may grant, the prisoner or counsel being present, the indictment or information shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for the attorney to be heard. *If, after such a request, the indictment or information is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment or information be of any further force or effect, and the court shall dismiss it with prejudice.*

Id. (emphasis added).

The only exception permitting trial more than six months after a UMDDA request is when a district court finds the state has shown good cause to receive a continuance or the parties stipulate for a continuance. *Id.* As this Court ruled in *Wilson* when construing the statute, if a continuance is not granted, a court has no jurisdiction to hear the case after six months, and it must dismiss the charges with prejudice. *In re State v. Wilson*, 632 N.W.2d at 228 ("If, after receipt of a prisoner's request, the complaint is not brought to trial within * * * the six-month period or any additional time granted, the court shall no

longer have jurisdiction over the complaint and the court shall dismiss the complaint with prejudice."); Minn. Stat. § 629.292, subd. 3.

C. The state violated Mikell's rights under the UMDDA by not bring him to trial within six months.

Mikell's UMDDA rights were violated. The state did not bring him to trial within six months of his request. And no continuance permitted the state to bring him to trial 14 months after his request.

The state initially charged Mikell with the DANCO violations on August 18, 2017. (O.H. 11). The court set it on for a November 13 trial. (Index #12 at 1-2; *see also* Register of Actions for File No. 27-CR-17-20553). On October 27, Mikell signed a request for speedy disposition or dismissal of the charges. (Index #22, A14). On November 7, he filed his UMDDA request, which was also served on the state. *Id.* On the November 13 trial date, the state dismissed the charges. (Index #22, A12; O.H. 8, 11). The state decided not to pursue them because Mikell had been convicted and sentenced to a 60-month prison term on another conviction. (O.H. 8).

The state did not seek a continuance. Even if the state doesn't ask for a continuance, the district court is generally required to determine whether there is good cause to permit the state more time and grant one. *In re State v. Wilson,* 632 N.W.2d at 228 (holding if court doesn't schedule trial within 6 months of demand, the UMDDA imposes a clear statutory duty on the court to determine whether good cause exists to grant additional time beyond that period to do so). But that duty was suspended here because the state dismissed the complaint within the six-month period. There was no case

before the court to continue. Under these circumstances, the state's dismissal was "with prejudice." *Id.* ("If, after receipt of a prisoner's request, the complaint is not brought to trial within 'that period,' meaning the six-month period or any additional time granted, the court shall no longer have jurisdiction over the complaint and the court shall dismiss the complaint with prejudice.").

Yet the state refiled the identical charges and brought Mikell to trial over 14 months after his UMDDA request. Because this was outside the six-month period, under the plain language of the UMDDA and *Wilson*, the district court had no jurisdiction to hear the case. *Id.*; Minn. Stat. § 629.292, subd. 3 ("If, after such a request, the indictment or information is not brought to trial within that period, no court of this state shall any longer have jurisdiction").

To be sure, there was a change in circumstances after the six months had passed. The court of appeals reversed the domestic-assault conviction that influenced the state's decision to dismiss the DANCO violation charges. (O.H. 8). And the state was unable on remand to get Mikell to accept its plea offer on the reversed charge. *Id.* Be that as it may, the UMDDA's plain language does not take such circumstances into account. Nothing in the statute provides that events occurring ten months after a UMDDA request and dismissal permit prosecutors to relodge the same charges outside the six-month window.

Mikell was brought to trial over 14 months after he requested disposition of his charges. The UMDDA required the district court to dismiss them.

D. The lower courts violated the UMDDA by dismissing Mikell's charges on the mistaken belief that dismissal is only required if a person's constitutional speedy-trial rights are violated.

Misconstruing the UMDDA, the lower courts permitted Mikell's delayed prosecution. The district court found no UMDDA violation because the state dismissed the original charges within a week of Mikell's request. (O.H. 10). That is, the court never addressed Mikell's argument that he was not brought to trial within 6 months of those charges, given the charges relodged in this case are, as the state concedes, identical.

For its part, the court of appeals agreed with Mikell that he was tried outside the UMDDA's 6-month timeframe. *State v. Mikell*, 2020 WL 2703709 at *5 (Minn. App. May 26, 2020). And it "conclude[d] that the six-month period prescribed in the UMDDA did not start afresh after the state dismissed and refiled the DANCO charges against Mikell." *Id.* It further agreed that neither the state nor the district court found good cause to permit that delay. *Id.* Yet the court reasoned the UMDDA did not require dismissal because Mikell did not satisfy the constitutional speedy-trial test. *Id.* at *6. (applying factors from *Barker v. Wingo*, 407 U.S. 514, 527 (1972)). The court concluded that, because Mikell did not satisfy the *Barker* factor showing he was prejudiced by the delay, the UMDDA did not require dismissal. *Id.*

Contrary to the court of appeals' conclusion, when applying the UMDDA courts do not engage in further inquiry into constitutional speedy-trial considerations such as whether the defendant would be prejudiced by the delay. *In re State v. Wilson*, 632 N.W.2d at 228. In *Wilson*, this Court held that "If, after receipt of a prisoner's request, the complaint is not brought to trial within "that period," meaning the six-month period or

any additional time granted, the court shall no longer have jurisdiction over the complaint and the court shall dismiss the complaint with *prejudice*." *Id.* (emphasis added); *see also Higinbotham,* 712 P.2d at 996 (construing Colorado UMDDA and concluding "[t]he directive to dismiss is mandatory. It is irrelevant that the prosecution might be able to prove that the defendant did not suffer any prejudice from the delay").

This is because the plain language of the statute prohibits that inquiry. It mandates that when a request is made, within the six months or the continued time period, the prisoner "*shall be brought to trial.*" Minn. Stat. § 629.292 (emphasis added). It further commands that "if, after such a request, the indictment or information is not brought to trial within that period, *no court of this state shall any longer have jurisdiction.*" *Id.* When the Legislature uses the word "shall," it clearly intends what follows to be mandatory. *State v. Bluhm*, 676 N.W.2d 649, 653 (Minn. 2004). The legislature provided no requirement that the prisoner be prejudiced by delay. The court of appeals misconstrued the statute by imposing that requirement.

The United States Supreme Court's construction of the Interstate Agreement on Detainers Act (IAD) is instructive. *United States v. Mauro*, 436 U.S. 340, 365 (1978). This Court looks to interpretations of the IAD for guidance when interpreting the UMDDA because the statutes are similar. *In re State v. Wilson*, 632 N.W.2d at 230.

The IAD applies to inmates with charges pending in another state. *Id.* n.6. Like the UMDDA, it sets out procedures that prisoners may follow to ensure speedy disposition of those charges. *Mauro*, 436 U.S. at 343. Like the UMDDA, the statute requires prosecution within a certain period. *Id.* at 352 (quoting IAD, Article IV(c)). And like the

UMDDA, if the government doesn't prosecute within that timeframe, the IAD mandates the court "shall enter an order dismissing the same with prejudice." *Id.* (quoting IAD, Article IV(e)).

Applying that plain language, in *United States v. Ford* the Second Circuit dismissed with prejudice the indictment at issue because the government did not prosecute Ford within the statutory time frame. *U.S. v. Ford*, 550 F.2d 732, 743-44 (2nd Cir. 1977). The court held the dismissal language in article IV(e), "is mandatory on this court." In *Mauro*, the United States Supreme Court affirmed that interpretation of the IAD's dismissal provision. 436 U.S. at 365 (holding after finding violation of the time frame in Art. IV(c) that "the Court of Appeals correctly reversed the judgment of the District Court and ordered that the indictment against Ford be dismissed"), *affirming Ford*, 550 F.2d 732, 743-44.

Notably, neither Court applied the *Barker* factors or required the prisoner show prejudice. That is because the plain language of the statute was mandatory and required dismissal when the case was not prosecuted within the statutory timeframe. *Accord Brown v. Wolff*, 706 F.2d 902, 906 (9th Cir. 1983) (holding mandate under IAD that, if case is not tried within 180 days of prisoner arriving in state with a detainer, the statutory language stating court "shall enter an order dismissing the [indictment] with prejudice" must be followed without further inquiry into whether prisoner was prejudiced). This rationale applies equally to the UMDDA.

This construction of the UMDDA's plain language is wholly consistent with the legislative intent in enacting the UMDDA. *See Hamilton*, 268 N.W.2d at 61 (stating the

legislature intended UMDDA to have "a definite consequence for undue delay dismissal of the charge irrespective of its gravity"). As noted, the purpose of the statute is to ensure expeditious prosecution of detainers so prisoners' access to and continuation in prison rehabilitation programs will not be disrupted due to pending charges. *See Higinbotham*, 712 P.2d at 997; *In re State v. Wilson,* 632 N.W.2d at 230 (relying on guidance from other states to construe Minnesota's UMDDA). Consistent with this purpose, no showing of prejudice to one's trial rights is necessary to trigger dismissal.

In contrast, the Legislature's purpose and intent of the statute is completely evaded if the state is allowed to dismiss charges after a defendant has requested final disposition under the UMDDA, and then refile the same charges after the six-month time period has run. Such legal maneuvering will render meaningless the UMDDA and its mandatory consequence.

Applying the UMDDA's plain language, as the Court must, shows the lower courts erred by not dismissing Mikell's DANCO violation charges. Mikell's convictions must be vacated.

II. Mikell's convictions must be reversed because the trial court denied him his state and federal constitutional right to a speedy trial.

In addition to the state violating Mikell's speedy-trial rights under the UMDDA, the state also violated Mikell's constitutional right to a speedy trial under the state and federal constitutions. This also requires reversal of Mikell's convictions.

A. This Court reviews the denial of Mikell's speedy-trial challenge de novo.

"Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio,* 891 N.W.2d 620, 627 (Minn. 2017).

B. Mikell was denied a speedy trial where he was tried 17 months after the DANCO charges were first lodged despite his speedy-trial demands.

Under the United States and Minnesota Constitutions all criminal defendants are entitled to a speedy trial. *See* U.S. Const. amends. VI & XIV; Minn. Const. art. I, § 6; *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). *See also* Minn. R. Crim. P. 11.09. "The right to a speedy trial is as 'fundamental as any of the rights secured by the Sixth Amendment.'" *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (*quoting Klopfer v. North Carolina,* 386 U.S. 213, 223 (1967)). It is the state's responsibility to ensure that right is vindicated. *See Barker v. Wingo*, 407 U.S. 514, 527 (1972) ("A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process"). The only possible remedy for a violation of the right is reversal and dismissal. *Strunk v. United States*, 412 U.S. 434, 439-40 (1973) (citing *Barker*, 407 U.S. at 522).

To determine whether Mikell's speedy-trial right was violated, this Court must consider: (1) the length of the delay; (2) the reason for the delay; (3) whether he asserted

this right; and, (4) whether he was prejudiced by the delay. *Barker*, 407 U.S. at 530-33; *Windish*, 590 N.W.2d at 315. It may also consider other relevant circumstances. *Id.* at 533.

1. The length of the delay weighs in favor of dismissing the charges.

"The length of the delay is a 'triggering mechanism' which determines whether further review is necessary." *Windish*, 590 N.W.2d at 315 (quoting *Barker*, 407 U.S. at 530). Delay is calculated from the point at which the speedy trial right attaches. *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). The right attaches at arrest or when criminal charges are filed, whichever comes first. *Id.*

The state initially charged Mikell with the DANCO violations on August 18, 2017. Mikell was detained on another offense so was not formally arrested on those charges. Complaint, Index #1 in File No. 27-CR-17-20553. His trial commenced on those same charges, though filed in a new complaint, on January 14, 2019. Thus, Mikell's trial began about 17 months from the date he was first charged.

This was also months after Mikell demanded a speedy trial. In Minnesota, delays that exceed 60 days from the date of demand after a plea of not guilty raise a presumption that a speedy-trial violation has occurred unless the district court finds good cause for the delay. *Taylor*, 869 N.W.2d at 19. Mikell first demand a speedy trial on August 21, 2017, just three days after the complaint was filed. *See* Motion to Dismiss, Index #12, at 1; MNCIS Register of Actions for 27-CR-17-20553. So there was a delay of about 512 days from the date he demanded speedy trial until his trial started. Because this delay is

considerably longer the 60-day presumptive violation period, this Court is required to address the other factors. *Id.*

The district court concluded the delay was less than 60 days. The court acknowledged Mikell pleaded not guilty and demanded a speedy trial on August 21, 2017. (O. 12-13). But the court ignored that demand, reasoning that even though the court entered Mikell's speedy demand on August 21, under the criminal procedure rules the court should not have permitted Mikell to plead not guilty and demand a speedy trial until later. (O.H. 12; *see* Register of Actions in 27-CR-17-20553). When calculating delay, the court considered only the time from Mikell's October 5, 2017, second demand for a speedy trial on the first complaint until the November 13, 2017, trial date on that complaint, which was the day the case was dismissed, not the day he was tried. (O. 12). Concluding that period was less than 60 days, the court concluded this factor weighed against dismissal. (O.H. 13).

The district court erred. As the state has conceded and the court of appeals stated, the determinative date is the day of trial, not the day of the earlier dismissal. Even subtracting the days between August 21 and October 5, 2017 (45 days), and the days between the November 13, 2017, dismissal of charges and the October 25, 2018, relodging of those charges (346 days), the delay to trial was 120 days (512-45-346). *Mikell*, 2020 WL 2703709 at *2; Respondent's Brief to court of appeals at 7-8.

In any event, the district court incorrectly concluded those days should not be included. The days between the November 13, 2017, dismissal of charges and the October 25, 2018, relodging of those charges (346 days) are counted. *State v. Kasper*,

411 N.W.2d 182, 184 (Minn. 1987) ("if charges are dismissed by the prosecutor and new charges are brought, the time period should not start again from zero with the new complaint").

In addition, Mikell should not be penalized for having demanded a speedy trial earlier than the rules required. *Kasper*, 411 N.W.2d at 184 (recognizing defendant's speedy-trial demand even though it was not in strict compliance with the criminal procedure rules where prosecutor and court had notice of the demand). So those 45 days the days between August 21 and October 5, 2017 should also be included.

Because by any calculation Mikell's trial occurred well beyond the 60-day presumptive prejudice range, this Court must consider the reason for the delay, whether Mikell asserted his right, whether he was prejudiced by the delay, and all other relevant circumstances. *Barker*, 407 U.S. at 530-33. None of these factors is determinative; instead, they are "related factors and must be considered together with such other circumstances as may be relevant." *Osorio*, 891 N.W.2d at 628 (quoting *Barker*, 407 U.S. at 533). This Court must "engage in a difficult and sensitive balancing process." *Id.*

2. The reasons for delay weigh in favor of dismissing the charges.

The key question on this factor is whether the government or the defendant is more to blame for the delay. *Osorio*, 891 N.W.2d at 628. If the Court appoints blame to the state, it considers the reasons for the delay. *Id.* Neutral reasons such as negligence weigh less heavily against the state than deliberate delays to hamper the defense. *Id.*

a) The delay was the state's fault.

The state, not Mikell, was responsible for the delay here. When Mikell filed his UMDDA request, the state had the authority to dismiss or prosecute the DANCO violations. Due to the resolution in another case, it chose to dismiss the charges.

Mikell had no control over the state's acts over the following year. It was the state's decision alone to refrain from prosecuting Mikell on the DANCO violations for ten months while he was appealing his assault conviction. The state also made the decision to wait another 41 days after the court of appeals reversed (on September 14, 2018) before relodging the charges for the DANCO violations (on October 25, 2018) when Mikell wouldn't accept the state's offer to plead guilty to the reversed assault charge.

While Mikell moved to dismiss those charges due to the delay, he never sought a continuance. So most of the 81 days from the relodging of the charges until trial (on January 14, 2019) must also be counted against the state. Only the three days (November 2 to 5, 2018) when his motion to dismiss was pending can be attributed to his acts. *See In re State v. Wilson*, 632 N.W.2d at 230.

b) The state's delays were deliberate.

By the state's admission, those delays were a deliberate choice by the state not mere negligence. The state was satisfied with the long sentence imposed on Mikell in the assault case, so it chose not to go forward in prosecuting the DANCO violations. (O.H. 8). Even after the reversal of that conviction, the state decided not to relodge the charges

for the DANCO violations until Mikell chose to reject its plea offer to 48 months on that other case. (O.H. 19, 21; *See* Motion to Dismiss Memo, Index #12 at p. 2).

From the state's perspective, as the district court noted, these were understandable reasons for the delay. (O.H. 13-14). Prosecution of the DANCO violations would not have served the state at the time. But as with court congestion, the delay must still weigh against the state. *See Windish*, 590 N.W.2d at 316.

It is Mikell, not the state, who has the right to a speedy trial. He is the one who suffered the anxiety of having the charges and a long sentencing hanging over his head. (O.H. 18-19). He expressed his frustration to the district court when he learned the state's plea deal had increased from 48 months if he pleaded guilty to the remanded assault charge to 56 months on the re-charged DANCO violations because he rejected the state's plea offer.

> I didn't have any case, like if he said this is fair for [the prosecutor] to—you said you made a mistake and the State made a mistake, I was reversed and remanded one case, now I got three cases all of a sudden. *** I had one coming back here. * * *All of a sudden I got three cases and the guideline to the one case was 32 -- or 23/32 and I come back, the case that's dismissed it's back in my face. I can't -- I don't see where I'm being treated fairly. I understand what you said about the mistake in all of this and all of that, if -- if the case wouldn't have never made it back, but didn't the State know that it could make it back? Why I got -- I mean, the thing was -- I mean, you -- you was here for the sentencing and everything and -- and the case-- and the speedy trial case, the DANCO, how do I get from 23 to 32 to [56], how do I do that? How did that happen to me?

(O.H. 20-21). And Mikell was the one who was in danger of losing witnesses. (O.H. 15-16). He had no duty to bring himself to trial. *Osorio*, 891 N.W.2d at 628 (quoting *Barker*, 407 U.S. at 527) ("A defendant has no duty to bring himself to trial."). Indeed, he had no ability to do so.

Mikell does not dispute the court of appeals' conclusion that the prosecutor did not act in bad faith to hamper his defense. *Mikell*, 2020 WL 2703709 at *3. But the state's relodging the charges and prosecuting Mikell only after Mikell refused to accept the state's plea offer on another case, if not bad faith, is seemingly vindictive conduct and constituted legal maneuvering that went beyond mere negligence. *Cf. Kasper*, 411 N.W.2d at 185 (holding delay against state and reversing where it dismissed a charge due to court's denial of a continuance and relodged the charge to restart the speedy trial time limit). *See also Osorio*, 891 N.W.2d at 628-29 ("Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground.") (quoting *Doggett v. United States*, 505 U.S. 647, 648 (1992)).

The prosecutor made a calculated decision not to prosecute Mikell on the DANCO violations until 14 months had passed. Because this was more than mere negligence on the state's part, this factor weighs heavily against the state. *Compare Osorio*, 891 N.W.2d at 628 (holding state's failure to take any steps to prosecute was merely negligent so weighed less heavily against it); *Jones*, 392 N.W.2d at 235 (holding court congestion weighs against state but not as heavily as deliberate delay).

3. Mikell's assertion of his speedy-trial rights weighs in favor of dismissing the charges.

A defendant's assertion, or lack of assertion, of his right to a speedy trial is yet another factor to be considered in the balancing analysis. *Windish*, 590 N.W.2d at 317. In evaluating the defendant's assertion of the right to a speedy trial, courts consider any

"action whatever * * * that could be construed as the assertion of the speedy trial right." *Windish*, 590 N.W.2d at 317 (quoting *Barker*, 407 U.S. at 534).

Mikell frequently and adamantly demanded a speedy trial:

- He demanded a speedy trial on August 21, 2017, three days after he was charged with the DANCO violations;
- He demanded one again on October 5, 2017, after which trial was set for mid-November;
- On October 27, 2017, he again demanded speedy disposition of his case by signing the UMDDA request, which was filed on November 7, 2017.

From the dismissal on November 13, 2017, until the charges were relodged on October 25, 2018, there was no need to express any concern about the charges because they no longer existed. But once the charges were reinstated, he again forcefully demanded resolution.

- On November 2, 2018, Mikell moved to dismiss based on violation of his speedy-trial and UMDDA rights.
- He continued to forward that demand at his November 5, 2018, contested omnibus hearing.
- After the district court denied that motion, on January 12, 2019, Mikell filed a pro-se handwritten appeal with the court. (Index # 16).
- And because Mikell was adamant that he wanted to preserve his speedy-trial and UMDDA challenges, he waived a jury trial and proceeded via a

court trial with the stipulation that the need for dismissal due to delay would be his sole issue on appeal.

Given Mikell's frequent and intense assertion of his speedy-trial demand, as the state conceded and the court of appeals found (*Mikell* at *4), this factor also weighs in his favor. *See Windish*, 590 N.W.2d at 318 (stating courts must assess "the frequency and intensity of a defendant's assertion of a speedy trial demand"); *Taylor*, 869 N.W.2d at 20. This factor "is entitled to strong evidentiary weight" when determining whether Mikell was deprived of a fair trial. *Osorio*, 891 N.W.2d at 629.

4. The prejudice Mikell suffered by the state's failure to expeditiously prosecute his case weighs in favor of dismissing the charges.

Mikell does not have to affirmatively prove prejudice; the possibility of prejudice resulting from delay is sufficient. *See Windish*, 590 N.W.2d at 318; *Doggett v. United States,* 505 U.S. 647, 654 (1992) ("affirmative proof of particularized prejudice is not essential to every speedy trial claim"). The United States Supreme Court has identified three interests that are protected by the right to a speedy 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 (*citing Barker*, 407 U.S. at 532). "[T]he third factor, impairment of a defendant's defense, is the most serious." *Id.* The record shows the possibility that Mikell was prejudiced by the delay.

This Court held the third factor weighed in favor of the defendant under strikingly similar facts. In *Windish*, the Court indicated the first two factors were not at issue.

Windish, 590 N.W.2d at 318. Yet it found prejudice due to the impairment of the defendant's defense to terroristic threats based on his counsel's statement that she would have difficulty locating witnesses who overheard the confrontation between the defendant and the complainant. *Id.* at 319. "While we agree with the state that Windish has not provided a clear record of how the witnesses would have testified, we conclude that the circumstances surrounding the delay, including the availability of witnesses at the earlier trial dates, suggest harm to Windish's case." *Id.*

This was also the case with Mikell's defense. A material witness to the DANCO violations, which occurred in the Hennepin County jail, was no longer in custody and had not been located at the time of the omnibus hearing after the re-charging by the state. (O.H. 5, 16; Index #12, p. 7-8). This is understandable given that 14 months had passed since the offense occurred and jails are transitory locations. Any other potential witnesses to the alleged crime who could dispute identity or the state's version of events had necessarily been released. As defense counsel noted, the delay hampered her ability to put on a defense for Mikell. (O.H. 5). Mikell's Sixth Amendment right to present a defense, which exists regardless of the state's assessment of the strength of its case, was crippled by the delay in this case. *See e.g. Holmes v. South Carolina*, 547 U.S. 319, 331 (2006). Accordingly, as in *Windish*, the record established there was a possibility that Mikell's defense would be impaired.

In addition, the delay resulted in Mikell losing the opportunity to have any sentence for the DANCO violations be imposed more favorable to the felony assault sentence. (O.H. 4-5, 16). The loss of potentially concurrent time is prejudice for purposes

of delay of speedy trial. *Smith v. Hooey*, 393 U.S. 374, 378 (1969). That concern was more than speculative as the district court found. After the state re-charged the DANCO violations, it consistently stated that the DANCO violations could be run consecutive to the domestic assault and to each other (O.H. 18-19, 20-21).[8] As noted by defense counsel, the possibility of consecutive sentences caused Mikell extensive anxiety and concern. (Index #12, p. 8; O.H. 20-21). As did the fact that he was facing three convictions, when he only had one before the court of appeals' reversal of the assault conviction. (O.H. 20-21).

It was clear from the record that Mikell was extremely distressed and concerned about the proceedings and the delay. In addition to his earlier-quoted comments, when the court told Mikell that "we'll just play it out, I mean we'll see what happens [on appeal]," Mikell stated, "I understand what was just said but I just can't believe it. I'm tired of playing it out, I'm tired of playing." (O.H. 22-23). Later, he again said, "I'm tired, you know." (O.H. 24). There is no doubt from these remarks that the long delay caused Mikell to experience prejudice through anxiety, frustration and stress. In addition to the other *Barker* factors, the prejudice to Mikell from the delay weighs in Mikell's favor.

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[8] The fact that Mikell was subsequently sentenced to concurrent sentences for the two DANCO violations after he agreed to the stipulated-facts trial is irrelevant to the prejudice analysis at the time of his motion to dismiss the complaint for violation of his speedy-trial rights.

5. Other relevant circumstances weigh in favor of dismissing the charges.

Finally, that Mikell's charges were not for the most serious of offenses further weighs the delay more heavily against the state. *State v. Helenbolt,* 334 N.W.2d 400, 405 (Minn. 1983) (holding state's eight-month delay in prosecution due to filing interlocutory appeal weighed less heavily against it because of the seriousness of the defendant's murder and burglary charges; "lesser crimes might not justify so long a delay"). As does the fact that this prosecution on the DANCO violations was not complex. *Windish*, 590 N.W.2d at 316.

Considering all factors and relevant circumstances together weigh heavily against the state. When a defendant's constitutional right to speedy trial has been violated, dismissal, while severe, is the remedy. *Barker,* 407 U.S. at 522. Mikell's speedy-trial rights were violated and dismissal was required. *Id.*; *Kasper,* 411 N.W.2d 280; *see also Windish*, 590 N.W.2d at 315. Mikell's convictions must be vacated.

6. The interests of justice also support vacating Mikell's convictions.

Mikell has established his constitutional rights were violated. But even when no constitutional violation occurred, when deciding whether to reverse, this Court can also look generally to whether "justice was served" during the judicial process. *See Windish*, 590 N.W.2d at 319. The circumstances here -- the state dismissing charges after obtaining a conviction and lengthy prison sentence in a different case, and then filing a second complaint with the same charges after the conviction was reversed and Mikell rejected a plea offer -- make this an appropriate case for this Court to find that justice was not served and exercise its supervisory powers to reverse Mikell's convictions.

III. Mikell's convictions must be vacated because the state unnecessarily delayed bringing him to trial.

Finally, the district court erred in not dismissing the complaint for the DANCO violations because the state unnecessarily delayed prosecuting Mikell. When a prosecutor refiles charges voluntarily dismissed earlier, the rules of criminal procedure give the district court discretion to dismiss the charges if the state "unnecessarily delayed bringing the defendant to trial." *State v. Olson,* 884 N.W.2d 395, 399 (Minn. 2016) (quoting Minn. R. Crim. P. 30.02). The court's denial of Mikell's motion to dismiss the complaint is reviewed for an abuse of discretion. *Id.* at 398. A court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). The lower courts' rulings here were based on an incorrect view of the law and the facts in the record.

"Unnecessarily" is an adverb describing an action that is unnecessary or needless. The American Heritage Dictionary at 1897 (5th ed. 2011). The state's 17-month delay in prosecuting Mikell was not necessary. By the state's own admission, the basis for the delay was its satisfaction with the long prison sentence it secured against Mikell on the assault conviction. Because he was in prison, there was no need to prosecute the other offenses. While from the state's perspective this may have been an understandable reason to delay the prosecution on the DANCO violations, under this Court's precedent Mikell's incarceration did not render the delay necessary or even acceptable.

Almost 100 years ago, this Court expressly held that being imprisoned on one offense does not make acceptable a delay in prosecution for other alleged offenses. *State v. McTague*, 216 N.W. 787, 788, 173 Minn. 153, 154 (1927).

> The suggestion that defendant could not be tried because he was in State Prison is without substance. The state that holds him in prison is the same state that prosecutes these indictments. His imprisonment could not be used by him as an excuse to avoid trial, much less the state.

Id. More recently the Court reaffirmed this principle: "[I]t is imperative to emphasize the necessity of proceeding with the prosecution of criminal cases with utmost dispatch whether the person against whom the criminal charge is pending is incarcerated or not." *State v. Borough*, 178 N.W.2d 897, 899, 287 Minn. 482, 485 (1970).

To be sure, the state's rationale for delaying the prosecution on the DANCO violations suited its interests at the time. But the lower courts' reliance on that reason to conclude the state had not unnecessarily delayed bringing Mikell to trial is contrary to this Court's direction in *McTague* and *Borough*. Had the state decided much earlier to recharge Mikell, or had it demonstrated a reason for delay other than the mere calculation that the court of appeals would not reverse his assault conviction, the delay might be deemed necessary. *Compare Olson,* 884 N.W.2d at 399 (holding four-month delay in prosecution of dismissed and then recharged offenses less than two weeks later based on witness unavailability did not show state unnecessarily delayed prosecution). It did not. In addition, the district court failed to consider that the dismissed charges were re-filed only after Mikell won on appeal and rejected the state's plea offer – which suggested that the state acted in bad faith in re-charging the DANCO violations.

The court of appeals' alternative basis for finding no abuse of discretion was also based on a misconstruction of the law. The court relied on its precedent holding dismissal under the rule is only warranted if the defendant can show prejudice. *Mikell*, 2020 WL 2703709 at *7 (citing *State v. Banks*, 875 N.W.2d 338 (Minn. App. 2016)). *Banks* did say that, and relied on this Court's opinion in *State v. Hart,* 723 N.W.2d 254, 257 n.5 (Minn. 2006). But in *Hart*, this Court expressly indicated it was not addressing a dismissal under Rule 30.02. *Id.* at 257-58. The Court did indicate in dicta in a footnote that it had previously required a prejudice showing to support dismissal motions under the rule. *Id.* at 257 n.5 (citing generally to *Borough,* 178 N.W.2d at 899). But *Borough* was a constitutional speedy-trial challenge, not a Rule 30.02 challenge. Research has uncovered no case requiring a prejudice showing as a condition precedent to dismissal under Rule 30.02.

To the contrary, in *Olson* when affirming the denial of a dismissal for unnecessary delay, the Court did not inquire into whether the defendant was prejudiced. *Olson,* 884 N.W.2d at 399. It affirmed the district court's consideration of the state's actions and its reasons for them. *Id.* (affirming the denial of dismissal because the delay was caused by witness unavailability, the state advised the defendant before dismissing that it would be refiling, there were not excessive continuances, and the new charge was promptly pursued). While in some circumstances prejudice to the defendant or its absence may bear on whether the state has unnecessarily delayed prosecution, it appears it is not, and should not, be a condition precedent.

Even if a showing of prejudice is required, as noted *supra* the record here reveals Mikell suffered prejudice by the potential loss of a material witness which hampered his ability to present a defense, by the stress and anxiety that he personally suffered, and the potential loss of concurrent sentences and more convictions. *See* section II.C.4. above.

The district court based its denial of Mikell's dismissal motion on an incorrect view of the law given the facts presented. This was an abuse of discretion requiring reversal. *Nicks*, 831 N.W.2d at 503. For this additional reason Mikell asks that his convictions be vacated.

CONCLUSION

For the reasons stated herein, Mikell's right to a speedy trial was violated under the UMDDA and the state and federal constitutions, and the district court erred by not dismissing the complaint under Minn. R. Crim. P. 30.02 based on these violations, as well as the excessive and unreasonable delay. Mikell respectfully requests that this Court reverse and vacate his convictions.

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Respectfully submitted,

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