A19-0732

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Roosevelt Mikell,

Appellant.

APPELLANT'S REPLY BRIEF

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v. **APPELLANT'S REPLY BRIEF**

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Appellant.

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

Under the UMDDA's plain language, the state violated Mikell's rights by not bringing him to trial within six months of his request. The state disagrees that there was an unlawful delay. It asserts the UMDDA's six-month clock only applies to pending cases, it does not apply to Mikell's dismissed case. (Resp. Brief at 25-26) (citing Minn. Stat. §629.292, subd. 1). While it is true that the statute applies to pending cases, that does not resolve the question of whether the state had the authority to recharge and try Mikell more than six months after his request for disposition.

The state's position requires deleting a key part of the statute. While the UMDDA does say prisoners "may request final disposition of any untried indictment or complaint pending against the person," it goes further. Subdivision 3 provides the remedy after that request is made: dismissal with prejudice. Minn. Stat. §629.292, subd. 3 ("If, after such a

request, the indictment or information is not brought to trial within [6 months], 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."). Because the first complaint against Mikell was dismissed with prejudice and the district court lacked jurisdiction over that "information," the state had no authority to lodge identical charges and bring Mikell to trial 14 months after his request. *Id.*

That statutory language also dispatches with the state's claim that, if the state dismisses the original complaint in good faith, the six-month disposition period is tolled. (Resp. Brief at 26-29). When a request for speedy disposition is made, the UMDDA gives the state three options: bring the person to trial within six months, seek a continuance, or dismiss the charges. *Id.*; *In re State v. Wilson,* 632 N.W.2d 225, 230 (Minn. 2001). Under the statute, the granting of a continuance is the only method for extending the six-month period to bring a person to trial. *Id.* ("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."). The state never made a request for a continuance in Mikell's case. Furthermore, the statute contains no provision extending or tolling the disposition period when a complaint is dismissed in good faith. The statute does not permit the court to grant a continuance after dismissal. After the

dismissal, "no court of this state shall any longer have jurisdiction" over the matter. *Id.* at subd. 1.

Contrary to the state's claim, the court of appeals decision in *State v. Miller* does not support its position; it supports Mikell's reading of the statute. (Resp. Brief at 27-28) (citing *State v. Miller*, 525 N.W.2d 576, 580 (Minn. App. 1994)). Relying on this Court's decision in *State v. Kasper*, the *Miller* court ruled that the state's dismissal of conspiracy and racketeering charges and lodging of a murder charge arising out of the same circumstances did not toll the 6-month UMDDA clock. *Id.* (analyzing *State v. Kasper*, 411 N.W.2d 182, 184 (Minn. 1987)). The court did not say this was because the state acted in bad faith, thereby implying good-faith dismissals toll the clock.

And *Kasper* is a speedy-trial case that does not address the UMDDA. In *Kasper*, this Court held the dismissal and relodging of a misdemeanor charge did not restart the misdemeanor speedy-trial clock set out in the rules of criminal procedure. *Kasper*, 411 N.W.2d at 184 (citing Minn. R. Crim. P. 6.06). Under that rule, trial "must begin within 60 days" of a demand but "may be extended for good cause." Minn. R. Crim. P. 6.06. The *Kasper* Court concluded the state did not show good cause to extend the 60-day period where its dismissal and recharge was based on the district court's denial of its continuance motion. *Id.* The Court did not find the state acted in bad faith.

Rewriting the UMDDA to create the tolling exception proposed by the state would essentially invalidate the statute. "Mandatory Disposition" of a detainer would be of no service to a prisoner if it simply meant that, upon request, the state had to either initiate trial within six months or dismiss the charge without prejudice, permitting the state to

relodge the charges if and when it suited the government. The person would never be free of the anxiety caused by knowing the state could simply relodge the charges at any time. And such an exception would thwart the statute's goals of ensuring a definite consequence for undue delay in prosecuting and providing greater speedy-trial protections than those enshrined in the constitution. *See 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 and provide (a) a specific mechanism for an inmate to assert his right to a speedy trial; (b) a general rule that inmates should be brought to trial within 6 months; and (c) a definite consequence for undue delay dismissal of the charge irrespective of its gravity").

This is also the reason UMDDA claimants need not prove a constitutional speedy-trial violation to obtain relief. Despite including the above *Hamilton* quotation about the UMDDA's purpose in its *Miller* decision, the court of appeals ignored it and applied the *Barker* factors when analyzing the UMDDA violation. *Miller*, 525 N.W.2d at 581. This makes no sense. A statute does not provide greater protection than the constitution if the state only violates a person's statutory rights when it violates their constitutional rights.

For this reason, the *Barker* factors do not apply to Mikell's UMDDA claim. Under the statute's plain language, Mikell is not required to show prejudice. That language is mandatory and required dismissal because the state did not prosecute him within the statutory timeframe. *See, e.g. Wilson*, 632 N.W.2d at 228; *United States v. Mauro*, 436 U.S. 340, 365 (1978).

Instead, the state brought Mikell to trial over 14 months after he requested disposition of his charges. His resulting convictions must be reversed.

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

The state further claims the district court acted within its discretion under the rules of criminal procedure when denying Mikell's motion to dismiss because the state did not unnecessarily delay bringing him to trial. (Resp. Brief at 31-33); Minn. R. Crim. P. 30.02. According to the state, it would have been inefficient to have tried Mikell on the DANCO violations earlier. The state correctly notes that the district court found as much. As the reason for delay, the court found Mikell went "to prison and so therefore the State didn't feel any need to prosecute him any more for those cases." (O.H. at 14).[1] The court further stated, "it would be kind of an absurd result to have found that the state would have had to try those cases even though there was no good reason at the time to try them because of the 60-month sentence" Mikell was serving. (*Id.* at 17).

In defending the district court's ruling, the state completely ignores Mikell's reliance in his principal brief on *State v. McTague* and *State v. Borough*. These cases demonstrate the court's ruling was based on an erroneous view of the law. Both cases state that a person's imprisonment is not a permissible ground for delaying prosecution. *State v. Borough*, 178 N.W.2d 897, 899, 287 Minn. 482, 485 (1970) ("[I]t is imperative to emphasize the necessity of proceeding with the prosecution of criminal cases with utmost

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

dispatch whether the person against whom the criminal charge is pending is incarcerated or not."); *State v. McTague*, 216 N.W. 787, 788, 173 Minn. 153, 154 (1927). The state cites no authority holding efficiency or judicial economy trump a prisoner's right to speedy disposition of charges pending against them.

To be sure, the district court correctly noted that Mikell, like all persons charged with an offense, benefitted from the dismissal of the original charges "at the time." (*Id.* at 17). But that benefit was in part based on him believing he was no longer subject to that prosecution. That the case was initially dismissed has no bearing on whether the state unnecessarily delayed in bringing him to trial by lodging the same charges a year later and waiting 14 months to commence trial. Because the reason for that extended delay was Mikell serving a prison sentence on another case, under *Borough* and *McTague* the delay was unwarranted.

The district court's denial of Mikell's motion to dismiss under Rule 30.02 was based on an incorrect view of the law. Therefore, the court abused its discretion. *Cf. State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). This, too, requires Mikell's convictions be vacated.

III. Mikell's convictions must be vacated because the trial court denied him his constitutional right to a speedy trial.

In applying the constitutional *Barker* test, the state agrees that the length of delay and Mikell's assertion of his speedy-trial rights both weigh in favor of vacating his convictions. (Resp. Brief at 9-15, 19-20). And it does not contest that two other relevant circumstances weigh in favor of vacating them: Mikell's charges were not for the most

serious of offenses; and, his DANCO prosecution was not complex. The parties' disagreement relates to the reasons for the various delays and whether the record suggests prejudice to Mikell's defense.

The reasons for delay weigh in favor of vacating Mikkel's convictions.

The state alleges the 45-day delay between Mikell's speedy trial demands on August 21, 2017, and October 5, 2017, was his fault because he demanded a speedy trial prematurely and he sought a continuance from September 22 to October 5. (Resp. Brief at 16-17). But under settled case law his first demand must be recognized. *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). Here, the district court accepted Mikell's demand for speedy trial on August 21, 2017, and entered it in the district court record. *See* Register of Actions, 27-CR-17-20553, Index #4. So the 32 days until September 22 count against the state.

As do the 13 days from September 22 to October 5, 2017. On September 22, Mikell did not request a continuance in the DANCO case. He was scheduled to be sentenced on the assault conviction that day. *See* Register of Actions, 27-CR-17-13791). Although there is nothing in the record regarding the continuance, the notation on the Register of Actions indicates that the court reset the assault sentencing hearing to October 5, 2017 on Defendant Request. *Id.* So the 45-day delay between August 21 and October 5 on the current case is attributable to the state not Mikell.

The state concedes it is to blame for the 39-day delay from October 5 to November 13. (Resp. Brief at 17).

The significant point of dispute is over which party is to blame for the next delay: the 364 days between the state's November 13, 2017, dismissal of charges and its October 25, 2018, relodging of the charges in the new complaint. (Resp. Brief at 17). Relying on a court of appeals' case, which does not control here, the state alleges it is not to blame for this delay because it didn't act in bad faith. *Id.* It also attempts to distinguish its actions from those in *Kasper*. There this Court concluded the time between dismissal and refiling of the same charges counted against the state because it acted to circumvent the criminal procedure rules' time limit. *Kasper*, 411 N.W.2d at 185. The state's acts here were equally concerning: it recharged the dismissed counts out of frustration or vindictiveness when Mikell, after securing an appellate court reversal of another conviction, on remand would not agree to plead guilty to that charge.[2] As in *Kasper*, due to the state's deliberate and strategic actions it must be held responsible for this 364-day delay.

The state takes responsibility for the next 19-day delay until November 13, 2018. (Resp. Brief at 18). During that time, Mikell unsuccessfully moved to dismiss. However, the state blames Mikell for the 62-day delay between November 13 and his January 14, 2019, trial.

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[2] In fact, in the appeal of the domestic assault conviction the state did not file a brief and conceded that a reversal and remand for a new trial was necessary, and requested an expedited opinion be issued. *See* Order Opinion in A18-0028. This concession demonstrates the state's knowledge that the conviction should and would be reversed.

The state argues that the 62-day delay from November 13, 2018 to January 14, 2019, should be attributed to Mikell and not the state. (Resp. Brief 17-18). But the state appears to have incorrectly read the transcript of the November 13, 2018, hearing. Mikell's trial on the remanded domestic assault case was scheduled for trial on November 13, 2018; this was confirmed at the November 5, 2018 hearing. (O.H. 18, 24). The transcript is clear that the parties were in court on November 13, 2018, for a trial on the domestic assault case, not the DANCO violations, and Mikell requested more time on the assault trial. (11/13/18 Hearing at 2-3). The court specifically stated, "27-CR-17-13791 is the trial today" and "[y]ou talk about the DANCOs, we're not here to try the DANCOs." *Id.* It is also very clear that Mikell was extremely distressed about the court's refusal to dismiss the DANCO violations at the previous hearing, and continued to express his confusion and plea to the court to remedy the unfairness of the situation. *Id.* at 3-8. It was only after the state joined Mikell's request for a continuance of the domestic assault trial that the court granted the continuance. *Id.* at 8. Because Mikell did not request the continuance on the DANCO case, this time period weighs against the state.

Overall, the most significant part of the delay in this case was based on the prosecutor's calculated decision not to prosecute Mikell on the DANCO violations until he refused to plead guilty to the remanded assault charge. Given that this was not merely a negligent act, this factor weighs heavily against the state.

The likely prejudice Mikell suffered by the state's failure to expeditiously prosecute his case weighs in favor of vacating Mikkel's convictions.

The state argues this factor weighs against Mikell because he did not show he suffered prejudice. (Resp. Brief at 20). But that is not the standard. Mikell does not have to affirmatively prove prejudice; the possibility of prejudice resulting from delay is sufficient. *See State v. Windish*, 590 N.W.2d 311, 318 (Minn. 1999); *Doggett v. United States,* 505 U.S. 647, 654 (1992) ("affirmative proof of particularized prejudice is not essential to every speedy trial claim"). The record need only suggest evidentiary prejudice. *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015).

The allegations against Mikell are that 14 months earlier while in Hennepin County Jail, he used another detainee's phone to call the complainant in violation of a DANCO. *See* Complaint, Index #1. The record here suggests that Mikell had difficulty finding that material witness or that person did not recall what occurred. At the omnibus hearing, counsel averred that person was no longer in custody and would be difficult to find. (O.H. 5, 16; Index #12, p. 7-8). Later, at Mikell's stipulated facts trial, counsel did not present the person's affidavit.

Despite being responsible for delaying the prosecution for over a year, the state now faults Mikell for failing to document specific efforts made to find and present this witness. (Resp. Brief at 21-22). In *Windish*, this Court concluded the record sufficiently implied prejudice even though witnesses who were unavailable at earlier hearings had likely been found and were available for trial. *Windish*, 590 N.W.2d at 319. This was, in part, because counsel failed to call them at trial. *Id.* at 315, 319. Similarly, the fact that

counsel here did not present the eyewitness' affidavit at trial further implies that she was unable to secure that witness or the witness no longer recalled the events. This suggests Mikell's defense was likely harmed by the state's delay. *Id.* at 319 (finding record suggested harm to the defense, noting "the erosion of testimony over time 'can rarely be shown,' and that impairment of one's defense is the most difficult kind of speedy trial prejudice to prove").

Given the totality of circumstances, Mikell's constitutional speedy trial rights were violated, or, at a minimum, he was treated so unfairly by the criminal justice system that reversal is necessary to ensure justice is served. *Id.* at 319. He respectfully asks this Court reverse the court of appeals and vacate his convictions.

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Respectfully submitted,

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