

DA 23-0695

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 236

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH BENTON FLYNN,

Defendant and Appellant,

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ECDC-2022-591
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brent Flowers, Beebe & Flowers, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Thad Tudor, Assistant
Attorney General, Helena, Montana

Rebecca Dockter, Helena City Attorney, Todd Baker, Deputy City
Attorney, Helena, Montana

Submitted on Briefs: August 7, 2024

Decided: October 22, 2024

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 On December 12, 2022, Joseph Benton Flynn (Flynn) was convicted of misdemeanor Driving Under the Influence, first offense, in violation of § 61-8-401(1)(a), MCA,¹ following a no contest plea in Helena Municipal Court. Prior to the entry of this plea, the Municipal Court had denied Flynn’s motion to suppress evidence based on an alleged lack of particularized suspicion justifying the initial stop and his motion to dismiss for lack of speedy trial. Flynn appealed the denials of his motions to the First Judicial District Court, Lewis and Clark County. The District Court affirmed the Municipal Court’s denial of his motions, upholding his conviction. We affirm.

¶2 Flynn presents the following issues for review:

1. *Whether there was particularized suspicion to stop Flynn for speeding.*
2. *Whether Flynn was denied his constitutional right to a speedy trial.*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On November 25, 2020, at approximately 10:10 p.m., Officer Jessica Cornell (Cornell) observed a vehicle driving northbound on Benton Avenue in Helena, Montana, overtake another vehicle at a high rate of speed. From her vantage point, she could also see a RADAR controlled traffic device (RADAR sign) which detects and displays vehicle speed to notify drivers of their speed relative to the posted speed limit. The posted speed limit at the location was 25 mph. The RADAR sign registered the northbound vehicle as traveling at 36 mph. Based upon her training and experience as a peace officer and the

¹ Since recodified at § 61-8-1002, MCA.

speed displayed on the sign, Cornell believed the vehicle was exceeding the posted speed limit and initiated a traffic stop by turning on her patrol lights.

¶4 The vehicle, driven by Flynn, exited Benton Avenue and stopped in a parking lot. During the stop, Flynn crossed two lanes without signaling and drove over the curb to enter the parking lot. Once Cornell made contact with Flynn, she observed he had bloodshot and glossy eyes, and she could smell the odor of alcohol emanating from his vehicle. Flynn admitted to having left a nearby bar after consuming “two to three beers.” Based on her observations of Flynn’s driving behaviors, his bloodshot and glossy eyes, the odor, and his admission of consuming alcohol, Cornell initiated Standard Field Sobriety Tests (SFSTs). Because Flynn exhibited several indicators of impairment while performing the SFSTs, Cornell requested Flynn submit to a preliminary breath test (PBT). Flynn consented to the PBT, which indicated a .089 blood alcohol concentration (BAC). Cornell then arrested Flynn for DUI. Flynn consented to a blood sample, which produced an additional result showing a .092 BAC. He was released after posting bond.

¶5 Flynn pleaded not guilty on November 30, 2020. Flynn was originally represented by a public defender, but after failing to provide documentation of his eligibility, the appointment of the public defender was rescinded on January 5, 2021. Regardless, Flynn had already hired Mathew Johnson on December 29, 2020, and Johnson represented Flynn at the January 6, 2021, omnibus hearing wherein the Municipal Court set a first trial date for April 22, 2021. On April 8, 2021, Flynn requested a change of plea hearing and moved to vacate the trial date. The change of plea hearing was set for May 3, 2021. On April 28,

2021, Flynn retained different counsel and through them moved to vacate the change of plea hearing. As will be discussed, Flynn conceded to many of the delays.

¶6 On May 26, 2021, Flynn moved to suppress the evidence from the traffic stop. On June 1, 2021, while the motion to suppress was pending, the Municipal Court set a second trial date for September 16, 2021. The Municipal Court denied the motion to suppress on August 26, 2021.

¶7 On August 30, 2021, the State moved to continue the trial due to the unavailability of the State's expert witness on toxicology. Flynn did not oppose the motion and the Municipal Court set a third trial date for January 13, 2022. On December 29, 2021, the State and Flynn made an oral joint motion to continue due to the unavailability of the State's toxicologist and to allow Flynn to consider his own expert witnesses. The State memorialized the joint motion in writing. The written motion noted Flynn waived his right to speedy trial. A new trial date was set for May 12, 2022.

¶8 Flynn failed to appear at a jury confirmation hearing on April 20, 2022. His attorney filed a continuance, again conceding delay, and trial was reset for August 9, 2022. Flynn requested a bench trial. On August 5, 2022, Flynn again moved for a continuance and conceded delay. The Municipal Court scheduled trial for September 19, 2022.

¶9 On September 16, 2022, Flynn moved to dismiss for lack of speedy trial. To accommodate briefing on the motion, the court rescheduled the bench trial for December 12, 2022. The Municipal Court denied Flynn's motion to dismiss on October 12, 2022.

¶10 On the date scheduled for trial, Flynn pleaded no contest and reserved his right to appeal the denials of his motion to suppress and his motion to dismiss for lack of speedy trial. The Municipal Court assessed \$1,085 in fines and fees against Flynn, with \$300 suspended. Flynn appealed to the District Court.

¶11 The District Court assigned Flynn's appeal to a Special Master. The Special Master affirmed the Municipal Court's denials on July 31, 2023. Flynn then objected to the order of the Special Master. The District Court affirmed the Special Master's order denying Flynn's motion to suppress and motion to dismiss for lack of speedy trial on November 9, 2023. Flynn then appealed to this Court.

STANDARD OF REVIEW

¶12 On Flynn's appeal from the Municipal Court, the District Court functioned as an intermediate appellate court. *See* §§ 3-5-303 and 3-6-110, MCA; *City of Bozeman v. Cantu*, 2013 MT 40, ¶ 10, 369 Mont. 81, 296 P.3d 461. In his appeal to this Court, we review the case as if the appeal originally had been filed in this Court. *Cantu*, ¶ 10 (citation omitted). "We examine the record independently of the district court's decision, applying the appropriate standard of review." *Cantu*, ¶ 10 (citation omitted).

¶13 "We review the grant or denial of a motion to suppress to determine whether a district court's findings of fact are clearly erroneous and whether the court correctly applied the law to those facts." *State v. Dupree*, 2015 MT 103, ¶ 8, 378 Mont. 499, 346 P.3d 1114 (citation omitted). "A court's determination that particularized suspicion exists is a question of fact reviewed for clear error." *Dupree*, ¶ 8. "A trial court's findings are clearly

erroneous if not supported by substantial evidence, if the court has misapplied the effect of the evidence, or if this Court’s review of the record leaves us with the firm conviction that a mistake has been made.” *State v. Lanegan*, 2004 MT 134, ¶ 10, 321 Mont. 349, 91 P.3d 578 (citation omitted).

¶14 “A speedy trial violation presents a question of constitutional law, which this Court reviews *de novo* to determine whether the court correctly interpreted and applied the law.” *State v. Chambers*, 2020 MT 271, ¶ 6, 402 Mont. 25, 474 P.3d 1268 (citations omitted). Factual findings underlying a speedy trial analysis are reviewed for clear error. *Chambers*, ¶ 6 (citations omitted); *State v. Ariegwe*, 2007 MT 204, ¶ 119, 338 Mont. 442, 167 P.3d 815.

DISCUSSION

¶15 1. *Whether there was particularized suspicion to stop Flynn for speeding.*

¶16 Both the United States Constitution and Montana Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; U.S. Const. amend. XIV; Mont. Const. art. II, § 11. A peace officer may reasonably “stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed . . . an offense.” Section 46-5-401(1), MCA. To justify an investigatory stop of a vehicle, the State must prove (1) objective data and articulable facts from which a peace officer can make certain reasonable inferences and (2) a resulting suspicion that the person to be stopped is committing an offense. *Brown v. State*, 2009 MT 64, ¶ 20, 349 Mont. 408, 203 P.3d 842. “Whether particularized suspicion exists is a question of fact that depends on the totality of the circumstances including, but

not limited to, the quantity, or content, and quality, or degree of reliability, of the information available to the officer.” *Weer v. State*, 2010 MT 232, ¶ 10, 358 Mont. 130, 244 P.3d 311 (internal quotations omitted). While direct “observation of a traffic offense naturally gives rise to a particularized suspicion,” particularized suspicion can also arise from other “specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant intrusion” by the peace officer. *State v. Brander*, 2004 MT 150, ¶ 6, 321 Mont. 484, 92 P.3d 1173 (citations omitted).

¶17 Here, Cornell possessed particularized suspicion based on both her training and experience as a peace officer and from the speed displayed on the RADAR sign. Cornell observed Flynn’s vehicle passing another at a high rate of speed in a 25 mph zone. She testified her training in estimating the speed of traffic led her to believe that Flynn’s vehicle was exceeding the posted speed limit. Cornell testified to her experience patrolling this zone of Helena and her familiarity with traffic traveling northbound from the downtown area on Benton Avenue. This, coupled with her observation of Flynn’s driving relative to the vehicle he overtook, created sufficient particularized suspicion to justify initiating a traffic stop of Flynn for exceeding the speed limit.

¶18 While her observation of Flynn overtaking another vehicle and her trained estimate of his speed provided sufficient particularized suspicion to justify the stop, Cornell additionally confirmed her estimation of Flynn’s speed against the “36 mph” displayed by the RADAR sign. The Montana legislature has recognized the utility of radar devices in measuring speed:

The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical devices. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in any court or legal proceeding where the speed of the motor vehicle is at issue.

Section 61-8-702, MCA; *see also City of Billings v. Skurdal*, 224 Mont. 84, 90, 730 P.2d 371, 374 (1986). In *Skurdal*, we found the testimony of the peace officer that his radar device “was used correctly and was operating properly” sufficient evidence by which to affirm a conviction for speeding when the defendant “failed to present any evidence which challenged the validity of the use of radar.” *Skurdal*, 224 Mont. at 90, 730 P.2d at 374. There, the peace officer visually estimated the defendant’s speed, confirmed the defendant was exceeding the posted speed limit with a radar device, and then effected a traffic stop. *Skurdal*, 224 Mont. at 86, 730 P.2d at 373. Here, Cornell testified that she often relied on this RADAR sign to check her estimations of vehicular speed on Benton Avenue, though she did not testify to calibrating the RADAR sign on the night she pulled over Flynn.

¶19 Flynn does not contend the RADAR sign was unreliable. Instead, Flynn alleges the lower court incorrectly concluded the use of RADAR signs by peace officers complies with § 61-8-206(2)(a), MCA. Section 61-8-206(2)(a), MCA, prohibits the use of an “automated enforcement system designed to detect traffic violations . . . to enforce traffic laws” by local authorities. Because the RADAR sign encourages drivers to reduce their speed if the sign detects they are exceeding the speed limit, Flynn argues this is an automated enforcement of a traffic law prohibited by the plain language of the statute.

¶20 We review an issue of statutory interpretation as a question of law to determine whether the lower courts’ interpretation was correct. *State v. Madsen*, 2013 MT 281, ¶ 8,

372 Mont. 102, 317 P.3d 806 (citation omitted). “A judge’s role in statutory interpretation is to ‘ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or to omit what has been inserted.’” *Madsen*, ¶ 8 (quoting § 1-2-101, MCA). “We determine the intention of the Legislature first from the plain meaning of the words used, and if interpretation of the statute can be so determined, we may not go further and apply other means of interpretation.” *State v. Trull*, 2006 MT 119, ¶ 32, 332 Mont. 233, 136 P.3d 551 (citations omitted). “In the search for plain meaning, ‘the language used must be reasonably and logically interpreted, giving words their usual and ordinary meaning.’” *State v. Ankeny*, 2010 MT 224, ¶ 21, 358 Mont. 32, 243 P.3d 291 (quoting *Gaub v. Milbank Ins. Co.*, 220 Mont. 424, 427, 715 P.2d 443, 445 (1986); *Matter of McCabe*, 168 Mont. 334, 339, 544 P.2d 825, 828 (1975)).

¶21 Here, the plain meaning of the statute supports the lower court’s conclusion that the RADAR sign is not an automated traffic enforcement device. If the RADAR sign detected a driver exceeding the speed limit, and a law enforcement officer was not present to cite the speeding driver, as occurred here, the RADAR sign is unequipped to issue a citation for the violation of the traffic law, let alone stop the driver. The RADAR sign plainly provides only a reminder of the posted speed limit for drivers—both those exceeding and those following the posted speed limit. The RADAR sign by itself possesses no enforcement mechanism enabling the local municipality to hold drivers accountable for traffic violations occurring outside the presence of a peace officer. Had Cornell not been parked behind the Civic Center, Flynn would have been otherwise free to ignore the digits

displayed by the RADAR sign. If we accept Flynn’s construction of § 61-8-206(2)(a), MCA, as disallowing RADAR signs, peace officers would likewise be prohibited from relying on red lights to cite drivers who fail to stop as these are likewise automated devices which remind drivers of the rules of the road. “Statutory construction should not lead to absurd results if a reasonable interpretation would avoid it.” *State v. Sommers*, 2014 MT 315, ¶ 22, 377 Mont. 203, 339 P.3d 65. The plain meaning of the statute does not support Flynn’s argument that Cornell’s reliance on the RADAR sign was impermissible as a matter of law. We therefore hold that the lower courts did not err by concluding § 61-8-206(2)(a), MCA, does not prohibit RADAR signs.

¶22 Based upon the totality of the circumstances, including Cornell’s reliance on her training and experience to estimate Flynn’s speed and her use of the RADAR sign to confirm her estimate, sufficient particularized suspicion existed to make the initial stop of Flynn. Because Cornell was justified in stopping Flynn, the resulting DUI investigation was likewise reasonable. We affirm the denial of Flynn’s motion to suppress the evidence from the traffic stop.

¶23 2. *Whether Flynn was denied his constitutional right to a speedy trial.*

¶24 The United States Constitution and the Montana Constitution guarantee the right of the accused to a speedy trial. U.S. Const. amend. VI; U.S. Const. amend. XIV; Mont. Const. art II, § 24. If the delay between accusation and trial exceeds 200 days, we evaluate a constitutional speedy trial claim by balancing four factors: (1) the length of the delay; (2) the reasons for the delay; (3) the accused’s responses to the delay; and (4) prejudice to the accused. *Ariegwe*, ¶ 113; *Chambers*, ¶ 7; *State v. Heath*, 2018 MT 318, ¶ 14, 394 Mont.

41, 432 P.3d 141. No one factor is dispositive by itself: the unique facts and circumstances of each factor must be considered to determine whether the accused has been denied their right to a speedy trial. *Ariegwe*, ¶¶ 105, 112; *Chambers*, ¶ 7; *Heath*, ¶ 14.

Factor One: Length of Delay

¶25 “The right to a speedy trial begins when a person has been formally accused or charged by the prosecution, whether by arrest, the filing of a complaint or by indictment or information.” *Chambers*, ¶ 8 (citing *Ariegwe*, ¶ 42). First, we must determine whether “the interval between accusation and trial is at least 200 days (irrespective of fault for the delay).” *Ariegwe*, ¶ 107. Second, we examine the extent to which the delay stretches beyond the 200-day threshold. *Chambers*, ¶ 8; *Ariegwe*, ¶ 37 (citation omitted).

¶26 Here, Flynn and the State agree the time began running with his arraignment on November 30, 2020. His final date for trial was scheduled for December 12, 2022, a total delay of 742 days, 542 days beyond the 200-day threshold requirement. Accordingly, this factor weighs against the State and creates a presumption of prejudice against Flynn. *Ariegwe*, ¶¶ 56, 113.

Factor Two: Reasons for Delay

¶27 The Court must first identify each period of delay in bringing the accused to trial, attributing each period of delay to the appropriate party, and weighing each period of delay based upon the “specific cause and motive for the delay.” *Ariegwe*, ¶ 108. We attribute delays not obviously caused or affirmatively waived by the defendant to the State; however, both “institutional circumstances, such as overcrowded court dockets, and ‘valid’

reasons, such as a missing witness . . . weigh less heavily against the state.” *Ariegwe*, ¶ 108. Lack of diligence in prosecuting and bad faith delays by the prosecution to frustrate the defense weigh most heavily against the state. *Ariegwe*, ¶ 109. Reasons ascribed to the accused are likewise weighed based upon appropriateness for the motivations behind the delay. *Ariegwe*, ¶ 109.

¶28 Here, we have identified seven periods of delay: (1) a 143-day delay from Flynn’s arraignment on November 30, 2020, until the original trial date of April 22, 2021; (2) a 147-day delay from that original trial date until the second trial date of September 16, 2021; (3) a 119-day delay between the second trial date and a third trial date of January 13, 2022; (4) a 119-day delay between the third trial date and the fourth trial date set for May 12, 2022; (5) an 89-day delay between the fourth trial date and the fifth trial date set for August 9, 2022; (6) a 41-day delay between the fifth trial date and the sixth trial date set for September 19, 2022; and (7) an 84-day delay between the sixth trial date and the bench trial scheduled for December 12, 2022 at which Flynn entered his no contest plea. We turn next to our *Ariegwe* analysis to assess the relative responsibility between the State and Flynn for each of the delays.

¶29 The first delay of 143 days between Flynn’s arraignment and the initial April 22, 2021 trial date resulted largely from institutional delays common to a criminal prosecution. We attribute these 143 days to the State as institutional delay.

¶30 The second delay of 147 days between the initial trial date and the second September 16, 2021 trial date, occurred due to Flynn’s April 8, 2021, motion to vacate the

original trial and enter a change of plea. In his motion, Flynn waived “his right to speedy trial.” We attribute these 147 days to Flynn.

¶31 The third delay of 119 days between the second trial date and the third January 13, 2022, trial date resulted from an unopposed continuance requested by the State due to the unavailability of the State’s expert toxicologist witness. Witness unavailability is a valid reason for delay but still weighs against the State, though “less heavily.” *Ariegwe*, ¶ 70 (citation omitted). We attribute these 119 days to the State.

¶32 The fourth delay of 119 days between the third trial date and the fourth May 12, 2022, trial date resulted from a joint oral motion by the parties to accommodate the State’s unavailable witness and Flynn’s efforts to secure his own expert witnesses. The written motion by the State memorializing this joint oral motion included an additional waiver of Flynn’s right to speedy trial. Flynn did not oppose this motion. Because of this affirmative waiver of his right to speedy trial, we attribute these 119 days to Flynn.

¶33 The fifth delay of 89 days between the fourth trial date and the fifth August 9, 2022, trial date resulted entirely from a motion to continue requested by Flynn after his failure to appear for a mandatory jury confirmation hearing on April 20, 2022. Flynn’s motion contained no basis for the postponement and conceded responsibility for any delay resulting from this continuance. We attribute these 89 days to Flynn.

¶34 The sixth delay of 41 days between the fifth trial date and the sixth September 19, 2022 trial date, resulted from another motion to continue requested by Flynn in which he

again proffered no basis for the postponement and conceded delay. We attribute these 41 days to Flynn.

¶35 The seventh and final delay of 84 days between the sixth trial date and the seventh December 12, 2022, trial date began with Flynn’s motion to dismiss for lack of speedy trial. We charge “delays directly attributable to the filing of a speedy trial motion less than *thirty* days prior to the scheduled trial date” to the accused to equitably afford “the court and the parties a reasonable time frame in which to address the speedy trial motion fully.” *Ariegwe*, ¶ 116 (emphasis in original). Here, Flynn filed his motion to dismiss for lack of speedy trial on September 16, 2022—just three days before trial was to begin. This necessitated delaying trial for yet another time to accommodate full briefing on the matter. Accordingly, we attribute these 84 days to Flynn.

¶36 Of the 742 days between Flynn’s arraignment and final trial date of December 12, 2022, we attribute 480 days of the delay to Flynn and 262 to the State. We weigh the 262 days attributable to the State less heavily because these delays arose from witness unavailability and inherent institutional delays. Meanwhile, the delays caused by Flynn stemmed in part from his various motions to continue in which he waived his right to speedy trial. Importantly, Flynn’s failure to appear at the April 20, 2022 jury confirmation hearing began a sequence of delays culminating in Flynn’s motion to dismiss shortly before the sixth scheduled trial date. “A motion for postponement must disclose the basis therefor, or it is presumed to be unjustified and is weighed heavily against the proponent.” *State v. Couture*, 2010 MT 201, ¶ 75, 357 Mont. 398, 240 P.3d 987 (citing *Ariegwe*, ¶ 129). We

therefore weigh the 480 days of delay attributed to Flynn more heavily due to a lack of justification for his requested continuances.

¶37 While the court’s trial timeline and its attributions of the delays differ slightly from our analysis here, we nonetheless agree with the lower court that the balance of this factor weighs against Flynn.

Factor Three: The Accused’s Responses to the Delays

¶38 While “the number of instances in which the accused acquiesces in or objects to pretrial delay is not talismanic,” we examine “the totality of the accused’s various responses to the delays in bringing [them] to trial,” looking for indicia of the accused’s earnest intention to proceed with trial. *Ariegwe*, ¶ 110. This evaluation turns on various factors, including “timeliness, persistence, and sincerity of the objections,” as well as “whether the accused was represented by counsel” and “the accused’s pretrial conduct.” *Ariegwe*, ¶ 110. We “view the assertion of the right” to speedy trial in the context of the entire case because “the mere fact that the accused has filed a motion to dismiss on speedy trial grounds sometime prior to the commencement of trial is itself of little probative value on the question of whether the right has been violated.” *Ariegwe*, ¶ 139.

¶39 Here, Flynn did not contest the State’s delay based on witness availability; Flynn jointly moved for the fourth delay; and Flynn waived his right to speedy trial in his own continuances. He conceded delay in several motions and made a joint oral motion with the State, wherein he waived his speedy trial rights, so that both parties could secure expert witnesses. Flynn’s failure to appear at the April 20, 2022, jury confirmation hearing

resulted in a continuance which likewise caused further delay. Based on this record, we conclude Flynn has not demonstrated he wanted a speedy trial. *Ariegwe*, ¶ 79.

Factor Four: Prejudice to the Accused

¶40 We assess whether “the accused has been prejudiced by the delay in light of the interests the speedy trial right was designed to protect.” *Ariegwe*, ¶ 111. The spirit of the speedy trial right shields the accused from oppressive pretrial incarceration, excessive anxiety and concern arising out of the unresolved criminal charges, and the possibility a prolonged delay will impair the accused’s ability to present an effective defense as evidence or witnesses’ memories fade. *Ariegwe*, ¶ 111.

¶41 Here, Flynn was not prejudiced by the delay. Flynn did not endure lengthy pretrial incarceration nor was he subjected to any pretrial testing. Flynn alleges the delay caused him anxiety and stress, but Flynn has provided no specific examples of how the delays have caused him excessive anxiety and concerns. *Ariegwe*, ¶ 97 (“a certain amount of anxiety and concern is inherent in being accused of a crime,” but this factor weighs whether the delay has “unduly . . . aggravated the anxiety and concern”). Nothing in the record suggests an impairment of his defense resulting from diminished memories or loss of evidence. Indeed, the minimal evidence produced in this case was easily preserved and the few witnesses who did testify did not indicate an inability to recall the events.

Balancing the *Ariegwe* Factors

¶42 Finally, we conclude our analysis by balancing the foregoing four factors. *Ariegwe*, ¶ 112. Here, the length of delay weighs in Flynn’s favor because the delay significantly

exceeded 200 days, creating a presumption of prejudice. The reasons for delay weigh slightly in the State's favor, as we determined that 64% of the 742-day delay was attributable to Flynn. Flynn's actions and responses in these proceedings do not exhibit a desire to have a speedy trial as he generally acquiesced to the State's continuances and failed to raise his speedy trial right until the eve of the sixth scheduled trial date. Flynn has also failed to convincingly demonstrate he suffered prejudice from the delay. He was not incarcerated or subject to pretrial testing during the delay, he failed to demonstrate excessive anxiety due to the delay, and he has not shown any impairment of his ability to mount an adequate defense due to the delay. Balancing the factors, we conclude Flynn's motion to dismiss for lack of speedy trial was properly denied.

¶43 The Municipal Court did not violate Flynn's right to a speedy trial. We conclude the District Court did not err in affirming the Municipal Court's denial of Flynn's motion to dismiss for lack of speedy trial.

CONCLUSION

¶44 The District Court correctly affirmed the Municipal Court's denial of Flynn's motion to suppress and his motion to dismiss for lack of speedy trial. His conviction is affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON