

STATUTORY RIGHTS - SPEEDY TRIAL: CONSIDERING
GOOD CAUSE DELAY AND PROPER PROCEDURE WHEN
THE DEFENDANT INVOKES HIS STATUTORY RIGHT TO A
SPEEDY TRIAL

State v. Watson, 2019 ND 164, 930 N.W.2d 145

ABSTRACT

In *State v. Watson*, the North Dakota Supreme Court considered the appeal of a defendant who was convicted of similar charges in three separate counties. The court *held* that in two counties, the district court did not abuse its discretion by granting continuances for good cause delay. The state presented sufficient evidence for a good cause delay based on (1) the unavailability of a testifying witness at a scheduled trial date, (2) the state used diligence in attempting to secure the witness, and (3) the defendant did not show that he was prejudiced by the delay. Therefore, although the 90-day statutory period was exceeded, there was good cause and the district court's decisions were not unreasonable. However, the court *held* that in the third county, the defendant's statutory speedy trial right was violated because the trial failed to begin within 90 days of his speedy trial election and the government failed to show good cause for the delay. The district court previously denied a motion for continuance because there was not good cause based on the prosecutor's scheduling conflicts. The court *held* the record as presented was not sufficient to rule as to whether there was good cause delay for the continuance. The record, the court *held*, was too void of information as to determine what had occurred at the district court level. Accordingly, the court reversed and remanded the district court's judgment for dismissal of the charge with prejudice. In comparing and contrasting case law with the dates of procedural activity and the reasoning, the court expanded its previous case law of what violates the statutory right to a speedy trial. Of significance to both the bench and the bar, this case allows for a comparison of what is permitted against what violates a defendant's rights when he has invoked his statutory right to a speedy trial. *Watson* provides guidelines for how the court and government should oversee the timeline of criminal prosecutions when the defendant has invoked his statutory right to a speedy trial, and what the outcome may be if this right is violated.

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I. FACTS

James Watson, (“Watson”), the defendant and appellant, was convicted of sexual offenses in three separate counties.¹ Though the issues raised on appeal were similar, the court addressed the facts of each case in turn.²

1. *State v. Watson*, 2019 ND 164, ¶ 2, 930 N.W.2d 145. The North Dakota Supreme Court heard three consolidated cases from three separate counties for the appeal. *Id.*

2. *Id.*

A. HETTINGER COUNTY

On June 30, 2017, Watson was charged in Hettinger County with three counts of gross sexual imposition.³ On October 2, 2017, Watson was arraigned and the state filed a criminal information charging Watson with one count of gross sexual imposition in violation of North Dakota Century Code § 12.1-20-03, a class AA felony.⁴ The following day, October 3, 2017, Watson filed and served a speedy trial request under sections 29-01-06 and 29-19-02 of the North Dakota Century Code.⁵

The court scheduled a jury trial for December 27, 2017, later amended to December 27–29, 2017.⁶ The state moved for a continuance on December 18, 2017.⁷ The state argued good cause for the continuance because the victim was a “necessary witness” and she was unable to testify at the trial on December 28–29, 2017.⁸ The district court advised the parties the state must comply with section 29-19-06 of the North Dakota Century Code for the court to consider a continuance based on the unavailability of a witness.⁹ The state then filed a supplemental brief supporting its continuance, and Watson objected.¹⁰ The district court granted the state’s motion, finding the state’s brief supplied the information required by section 29-19-06, finding a good cause delay beyond the 90-day statutory requirement based on the unavailability of a material witness.¹¹

The court ordered the trial to take place January 31 through February 2, 2018.¹² The trial was amended to take place February 7 – 9, 2018 instead.¹³ The trial did not take place as the parties instead reached a plea agreement.¹⁴ Watson entered a conditional *Alford* plea¹⁵ of guilty to the amended charge of sexual assault in violation of section 12.1-20-07 of the North Dakota

3. *Id.* at ¶ 9.

4. *Id.* at ¶ 10.

5. *Id.*

6. *Id.* at ¶ 11.

7. *Id.*

8. *Id.*

9. *Id.* at ¶ 12.

10. *Id.*

11. *Id.* at ¶ 13.

12. *Id.*

13. *Id.*

14. *Id.* at ¶ 14.

15. “An *Alford* plea is a type of plea that occurs when a defendant knowingly and voluntarily enters a guilty plea while maintaining his innocence.” *State v. Bates*, 2007 ND 15, 726 N.W.2d 595, n. 1 (citing *North Carolina v. Alford*, 400 U.S. 25 (1970)).

Century Code, a class C felony.¹⁶ Watson received a sentence of 5 years imprisonment and credit for time already served.¹⁷

B. STARK COUNTY

In Stark County, Watson was charged with continuous sexual abuse of a child, violating section 12.1-20.03 of the North Dakota Century Code, a class AA felony.¹⁸ Watson was arraigned on October 2, 2017.¹⁹ The following day, October 3, 2017, Watson filed and served his speedy trial request as set forth in sections 29-01-06 and 29-19-02.²⁰ The court scheduled a jury trial for December 27–29, 2017.²¹

On December 14, 2017, the state made a motion for a continuance based on unavailability during the week of December 25–29, 2017, and filed an affidavit stating its primary witness was unavailable.²² Watson timely objected, arguing the state did not meet the procedure set forth in section 29-19-06 for a continuance due to a witness’s absence.²³ The district court denied the continuance, but allowed the state to supplement its motion for the court to consider the whether the witness’s absence was a valid reason for a continuance.²⁴ The state did supplement its motion and provided the information as set forth by the section 29-19-06.²⁵ The district court then granted the state’s motion for a continuance on December 20, 2017.²⁶ The district court found “the State’s unavailability was not a sufficient or justifiable reason for continuance, but good cause existed to delay the trial beyond the 90-day requirement based on the witness’s unavailability.”²⁷

The following day, December 21, 2017, Watson objected to the state’s supplemental brief, arguing the state had not shown diligence in securing the witness for trial.²⁸ The court determined that its order granting the continuance “stands” because the state complied with section 29-19-06 and Watson

16. *Watson*, 2019 ND 164, at ¶ 14.

17. *Id.* Watson was arraigned on October 2, 2017. *Id.* at ¶ 4. It is not indicated that he was released after that date. See Brief of Appellant James Glee Watson at ¶¶ 2-3, *State v. Watson*, 2019 ND 164, 930 N.W.2d 145 (No. 20180294, 20180295, 20180296).

18. *Watson*, 2019 ND 164, ¶ 15, 930 N.W.2d 145.

19. *Id.* at ¶ 16.

20. *Id.*

21. *Id.*

22. *Id.* at ¶ 17.

23. *Id.*

24. *Id.* at ¶ 18.

25. *Id.*

26. *Id.* at ¶ 19.

27. *Id.*

28. *Id.* at ¶ 20.

did not address prejudice, the vital factor in deciding whether a continuance is justified.²⁹

A jury trial was then scheduled to take place February 7–9, 2018.³⁰ The trial did not take place as Watson entered an *Alford* conditional guilty plea to one count of continuous sexual abuse of a child, a class AA felony.³¹ He received a 25 year sentence with the possibility of parole.³²

C. GOLDEN VALLEY COUNTY

Watson faced charges of continuous sexual abuse of a child in Golden Valley County.³³ Watson was arraigned on October 2, 2017.³⁴ The following day, October 3, 2017, Watson filed and served his speedy trial request as set forth in sections 29-01-06 and 29-19-02 of the North Dakota Century Code.³⁵ A jury trial was scheduled for December 27, 2017, then later was rescheduled for January 3 – 5, 2018.³⁶

The state made a motion for a continuance on December 14, 2017.³⁷ The state argued good cause for the continuance was present “because the investigation was ongoing, law enforcement released additional information, and the state wanted additional time to review the new information and make Watson an offer.”³⁸ The state further argued it had a scheduling conflict due to a trial in another case on January 5, 2018.³⁹ Watson objected.⁴⁰

The following day, December 15, 2017 the district court informed the parties the jury trial was scheduled for January 3–5, 2018, due to issues with the court’s schedule.⁴¹ The court advised that unless the court ordered a continuance, the state should prepare to go to trial.⁴² The district court then rejected the state’s motion for a continuance on December 20, 2017.⁴³ Good

29. *Id.*

30. *Id.* at ¶ 21.

31. *Id.*; *State v. Bates*, 2007 ND 15, ¶ 2 n. 1, 726 N.W.2d 595 (citing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

32. *Watson*, 2019 ND 164, ¶ 21, 930 N.W.2d 145; *see also* Brief of Appellant James Glee Watson at ¶¶ 2-3, *State v. Watson*, 2019 ND 164, 930 N.W.2d 145 (No. 20180294, 20180295, 20180296).

33. *Watson*, 2019 ND 164, ¶ 3, 930 N.W.2d 145.

34. *Id.* at ¶ 4.

35. *Id.*

36. *Id.*

37. *Id.* at ¶ 5.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at ¶ 6.

42. *Id.*

43. *Id.* at ¶ 7.

cause was not present for state's request of more investigatory time.⁴⁴ Further, the court found there was no conflict with the other case scheduled for that same day because the same judge would be involved if it did not reach a settlement, and there would be no conflict at all if a settlement was reached.⁴⁵

On January 3–5, 2018, no trial took place.⁴⁶ In fact, “There is no information in the record about the trial until January 22, 2018, when an amended notice of trial was filed, rescheduling the jury trial to January 31-February 2, 2018.”⁴⁷ The jury trial was rescheduled to January 31 – February 2, 2018.⁴⁸ The trial was held and the jury found Watson guilty of continuous sexual abuse of a child.⁴⁹ He received a sentence of 25 years in prison.⁵⁰

D. NORTH DAKOTA SUPREME COURT TREATMENT

The North Dakota Supreme Court considered the cases on a consolidated appeal.⁵¹ The Supreme Court affirmed the Hettinger County and Stark County judgments, finding the district court did not abuse its discretion by granting the state's motions for continuances.⁵² However, the Supreme Court reversed the Golden Valley County judgment and remanded it for dismissal with prejudice, because it found the “trial did not begin within 90 days of Watson's speedy trial election and the district court did not find good cause for the delay.”⁵³

II. LEGAL BACKGROUND

In North Dakota, in addition to constitutional rights given by the North Dakota Constitution and United States Constitution, criminal defendants have a statutory right to a speedy trial.⁵⁴ Codified by North Dakota Century Code § 29-01-06, in a criminal prosecution, the defendant has the right to a speedy and public trial.⁵⁵ The defendant must invoke his right to a speedy trial under section 29-19-02 of the North Dakota Century Code for the privileges of the statute to apply.⁵⁶ The right to a speedy trial statute states:

44. *Id.*

45. *Id.*

46. *Id.* at ¶ 8.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at ¶¶ 1-2.

52. *Id.* at ¶ 1.

53. *Id.* at ¶¶ 1, 41.

54. N.D. CENT. CODE § 29-01-06 (2019).

55. N.D. CENT. CODE § 29-01-06(5) (2019).

56. N.D. CENT. CODE § 29-19-02 (2019).

In a criminal prosecution, the state and the defendant each shall have the right to a speedy trial. The right to a speedy trial in a criminal case in which the charging instrument contains a charge of a felony offense under section 19-03.1-23 or under chapter 12.1-20 is for the trial to begin within ninety days of the date the party elects this right. The prosecution and the defendant shall elect this right within fourteen days following the arraignment. The court may allow the trial to begin later than ninety days of the arraignment for good cause.⁵⁷

This statutory speedy trial right applies to criminal cases under section 19-03.1-23, controlled substances, and under chapter 12.1-20, sex offenses.⁵⁸ The defendant must “elect” their right for the statute to apply.⁵⁹ The defendant elects this right when it is received by the court and prosecutor.⁶⁰ The defendant must also elect the right within the fourteen-day window following arraignment.⁶¹ The fourteen-day window is not flexible, but is rather mandatory, should a criminal defendant choose to elect this right.⁶² The court is authorized to allow the trial to begin later than 90 days after the arraignment if there is good cause.⁶³ The speedy trial statute does not contain a remedy should the right be violated.⁶⁴

A. GOOD CAUSE – FOUR BALANCING FACTORS

Section 29-19-02 of the North Dakota Century Code authorizes the district court to begin a trial later than 90 days after the arraignment for good cause.⁶⁵ The district court must balance four factors to determine whether there is good cause to grant a continuance under section 29-19.02.⁶⁶ The four factors are: “(1) length of delay; (2) reason for delay; (3) a defendant’s assertion of his right; and (4) prejudice to the defendant.”⁶⁷ There is not a single

57. *Id.*

58. *Watson*, 2019 ND 164, ¶ 24, 930 N.W.2d 145.

59. *Id.* (citing *State v. Gibson*, 2017 ND 15, ¶ 5, 889 N.W.2d 852 (analyzing N.D. CENT. CODE § 29-19-02 (2019))).

60. *Id.*

61. *Id.* (citing *Koenig v. State*, 2018 ND 59, ¶ 16, 907 N.W.2d 344 (analyzing N.D. CENT. CODE § 29-19-02 (2019))).

62. *Id.*

63. *State v. Hall*, 2017 ND 124, ¶ 10, 894 N.W.2d 836; N.D. CENT. CODE § 29-19-02 (2019).

64. N.D. CENT. CODE § 29-19-02 (2019).

65. *Watson*, 2019 ND, ¶ 28, 930 N.W.2d 145; *Hall*, 2017 ND, ¶ 10, 894 N.W.2d 836.

66. *Everett v. State*, 2008 ND 199, ¶ 26, 757 N.W.2d 530. The North Dakota Supreme Court uses this four-factor balancing test to analyze alleged violations of the statutory right to a speedy trial, even though it was adopted as a constitutional speedy trial test.

67. *Id.* (citing *State v. Foster*, 1997 ND 8, ¶ 7, 560 N.W.2d 194).

controlling factor, but a lack of prejudice weakens a claim.⁶⁸ The third factor, a defendant's assertion of the right, is based on the fourteen-day period as required by statute.⁶⁹

The first factor balanced is the length of the delay.⁷⁰ Whether the delay is too long depends on the circumstances set forth in the case.⁷¹ In *State v. Hinojosa*⁷² and *State v. Moore*,⁷³ the North Dakota Supreme Court held that delays of 54 and 38 days, respectively, were not excessive given the severity of the offenses.⁷⁴

The second balancing factor is the reason for the delay.⁷⁵ This factor “weighs against the state if there is evidence of intentional or dilatory tactics that unnecessarily delay the trial.”⁷⁶ However, if the defendant causes or contributes to the delay, the factor will be weighed against him.⁷⁷ Such a case of the defendant causing his own delay was illustrated in *Everett v. State*,⁷⁸ in which the court held the defendant, who was unable to work with two attorneys, slowed down the process himself, and it could not be said the state caused the delay.⁷⁹

A witness's unavailability may serve as a valid reason to justify a delay of trial, so long as the unavailability is not attributable to the state.⁸⁰ Section 29-19-06 sets forth eight requirements for the state to make a showing of continuance based on an absent witness.⁸¹ The factors include whether the applicant used due diligence in preparation for trial, whether the witness' testimony is material, and that the witness is not absent due to the fault or advice of the applicant.⁸²

The fourth factor to determine whether the court has good cause to grant a continuance is prejudicial to the defendant.⁸³ There are three types of

68. *State v. Hinojosa*, 2011 ND 116, ¶ 8, 798 N.W.2d 634 (quoting *State v. Moore*, 2007 ND 7, ¶ 6, 725 N.W.2d 910).

69. N.D. CENT. CODE § 29-19-02 (2019).

70. *Everett*, 2008 ND 199, ¶ 27, 757 N.W.2d 530.

71. *Moore*, 2007 ND 7, ¶ 7, 725 N.W.2d 910.

72. 2011 ND 116, 798 N.W.2d 634.

73. 2007 ND 7, 725 N.W.2d 910.

74. *Hinojosa*, 2011 ND 116, ¶ 9, 798 N.W.2d 634 (dealing with a drug distribution offense); *Moore*, 2007 ND 7, ¶ 7, 725 N.W.2d 910 (dealing with burglary, theft of property, and criminal mischief offenses).

75. *Everett*, 2008 ND 199, ¶ 28, 757 N.W.2d 530.

76. *Koenig v. State*, 2018 ND 59, ¶ 22, 907 N.W.2d 344.

77. *Id.* (quoting *State v. Moran*, 2006 ND 62, ¶ 10 711 N.W.2d 915).

78. 2008 ND 199, ¶ 26, 757 N.W.2d 530.

79. *Everett*, 2008 ND 199, ¶ 28, 757 N.W.2d 530.

80. *State v. Watson*, 2019 ND 164, ¶ 32, 930 N.W.2d 145.

81. N.D. CENT. CODE § 29-19-06 (2019).

82. *Id.*

83. *Watson*, 2019 ND, ¶ 33, 930 N.W.2d 145.

prejudice: (1) oppressive pretrial incarceration, (2) anxiety and concern brought on by the delay, and (3) an impaired defense.⁸⁴ Although delay is not presumptively prejudicial, a lack of prejudice will weaken a claim considerably.⁸⁵

B. PRIOR CONSIDERATION OF THE STATUTORY RIGHT TO A SPEEDY TRIAL

The North Dakota Supreme Court has generally found the statutory right to a speedy trial is not violated in most cases. In *Everett*, the North Dakota Supreme Court held the defendant's right to a speedy trial was not violated when the defendant fired multiple attorneys, leading to a delay in proceedings not caused by the state.⁸⁶ Furthermore, there was no speedy trial violation at all; the defendant failed to elect his right to a speedy trial within the fourteen-day period required by section 29-19-02.⁸⁷ The judgment against the defendant was affirmed.⁸⁸

The 90-day period to begin trial has been analyzed by the North Dakota Supreme Court. In *Koenig v. State*,⁸⁹ the North Dakota Supreme Court held the defendant's statutory right to a speedy trial was not violated at all because he elected the right before his arraignment, in violation of section 29-19-02 which requires the defendant to elect his right within fourteen days after his arraignment.⁹⁰ When considering the date of the arraignment, the trial was held 86 dates later, which was within the 90-day permissible period.⁹¹ Further, in *State v. Gibson*,⁹² the Supreme Court rejected the argument that the 90-day period began when the defendant mailed his request of a speedy trial.⁹³ Rather, the 90-day period begins when the prosecutor and court receive the notice of election.⁹⁴

What constitutes "prejudice" has been at issue in several North Dakota cases. In *State v. Hall*,⁹⁵ the defendant argued generally that the delay caused him "anxiety and concern," resulting in "oppressive pretrial incarceration."⁹⁶

84. *Id.*

85. *Id.*; *State v. Aguero*, 2010 ND 210, ¶ 22, 791 N.W.2d 1.

86. *Everett*, 2008 ND 199, ¶ 28, 757 N.W.2d 530.

87. *Id.* at ¶ 29.

88. *Id.* at ¶ 1.

89. 2018 ND 59, 907 N.W.2d 344

90. *Koenig*, 2018 ND 59, ¶¶ 16-20, 907 N.W.2d 344.

91. *Id.* at ¶ 18.

92. 2017 ND 15, 889 N.W.2d 852.

93. *Gibson*, 2007 ND 15, ¶ 5, 889 N.W.2d 852.

94. *Id.*

95. 2017 ND 124, 894 N.W.2d 836.

96. *Hall*, 2017 ND 124, ¶ 14, 894 N.W.2d 836.

While the Court recognized the detrimental impact of pretrial detention to defendants, the defendant failed to fully brief the issue of how his pretrial incarceration specifically affected him.⁹⁷ Therefore, when balancing the factors, there was not enough loss of his liberty tied to specific prejudice to find a violation of the defendant's right to a speedy trial.⁹⁸ The defendant's criminal judgment was affirmed.⁹⁹ In *State v. Owens*, the Court found that while more than a one-year delay in trial when the defendant has elected his speedy trial right is presumptively prejudicial,¹⁰⁰ the defendant contributed to the delay in his trial by his actions such as firing his court-appointed attorney.¹⁰¹ In *State v. Bergstrom*, although the Court was troubled by a two-year delay in proceedings, there was no evidence that the state purposely delayed the trial and the defendant failed to fully brief the issue.¹⁰² The defendant's conviction was affirmed.¹⁰³

The Court cites several cases where the Uniform Mandatory Disposition of Detainers Act is at issue.¹⁰⁴ The Uniform Mandatory Disposition of Detainers Act ("UMDDA"), N.D.C.C. § 29-33-03, is a statutory speedy trial right for those instances where a detainer is filed against a person who is already imprisoned in North Dakota.¹⁰⁵ The UMDDA mandates that when a case is not brought to trial within the 90-day period required by statute, the case must be dismissed with prejudice.¹⁰⁶ In *State v. Olsen*, the district court held a hearing on the state's motion for a continuance, which was within the 90-day period following when the defendant had elected his speedy trial right.¹⁰⁷ The district court granted a 60-day continuance.¹⁰⁸ The trial was ultimately rescheduled for 63 days later, and the Supreme Court held this delay violated the defendant's right to a speedy trial.¹⁰⁹ As required by the

97. *Id.*

98. *Id.* The defendant in *Hall* also failed to raise the issue within 14 days of his arraignment, therefore contributing to his own confinement. *Id.* at ¶ 8.

99. *Id.* at ¶ 1.

100. *State v. Owens*, 2015 ND 68, ¶ 9, 860 N.W.2d 817.

101. *Id.* at ¶ 10.

102. *State v. Bergstrom*, 2004 ND 48, ¶¶ 16-19, 676 N.W.2d 83.

103. *Id.* at ¶ 21.

104. The Court does not explicitly state that it treats claims under the Uniform Mandatory Disposition of Detainers Act and § 29-19-06, the general speedy trial right, the same. From the citation of several cases under the UMDDA, it is likely implied that the court treats the claims the same, or very similarly.

105. N.D. CENT. CODE § 29-33-03 (2019); *State v. Hinojosa*, 2011 ND 116, ¶ 7, 798 N.W.2d 634.

106. N.D. CENT. CODE § 29-33-03 (2019); *State v. Olsen*, 540 N.W.2d 149, 150 (1995).

107. *Olsen*, 540 N.W.2d at 150.

108. *Id.*

109. *Id.* at 150-51.

UMDDA, the judgment of conviction was reversed, and the case was remanded to be dismissed with prejudice.¹¹⁰

III. THE COURT’S ANALYSIS

In *Watson*, the North Dakota Supreme Court, with Justice Crothers writing for the majority, found that *Watson*’s statutory speedy trial right was not violated in Hettinger and Stark Counties, but was violated in Golden Valley County.¹¹¹ In Hettinger and Stark Counties, the court found the continuances to be justified by good cause.¹¹² However, in Golden Valley County, the Court struggled to even address the statutory question because the record was so void of information.¹¹³ There was no explanation from the District Court to justify a delay, especially in light of the court previously denying a motion for a continuance.¹¹⁴ Therefore, the trial had been improperly rescheduled after the statutory time limit.¹¹⁵ An opinion concurring in part and dissenting in part, written by Justice Jensen and joined by Chief Justice VandeWalle, agreed with the majority’s analysis of the Stark County and Hettinger County cases, but would have affirmed the Golden Valley conviction.¹¹⁶

A. THE MAJORITY OPINION

The North Dakota Supreme Court held the defendant’s statutory speedy trial rights were not violated in the Stark County and Hettinger County cases, but the right was violated in Golden Valley County.¹¹⁷ The Court ordered the district court’s judgment in Golden Valley County reversed and remanded for “dismissal of the charge with prejudice.”¹¹⁸

1. Stark County and Hettinger County Good Cause Delay

The North Dakota Supreme Court rejected *Watson*’s arguments that the state failed to establish good cause for the continuances in Hettinger County and Stark County.¹¹⁹ In considering the four factors to determine whether there was good cause to grant a continuance, the court first determined it was

110. *Id.* at 151.

111. *State v. Watson*, 2019 ND 164, ¶ 1, 930 N.W.2d 145.

112. *Id.* at ¶ 34.

113. *Id.* at ¶¶ 37, 40.

114. *Id.* at ¶ 37.

115. *Id.* at ¶ 40.

116. *Id.* at ¶ 44.

117. *Id.* at ¶ 1.

118. *Id.* at ¶ 41.

119. *Id.* at ¶ 27.

undisputed that Watson timely asserted his right to a speedy trial, the third factor typically considered in determining speedy trial violations.¹²⁰

The first factor, the length of the delays beyond the 90-day statutory limit – 29 days in Hettinger County and 36 days in Stark County – were relatively short.¹²¹ The court found the delay was minimal given the severe charges, and drew comparisons to other cases with a delay of 54 days in a drug delivery offense and another with a 38-day delay in a burglary, theft, and criminal mischief offense, where the court also held the statutory speedy trial right was not violated.¹²²

The second factor, the reason for the delay, was permissible when considered under section 29-19-06, allowing for continuances based on the unavailability of a primary witness.¹²³ The Court found that while the state did not go through every factor enumerated in section 29-19-06, there was sufficient evidence that the state supplied the information required, including that the testimony was material and could not be supplied by others.¹²⁴

Finally, the Court considered prejudice, the lack of which can weaken a claim.¹²⁵ The Court found Watson did not demonstrate prejudice in any of his claims.¹²⁶ Although Watson was incarcerated while awaiting trial, he did not show the additional month was “oppressive or that he experienced anxiety related to the delay.”¹²⁷ Further, he did not show his defense was inhibited by the delay in the proceedings.¹²⁸ Thus, it could not be said that the delay in Stark County or Hettinger County was prejudicial to Watson.¹²⁹

In balancing the four factors, the court found that although the 90-day statutory requirement for a speedy trial was exceeded in both counties, the district court found good cause for the delay as to justify exceeding the statutory time limit.¹³⁰ Therefore, the District Court did not abuse its discretion in granting continuances, and Watson’s speedy trial rights were not violated.¹³¹ The court affirmed the judgments in both Hettinger and Stark Counties.¹³²

120. *Id.* at ¶ 30.

121. *Id.*

122. *Id.*; *see also* State v. Hinojosa, 2011 ND 116, ¶ 9, 798 N.W.2d 634; State v. Moore, 2007 ND 7, ¶ 7, 725 N.W.2d 910.

123. *Watson*, 2019 ND 164, ¶ 32, 930 N.W.2d 145.

124. *Id.* at ¶¶ 31, 32.

125. *Id.* at ¶ 33.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at ¶ 34.

131. *Id.*

132. *Id.*

2. *Golden Valley County Violated Defendant’s Statutory Right to a Speedy Trial*

The court agreed with Watson’s argument that the district court erred in granting a continuance in the Golden Valley County case.¹³³ In evaluating the dates that were at issue, the court noted that there was no information in the record explaining why the trial was not held on January 3-5, 2018 as planned.¹³⁴ When the district court had considered the state’s motion for continuance, it denied the motion, finding good cause was not present.¹³⁵ There were no other orders granting a continuance or denying a motion to dismiss based on a statutory speedy trial violation.¹³⁶ The only information in the record indicating why the trial had been rescheduled was a letter from the court to the parties on December 15, 2017, noting “the trial was moved due to court scheduling problems.”¹³⁷ The court did not decide whether this explanation was sufficient because the trial was rescheduled again, and there was no information or explanation in the record for this delay.¹³⁸

Watson timely elected his statutory speedy trial right.¹³⁹ Under the requirements of section 29-19-02, the trial should have started by January 2, 2018, 90 days after the date Watson invoked his statutory speedy trial right.¹⁴⁰ The trial ultimately did not begin until January 31, 2018.¹⁴¹ Without any explanation of the District Court’s reasoning for the delay, the North Dakota Supreme Court was unable to review the decision made by the district court.¹⁴² Therefore, based on the limited available record, the District Court failed to comply with the requirements of § 29-19-02, the statutory right to a speedy trial, by impermissibly rescheduling the trial after the statutory time limit expired, resulting in an abuse of discretion.¹⁴³

The Court found that Watson’s statutory speedy trial rights were violated in Golden Valley County.¹⁴⁴ The Court reversed the district court’s judgment and remanded for the charge to be dismissed with prejudice.¹⁴⁵

133. *Id.* at ¶ 40.

134. *Id.* at ¶ 36.

135. *Id.* at ¶ 37.

136. *Id.*

137. *Id.* at ¶ 39.

138. *Id.*

139. *Id.* at ¶ 38. Watson was arraigned on October 2, 2017 and elected his right to a speedy trial on October 3, 2017, clearly within the 14-day window following arraignment as provided by section 29-19-92. *Id.* at ¶ 4.

140. *Id.* at ¶ 38.

141. *Id.* at ¶ 39.

142. *Id.* at ¶ 40.

143. *Id.*

144. *Id.* at ¶ 41.

145. *Id.*

B. THE CONCURRENCE AND DISSENT

The minority opinion of the Court concurred in affirming the Stark County and Hettinger County convictions.¹⁴⁶ However, the minority opined that the district court did not abuse its discretion when it granted a continuance in Golden Valley County, and therefore would have affirmed the conviction.¹⁴⁷

The minority disagreed that the record in Golden Valley County was insufficient to make a determination as to whether good cause existed for the delay.¹⁴⁸ Since “[t]he same trial judge, same defendant, and same defense counsel participated in all three trials,” which were all scheduled within a short period of time, the dissent expressed its belief that the district court was “referencing the rationale from the order(s) entered in the other cases.”¹⁴⁹ That rationale was upheld by the majority opinion of the Court as to be sufficient in the Hettinger County and Stark County cases.¹⁵⁰

Further, the dissent argues, even if the majority ignores the reasoning set forth by the district court in the other counties, which is appropriate to do,¹⁵¹ under the four balancing factors, the district court did not act in “an arbitrary, unreasonable, or unconscionable manner.”¹⁵² The four balancing factors would indicate that the district court found good cause, the delay was relatively short, a delay of the same length was upheld in similar cases, and there was no prejudice to Watson.¹⁵³ Therefore, the dissent would affirm Watson’s Golden Valley County conviction.¹⁵⁴

IV. IMPACT OF THE DECISION

Watson undoubtedly sets forth a backdrop for future cases where there is an alleged violation of the defendant’s statutory right to a speedy trial. Of particular significance, *Watson* signals that a good cause delay exists when the state has used diligence to secure a witness, but the witness is unavailable for the trial dates.¹⁵⁵ Second, the court mandates that the record must be fully developed as to even make a determination of whether good cause exists.¹⁵⁶

146. *Id.* at ¶ 44. (Jensen, J. and VandeWalle, C.J., concurring in part and dissenting in part).

147. *Id.*

148. *Id.* at ¶ 47.

149. *Id.* at ¶ 48.

150. *Id.*

151. *Id.* at ¶ 49.

152. *Id.* at ¶ 54.

153. *Id.*

154. *Id.*

155. *Id.* at ¶ 32 (majority opinion).

156. *Id.* at ¶ 40.

The mandate of a developed record was further demonstrated by a case considered by the court in 2020.¹⁵⁷ Finally, the criminal bar must remain cognizant of the remedy, reversal of the conviction and remand for dismissal with prejudice,¹⁵⁸ for a violation of the defendant’s statutory right to a speedy trial.

A. WHAT CONSTITUTES A GOOD CAUSE DELAY

Watson makes clear from the three separate proceedings what can constitute a good cause delay: unavailability of a material witness when the state shows they used diligence to secure the witness.¹⁵⁹

Watson sets forth a timeline of when the state requested continuances after the defendant elected his statutory speedy trial right, what the reasoning for the continuances was, how the district court responded to such requests, and how the North Dakota Supreme Court analyzed the procedure that took place.¹⁶⁰ When a practitioner comes across questionable circumstances such as balancing whether there is good cause delay against the defendant’s statutory right to a speedy trial, the practitioner could consider *Watson* to make a determination of what is likely appropriate given the particular circumstances.

B. MANDATE OF A DEVELOPED RECORD

The Court in *Watson* made a showing of its disapproval of a record too vague to determine what occurred and for what reason it occurred.¹⁶¹ When the record was developed fully in the Hettinger County and Stark County proceedings, the court considered the four balancing factors and ultimately affirmed the judgments.¹⁶²

However, in Golden Valley County, the record was not developed fully as to make a determination of whether there was good cause for the delay.¹⁶³ Therefore, rather than go through the four balancing factors to determine whether there was good cause, the majority of the Court chose not to do so.¹⁶⁴

Watson signals to practitioners that the record must be fully developed with the reasoning for continuances set forth if there is a proceeding in which the defendant timely elected his speedy trial right. Judges, prosecutors, and criminal defense attorneys need to remain especially cognizant of the holding

157. *State v. Mondragon*, 2020 ND 21, 937 N.W.2d 531.

158. *Watson*, 2019 ND 164, ¶ 40, 930 N.W.2d 145.

159. *Id.* at ¶ 32.

160. *See generally* *State v. Watson*, 2019 ND 164, 930 N.W.2d 145.

161. *Id.* at ¶ 40.

162. *Id.* at ¶¶ 31-34.

163. *Id.* at ¶ 40.

164. *Id.* at ¶¶ 40-41.

in *Watson*. In rural or less populous counties in North Dakota, often the same judge, prosecutor, and defense attorney may be involved in related but separate cases.¹⁶⁵ Even as such, the proper statutory procedures must be followed when considering good cause in relation to the statutory speedy trial right, and the record must be fully developed with the reasoning for a delay. The involvement of several of the same players will not be a successful justification for violating the defendant's statutory right to a speedy trial.

C. SUBSEQUENT CONSIDERATION OF THE STATUTORY SPEEDY TRIAL RIGHT IN *STATE V. MONDRAGON*

Subsequently, in January 2020, the Court considered the statutory speedy trial right in *State v. Mondragon*.¹⁶⁶ In *Mondragon*, the defendant invoked his speedy trial right on June 12, 2018.¹⁶⁷ The same year, the state requested continuances three separate times, all of which the district court granted.¹⁶⁸

The state requested its first continuance in July 2018, based on the prosecutor's unavailability, incomplete DNA evidence, and two witnesses' unavailability.¹⁶⁹ The defendant objected, arguing good cause was not shown.¹⁷⁰ On August 1, 2018, the court granted the continuance and a jury trial was set for mid-September.¹⁷¹

The state then requested a continuance during a status conference on August 28, 2018.¹⁷² The state wanted to undergo additional DNA tests as to confirm it was the defendant's DNA.¹⁷³ There was an issue in that the next open trial date, in October, would conflict with the prosecutor's planned medical appointments.¹⁷⁴ The next open date for trial would fall over Thanksgiving week, and the prosecutor planned to be away.¹⁷⁵ Thus, the next available trial date was in December, outside the 90-day statutory window.¹⁷⁶ The

165. Eric Tegethoff, *Hurting for Attorneys, UND Program Boosts Rural Numbers*, PUBLIC NEWS SERVICE (April 30, 2019), <https://www.publicnewsservice.org/2019-04-30/rural-farming/hurting-for-attorneys-und-program-boosts-rural-numbers/a66320-1> (stating there is a shortage of attorneys in North Dakota, and quoting Michael McGinniss, then the law school's incoming dean, stating that six counties in North Dakota don't have an attorney).

166. *State v. Mondragon*, 2020 ND 21, 937 N.W.2d 531.

167. *Mondragon*, 2020 ND 21, ¶ 2, 937 N.W.2d 531.

168. *Id.*

169. *Id.* at ¶ 3.

170. *Id.*

171. *Id.* at ¶ 4.

172. *Id.* at ¶ 5.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

defense attorney believed the DNA that the state planned to test could be exculpatory, while stating his client “still does not want to waive his right to a speedy trial.”¹⁷⁷ Further, the defense attorney did not object to the prosecution’s planned absence in October, and indicated “December is fine,” while again stating the defendant did not waive the speedy trial request.¹⁷⁸ The court amended bond, lowering the amount, and stated it was granting the continuance to December 19, 2018, “very reluctantly,” and noted the defense had not objected.¹⁷⁹

From December through early January, many conferences between the parties were held.¹⁸⁰ In early December, the new DNA test report was prepared, and the defense attorney indicated readiness to proceed with trial.¹⁸¹ On December 13, 2018, a status conference was held at which it was discussed that the defense may obtain a second opinion on the DNA test.¹⁸² The defense stated if it obtained a DNA expert, it would “do a Motion in Limine and ask that all this be excluded . . . [or] do a Motion to Dismiss” for the fact that trial had not begun in 90 days as required by the statute.¹⁸³ The defense further noted it had the chance to consult with a DNA expert and then continue moving forward.¹⁸⁴ The defense asked to meet again on December 17, 2018.¹⁸⁵

At the status conference on December 17, 2018, two days before the scheduled trial, both the defense and prosecution agreed that the pool of jurors was too small due to the flu season and the upcoming holidays.¹⁸⁶ The defense indicated it planned to make a motion in limine as discussed earlier, and the state indicated its willingness to move for a continuance if doing so would be helpful for the court.¹⁸⁷ The state believed it was “better to deal with the problem then instead of the day of trial,” and indicated concern as to its expert’s travel the day of trial, as well as the defense’s potential expert.¹⁸⁸

The district court granted the third continuance, based on the small pool of jurors, a longer than expected trial, and good cause factors as discussed

177. *Id.* at ¶ 6.

178. *Id.*

179. *Id.*

180. *Id.* at ¶¶ 8-13.

181. *Id.* at ¶ 8.

182. *Id.* at ¶ 9.

183. *Id.*

184. *Id.*

185. *Id.* at ¶ 10.

186. *Id.* at ¶ 11.

187. *Id.*

188. *Id.*

prior.¹⁸⁹ If the trial did not work, the next available date would be in February or March, to which the defense attorney responded, “we’re already beyond that time; so I don’t know what the difference is.”¹⁹⁰ Trial was scheduled for February 5 – 8, 2019.¹⁹¹

On January 8, 2019, a pretrial conference was held and the defense had not obtained a report from its DNA expert.¹⁹² On February 5, 2019, Mondragon entered conditional Alford pleas¹⁹³ to the charges.¹⁹⁴ The defense reserved the right to appeal the court’s grants of continuances.¹⁹⁵

On appeal, the North Dakota Supreme Court affirmed the judgment, finding the continuances did not violate the defendant’s statutory right to a speedy trial.¹⁹⁶ To begin, the first continuance was proper despite the fact that the district court did not explicitly analyze the factors under section 29-19-06.¹⁹⁷ The district court had properly found several reasons to grant the continuance, including the prosecutor’s unavailability.¹⁹⁸ Although “we would prefer the court address the four factors, failure of the court to address the factors will not be reversed if we are able to analyze the factors based on the record.”¹⁹⁹ If the district court had addressed the factors, the speedy trial right would not have been violated.²⁰⁰ Thus, the Court will not overturn “a correct result if the result would have been the same applying the factors.”²⁰¹

The second continuance was also proper as demonstrated by the record.²⁰² The district court had analyzed the speedy trial factors as required.²⁰³ Further, the Court noted, “[the defendant] cannot have the benefit of the delay . . . while simultaneously claiming the right to a speedy trial and then charge the state with responsibility for such a delay.”²⁰⁴

Finally, the third continuance was also proper.²⁰⁵ In so reasoning, the Court pointed to the fact that both the state and defense attorney agreed not

189. *Id.* at ¶ 12.

190. *Id.*

191. *Id.*

192. *Id.* at ¶ 13.

193. *See Alford pleas, supra* note 15.

194. *Mondragon*, 2020 ND 21, ¶ 13, 937 N.W.2d 531.

195. *Id.*

196. *Id.* at ¶ 1.

197. *Id.* at ¶ 19.

198. *Id.*

199. *Id.* at ¶ 20.

200. *Id.* at ¶¶ 22-23.

201. *Id.* at ¶ 23.

202. *Id.* at ¶ 30.

203. *Id.* at ¶¶ 27-30.

204. *Id.* at ¶ 30.

205. *Id.* at ¶ 34.

enough jurors were called.²⁰⁶ The district court discussed the speedy trial factors as previously considered in its prior opinion.²⁰⁷ Again, the Court reasoned, it was troubling that the defense contributed to and benefited from the delay and then argued the delay was improper.²⁰⁸ Thus, the defendant's invoked speedy trial right was not violated.²⁰⁹

The Court compared the continuances to *Watson*, where the district court was not explicit in applying the four factors but nonetheless found the state had used due diligence in trial preparation.²¹⁰ Similarly, in *Mondragon*, the district court was not explicit in balancing the factors in some instances, but had reasons to find good cause for the delay was present.²¹¹

The Court did not further distinguish from *Watson* as to the record that was present in each case. It can be understood that *Mondragon* is consistent with *Watson* in that *Mondragon* had what *Watson*'s Golden Valley case did not have: a fully developed record. Thus, *Mondragon* affirms the holding that the record must be developed as to the reasons for granting a continuance when a defendant has invoked his statutory right to a speedy trial. In *Watson*, there was very little information on the record as to why the continuances were granted.²¹² By contrast, in *Mondragon*, the record was developed as to make a decision even when the factors were not explicitly addressed.²¹³

The Court's decision in *Mondragon* further clarifies what the criminal bar and the North Dakota bench should be cognizant of in dealing with defendants who have invoked their statutory right to a speedy trial. That is, the reasoning for a continuance outside the 90-day window must be abundantly clear. If the record is developed, the Court may be more willing to evaluate the speedy trial factors even when they were not explicitly addressed. The best practice, however, is to ensure that the proper procedure is followed and that the district court properly evaluates the speedy trial factors when a continuance is requested.

D. THE REMEDY

While the Court affirmed the judgments in Hettinger County and Stark County,²¹⁴ the Court reversed the Golden Valley County judgment and

206. *Id.* at ¶ 32.

207. *Id.*

208. *Id.* at ¶ 34.

209. *Id.*

210. *Id.* at ¶ 19.

211. *Id.*

212. *State v. Watson*, 2019 ND 164, ¶ 40, 930 N.W.2d 145.

213. *Mondragon*, 2020 ND 21, 937 N.W.2d 531.

214. *Watson*, 2019 ND 164, ¶ 34, 930 N.W.2d 145.

remanded to the district court for dismissal of the charge with prejudice.²¹⁵ *Watson* had been found guilty in Golden Valley County of continuous sexual abuse of a child by a jury and was sentenced to 25 years in prison.²¹⁶

Watson sets forth a strong message to the criminal bar in North Dakota. That is, the statutory right to a speedy trial, when elected by the criminal defendant, must be followed. If the statutory right is not handled properly, the Supreme Court may reverse a jury finding and remand for dismissal of the charge with prejudice.²¹⁷ Practitioners must remain on high alert of the implications of violating a defendant's statutory right to a speedy trial. As mentioned above, in a current state of shortage of attorneys and heavy case-loads, proper procedures cannot fall by the wayside. Judges, prosecutors, and criminal defense attorneys must be aware of the procedure required when a criminal defendant invokes their statutory right to a speedy trial.

The procedure set forth by section 29-19-02 was codified by the North Dakota Legislature 20 years ago.²¹⁸ The Legislature decides the rights of criminal defendants, and it is crucial for our court system to follow procedural requirements as they are set forth. Without such rights, the defendant loses his ability to access the justice system in a fair and timely manner.

V. CONCLUSION

In *Watson*, the North Dakota Supreme Court considered a defendant's statutory right to a speedy trial when he had properly elected this right.²¹⁹ The court analyzed three separate proceedings in three separate counties, which allows for a comparison to determine what constitutes a good cause delay and what does not.²²⁰ The court made clear that a key witness's unavailability when the state has used diligence to secure the witness constitutes a good cause delay under the statute.²²¹ Further, the court required that a developed record be present in order to properly consider a delay when the defendant elected his statutory speedy trial right.²²² As demonstrated by subsequent litigation, the court will be flexible in evaluating the speedy trial factors, so long as there is a clear indication of the district court proceedings from a fully developed record.²²³ Accordingly, there is no bright-line rule as

215. *Id.* at ¶ 41.

216. *Id.* at ¶ 8.

217. *Id.* at ¶ 41.

218. N.D. CENT. CODE § 29-19-02 (2019).

219. *See generally* State v. Watson, 2019 ND 164, 930 N.W.2d 145.

220. *Id.*

221. *Id.* at ¶ 32.

222. *Id.* at ¶¶ 40-41.

223. State v. Mondragon, 2020 ND 21, 937 N.W.2d 531.

to when a record is considered fully developed, and the court evaluates alleged statutory speedy trial violations based on the circumstances present in the particular case.

Of particular importance, the criminal bar and the bench in North Dakota must be aware of the remedy for a violation of the defendant's statutory right to a speedy trial. If the court finds the defendant's statutory speedy trial right was violated, *Watson* makes clear that the defendant's sentence may nonetheless be reversed with instructions that it is to be vacated.²²⁴ As North Dakota continues to deal with a shortage of attorneys in rural areas,²²⁵ the proper procedure when a defendant has elected his statutory speedy trial right must be followed in order to ensure compliance with the statute and the precedent set forth in *Watson*.

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224. *Id.* at ¶ 41.

225. Tegethoff, *supra* note 165.

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