

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0725**

Deiven Jacques Branch, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 11, 2021
Affirmed
Jesson, Judge**

Carver County District Court
File No. 10-CR-17-1288

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Deiven Branch was initially stopped on suspicion of driving with a suspended license. After he admitted to smoking marijuana and handed the arresting officer a burnt marijuana joint, the officer expanded the stop to include a search of Branch's

car. Branch argues that the officer lacked probable cause to expand the stop to include a search of his vehicle and that his right to a speedy trial was violated. Because we conclude that the postconviction court did not abuse its discretion in denying Branch's petition for relief on these challenges, we affirm.

FACTS

In late 2017, law enforcement stopped appellant Deiven Branch on suspicion of driving with a suspended license. During the stop the officer noticed a strong odor of burnt marijuana coming from the car. When asked about the smell, Branch admitted to having smoked marijuana earlier that day and produced a small burnt marijuana joint. The officer had Branch exit the car, and when backup arrived, searched the vehicle. The search yielded an open bottle of Bacardi Limon rum, a makeup container with trace amounts of THC wax inside, two stun guns, and a black pistol. Branch was placed under arrest and charged with possession of a firearm by a felon, possession of an electronic incapacitation device by a prohibited person, fifth-degree possession of a controlled substance, driving with a suspended license, and possession of an open bottle.¹

At a hearing on January 17, 2018, Branch requested a contested omnibus hearing to determine whether the stop, search, and seizure were valid. Branch also demanded a speedy trial. To satisfy Branch's requests, the district court scheduled a contested omnibus hearing for February 22, 2018, and a jury trial for March 13, 2018.

¹ Minn. Stat. § 152.025, subd. 2(1) (2016); Minn. Stat. § 169A.35, subd. 3 (2016); Minn. Stat. § 171.24, subd. 1 (2016); Minn. Stat. § 609.165, subd. 1b(a) (2016); Minn. Stat. § 624.731, subd. 3(b) (2016).

At the contested omnibus hearing, the district court heard both parties' arguments and testimony from the arresting officer. Based on the information presented, the district court determined that the initial stop was justified and the arresting officer had "reasonable articulable suspicion" that further evidence of possession of marijuana was in the car. Because of this, the expansion of the stop was permissible, and evidence resulting from the search would not be suppressed at trial.

Then, on February 28, 2018—before Branch's jury trial began—the state moved for a continuance. According to the state, DNA test results on samples taken from the gun would not be available until after the scheduled trial date. Over Branch's objection, the district court found that there was good cause to delay, granted the state's motion, and set a new trial date for April 3, 2018.

No other delays occurred. A jury trial commenced on April 3, 2018. At the conclusion of the three-day trial, the jury delivered guilty verdicts on the charges of possession of a firearm by a felon, possession of an electronic incapacitation device by a prohibited person, and possession of a Schedule I controlled substance.² The district court sentenced Branch to 60 months for the conviction of possession of a firearm by a felon, but declined to sentence him on the two remaining convictions.

Branch filed a petition for postconviction relief challenging the legality of the search of his vehicle and asserting that he was deprived of his right to a speedy trial. In reviewing Branch's case, the postconviction court determined that the officer had probable cause to

² The state moved to dismiss the charges of driving with a suspended license and possession of an open bottle, which the district court granted.

search Branch's vehicle after Branch produced the burnt marijuana joint and that there was good cause for the delay of trial. Based on these conclusions, Branch's petition was denied.

Branch appeals.

DECISION

Branch appeals the postconviction court's conclusions of law that the search was a permissible expansion of the initial stop and that Branch's right to a speedy trial was not violated. We review the denial of a petition for postconviction relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). But while legal issues are reviewed de novo, factual findings are reviewed for clear error. *Id.*

I. The search of Branch's car was a permissible expansion of the initial stop.

In his petition for postconviction relief, Branch argued that the search of his car was impermissible because the officer lacked probable cause to expand the stop. Branch conceded that the officer had probable cause to suspect marijuana use when he smelled burnt marijuana during the stop. But once Branch admitted to smoking marijuana and produced a burnt joint, Branch contends that probable cause evaporated. The postconviction court disagreed and determined that under *State v. Thiel*, the search was permissible. 846 N.W.2d 605, 611 (Minn. App. 2014).

We agree with the postconviction court. In *Thiel*, the appellant was initially stopped for speeding. *Id.* at 609. When the state trooper conducting the stop noticed a strong smell of marijuana coming from the car, he asked whether there was any marijuana in the car. Appellant responded by handing the trooper a pipe containing a small amount of burnt marijuana. *Id.* Believing there was more marijuana in the vehicle, the trooper had a canine

unit conduct a sniff of the car. *Id.* When the dog alerted, the trooper searched the vehicle and found two mason jars of raw marijuana. *Id.*

On appeal, this court concluded that the “discovery of marijuana in a car gives law enforcement probable cause to search for more anywhere in the car where one might reasonably expect to find marijuana.” *Id.* at 611. It did not matter that the appellant produced the pipe. *Id.*

Thiel dictates the outcome of this case. As in *Thiel*, Branch was stopped for reasons unrelated to the presence of an illegal substance. Despite the fact that Branch produced a burnt marijuana joint, the officer suspected that additional contraband was in the car. Under *Thiel*, the officer had “probable cause to search for more anywhere in the car where one might reasonably expect to find marijuana.” *Id.* As such, the officer could permissibly expand the traffic stop to search Branch’s car.

Because the postconviction court correctly applied the relevant law and its decision is supported by the record, it did not abuse its discretion in determining that the stop was permissibly expanded to include a search. Next, we consider whether the postconviction court abused its discretion when it concluded that Branch’s right to a speedy trial was not violated.

II. Branch was not denied his right to a speedy trial.

When defendants demand their speedy trial rights, trials must begin within 60 days, unless there is good cause for a delay. Minn. R. Crim. P. 11.09(b). To determine whether a defendant’s right to a speedy trial has been violated, the court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant

asserted their right to a speedy trial; and (4) whether the defendant was prejudiced because of the delay. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

Branch asserted that his right to a speedy trial was violated when the district court granted the state's motion for a continuance. According to Branch, the 17-day delay requested by the state was not for good cause because DNA evidence from the gun was not materially significant to the case. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. App. 1990). And the result of this delay was continued incarceration, which prejudiced Branch.

The postconviction court disagreed. Despite Branch's reliance on *Stroud*, the postconviction court determined that the decision actually supported the opposite conclusion: DNA evidence is significant because it may "implicate *or* exonerate" the defendant. *Id.* at 335 (emphasis added). As such, there was good cause to delay the trial until the DNA results were available. Furthermore, the delay, while "unfortunate" in that it resulted in additional incarceration time, was not prejudicial to Branch.

We agree with the postconviction court. There is no dispute that Branch demanded a speedy trial and that the trial was delayed 17 days beyond the 60-day period. But the delay was for good cause. The state was required to prove beyond a reasonable doubt that Branch had either actual or constructive possession of the gun. Because the state did not know whether any DNA was present on the gun and had not taken a statement from Branch's passenger, it was materially relevant to know the DNA test results. As in *Stroud*, the DNA test would either "implicate *or* exonerate" Branch's actual or constructive possession of the gun. *Id.* Furthermore, Branch was not unduly prejudiced by the delay. The only claim of prejudice Branch raises in his petition is that of continued incarceration.

But “anxiety suffered from pretrial incarceration is . . . not a serious allegation of prejudice.” *State v. Givens*, 356 N.W.2d 58, 62 (Minn. App. 1984). This is particularly the case here, given the relatively brief 17-day delay.

In sum, our review of the record and relevant law confirms the postconviction court’s conclusions that the search of Branch’s car was a permissible expansion of the initial stop and there was good cause to delay his trial. As such, the postconviction court did not abuse its discretion when it denied Branch’s petition for postconviction relief.

Affirmed.