

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2008-386

APR 15 2009

APRIL TERM, 2009

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
	}	
Brian R. Sanford	}	DOCKET NO. 3588-8-07 Cncr

Trial Judge: Christina C. Reiss

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conditional guilty pleas to domestic assault and reckless endangerment. He argues that the court committed reversible error by failing to hold his trial within thirty days of the date that the first jury was selected. We affirm.

Defendant was charged with aggravated domestic assault in August 2007 after he allegedly pointed a loaded gun at his girlfriend and pretended to pull the trigger. A jury draw was scheduled for mid-February 2008, and was continued twice at defendant's request. The jury draw was then set for June 16, 2008. Several weeks before that date, defense counsel indicated to the State that he would not be ready for trial on June 16, and that the State should not arrange to have the victim present on that date. The parties then filed a joint motion to continue the jury draw, which the court denied. On the morning of the jury draw, the State again requested a continuance, explaining that its key witness was not present. The court denied the motion, but set the trial for July 2. The parties then selected a jury. The following day, the State learned that its witness would not be available on July 2 and it filed an emergency motion to continue. The court granted the motion, finding "the absence of any articulated prejudice to the Defendant who is in the community." The court reset the case for another jury draw on August 11.

On June 20, defendant filed an objection to the August 11 jury draw date and requested a trial on or before July 16 using the jury that had been drawn in June. He asserted that under Vermont Rule of Criminal Procedure 23(d), the court was required to commence trial within thirty days of the date that the jury was selected, and that August 11 fell outside of this window. At a July 3 motion hearing, defendant reiterated his Rule 23 argument. The court overruled defendant's objection, finding that Rule 23 was not implicated given that the prior jury had been stricken and the new jury that would try defendant's case had not yet been impaneled. The court also found that defendant suffered no prejudice from the delay.

On July 17, defendant moved to dismiss the case against him, reiterating his assertion that Rule 23(d) had been violated. He maintained that selecting a new jury would circumvent Rule

23 and render it meaningless. Defendant suggested that the “failure to try [him] in a timely fashion necessarily relate[d] to his speedy trial rights,” and that dismissal of the charges was an appropriate remedy to a violation of those constitutional rights. The court denied defendant’s motion, explaining that the jury for defendant’s case had not yet been composed, and that the prior jury had been stricken by the court upon the filing of the State’s emergency motion to continue. The court noted that defense counsel had represented to the State that the trial “couldn’t happen” on the date of the June jury draw, which caused the court to conclude that defendant would suffer no undue prejudice if a new jury was selected for a different trial date. Defendant subsequently entered a conditional guilty plea to domestic assault and reckless endangerment, and this appeal followed.

Defendant argues that the court committed reversible error in denying his motion to dismiss. He maintains that Rule 23(d) was violated, and that there was no remedy for this violation other than dismissal of the charges. He makes the same brief reference to his speedy trial rights cited above.

We find no error in the court’s decision. Rule 23(d) addresses “jury separation,” and it provides in relevant part as follows:

After the composition of the jury is determined, the court shall proceed without unreasonable delay to the impaneling of the jury, the opening statements and the reception of evidence. Unless the parties consent to a longer delay, trial must commence not more than 48 hours after jury selection in the case of a felony for which the penalty may be life imprisonment or death, and not more than 30 days after jury selection in any other case. If the commencement of trial is delayed more than 24 hours, the parties shall be entitled to conduct a supplemental examination of the jurors as provided in Rule 24(a) related solely to issues arising from the period of separation and may exercise challenges for cause as provided in Rule 24(b) before the jury is sworn.

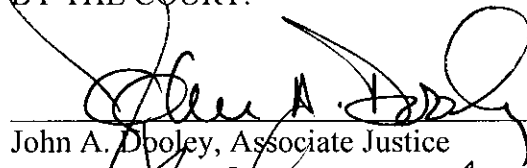
Rule 23(d) is designed to minimize and remedy juror exposure to prejudicial information after selection, but before a case can be tried. See Reporter’s Notes, V.R.Cr.P. 23; see also State v. Fortier, 149 Vt. 599, 602 (1988) (finding no abuse of discretion where the trial was held forty-seven days after the jury was selected and the defendant “failed to demonstrate the existence of any intervening events which might have been capable of prejudicing the deliberative function of the jury”); State v. Brisson, 124 Vt. 211, 213-14 (1964) (finding no abuse of discretion where the defendant failed to show that “any untoward event occurred in connection with any part of this [jury] panel, so as to cloud their impartiality” during the ten-day period following the impaneling of the jury, and stating that the trial court has discretion “to weigh concern for the prompt, orderly administration of criminal law against the possibility of jury prejudice in a given case”). We agree with the trial court that the concerns underlying the rule are not implicated here—there was no possibility of juror prejudice because the earlier jury had been stricken and a new jury was to be impaneled. Defendant’s motion to dismiss on Rule 23(d) grounds was properly denied.

Finally, defendant makes a passing reference to his speedy trial rights, but he does not explicitly argue that his speedy trial rights were violated, nor does he offer any legal argument to

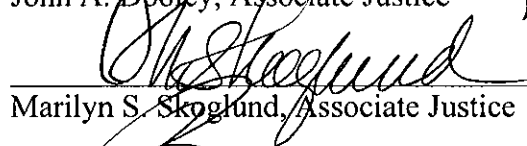
support such a claim. We thus do not address this assertion. We note, however, that under the circumstances recounted above, the court acted well within its discretion in granting the State's emergency motion to continue, striking the first jury, and scheduling the case for a new jury draw.

Affirmed.

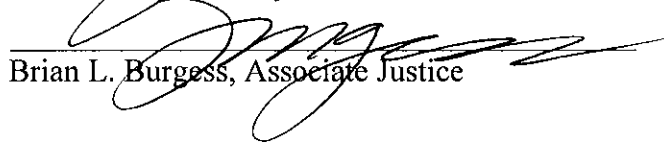
BY THE COURT:



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice