COURT OF APPEALS DECISION DATED AND FILED

April 5, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP2690-CR — **Cir. Ct. No. 2005CT78**

STATE OF WISCONSIN — **IN COURT OF APPEALS DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TINA M. SATZKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: STEVEN W. WEINKE, Judge. *Affirmed*.

¶1 BROWN, J.[1] On Friday, September 27, 2002, soon after a serious head-on auto accident in which both drivers were hospitalized, Tina M. Satzke was arrested and issued uniform citations for causing injury by operating a motor vehicle while under the influence of intoxicants and with a prohibited blood

[1] This appeal has been decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

alcohol concentration. However, the criminal complaint was not filed until January 28, 2005, almost two-and-a-half years later. Satzke[2] unsuccessfully argued to the trial court that the delay violated her rights to a speedy trial. She was tried and convicted and raises the speedy trial issue again on appeal. After considering the four-part balancing test required by law, we conclude that, under the totality of the circumstances, Satzke was not denied her speedy trial rights. We affirm.

¶2 Before discussing the speedy trial issue, we must briefly comment on the position of the State that we should treat this case under the rubric of due process rather than speedy trial. The State cites ***United States v. Lovasco***, 431 U.S. 783, 789 (1977), for the proposition that "[p]re-charging delays are analyzed not under the speedy trial clause but under the due process clause, which 'has a limited role to play in protecting against oppressive delay.'" According to the State, any objectionable delay here was between the date of the offense and the filing of the criminal complaint.

¶3 Notwithstanding that the State raises this speedy trial versus due process differentiation for the first time on appeal, it is wrong on the facts. The sheriff's deputy arrested Satzke at the hospital following the accident and she had her initial appearance in court in November 2002. While it is true that the charge was a misdemeanor necessitating the drafting of a formal complaint rather than relying on the uniform citations,[3] the fact is that Satzke was placed under arrest on

[2] Satzke has married in the interim and is now known as McHorney. For ease of reference, we will call her by her maiden name.

[3] ***State v. White***, 97 Wis. 2d 193, 202, 295 N.W.2d 346 (1980), held that uniform citations do not apply to criminal actions unless the citations satisfy the requirements of probable cause.

September 27, 2002, and had an initial appearance in court approximately one month later. There was no "dismissal" of the charges in the uniform citation and a "refiling" in the form of the criminal complaint. So, we do not have a situation similar to that found in ***State v. Urdahl***, 2005 WI App. 191, ¶¶17-18, ___ Wis. 2d ___, 704 N.W.2d 324, where the court held that the time between dismissed charges and the time of recharging is analyzed under due process rather than speedy trial. Therefore, pursuant to ***State v. Borhegyi***, 222 Wis. 2d 506, 511, 588 N.W.2d 89 (Ct. App. 1998), the right to speedy trial attached upon the date of arrest. Thus, we analyze this case under speedy trial jurisprudence.

¶4 The analysis used to determine whether a defendant's right to speedy trial has been violated was set forth in ***Barker v. Wingo***, 407 U.S. 514, 530 (1972), and adopted in Wisconsin in ***Day v. State***, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973). When a defendant asserts a violation of his or her constitutional right to a speedy trial, the court employs a four-part balancing test considering: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. ***Barker***, 407 U.S. at 530. The right to a speedy trial, however, is not subject to bright-line determinations and must be considered based upon the totality of the circumstances that exist in any specific case. ***Id***. at 530-31.

¶5 The first factor, the length of the delay, functions as a triggering mechanism. ***Borhegyi***, 222 Wis. 2d at 510. Until there is some delay which is presumptively prejudicial, it is unnecessary to inquire into the other factors. ***Id***. The U.S. Supreme Court has noted that, generally, a year's delay is presumptively prejudicial, and this time frame has been echoed by our supreme court. ***Id***. Here the parties agree that, to the extent the analysis is under speedy trial jurisprudence,

the nearly three-year delay between arrest and trial passes the "presumptively prejudicial" threshold.

¶6 This brings us to the second factor—the reason for the delay. Satzke pays particular attention to this factor because she sees it as being in her favor. Satzke concedes that *part* of the State's explanation for the delay is valid. She takes no issue with the State's assertion that it needed to investigate the victim's injury status before deciding what charges should be brought in the written complaint. She also understands that the victim's English language difficulties may have hampered this investigation somewhat. But Satzke maintains that while this explanation may well have justified a three- or four-month delay, there are still another two years unaccounted for. She claims that the State had no answer for the remaining delay and keys on the State's comment that the case just "resurfaced" after two years.

¶7 While Satzke acknowledges the State's further comment that the remaining delay can be attributed to staff shortages in the district attorney's office, she argues that, even if this were true, there has been no showing by the district attorney's office as to how the work backlog was so great that it caused a two-year delay in between referral of the file and the writing of a complaint.

¶8 Satzke cites ***Borhegyi***, 222 Wis. 2d at 513, for the proposition that "[c]avalier disregard toward a defendant's right to a speedy trial is an element of delay that it is to be weighed most heavily against the State." There, the State could offer no explanation for the seventeen months between arrest and trial. ***Id.*** at 513-14. The ***Borhegyi*** court considered that lack of explanation as being tantamount to "ignoring" speedy trial rights. ***Id***. According to Satzke, similar "cavalier disregard" is evident here.

¶9 To decide whether the State acted in "cavalier disregard," we first turn to the explanation given to the trial court at the time of the hearing on the speedy trial issue. The assistant district attorney stated:

> [W]e had a great deal of backlog from the period of time that Attorney Crowley had … retired. We weren't allowed to hire anyone for about five months. The office—the whole office fell behind. It took about a year to catch up on those referrals. I know that because I replaced Mr. Crowley. That was why we were delayed, particularly … traffic cases, and we had uncharged referrals based on understaffing for a long period of time.

¶10 We next turn to the trial court's discussion of this matter. The trial court stated in its later written decision that "it's certainly well-known to this court that the District Attorney's office during this time was understaffed."

¶11 Based on this information and the apparent finding of fact in that regard by the trial court, we can safely conclude that severe understaffing of the Fond du Lac district attorney's office caused a backlog from referral to complaint in traffic-related cases of about a year. While this explanation does not explain away a two-year delay, it does explain about half of it. But more to the point, the issue is not whether the Fond du Lac district attorney's office was negligent. Of course it was. The issue is, rather, whether the Fond du Lac district attorney's office acted in "cavalier disregard" such that this factor should be weighed heavily against the State. This court cannot go that far. This is not a case, like ***Borhegyi***, where the State had *no* explanation. And correlatively, this is not a case where the State was simply dismissive of any delay so long as it was not deliberate as was apparently the State's position in ***Borhegyi***. In sum, this is not a case where the State "ignored" its duty to both defendant and society to bring this case to trial in a speedy manner as was apparently the posture conveyed by the State to the court in ***Borhegyi***. Rather, this is a case where the district attorney's office was

overwhelmed by lack of staffing and dug out of it too slowly. Negligence, yes. Cavalier disregard, no.

¶12 The next factor we consider is whether the defendant moved for a speedy trial. Here, Satzke did make such a demand, but after the complaint was filed. The State faults Satzke for not filing a demand for speedy trial in the time between the arrest and the complaint. In the State's view, Satzke was simply laying low, hoping the case would fall between the cracks and should not be rewarded with a dismissal on speedy trial grounds for her recalcitrance in delaying the filing of her demand. Satzke counters that she could not make a speedy trial demand until the complaint was filed, giving the court jurisdiction to act. She also points out that speedy trial jurisprudence does not mandate the filing of a demand as a condition precedent to dismissal on that ground.

¶13 We agree with Satzke. She was not required to file a speedy trial demand in between her arrest and the filing of the complaint and, indeed, we must ask, where was she going to file it? To which court? The demand was filed and this factor favors Satzke.

¶14 Finally, we reach the prejudice prong. Prejudice is presumed because it is so difficult for a defendant to show that, but for the delay, the defendant would be better prepared for trial. ***Doggett v. United States***, 505 U.S. 647, 655-56 (1992). While presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to other ***Barker*** criteria, "it is part of the mix of relevant facts, and its importance increases with the length of delay." ***Doggett***, 505 U.S. at 656. Satzke seizes on this language to observe that she does not need to show prejudice in fact. Nevertheless, she notes that part of the State's evidence against her was a blood sample, extracted from her at the hospital, showing her

BAC to be .19. She also points out that, over time, the test ampoule was destroyed and she had no way of recovering it for testing. In her view, the ampoule was her best defense.

¶15 This court is not satisfied that Satzke was prejudiced by the delay. This was a serious auto accident with a lot of undisputed, documentary evidence. There was really no dispute that the accident occurred or that Satzke was at fault. In short, this was not a "he-said, she-said" case between victim and accused where witnesses' memories are so integral to the truth-finding function of the fact finder. An independent witness, driving behind the victim's car, observed that Satzke suddenly and without warning tried to pass a semi-truck on a two-lane road. According to this witness, Satzke never braked; it was as if she never even saw the oncoming traffic. So, the accident happened and Satzke was at fault. While this evidence alone does not support a claim of driving while intoxicated, it is certainly a probative building block.

¶16 As regards her drinking, the deputy on the scene who first made contact with Satzke detected a strong odor of alcohol and asked if she had been drinking. She admitted that she had and was coming from a wedding. She could not recall the accident, was deliberately avoiding the deputy by turning her head away from him when answering and was complaining that the deputy was trying to "get her" for drunk driving. She was continuously evasive and refused to take a preliminary breath test. At the hospital, when the deputy voiced his concern to hospital personnel about Satzke being intoxicated, a technician responded that "all I [the deputy] needed to do was to walk in the room [where Satzke was located] and I would be able to make my case." The deputy did so and immediately detected the strong odor of alcoholic beverage coming from Satzke's body. Even without the test, the State had a pretty strong case. The .19 results no doubt made

it even stronger. It is this court's conclusion that testing the ampoule would not have helped her win acquittal. At best, any independent test might have affected the weight of the test results but would not have affected its admissibility. In short, Satzke was in no better position to try her case before the delay than she was after.[4]

¶17 Based on the totality of circumstances, after considering and balancing the four ***Barker*** factors, this court concludes that dismissal is not warranted on the basis of a speedy trial violation. While the State was negligent, it did not act in cavalier disregard and did not ignore its duty to the public and to the defendant. While Satzke did make a demand for speedy trial, the prejudice component does not favor her. This court affirms.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[4] Parenthetically, we note that, if anything, the delay *helped* her cause. In the interim between the arrest and the filing of the complaint, she had turned her life around, quit drinking, embraced abstinence, became a valued employee and coworker and achieved a stable married life. The positive changes she has made in her life were expressly mentioned by the trial court as being major factors in sentencing. She received no jail time despite the severity of the accident and her inebriated condition at the time of the accident. This court doubts that the sentence would have been similar had there been no delay.