STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2022AP000189-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

BENJAMIN G. CHURLEY,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 11, THE HONORABLE JUDGE ELLEN BERZ, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not request oral argument or publication in this matter.

ARGUMENT

The State asks the Court to affirm the circuit court's ruling on the motion to dismiss for two reasons: (1) no legally cognizable speedy trial demand was ever made in this case, so the circuit court had no basis to motion and (2) to the extent that a demand was made, the circuit court's findings were not clearly erroneous and the court's ruling was proper as a matter of law.

I. STANDARD OF REVIEW

Whether a defendant has been denied his constitutional right to a speedy trial presents a question of law, which this court reviews de novo, while accepting any findings of fact made by the circuit court unless they are clearly erroneous. *State v. Leighton*, 2000 WI App 156, ¶ 5, 237 Wis.2d 709, 616 N.W.2d 126.

II. NO SPEEDY TRIAL DEMAND WAS MADE IN THIS CASE

A request for review of an administrative suspension of a license under Wis. Stat. § 343.305 is not analogous to a speedy trial demand. The State attempts here to point out the differences.

Under Wis. Stat. § 971.10, a defendant faced with misdemeanor or felony charges may make a speedy trial demand. There is no reference to persons charged with non-

criminal tickets or administrative reviews within the speedy trial statute.

Separate from the statutory speedy trial right, Wisconsin courts have long recognized a constitutional speedy trial right for criminal defendants. *State ex rel. Fredenberg v. Byrne* (1963), 20 Wis.2d 504, 508, 123 N.W.2d 305, 307. A criminal defendant's constitutional speedy trial rights are deemed derived from the Wisconsin Constitution Wis. Const. Art. I, § 7 as well as the Sixth Amendment of the United States Constitution, U.S. Const. amend. XI. *State v. Ziegenhagen*, 73 Wis. 2d 656, 245 N.W.2d 656.

Persons subject to administrative suspensions associated with drunk driving cases have a separate statutory framework. Under Wis. Stat. § 343.305, a defendant may request a review before a circuit court. Wis. Stat. § 343.305(8)(c)1. If the administrative department does not hear back from the trial court within 60 days of the request for review, then the department of is instruction to stay the suspension, until it hears back from the circuit court. Wis. Stat. § 343.305(8)(c)2.

There are zero cases, statutes, or other sources of law that conflate or overlap the separate principles of

criminal, constitutional speedy trial rights with a judicial review of an administrative suspension. The defendant in his brief cites to none. The defendant's single citation other than the statute itself is to a federal case, *Thomas v. Fiedler*. In Thomas, the United States Court of Appeals for the Seventh Circuit found that a 42 U.S.C. § 1983 claim against an older version of Section 343.305 was moot. *Thomas v. Fiedler*, 884 F.2d 990, 996. Nowhere in *Thomas* does the court discuss speedy trial rights or the actual statute the defendant cites in this appeal. There are no other cases to cite because, with respect to the defendant, the proffered legal principle does not exist.

The circuit court agreed with the State that a request for an administrative review under Section 343.305 does not constitute a speedy trial demand on criminal charges stemming from the same incident. R79. 16:18-17:1.

There is no logical reason to conflate the two separate rights. A person facing an administrative suspension is not an individual subject to criminal charges. He or she by extension does not have the same constitutional protections as those who have been charged with crimes. Furthermore, Section 343.305 contains its own

explanation of what to do if the 60 day limit is not met—separate from speedy trial remedies—it clearly explains that the suspension is stayed.

In sum, at no point in time did the defendant make a speedy trial demand.

III. TO THE EXTENT THAT THE DEFENDANT EXERTED HIS SPEEDY TRIAL RIGHTS, THE COURT PROPERLY DENIED HIS SPEEDY TRIAL DEMAND-BASED MOTION TO DISMISS

Under the standard of review, the State bifurcates the speedy trial issue into two parts: erroneous facts and issue of law.

a. The Court's factual findings were not clearly erroneous

Despite ruling on the issue of whether the defendant made a speedy trial demand, the circuit court in this matter made findings relevant to the issue of speedy trial. The defendant-appellant's brief notes that the appeal is based upon "an undisputed set of facts". Brief of Appellant, p. 8. To the extent that the circuit court is the fact finder, the State agrees.

The Court made appropriate findings as to the length of delay. The Court first made a finding as to the total amount of time from commencement of the case to present, finding it was roughly 35 months. R79. 14:18-23. It found

that, of that time, 9 months was caused by the State. R79. 16:1-3. The Court aptly noted that the COVID-19 pandemic delayed the case, as trials were not possible for a significant portion of 35 months. R79. 18:5-14. The Court noted that an additional portion of the 35 months was caused due to an unexpected, severe illness suffered by the court. R79. 21:1-12.

The Court found that the defendant was not prejudiced by the delay. It pointed out that the defendant did not submit any evidence in support of prejudice. R79. 17:23-25. It also found that the defendant also did not respond to the Court's request for supplemental authority in the case and did not make any request for an update during the nine month period in question. R79. 17:2-21.

The defendant-appellant makes no arguments as to whether any of the court's findings were clearly erroneous. The State believes that the court's factual findings were grounded in evidence and well-reasoned and asks this court to find them not erroneous.

The defendant-appellant now unfortunately is attempting to do with this court that it did with the circuit court. Whereas the circuit noted that the defendant submitted no evidence of prejudice, R.79. 17:23-25, here

too he appears to attempt to adds facts to the record. In the defendant-appellant's brief, he notes that the delay in time meant that the defendant's witnesses' recollections were not sharp, leading to prejudice. Ignoring the illogical notion that, as the State had the burden at any hypothetical trial and its witnesses would be equally burdened by the delay, there is no evidence of any witnesses that the defendant intended to call. In fact, the defendant did not file a witness list pursuant to the Court's scheduling order. R.54. Thus, as the circuit court heard no evidence as to prejudice, this court has been presented with no appropriately-filed evidence.

b. The Court properly denied the motion to dismiss as a matter of law

All parties appear to agree on the general framework to decide constitutional speedy trial demands. The test consists of a balancing test that includes consideration of four specified factors: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant has asserted his or her right to speedy trial, and (4) the prejudice to the defendant as a result of the delay. *Barker v. Wingo*, 407 U.S. 415, 92 S.Ct. 2182; *Day v. State*, 61 Wis. 2d 236, 212 N.W.2d 489 (Wis. 1973).

The quickest analysis belongs to the third factor: whether there was a demand. The State articulated its reasons for why no demand occurred in this case earlier within this brief, but to put it succinctly: a person requesting an administrative review lest it be stayed by an administrative body in no way is concurrently exercising his or her constitutional rights within a criminal case.

In analyzing the first and second factors, while the total amount of time was expansive, the trial court's careful delineation of that time helped explain the total delay, within the speedy trial demand framework. Of the thirty-five months of delay, only nine were found attributable to any State action. The remainder of delay was caused by issues including: the defendant repeatedly asking for setovers of hearings, the defendant not being available for any requested trial date by the court, the court's unexpected illness, the defendant's time spent analyzing discovery, and the COVID-19 pandemic. R79.

Beyond speculation, there was no prejudice to the defendant in this case. Beyond the findings by the court that have already been recited by the State, it is arguably relevant to consider what the defendant's response was after the motion hearing in question. The next two steps

the defendant engaged in were to (a) file a setover of the trial dates and (b) to file a plea form. R. 65.[1] At no point in time did the defendant file any witness lists, motions in limine, notice of expert filings, or anything else to suggest an interest in participating in a trial. The entirety of the defendant's prejudice argument relies upon information not in evidence.

[1] The State confesses that the setover request letter does not appear to be within the appellate record but it is recorded on public CCAP as filed on July 1, 2022.

CONCLUSION

For the foregoing reasons, the State requests that the Court affirm the trial court's October 14, 2020 decision.

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CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced using the following font:

> Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 9 pages.

Dated: 8/23/22.

Signed,

Attorney

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 23rd day of August, 2022.

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