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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2022AP002098-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

NED GUERRA,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE FOND DU LAC COUNTY CIRCUIT
COURT, THE HONORABLE PETER GRIMM, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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Constitutional Provisions

Wis. Const. art. I, § 7 8
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ISSUES PRESENTED

1. Was Guerra denied his constitutional right to a speedy trial?

The Circuit Court answered, “No.”

This Court should answer “No” and affirm the judgment of conviction.

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

The State requests neither oral argument nor publication, as the arguments are fully developed in the parties' briefs, and the issues presented involve the application of well-established principles to the facts presented.

STATEMENT OF THE CASE

Given the nature of the arguments raised in the brief of defendant-appellant, Guerra, the State exercises its option not to present a statement of the case. See Wis. Stat. 809.19(3)(a). The relevant facts and procedural history will be discussed in the argument section of this brief.

ARGUMENT

I. Guerra's constitutional right to a speedy trial was not denied by the delay between the filing of the criminal complaint and his trial.

A. A court determines whether a defendant was denied a speedy trial under a four-part test.

A defendant has a right to a speedy trial. U.S. Const. amends. VI, XIV; Wis. Const. art. I, § 7. Courts utilize a four-part balancing test to determine whether a person's constitutional right to a speedy trial was violated, considering: (1) the length of delay; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the delay resulted in prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *State v. Borhegyi*, 222 Wis. 2d 506, 509, 588 N.W.2d 89 (Ct. App. 1998).

Whether a defendant has been denied his constitutional right to a speedy trial presents a question of law that this Court decides de novo, while accepting any findings of fact made by the circuit court unless they are clearly erroneous. *Id.* ¶ 10.

“The right to a speedy trial is not subject to bright-line determinations and must be considered based on the totality of circumstances that exist in the specific case.” *State v. Urdahl*, 2005 WI App 191, ¶ 11, 286 Wis. 2d 476, 704 N.W.2d 324.

B. Guerra was not denied his constitutional right to a speedy trial.

1. The length of the delay was presumptively prejudicial.

The criminal complaint was filed on May 1, 2020. (R. 2:1.) Guerra's trial began on February 17, 2022. (R. 96:1.) This

period of 658 days (21 months, 17 days) was longer than one year so was presumptively prejudicial. *Urdahl*, 286 Wis. 2d 476, ¶ 12. However, a presumptively prejudicial delay is not, by itself, formative of a constitutional speedy trial violation. Appellate courts have declined to find speedy trial violations in cases involving similar and even lengthier delays than the delays in Guerra's case. *See Barker*, 407 U.S. at 533, 536 (five-year delay); *State v. Lemay*, 155 Wis. 2d 202, 204, 455 N.W.2d 233 (1990) (no speedy trial violation for an almost 37-month delay); *State v. Provost*, 2020 WI App 21 ¶ 27, 392 Wis. 2d 262, 944 N.W.2d 23 (almost 35-month delay); *Urdahl*, 2005 WI App 191, ¶¶ 25, 37 (30-month delay, with over 21 months attributable to the State).

Therefore, this Court must consider the remaining factors to determine whether this delay violated Guerra's constitutional right to a speedy trial. *See id.*

2. The reasons for the delay do not support a speedy trial violation.

“When considering the reasons for the delay, courts first identify the reason for each particular portion of the delay and accord different treatment to each category of reasons.” *Urdahl*, 286 Wis. 2d 476, ¶ 26. “A deliberate attempt by the government to delay the trial in order to hamper the defense is weighted heavily against the State.” *Id.* “[D]elays caused by the government's negligence or overcrowded courts” are counted, but they “are weighted less heavily.” *Id.* Delay “caused by something intrinsic to the case, such as witness unavailability,” “is not counted.” *Id.* (citing *State v. Ziegenhagen*, 73 Wis. 2d 656, 668, 245 N.W.2d 656 (1976); *Barker*, 407 U.S. at 531, 534)). And “if the delay is caused by the defendant, it is not counted.” *Urdahl*, 2005 WI App 191, ¶ 26.

Here, only a portion of the 658-day delay in trying Guerra is properly attributed to the State. And no part of the

delay was due to “[a] deliberate attempt by the government to delay the trial in order to hamper the defense.” *Urdahl*, 2005 WI App 191, ¶ 26. The record demonstrates that some delays were attributable to the court and its calendar, to the State because of witness unavailability, and to a factor beyond anyone’s control: COVID-19.

The COVID-19 pandemic caused unanticipated and unprecedented challenges on court operations, including the court’s ability to safely conduct jury trials, and the creation of extraordinary backlog. As previously noted, “The right to a speedy trial is not subject to bright-line determinations and must be considered based on the totality of circumstances that exist in the specific case.” *Urdahl*, 2005 WI App 191, ¶ 11.

Regarding Guerra’s initial delay, the criminal complaint was filed on May 1, 2020. (R. 2:1.) Guerra made his first appearance that same day. (R. 102:1.) Guerra filed a demand for speedy trial on August 4, 2020. (R. 11:1.) The matter was then scheduled for trial to begin on August 25, 2020, with a plea and sentencing hearing on August 24, 2020. (R. 103:1.)

On August 24, 2020, the parties appeared and the State requested an adjournment of the jury trial based on the unavailability of a witness. (R. 14 & 103:1-5.) Additionally, on August 24, 2020, there was discussion regarding a potential other acts motion and/or admission of character evidence that Guerra may introduce at trial. (R. 103:3-4.) The court noted Guerra’s custody status on another matter and found good cause existed to adjourn the matter in the State’s motion due to witness availability. (R. 103:3-4.) The matter was ultimately rescheduled for a plea and sentencing hearing on November 9, 2020, with a jury trial set to begin the following day on November 10, 2020 (R. 104:1-6.) Therefore, the period from August 24, 2020, to November 9, 2020 – 78 days – is not counted because it was, in part, due to witness unavailability. *Urdahl*, 2005 WI App 191, ¶ 26.

Several delays were attributable to the court's calendar. At the November 9, 2020, appearance, the court and the parties were discussing the trial that was scheduled for the next day. (R. 104:1-6.) Defense counsel stated,

We are scheduled for a jury trial tomorrow; however, it's my understanding there's some higher priority cases above us, so in light of that and also in light of the motion to amend the complaint filed by the State and the defendant's motion in limine, we would maintain our speedy trial demand, understanding a signature bond has been offered to the defendant, and we would ask for a motion hearing to be scheduled as soon as possible.

(R. 104: 2.) The State responded,

Your Honor, I would agree with that. By my preparations and review of the calendar, I believe the Quincy Strong trial would be the number one jury trial tomorrow. It is older. It is a felony-level case. The defendant is in custody on other matters. Speedy trial has been addressed. I have no objection to scheduling this for a motion hearing with the court authorizing us to cancel witnesses and canceling tomorrow's proceedings.

(R. 104: 2-3.) The court then stated in relevant part,

[N]oting that Mr. Guerra is in custody on other matters and, from my notes, far more serious matters than today's disorderly conduct charge, I, therefore, order the trial adjourned due to another case having higher priority, older case. I'm familiar with it. It's an alleged – gun case, and so that's the number one case. This case is, therefore, bumped for a full reset down the road for a new trial date, and we'll have a motion hearing set up with the amendment of the complaint and then any defense motions as

well. So the clerk will set it for a motion date whenever convenient and then a jury trial date down the road. Speedy trial is noted, still in the file, so we should give it higher priority for scheduling.

(R. 104: 3-4.) On November 9, 2020, the court and both parties recognized that the court had another trial scheduled to proceed the following day that took priority over Guerra's. Although defense counsel noted the speedy trial demand, defense counsel recognized there was a higher priority trial and suggested Guerra's matter be set for a motion hearing to address the State's motion to amend the criminal complaint and Guerra's motion in limine. The State and court agreed, and the matter was taken off the trial calendar for November 10, 2020. The matter was then set for a motion hearing on December 22, 2020. (R. 98:1.) Therefore, the time between November 9, 2020, and December 22, 2020 – 44 days – should not be weighed heavily against the State, if at all. *Urdahl*, 2005 WI App 191, ¶ 26.

On December 22, 2020, at a scheduled motion hearing, the parties addressed the State's motion to amend the criminal complaint and Guerra's motion in limine regarding the introduction of certain evidence. (R. 98:1-14.) Both motions were addressed on December 22, 2020, and the issue of Guerra's trial was discussed by the court and the parties. (R. 98:8-13.) The court addressed Guerra's speedy trial demand and noted the backlog the court was suffering due to COVID-19,

With that matter resolved, I do agree that we judges want speedy trials we want people to get their days in court timely and efficiently and quickly, but we all were thrown a curveball in many way with COVID and the shutdown and backlog of trials, and I think Fond du Lac County, probably has the record, not that I'm bragging about it, but between the five

judges we've probably had more jury trials in our county than any other county in the state, but I can't swear to that, but I know we're up there, and we're doing the best we can to push through cases that are old and people that are in custody for those cases, and there's victims' rights and speedy trial rights, so we're doing the best we can.

So, Mr. Guerra, you've got my recognition that, yes, I want to give you a speedy trial, but I've got a whole stack of cases, at least five, seven, eight, that are much older, people in custody, they got to go first, and your case just has to wait its turn. So that's my statements there, that I'm trying the best I can, but we have this backlog and COVID issues.

(R. 98:12.) The matter had already been scheduled for jury trial to begin March 4, 2021. (R. 98:9-10.) Given that the December 22, 2020, date was scheduled to address both a state motion and a defense motion, as well as the court attributing the delay to a backlogged court calendar due to COVID-19, the time from December 22, 2020, to March 4, 2021 – 73 days – should not be weighed heavily against the State, if at all. *Urdahl*, 2005 WI App 191, ¶ 26.

On March 3, 2021, the parties appeared for a plea and sentencing with a jury trial scheduled to begin the following day on March 4, 2021. (R. 105:1-5.) The State advised the court it was prepared to proceed to trial on Guerra's case the following day but did acknowledge other matters were scheduled to begin trial the following day as well (R. 105:2.) Again, Guerra's case was adjourned primarily due to a congested court calendar as a result of COVID-19. (R. 105:3.) The court stated,

The Court does appreciate the guarantees for the speedy trial, although the statute does provide the remedy initially would be relief from cash bond, and since this case

doesn't have cash bond, and the Court, noting the nature of the charge, penalties as alleged, and the other case is more serious, and also with the Court's calendar and with the COVID-19 operating order, there are certain priorities and congestions on the docket which makes tomorrow's trial date not viable for this case to go forward, so with regrets and apologies to Mr. Guerra, the trial for tomorrow is officially canceled and adjourned, and I'll do the best I can do to get it back on the trial calendar as soon as possible.

(R. 105:3.) The matter was reset for a jury trial to begin September 16, 2021. (R. 99:1-6.) Given that the jury trial scheduled to begin March 4, 2021, was adjourned by the court primarily due to a congested court calendar as a result of COVID-19, the time from March 3, 2021, to September 15, 2021 – 197 days – should not be weighed heavily against the State. *Urdahl*, 2005 WI App 191, ¶ 26.

On September 15, 2021, the parties appeared for a plea and sentencing with a jury trial scheduled to begin the following day on September 16, 2021. (R. 107:1-4.) After discussion amongst the parties and court regarding another matter that may take priority over Guerra's case, Guerra remained scheduled for jury trial on September 15, 2021 (R. 107:2-3.)

On September 16, 2021, the parties appeared for the scheduled jury trial. (R. 99:1-6.) The State advised the court the parties appeared to be prepared for trial that day but acknowledged there may be another matter that took priority. (R. 99:2.) The Court ultimately adjourned the matter as another case took priority over Mr. Guerra's case, stating,

The Court has a busy docket, and we have a number of cases that defendants want their jury trial date, and I have only so many jury days I can allocate. I have already had ten

jury trials in the last eight months, so this branch is working very hard to give people their jury trials in court.

And I do have the utmost respect for Mr. Guerra and his right for a speedy trial. I do note he's not in custody for this case. He has another more serious case pending. And we're here because I keep putting him at the next open trial date, and he hasn't had that time where his number is going to go. I have older cases and other cases with crimes against persons that are higher priority and older, so this case, with regret, has to be bumped for good cause; namely, I can't try four cases at once.

(R. 99:3.) In an effort to accommodate Guerra and his speedy trial demand, the court rescheduled the Jury Trial for October 5, 2021. (R. 99:4-5.) A plea and sentencing was ultimately scheduled as well for October 4, 2021 (R. 100:1-5.) Given the matter was rescheduled due to a congested court calendar, the time from September 16, 2021, to October 4, 2021 – 19 days – should not weigh heavily against the State. *Urdahl*, 2005 WI App 191, ¶ 26.

On October 4, 2021, the parties appeared for a plea and sentencing with a Jury Trial scheduled to begin the following day on October 5, 2021. (R. 100:1-5.) The State advised the court it was prepared to proceed to trial the following day. (R. 100:2.) There was discussion between the parties and the court regarding a sexual assault case that may take priority over Guerra's case and the court ultimately left Guerra's case on the trial calendar for the following day, October 5, 2021. (R. 100:2-4.) The court did note Guerra's speedy trial demand as well as his custody status,

The Court agrees, given the desire of the defendant through the speedy trial, which certainly the Court respects - - although for the record it is noted that this case has, I

think, a signature bond. Another case is holding him in custody. But, nonetheless, he is right, he does get a speedy trial for this. So the case must remain on the calendar. There is a older and more serious case alleging sexual assault that's going to be going ahead of the Guerra case, but I think I'm going to be calling that case this morning, and I'll know a lot more after we call the case on the Jebron Case. Off the record.

(R. 100:3.) The matter remained scheduled for trial on October 5, 2021. (R. 100:3-4.) On October 5, 2021, the parties appeared for trial. (R. 101.) The State advised the court the parties were prepared for trial. (R. 101:2.) Additionally, the State advised the court that a different case involving a sexual assault may take priority over Guerra's case. (R. 101:2.) Guerra moved to dismiss the matter, arguing a violation of his right to a speedy trial. (R. 101:2-3.) The State responded by addressing the issues and concerns caused by COVID-19 and requested the court deny Guerra's motion to dismiss. (R. 101:3.) The court responded,

The court will deny the motion to dismiss because a detailed and thorough analysis of the court record, I believe, would lead to a conclusion that there was a recognition that the defendant has another pending felony case far more serious and older with high cash bail, and this case may have taken a back seat, so to speak, to that other case which is still pending, but not in my branch. But, however, when the defendant stepped up his request for speedy trial, I've done my best to try to get it to trial. Unfortunately, I'd had about 12, 13 trials already just this year, last 12 months. We are working very hard to clean up the backlog from COVID, and the DA's office is also working double hard, because it's easy for me to set trial

dates, their office has to prep them and try them.

And every trial where Mr. Guerra has been bumped, there have been two or three other cases also being bumped, so he is not alone. I had four cases that could have been tried today, but today we have a sexual assault. It's a crime against person. And I respect Mr. Guerra's speedy trial demand. I honor the Constitution, I believe in it, but I only have so many trial days, and we are going a hundred percent in this branch getting through these cases.

(R. 101: 4.) The court further addressed whether Guerra was prejudiced by the delay,

So just be patient, Mr. Guerra. You'll get your day in court. And I find cause exists. And without a detailed analysis of every single adjournment and who wanted it and for what, the basis for the motion I don't think is properly substantiated, plus there's no prejudice. There has to be a showing of how the defendant has been affected of his right to a trial and a fair trial, and there is no showing of prejudice.

(R. 101:5) The matter was then rescheduled for a Jury Trial to commence on February 17, 2022.¹ (R. 96:1-185.). A plea and sentencing hearing was also scheduled for February 14, 2022. (R. 109:1-5.). Given the matter was adjourned due to a congested court calendar, the time from October 5, 2021, to February 17, 2022 – 136 days – should not weigh heavily against the State. *Urdahl*, 2005 WI App 191, ¶ 26.

While the court and the State were responsible for some delays, the reasons for the delays, including witness availability and the court's calendar, as illustrated by the

¹Guerra's case did proceed to jury trial on February 17, 2022 (R. 96.)

record, do not demonstrate a cavalier disregard of Guerra's speedy trial rights. There were other reasons for the delays as well, including both a State's Motion to Amend the Criminal Complaint and a Defense Motion in Limine regarding the introduction of other acts or character evidence, as well as the pandemic generally.

3. Guerra eventually asserted his speedy trial rights.

While the State has a duty to facilitate speedy trials, courts "emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Urdahl*, 2005 WI App 191, ¶ 33.

As previously noted, the criminal complaint was filed on May 1, 2020. (R. 2:1.) Guerra made his first appearance that same day. (R. 102:1.) Guerra did not demand a speedy trial on May 1, 2020. (R. 102:1-4.) Guerra appeared again on May 26, 2020, and again did not demand a speedy trial. (R. 110:1-4) It was not until August 4, 2020, that Guerra filed a Demand for Speedy Trial. (R. 11:1.) The matter was then scheduled for trial to begin on August 25, 2020, with a plea and sentencing hearing on August 24, 2020. (R. 103:1.) The record does not reflect that an objection was made by the defendant to the trial date scheduled on August 25, 2020. On August 24, 2020, the parties appeared, and the State requested an adjournment of the jury trial based on the unavailability of a witness. (R. 14:1 & 103:1-5.) This period of 116 days, from May 1, 2020, to August 24, 2020, was not the fault of the State. Thus, while Guerra's failure to timely demand a speedy trial did not result in a waiver of the right, this Court should treat Guerra's "failure or delay in demanding a speedy trial [to] be weighed against him." *Hatcher v. State*, 83 Wis. 2d 559, 568, 266 N.W.2d 320 (1978). If this period is attributed to the State, it should not be weighed heavily. *Urdahl*, 2005 WI App 191, ¶ 26.

4. The delay did not prejudice Guerra.

“[D]eprivation of the right to speedy trial does not per se prejudice the accused’s ability to defend himself.” *Barker*, 407 U.S. at 521. Court’s evaluate prejudice by reference to three factors: “prevention of oppressive pretrial incarceration, prevention of anxiety and concern by the accused, and prevention of impairment of defense.” *Provost*, 2020 WI App 21, ¶ 46.

Guerra concedes that the factor of oppressive pretrial incarceration weighs in favor of the State (Guerra Br. 14). As has been alluded to many times throughout the State’s brief, Guerra was granted a \$1000.00 signature bond in this matter. (R. 102:2.) Further, as the court took into consideration on many occasions, Guerra was pending on what was often referred to throughout court proceedings as a “more serious” case involving multiple counts of 1st Degree Sexual Assault of a Child, as well as other crimes against children. (R. 98:12; 99:3; 100:3; 101:4 103:3-4; 104:3-4; 105:3; 108:6-7.) In that matter, Guerra’s bond was set at \$250,000.00 cash, which he was unable to post. (R. 108:6-7.)

Although discussed throughout nearly all of Guerra’s court appearances, the court specifically addressed the serious nature of the charges and significant cash bond in Guerra’s other pending matter at the motion hearing on February 11, 2022. (R. 108:6-7.) Discussing Guerra’s motion to dismiss for violation of his speedy trial rights, the Court inquired,

Before defense counsel does rebuttal, I just want to confirm that Mr. Guerra is in the Fond du Lac County Jail under file 19-CF-541, which is alleging first degree child sexual assault, intercourse, child under 12. That’s Count 1. Count 2 is first degree child sexual assault, sexual contact with a person under age 13. Count 3 alleges child enticement with sexual contact. Count 4

alleges exposing genitals to a child. Count 5 alleges intimidate victim, dissuading reporting. Count 6 alleges resisting/obstructing. Count 7, 8, and 9 or 10 are bail jumpings. And if I can quickly skim the court record, which I'm trying to, cash bond might be in this case - - it's a long court record - - it says it's \$250,000, and the age of that case is 907 days.

(R. 108:6-7.) The State advised the court that was an accurate representation of Guerra's other pending matter. (R 108:7.) The record demonstrates a clear understanding and determination that Guerra was not held in custody on this matter throughout the pendency of the case. Therefore, Guerra's pretrial incarceration was not prejudicial in the oppressive sense.

The next factor this Court should address is the anxiety and concern of Guerra due to the delays of the case. *Provost*, 2020 WI App 21, ¶ 46. Guerra claims stress and anxiety was present based on the misdemeanor charges he was facing. (Guerra Br. 14.) However, the court addressed Guerra's anxiety and concern on multiple occasions. (R. 106:5-6; 108:11-12.) Addressing Guerra's motion to dismiss for violation of his speedy trial rights on June 17, 2021, the court stated,

The Court's duty is to uphold the Constitution and protect the rights of the accused in this situation. The Court notes the case does allege misdemeanors, but with the repeaters there is certainly exposure. That can be stressful and anxiety provoking. As referenced, Mr. Guerra has another far more serious case pending with I think the cash bond that's holding him. . .

So on this record and what I find most convincing is that there is no actual prejudice to Mr. Guerra. So while the arguments of Attorney Dahl are correct on

the law, ultimately it doesn't rise to the level of a violation of the speedy trial because he's not in jail for this case. He has a signature bond. And he's in jail anyways for something else, which mitigates the stress to another case and not this one.

(R. 106:5-6.) The court again addressed potential anxiety or stress Guerra may have suffered due to the delays at the February 11, 2022, motion hearing, regarding Guerra's second motion to dismiss for violation of his speedy trial rights. The court stated,

Bottom line, Mr. Guerra has been stuck in our county jail on a very serious sexual assault charge with high cash bail, so any stress or anxiety that would fall to this case would be minimal, de minimis at best, so I give zero weight to Mr. Guerra's perceived anxiety or uncertainty about a misdemeanor case, especially in light of a quarter million cash bail on a sexual assault charge.

(R. 108:11.) The Court continued,

So I don't see any prejudice falling to the defendant in this case because there's no oppressive pretrial incarceration. His anxiety concern is nonexistent for this case. There is no way the defense has been limited or weakened by the delay.

(R. 108:12.) Given that Guerra was pending on a serious child sexual assault case, in which he was charged with multiple crimes against children, was unable to post \$250,000.00 cash bail and was facing significant exposure in that case, his anxiety and concern due to the delays in this misdemeanor case would be minimal.

Finally, and most importantly, the record does not demonstrate that delays impaired his defense. *See State v. Leighton*, 2000 WI App 156, ¶¶ 23–24, 237 Wis. 2d 709, 616 N.W.2d 126. Guerra has not identified how the delay impaired

his defense, and the factors associated with the impairment of a defense, such as a witness's death, disappearance, or inability to accurately recall events, are not present in his case. *See Scarbrough v. State*, 76 Wis. 2d 87, 98, 250 N.W.2d 354 (1977).

The court addressed this factor as well at the Motion Hearing on February 11, 2022, stating,

And the issue of prejudice of the trial, well, the truth is, when cases get delayed, it's the prosecutor's case who gets weakened. If witnesses can't remember anything or don't have facts, then the jury has no facts to find someone guilty. So in my experience, the delay of the case works to the benefit of the defendant when the State can't meet the burden of proof.

And Mr. Guerra hasn't claimed that he has amnesia, that he can't remember anything, so he can testify. He's got his memory. He can get up there and tell the jury what he wants the jury to know, and it's the State's problem if the witness that they call doesn't remember anything. So I don't see any prejudice falling to the defendant in this case because there's no oppressive pretrial incarceration. His anxiety concern is nonexistent for this case. There is no way the defense has been limited or weakened by the delay.

(R. 108:12.) Upon review of the record, Guerra was the only defense witness at trial and there does not appear to be any indication that the concerns outlined in *Scarbrough* occurred in this case. (R. 96:2; 113-142.) In fact, to the court's point, during his testimony, Guerra appeared to have no issue recalling events, nor statements he made to the other individual involved. (R. 96:113-142.) The video of the incident was played for Guerra, and he appeared to have testified to its contents, his frame of mind, as well as his statements,

demonstrating that he had no issue recollecting the events. (R. 96:113-142).

Moreover, nothing in the record suggests that the delay hindered Guerra's "ability to gather evidence, contact witnesses, or otherwise prepare his defense." *See Scarbrough*, 76 Wis. 2d at 98.

Considering Guerra's minimal concerns stemming from the delay, the absence of impairment to his defense, and the absence of oppressive pretrial incarceration due to his incarceration on other charges, the pretrial delay did not prejudice Guerra.

5. Balancing the factors.

Balancing all four factors based on this record, no constitutional violation of Guerra's right to a speedy trial occurred. The approximately 21-month timeframe is notable, but not by itself a violation. Guerra made his speedy trial demand 96 days after the criminal complaint was filed. The reasons for the delay included, unavailability of a witness, the need to address pretrial motions, and an overcrowded court calendar due to COVID-19. Finally, Guerra was not prejudiced by the delay as he remained in custody on another matter, and his defense was not hindered or impaired.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 19th day of May 2023.

Electronically signed by:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,977 words.

Dated this 19th day of May 2023.

Electronically signed by:

Barry J. Braatz

BARRY J. BRAATZ

Deputy District Attorney

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 19th day of May 2023.

Electronically signed by:

Barry J. Braatz

BARRY J. BRAATZ

Deputy District Attorney