

[Cite as *State v. Saxon*, 2009-Ohio-6905.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellant

v.

SHARON E. SAXON

Appellee

C. A. No. 09CA009560

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR075809

DECISION AND JOURNAL ENTRY

Dated: December 30, 2009

BELFANCE, Judge.

{¶1} Appellant, the State of Ohio, appeals from the judgment of the Lorain County Court of Common Pleas. For the reasons set forth below, we affirm in part and reverse in part.

I.

{¶2} In May of 2004, the Appellee, Sharon Saxon was to be admitted to the Nord Center in Lorain, a behavioral health center. Officers from the Lorain County Sherriff’s Department were called to Saxon’s home to assist in escorting her to the Nord Center. It is alleged that Saxon attempted to threaten one of the officers with a handgun.

{¶3} Saxon was indicted by the Grand Jury on May 1, 2008 for one count of obstructing official business and one count of aggravated menacing.

{¶4} Saxon moved to dismiss the charges on the basis that her speedy trial rights were violated. The State of Ohio did not file any written opposition to the motion to dismiss although it did oppose dismissal at a subsequent hearing on the matter. At the hearing, the State did not

offer any reason for the four-year delay in charging Saxon and did not explain why it sought to press charges against Saxon at this time given Saxon's apparent mental disabilities. After a hearing on the matter, the court dismissed both charges. The State filed the instant appeal.

II.

{¶5} We review a ruling on a pretrial motion to dismiss criminal charges using the de novo standard. *State v. Davis*, 9th Dist. No. 08CA009412, 2008-Ohio-6741, at ¶22 (applying a de novo standard to the trial court's legal conclusions on a motion to dismiss). See, also, *State v. Henley*, 8th Dist. No. 86591, 2006-Ohio-2728, at ¶7 ("Courts reviewing a decision on a motion to dismiss for pre-indictment delay accord deference to the lower court's findings of fact but engage in a de novo review of the lower court's application of those facts to the law.").

{¶6} The statute of limitations is "'* * * the primary guarantee against [the State] bringing overly stale criminal charges.'" *United States v. Marion* (1971), 404 U.S. 307, 322, quoting *United States v. Ewell* (1966), 383 U.S. 116, 122. Statutes of limitations circumscribe the period of time during which one may be called to defend one's actions against criminal prosecution. *Marion*, 404 U.S. at 323, quoting *Toussie v. United States* (1970), 397 U.S. 112, 114. Charges brought outside the statute of limitations are presumptively prejudicial. *Marion*, 404 U.S. at 322.

Aggravated Menacing

{¶7} Count two of Saxon's indictment contained a charge of aggravated menacing, a first-degree misdemeanor. R.C. 2903.21(B). The applicable statute of limitations for this charge is two years. R.C. 2901.13(A)(1)(b). The State concedes that Saxon was indicted on count two, aggravated menacing, outside of the applicable statute of limitation and dismissal was likely appropriate. Since the incident was alleged to have occurred in May of 2004 and the charges

were not filed until May 1, 2008, the charge of aggravated menacing was brought outside of the two-year statute of limitations and an irrebuttable presumption of prejudice arises. See *Marion*, 404 U.S. at 322. Thus, the State is correct when it concedes that the trial court properly dismissed count two of the indictment. See *Marion*, 404 U.S. at 322.

Obstructing Official Business

{¶8} The first count of Saxon’s indictment is the charge of obstructing official business, under the facts of this case, a fifth-degree felony. R.C. 2921.31(B). The State argues that the trial court erred in dismissing this charge. The statute of limitations for felonies, regardless of degree, is six years. R.C. 2901.13(A)(1)(a). Accordingly, the charge is not presumptively prejudicial because it was filed within the statute of limitations.

{¶9} “When there has been an unjustifiable delay between the commission of an offense and a defendant’s indictment for the offense that results in actual prejudice to that defendant, a defendant’s right to due process under Section 16, Art. I of the Ohio Constitution and the Fifth and Fourteenth Amendments to the United States Constitution have been violated.” *State v. Barnhardt*, 9th Dist. No. 05CA008706, 2006-Ohio-4531, at ¶16, citing *State v. Luck* (1984), 15 Ohio St.3d 150, paragraph two of the syllabus. Following precedent established by the Supreme Court of the United States, the Supreme Court of Ohio outlined a burden-shifting test for determining whether a charge must be dismissed due to a pre-indictment delay. See *State v. Whiting* (1998), 84 Ohio St.3d 215, 217. A defendant who alleges prejudice from the delay must demonstrate actual prejudice will be suffered at trial. *Id.*, citing *Luck*, 15 Ohio St.3d at 157-158. Once the defendant has satisfied this burden, the State must present evidence that the delay was justified. *Whiting*, 84 Ohio St.3d at 217, citing *Luck*, 15 Ohio St.3d at 158. The court must then balance the actual prejudice to the defendant against the reasoning offered by the State to

determine if dismissal is appropriate. *Id.* If the defendant does not produce evidence of actual prejudice, the court's inquiry ends and the burden does not shift to the State to justify the delay. *State v. Earley* (June 28, 2000), 9th Dist. No. 99CA0059, at *4. The evidence of actual prejudice "must be specific and not speculative;" meaning the defendant must demonstrate how the evidence that was lost due to delay would have aided the defense. *Barnhardt* at ¶¶16-17.

{¶10} Saxon alleges that she established actual prejudice because she has no recollection of the events that led to the indictment. She further argues that the State failed to offer any basis for the delay under circumstances where the State had access to Saxon over the past four years and thus could have brought the charges contemporaneously with the alleged crime. The State argues that because Saxon has not demonstrated actual prejudice, the burden did not shift to the State to provide a reason for the pre-indictment delay. Additionally, the State claims that the trial court applied an incorrect legal standard to resolve this issue.

{¶11} The trial court conducted a brief hearing on Saxon's motion to dismiss. No witnesses testified; the attorneys simply presented argument to the court. Saxon's attorney stated that Saxon has been prejudiced because she does not recall the incident that led to the charges. In response, the State argued that it was not obligated to justify the pre-indictment delay because Saxon did not present adequate evidence of actual prejudice.

{¶12} In its judgment entry granting the motion to dismiss, the trial court found that the delay was unreasonable and that the State failed to explain the reason for the delay. The entry is ambiguous. On the one hand, the trial court may have implicitly found actual prejudice and then determined that the State, in failing to proffer any reason for the delay did not sustain its burden to justify the delay. Conversely, because the trial court did not state any findings with respect to whether Saxon suffered actual prejudice, it is possible that the trial court failed to address this

issue. The test enunciated by the Supreme Court instructs the trial court to balance the actual prejudice demonstrated by the defendant with the reasons for the delay articulated by the prosecution. *Whiting*, 84 Ohio St.3d at 217, citing *Luck*, 15 Ohio St.3d at 158. In this cause, it is not clear whether the trial court implemented the correct legal standard. Accordingly, we find the State's argument well taken.

III.

{¶13} In light of the foregoing, we sustain the State's sole assignment of error. Because we hold that the trial court did not articulate the correct legal standard and made no findings as to whether Saxon satisfied her burden to demonstrate actual prejudice, we remand the matter to the trial court. The judgment of the Lorain County Court of Common Pleas is affirmed in part and reversed in part. The matter is remanded for proceedings consistent with this opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to both parties equally.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
MOORE, P. J.
CONCUR

APPEARANCES:

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellant.

KENNETH M. LIEUX, Attorney at Law, for Appellee.