COURT OF APPEALS
DECISION
DATED AND FILED

May 13, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1146-CR **Cir. Ct. No. 2011CF4817**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANYALL LORENZO SIMPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Danyall Lorenzo Simpson appeals the judgment convicting him of the following charges: endangering safety by use of a dangerous weapon (pointing), domestic abuse; aggravated battery (substantial risk of great bodily harm), use of a dangerous weapon, domestic abuse; and failure to

comply with officer's attempt to take person into custody, use of a dangerous weapon. *See* WIS. STAT. §§ 941.20(1)(c), 940.19(6), 946.415(2), 968.075(1)(a), & 939.63(1)(b)-(c) (2011-12).[1] He argues that his statutory and constitutional rights to a speedy trial were violated. We affirm.

BACKGROUND

¶2 According to a criminal complaint filed October 7, 2011, Simpson attacked his live-in girlfriend by punching her several times in the face and upper body, pointing a shotgun at her chest, and striking her in the head with an object. Simpson barricaded himself and the victim inside a bedroom while police spent thirty minutes attempting to convince him to come out.

¶3 At Simpson's initial appearance, the trial court issued a no-contact order that prohibited Simpson from having contact with the victim. The victim testified at the preliminary hearing that followed. After the trial court found that there was credible evidence that Simpson had committed a felony and bound him over for trial, Simpson made his speedy trial demand.

¶4 On the date the jury trial was scheduled to begin, the State informed the court that it was not prepared to start because the victim had not appeared. The State relayed:

> This is not something that was unsurprising [sic] to me because over the weekend I listened to phone calls between the defendant and [the victim] that I obtained late Friday night, and those calls include discussions—The very first call I believe was on December 3rd. That call includes a discussion between the defendant and [the victim] about

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

> what she was going to do when this trial date came along. The defendant—She indicates that she is going to be M.I.A., which I assume stands for missing in action. She indicates that she is planning to go to Beloit. The defendant states that he knows that they might try to snatch her up in his words. She indicates that she knows that.
>
> In a later phone call the defendant indicates that—or states to the victim that it is important that she keep her cell phone off so that we won't be able to find her.
>
> There is further discussion right about Christmas time that—where she, again, assures him that she is not going to be around for the trial date.
>
> There are a number of discussions in this about how the victim should read certain letters. I haven't seen those letters. I don't know who they went to. I don't know how they were given to the victim. I don't know what they say. But, to me, how oblique the defendant's references occasionally are to what she should do, the references to these letters, indicates that he is being very careful, and that there is something in these letters that is important in some way that can't be discussed over the phone. I am speculating, of course, but I think it may have something to do with why she isn't here today. Because of that, I am not surprised that she took off in the middle of last night to avoid being here for this case.

The State argued that Simpson forfeited his right to a speedy trial and requested that the court issue a body attachment for the victim's arrest. Simpson denied any telephone conversations and asked the court to dismiss the case.

¶5 The trial court granted the State's request for a body attachment, finding "circumstantial evidence at a minimum that [the victim] may not be here as a result of potential intimidation by Mr. Simpson." Additionally, the court determined that the interests of justice would be served by granting a continuance and that this did not run afoul of Simpson's right to constitutional due process.

¶6 Simpson's trial was rescheduled to April 16, 2012. A jury found him guilty of the following: endangering safety by use of a dangerous weapon

(pointing), domestic abuse; aggravated battery (substantial risk of great bodily harm), use of a dangerous weapon, domestic abuse; and failure to comply with officer's attempt to take person into custody, use of a dangerous weapon.

DISCUSSION

A. Statutory right to a speedy trial.

¶7 On appeal, Simpson claims the trial court violated his statutory right to a speedy trial. WISCONSIN STAT. § 971.10(2)(a) provides that "[t]he trial of a defendant charged with a felony shall commence within 90 days from the date trial is demanded by any party in writing or on the record." The statute further provides: "A court may grant a continuance in a case, upon its own motion or the motion of any party, if the ends of justice served by taking action outweigh the best interest of the public and the defendant in a speedy trial." Sec. 971.10(3)(a).

¶8 Given that Simpson's trial is over, the State submits that there is no relief available for the claimed violation of Simpson's statutory right to a speedy trial. *See* ***State ex rel. Rabe v. Ferris***, 97 Wis. 2d 63, 68, 293 N.W.2d 151 (1980) ("the remedy afforded by [WIS. STAT. §] 971.10 [for a violation of the statutory right to a speedy trial] is simply release from custody or from the obligations of bond pending trial"). As such, the State argues that there is no need for us to consider Simpson's arguments on this point. Simpson has not filed a reply brief. We therefore deem this unrefuted argument admitted. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

B. Constitutional right to a speedy trial.

¶9 Simpson also claims the trial court violated his constitutional right to a speedy trial. We apply a four-part balancing test when determining whether a defendant's constitutional right to a speedy trial has been violated: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the defendant was prejudiced by the delay. *See* ***Barker v. Wingo***, 407 U.S. 514, 530 (1972).

¶10 As the State points out, courts are not required to inquire into the other speedy trial factors unless the length of the delay is considered presumptively prejudicial. *See* ***State v. Ziegenhagen***, 73 Wis. 2d 656, 665, 245 N.W.2d 656 (1976) ("[T]here is no necessity for inquiry into the other factors unless there is a delay which is presumptively prejudicial."); *see also* ***State v. Borhegyi***, 222 Wis. 2d 506, 510, 588 N.W.2d 89 (Ct. App. 1998). A delay that approaches twelve months is considered presumptively prejudicial. ***Id.***

¶11 Here, the State submits that the time between the filing of the complaint against Simpson and his trial was 193 days or six months and ten days. Simpson does not explain or develop any argument as to why this should be considered presumptively prejudicial.[2] *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not address arguments that are undeveloped). Without more, we are unable to reach the conclusion that he seeks, particularly given that in other instances, cited by the State, Wisconsin courts have

[2] On this point, Simpson's argument consists of the following: "The first factor the [c]ourt needs to look [at] is the length of delay. In this case, the trial was originally scheduled for January 9, 2012. The trial in this case started on April 16, 2012. This was 98 days after the previously scheduled trial."

held that even longer delays were not presumptively prejudicial. *See, e.g.*, ***Scarbrough v. State***, 76 Wis. 2d 87, 104, 250 N.W.2d 354 (1977) (eight-month delay); ***Beckett v. State***, 73 Wis. 2d 345, 348-49, 243 N.W.2d 472 (1976) (ten-month delay).

¶12 Consequently, we agree with the State that the length of delay is not presumptively prejudicial. And, once again, given that Simpson has not filed a reply brief addressing the State's position that this ends our inquiry, we deem this argument admitted. *See* ***Charolais Breeding Ranches***, 90 Wis. 2d at 109.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.