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SUPREME COURT
NEW YORK COUNTY

People v. Julio Batiz³¹⁰
(decided August 14, 1997)

Defendant, Julio Batiz, was indicted in May 1996 for two counts of murder in the second degree.³¹¹ Defendant was charged with stabbing his victim, Thomaso Ramos, in November 1981, causing injuries which resulted in her death in December 1981.³¹² Batiz moved to dismiss this indictment claiming that the fifteen years preindictment delay denied him due process.³¹³ Defendant argued that the inability of the police to locate eyewitnesses or alibi witnesses, combined with the demise of many of the investigating police officers, precluded cross-examination at trial.³¹⁴ He further contended that he was prejudiced by the four year delay during which time no investigation took place.³¹⁵ Following a hearing, the defendant's motion was denied.³¹⁶ The Supreme Court, New York County, held that the charge of murder is the "most serious offense recognized at law" and due process is not denied since defendant's flight significantly contributed to this delay.³¹⁷ Additionally, the court reasoned that the defendant effectively avoided any "pretrial or preindictment" prison term during this delay.³¹⁸ Although Batiz suffered some prejudice, a claim of prejudice alone is not sufficient to dismiss

²⁴⁵ N.Y. L.J., Aug. 14, 1997, 23 (Sup. Ct. New York County).

³¹¹ *Id.* See N.Y. PENAL LAW § 125.25 (McKinney 1997). This section states in pertinent part: "A person is guilty of murder in the second degree when: 1. With intent to cause the death of another person, he causes the death of such person or of a third person" *Id.*

³¹² *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23.

³¹³ *Id.*

³¹⁴ *Id.* at 24.

³¹⁵ *Id.*

³¹⁶ *Id.* at 23-24.

³¹⁷ *Id.* at 24.

³¹⁸ *Id.*

the indictment especially when the delay was caused by his own acts.³¹⁹

Prior to November 1981, Detective Cahill, now deceased, visited 2 West 111th Street following an anonymous call informing him that he could find the person he was looking for at this address.³²⁰ The building, the neighboring areas, and the place of the stabbing were investigated ten to twelve times by the detectives.³²¹ A "wanted card" was prepared in November 1981, containing the address, with the alias "Hernandez."³²² Although the victim knew the defendant and that he lived in the area, the detectives were unsuccessful in locating him in the first two months of the investigation.³²³

In January 1982, the case was transferred to the 23rd precinct when the lines of demarcation for the 25th and the 23rd precincts changed.³²⁴ No action was taken on the case between January 1982 to 1986.³²⁵ Detective Turner, now retired, investigated from April 1986 until April 1990.³²⁶ Turner discovered that the defendant used different names, birth dates, and social security numbers.³²⁷ He reissued the "wanted card" with the "Rodriguez" alias.³²⁸ In December 1986, Turner acquired three addresses for the defendant from records of the Department of Motor Vehicles [hereinafter "DMV"].³²⁹ Between November

³¹⁹ *Id.*

³²⁰ *Id.* at 23.

³²¹ *Id.*

³²² *Id.* The "wanted card" advises the detectives if the defendant is apprehended in a different case. *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.* Detective Turner visited the scene of the crime. *Id.* He did a "finest check" which is "a career criminal apprehension unit that uses federal computers to do various checks." *Id.* He also did a NYSIID check which provided him with the defendant's up-to-date criminal history. *Id.*

³²⁹ *Id.*

1989 and April 1990, Turner visited these addresses more frequently, in pursuit of a homicide arrest, to no avail.³³⁰

Detective Rehbein investigated the case from January 1990 until the defendant's arrest in May 1996.³³¹ In 1995, DMV listed the defendant's address as 620 West 135th Street.³³² Defendant's brother provided Rehbein with the defendant's van registration number, and informed him that the defendant lived in New Jersey on weekends, with his girlfriend.³³³ The van belonged to Charlotte Batiz, the defendant's wife, who resided at 221 West 111th Street.³³⁴

In May 1995, Rehbein discovered that the defendant was employed by the National Housing Partnership located at 620 West 135th Street.³³⁵ In June 1995, however, Rehbein was informed that the defendant took a demotion on an "unspecified date" to work in Albrightsville, Pennsylvania, with a home address of 301 Shakespeare Drive, Pennsylvania, Post Office Box 508.³³⁶ A Pennsylvania State Trooper agreed to make inquiries about the occupants of the Shakespeare address after the Postal Inspector informed Rehbein that Batiz was listed on that box, and had picked up mail from there.³³⁷

Between June 1995 and May 1996, Rehbein made five visits to the 111th Street address, and performed a "badge" check,

³³⁰ *Id.*

³³¹ *Id.* at 23. Detective Spear, now deceased, also conducted a parallel investigation independently. *Id.*

³³² *Id.*

³³³ *Id.* The defendant's records were sent to a Passaic County detective for verification, but he was unable to uncover any information of assistance. *Id.*

³³⁴ *Id.*

³³⁵ *Id.* Detective Rehbein was unable to obtain any information from the Social Security Administration or the Internal Revenue Service as they maintain their records are confidential. *Id.*

³³⁶ *Id.* Rehbein was also informed that the defendant was fired in 1993. *Id.*

³³⁷ *Id.* The Trooper provided Rehbein with license plate numbers for three parked cars located at that address. *Id.* A computer check revealed that the cars were registered to Stewart, with one car listed at a Brooklyn address. *Id.* No one was at home when Rehbein visited the Brooklyn address. *Id.*

another NYSIID check, and another "finest" check, to no avail.³³⁸ Defendant was arrested in April 1996 following an assault, and in May 1996, he was arrested for murder.³³⁹ Defendant's rap sheet showed that a warrant was issued in February 1982 for a probation violation, under the name of Rodriguez, and he never responded to letters sent in connection with this violation.³⁴⁰

Relying on *People v. Singer*,³⁴¹ the *Batiz* court recognized that a "[l]engthy and unwarranted preindictment delay constitutes a violation of the State's due process guarantee."³⁴² The statute of limitations is primarily a suspect's protection against a prolonged detainment before proceeding to trial.³⁴³ However, such a safeguard against a protracted delay does not exist when there is a charge of murder.³⁴⁴ Even if some prejudice was suffered by the defendant, a dismissal may be granted only if the defendant can show that the action was detained "without good cause," and the prosecution maintains the burden to demonstrate good cause for the delay.³⁴⁵

³³⁸ *Id.* A "badge check" is a "booking and arraignment system to determine if the defendant was arrested anywhere." A "finest check" is performed by a "career criminal apprehension unit that uses federal computers to do various checks." *Id.*

³³⁹ *Id.* The assault took place at East 115th Street. *Id.*

³⁴⁰ *Id.* Upon arrest the defendant said that he lived at 220 East 115th Street. *Id.*

³⁴¹ 44 N.Y.2d 241, 376 N.E.2d 179, 405 N.Y.S.2d 17 (1978).

³⁴² *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23. See *Singer*, 44 N.Y.2d at 253, 376 N.E.2d at 186, 405 N.Y.S.2d at 24-25. In *Singer*, defendant was incarcerated for another crime during the four year period between October 1970 and May 1974, after which he was formally charged with homicide. *Id.* at 252, 376 N.E.2d at 185-86, 405 N.Y.S.2d at 24.

³⁴³ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23. See also *People v. Fuller*, 57 N.Y.2d 152, 159, 441 N.E.2d 563, 567, 455 N.Y.S.2d 253, 256 (1982). In *Fuller*, defendant's unlawful conduct of grand larceny was discovered in December 1975, but the District Attorney was not informed until December 1976. *Id.* at 155, 441 N.E.2d at 564, 455 N.Y.S.2d at 254. Defendant based the due process claim on this 21-month delay. *Id.*

³⁴⁴ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23. See *Singer*, 44 N.Y.2d at 253, 376 N.E.2d at 186, 405 N.Y.S.2d at 25.

³⁴⁵ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23. See *People v. Lesiuk*, 81 N.Y.2d 485, 490, 617 N.E.2d 1047, 1050, 600 N.Y.S.2d 931, 934 (1993). In

The *Singer* court stated that the due process requirement under Article 1, section 6 of the New York State Constitution³⁴⁶ to secure prompt prosecution is more liberal than a speedy trial guarantee pursuant to CPL 30.20,³⁴⁷ CPL 30.30,³⁴⁸ and the Sixth Amendment of the Federal Constitution.³⁴⁹ In *United States v. Lovasc*³⁵⁰ the United States Supreme Court held that “to prosecute a defendant following investigative delay does not deprive him of due process, even if his defense might have been somewhat prejudiced by the lapse of time.”³⁵¹

Lesiuk, defendant was convicted following a jury trial for sale of marihuana in December 1986. *Id.* at 487, 617 N.E.2d at 1048, 600 N.Y.S.2d at 932. His conviction was delayed until August 1987 as the undercover narcotics unit tried to use the defendant to organize another marihuana transaction. *Id.* The court denied the defendant’s motion to set aside the verdict, stating that postponement of the defendant’s arrest did not constitute a deprivation of due process. *Id.* at 487, 491, 617 N.E.2d at 1048, 1050, 600 N.Y.S.2d at 932, 934.

³⁴⁶ N.Y. CONST. art. I, § 6. Article I, Section 6 provides: “In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him.” *Id.*

³⁴⁷ N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1997). This section provides: “After a criminal action is commenced, the defendant is entitled to a speedy trial.” *Id.*

³⁴⁸ N.Y. CRIM. PROC. LAW § 30.30 (McKinney 1997). Section 30.30 provides that time limitations “do not apply to a criminal action wherein the defendant is accused of an offense defined in section . . . 125.25 of the penal law.” *Id.*

³⁴⁹ *Singer*, 44 N.Y.2d at 253, 376 N.E.2d at 186, 405 N.Y.S.2d at 25. See also U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . and . . . to be confronted with the witnesses against him” *Id.*

³⁵⁰ 431 U.S. 783 (1977).

³⁵¹ *Lovasco*, 431 U.S. at 796. In *Lovasco*, the defendant was indicted for offenses which occurred 18 months previously. *Id.* at 784. Oral argument asserted that the delay “was caused by the government’s efforts to identify persons in addition to respondent who may have participated in the offenses.” *Id.* at 796. The Court found that due process was not violated even though some prejudice occurred, and it would not be “fundamentally unfair” to compel the defendant to stand trial. *Id.*

In *People v. Taranovich*,³⁵² the New York Court of Appeals set forth five factors which a court should consider in its determination of denial of due process arising from a preindictment delay.³⁵³ These factors are consistent with New York Criminal Procedure Law Section 30.20.³⁵⁴ They are:

(1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay.³⁵⁵

Although a fifteen year delay is substantial, the New York Court of Appeals has thus far refused to give a time restriction where a criminal prosecution cannot be pursued.³⁵⁶ This reluctance to set a "per se time restriction" is consistent with the decision of the Legislature not to impose a time limit where a murder is at issue.³⁵⁷ The *Batiz* court held that the fifteen year preindictment delay was not unreasonable.³⁵⁸ The court stated that it was more important to consider what was done to apprehend the defendant, rather than the length of time the defendant was sought after.³⁵⁹

³⁵² 37 N.Y.2d 442, 335 N.E.2d 303, 373 N.Y.S.2d 79 (1975).

³⁵³ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23 (citing *Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81-82).

³⁵⁴ *Id.* See N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1996).

³⁵⁵ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 23.

³⁵⁶ *Id.* at 23-24; *Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 82.

³⁵⁷ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 24. See N.Y. CRIM. PROC. LAW § 30.10(2)(a) (McKinney 1996). This provision states in pertinent part: "A criminal action must be commenced within the period of limitation prescribed . . . except . . . [a] prosecution for a class A felony may be commenced at any time." *Id.*

³⁵⁸ *Id.* (citing *People v. LaRocca*, 172 A.D.2d 628, 568 N.Y.S.2d 431 (2d Dep't 1991). In *LaRocca*, the defendant was convicted in 1985, following a jury trial, for a murder which occurred in 1968. *Id.* at 628, 568 N.Y.S.2d at 431. He appealed contending bad faith by the People for not obtaining an earlier indictment. *Id.* The court held that the seventeen year delay did not deprive the defendant of due process. *Id.* at 628, 568 N.Y.S.2d at 432.

³⁵⁹ *Batiz*, N.Y. L.J., Aug. 14 1997, at 24.

Inability to locate the defendant despite diligent efforts by the detectives constitutes “good cause” for the delay in the indictment.³⁶⁰ The reason this delay occurred was because the police were unable to locate Batiz.³⁶¹ There was no evidence of any action taken by the police between 1982 and 1986.³⁶² Although such inaction usually constitutes an undue delay, there is no reason to contemplate that the defendant would have been found if the investigation was active during that time.³⁶³ Defendant ceased reporting to the Department of Probation, which was unaware of his whereabouts, and was unable to locate him at his residence or workplace.³⁶⁴ A bench warrant was subsequently issued for his arrest, in February 1982.³⁶⁵ Since the defendant became a fugitive, the delay “should not be attributed to the People.”³⁶⁶ Batiz contributed to the delay and was only arrested because he committed another offense.³⁶⁷

³⁶⁰ *Id.* (citing *People v. Staley*, 41 N.Y.2d 789, 364 N.E.2d 1111, 396 N.Y.S.2d 339 (1977)). In *Staley*, the defendant was indicted thirty one months after the arrest and dismissal of charges without prejudice. *Id.* at 790, 364 N.E.2d at 1112, 396 N.Y.S.2d at 341. The court held this constituted a violation of due process as there was no acceptable reason or justification for the delay. *Id.* at 790, 792-93, 364 N.E.2d at 1113-14, 396 N.Y.S.2d at 341-42. The court also stated that “[d]elays due to difficulty in obtaining sufficient to indict or even to arrest do not mandate dismissal of charges, subject of course to the Statute of Limitations.” *Id.* at 792, 364 N.E.2d at 1114, 396 N.Y.S.2d at 342.

³⁶¹ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 24.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.* (citing *People v. King*, 114 A.D.2d 650, 494 N.Y.S.2d 484 (3d Dep’t 1985)). In *King*, the defendant became a fugitive following his participation in a “temporary release program.” *King*, 114 A.D.2d at 650, 494 N.Y.S.2d at 485. The court stated that since the 20 month delay occurred while he was a fugitive, this “cannot be chargeable against the prosecution.” *Id.* at 651, 494 N.Y.S.2d at 486.

³⁶⁷ *Id.*

Relying on *People v. Guzman*,³⁶⁸ Batiz sought a dismissal of the indictment based on the four year delay when he was “readily available.”³⁶⁹ However, the court asserted that the defendant in *Guzman* was available throughout the four year span, and fully cooperated with the police in their investigation.³⁷⁰ The detectives faced substantial difficulty in locating Batiz because of his use of aliases, different birth dates and social security numbers, lack of cooperation from his family, and conflicting home addresses.³⁷¹ Batiz could not be awarded with a dismissal, since the investigation was hindered by his own attempt and actions to evade capture; the investigators made an assiduous effort and there was nothing to indicate bad faith on their behalf.³⁷²

Defendant contended that the police did not do enough to locate him as he held a job in the city for a few years, was on jury duty twice, and faced an arrest in 1994.³⁷³ The court stated that the focus of defendant’s due process denial is not what the officers might have done, but rather whether their actions were reasonable.³⁷⁴ Even if further efforts were made, a dismissal is still not warranted since the delay “was not deliberate or motivated by an effort to obtain a tactical advantage.”³⁷⁵ Murder is the “most serious offense recognized at law” and this seriousness supports a finding that a delay does not deny Batiz of due process since his escape significantly contributed to this delay.³⁷⁶

Defendant further contended that the delay caused him prejudice because of the lack of eyewitnesses or alibi witnesses

³⁶⁸ 163 Misc. 2d 237, 620 N.Y.S.2d 227 (Sup. Ct. New York County 1994), *aff’d*, 227 A.D.2d 219, 642 N.Y.S.2d 269 (1st Dep’t 1996).

³⁶⁹ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 24.

³⁷⁰ *Id.* In *Guzman*, the court concluded that the forty-nine month delay deprived the defendant of due process and warranted dismissal of the indictment. *Guzman*, 163 Misc. 2d at 244, 620 N.Y.S.2d at 232.

³⁷¹ *Batiz*, N.Y. L.J., Aug. 14, 1997, at 24.

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* (citation omitted).

³⁷⁶ *Id.* (citation omitted).

due to the death of many of the investigators, thereby limiting his cross examination at trial.³⁷⁷ The court agreed that Batiz may have endured some prejudice caused by the delay, but since the delay was abundantly due to his own actions, a “general unspecified claim of prejudice” does not provide a basis to dismiss the indictment.³⁷⁸

In comparing the federal case and state cases relied on by the *Batiz* court, the application of the law in a preindictment delay are congruous. Both federal and state cases conclude that although some prejudice exists against the defendant due to the lapse of time in prosecuting a case, such delay may not deprive the defendant of due process.

Ramanadhan v. Wing³⁷⁹
(decided August 12, 1997)

This Article 78 proceeding involves a due process challenge under both the Federal³⁸⁰ and the New York State³⁸¹ Constitutions, where a professional’s reputation and livelihood were deprived by State action taken prior to the availability of a hearing.³⁸²

³⁷⁷ *Id.*

³⁷⁸ *Id.* (citing *People v. Andine*, 214 A.D.2d 373, 624 N.Y.S.2d 594 (1st Dep’t 1995)). In *Andine*, defendant appealed his conviction for assault, contending that the preindictment delay of four years and seven months deprived him of due process. *Id.* at 373, 624 N.Y.S.2d at 595. The court dismissed the indictment since the People failed to show that diligent efforts were made to locate the defendant. *Id.* at 374-75, 624 N.Y.S.2d at 596. They were in possession of the defendant’s photograph, they knew his aliases and his whereabouts, and, nonetheless, closed the case after six weeks. *Id.*

³⁷⁹ 174 Misc. 2d 11, 662 N.Y.S.2d 393 (Sup. Ct. New York County 1997).

³⁸⁰ U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: “[N]or shall any state deprive any person of life, liberty, or property without due process of law. . . .” *Id.*

³⁸¹ N.Y. CONST. art. I, § 6. This provision of the New York State Constitution provides in pertinent part: “[N]o person shall be deprived of life, liberty, or property without due process of law.” *Id.*

³⁸² *Ramanadhan*, 174 Misc. 2d at 24, 662 N.Y.S.2d at 404. Here, a Special Administrative Hearing before the New York State Department of Social