

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0255**

State of Minnesota,
Respondent,

vs.

Isaac Thomas Soltau,
Appellant.

**Filed December 31, 2018
Affirmed
Ross, Judge**

Olmsted County District Court
File No. 55-CR-15-8373

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Assistant County Attorney,
Rochester, Minnesota (for respondent)

James McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Smith,
Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Isaac Soltau crashed his car into a curb after a night of heavy drinking, causing it to flip and eject a passenger through the rear window. Paramedics took Soltau to a hospital, where a police officer drew a blood sample. More than two years passed before prosecutors

filed charges against Soltau for impaired driving. Soltau unsuccessfully moved to dismiss the charges for unnecessary pre-charge delay and to suppress the blood-draw evidence obtained without a warrant. Answering this appeal from his conviction, we hold that the district court acted within its discretion by refusing to dismiss the charges on delay grounds and that the exigent-circumstances exception to the warrant requirement justified the warrantless blood draw. We therefore affirm.

FACTS

Isaac Soltau drank at least six vodka Red Bulls before leaving the bar after 2:00 a.m. and driving his car into a curb. The impact caused the car to flip and eject one of Soltau's passengers through the rear window. Soltau admitted to Rochester Police Sergeant Timothy Lutzke that he "had too much to drink." Paramedics took Soltau and the two passengers to the hospital.

Sergeant Lutzke wanted to obtain a warrant to draw a sample of Soltau's blood to test it for alcohol concentration. The sergeant completed an affidavit and warrant application. He conferred with an assistant Olmsted county attorney about it. He then sought a judge to issue a warrant.

Meanwhile, Officer Kenneth Gallion went to the hospital where Soltau was being treated, and he awaited word about the warrant. Hospital staff eventually told Officer Gallion that he had only "a small window of opportunity" to draw Soltau's blood before nurses moved him to the operating room. Officer Gallion knew that Sergeant Lutzke was attempting to obtain a warrant, but, believing it was imperative to draw the blood sample

before Soltau became unavailable, he drew Soltau's blood before nurses removed him for surgery. It was 4:40 a.m. A judge signed the search warrant five minutes later.

The Bureau of Criminal Apprehension tested Soltau's blood three times, revealing blood-alcohol concentrations of .11, .104, and .10. For reasons unclear from the record, the state did not immediately charge Soltau with any crime. Sixteen months after the crash, the police department assigned the case to Investigator Chris Weber, who later speculated that the case had "fallen through the cracks."

Another eight months passed. Then Weber drafted a search warrant for all the crash victims' medical records. Eventually, more than two years after the crash, the state charged Soltau with four counts of criminal vehicular operation causing substantial bodily harm—two for operating a car negligently under the influence of alcohol and two for having a blood-alcohol concentration of .08 or more within two hours after driving—and with two counts of driving while impaired.

Soltau filed a three-request motion. He asked the district court to dismiss the complaint because of the state's unnecessary pre-charge delay. He asked the court to suppress evidence obtained as a result of the warrantless blood draw. And he asked the court to forbid the state from introducing the blood-test results because the physical evidence was destroyed and unavailable for him to test. Soltau supported his motion in part with the affidavit of a crash-reconstruction expert, who testified that he could not analyze whether Soltau had been driving the car because the vehicle had not been preserved as evidence.

The district court denied Soltau’s motion, concluding that he was not prejudiced by the charging delay and that exigent circumstances justified the warrantless blood draw. Soltau proceeded to a stipulated-evidence trial, after which the district court found him guilty on all counts and convicted him of two of the criminal-vehicular-operation offenses.

Soltau appeals.

DECISION

Soltau offers two arguments on appeal. He argues first that the district court abused its discretion by denying his motion under Minnesota Rule of Criminal Procedure 30.02 to dismiss the state’s charges against him after an unnecessary delay. He argues second that the district court erred by finding that an exigency justified the warrantless draw of his blood. Neither argument compels reversal.

I

Soltau maintains that the district court should have dismissed the state’s criminal complaint against him under Minnesota Rule of Criminal Procedure 30.02 because of the prosecutor’s unnecessary delay in charging him. We review the district court’s decision to deny a motion to dismiss for an abuse of discretion. *State v. Banks*, 875 N.W.2d 338, 344 (Minn. App. 2016), *review denied* (Minn. Sept. 28, 2016). Rule 30.02 provides that “[t]he court may dismiss the complaint . . . if the prosecutor has unnecessarily delayed bringing the defendant to trial.” In addition to the unnecessary-delay element, a challenger must also establish that the delay prejudiced him. *Banks*, 875 N.W.2d at 341. The state does not dispute that the prosecutor’s 27-month delay in charging Soltau was unnecessary, so we turn to whether the delay prejudiced him.

Soltau has not established that the state's pre-charge delay prejudiced him. A defendant can show prejudice by demonstrating that he was incarcerated during the pre-charge delay, that he experienced anxiety over the possibility of potential charges, and that his defense would be impaired by the delay. *See Banks*, 875 N.W.2d at 346. The district court found that Soltau suffered no prejudice in any of these forms, and the record gives us no reason to disturb the findings. Soltau spent only a single day in jail related to the offense after he failed to appear. He offered no evidence that he experienced anxiety over the lingering potential charges. And according to the district court's undisputed findings, the car was destroyed only after its owner, Soltau's father, transferred it to his insurer following the accident. Although the state did dispose of the blood sample, we cannot conclude that this prejudiced Soltau's defense against the alcohol-based charges. Soltau admitted that he drank too much before driving and crashing the car, and he gives us no reason to doubt the accuracy or reliability of the three tests performed by the BCA, each of which showed a legally excessive blood-alcohol concentration. The district court did not abuse its discretion by concluding that the state's unnecessary pre-charge delay did not prejudice Soltau and, consequently, by refusing to dismiss the criminal complaint under Rule 30.02.

II

Soltau maintains next that the officer's warrantless blood draw violated his Fourth Amendment rights. We review *de novo* the district court's conclusion that no Fourth Amendment violation occurred. *State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

The district court held that the exigent-circumstances exception to the Fourth Amendment's warrant requirement justified Officer Gallion in drawing the blood sample

before the district court issued a search warrant. The exigent-circumstances exception applies in a drunk-driving case if a reasonable officer would have concluded that he faced an urgency “in which the delay necessary to obtain a warrant would significantly undermine the efficacy of the search.” *Stavish*, 868 N.W.2d at 676–77. When Officer Gallion decided to draw Soltau’s blood at 4:40 a.m., he knew that Soltau had lost control of his car and flipped it at about 2:45 a.m., that Soltau had declared that he had drunk too much, that state law prohibits a person from having a blood-alcohol concentration of .08 or more within two hours of driving (*see* Minn. Stat. § 169A.20, subd. 1(5) (2016)), that only six minutes remained before the two-hour statutory window under subdivision 1(5) would be closed, and that hospital staff was about to wheel Soltau away for surgery. Because Soltau’s blood-alcohol concentration at that moment was integral to whether he had committed a crime, a reasonable officer would conclude, as Officer Gallion concluded, that delaying any longer would significantly undermine the efficacy of the search. The warrantless blood draw was therefore reasonable and did not violate Soltau’s Fourth Amendment rights.

Affirmed.