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## Hate crimes hard to prove, DA says; Jude case short of threshold, he says; [Final Edition]

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### Abstract (Document Summary)

So when prosecutors charged three Milwaukee police officers in the Oct. 24 beating of Frank Jude Jr., those same people including some elected officials expressed surprise and disappointment that a hate-crime enhancer wasn't included. The decision spotlights the high threshold of Wisconsin's hate-crime law and what prompts a prosecutor to use it or not. It also served as a reminder that provable facts might not always match public perceptions in high-profile cases.

The criminal complaint charging police officers Jon Bartlett, Andrew Spengler and Daniel Masarik says Spengler, who was hosting a party at his Bay View home, suspected Jude of taking his badge, and that Jude shortly thereafter was pulled from a pickup truck, savagely beaten and stripped.

All three officers are charged with party to the crime of substantial battery; Bartlett and Masarik also are charged with second-degree recklessly endangering safety. Bartlett faces a heavier possible sentence on both charges if convicted of using a knife, which the complaint says he held to Jude's throat. Masarik is also charged with perjury. Bartlett, Masarik and Spengler face possible maximum penalties of 22, 19 and 3 years respectively if convicted of all counts.

### Full Text (1038 words)

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When the story got out that a black man had been severely beaten by a mob of off-duty white police officers this past fall, and that the victim said he suffered racial slurs along with kicks and blows, many people figured that the incident was the very definition of a hate crime.

So when prosecutors charged three Milwaukee police officers in the Oct. 24 beating of Frank Jude Jr., those same people including some elected officials expressed surprise and disappointment that a hate-crime enhancer wasn't included. The decision spotlights the high threshold of Wisconsin's hate-crime law and what prompts a prosecutor to use it or not. It also served as a reminder that provable facts might not always match public perceptions in high-profile cases.

In explaining his choice, Milwaukee County District Attorney E. Michael McCann said the hate-crime law applies only when perpetrators target their victims specifically because of their race, sexual orientation, religion, ethnic background or some other trait.

"To anyone who reviews the whole police file, it is very clear these victims were selected because they were suspected in stealing a (police officer's) badge," McCann said. "If they had been white, black or red if there had been two white men involved the same thing would have happened."

Jude denies taking a badge, and none was found on him.

The criminal complaint charging police officers Jon Bartlett, Andrew Spengler and Daniel Masarik says Spengler, who was hosting a party at his Bay View home, suspected Jude of taking his badge, and that Jude shortly thereafter was pulled from a pickup truck, savagely beaten and stripped.

The complaint cites accounts of 12 witnesses, but none mentions racial taunting or slurs.

To McCann, the motive seems plausible enough to undercut the idea that Jude was beaten for being black.

"You don't use the enhancer just because the person who committed the crime has demonstrated they can be a bigot," said Dane County District Attorney Brian Blanchard, who has used the statute several times. "Any time a prosecutor includes a charge or an enhancer that you cannot prove very well, the jury starts to wonder, If the state will make that weak an argument on that point, does that mean everything they present is weak?"

Wisconsin's hate-crimes law, which has been upheld by the U.S. Supreme Court, can add up to five years to the prison sentence imposed for a felony, one or two year to misdemeanors, and upgrades some misdemeanor offenses to felonies.

Defense lawyers say McCann, like most prosecutors, probably wants to avoid being accused of overcharging the case.

"There has not been a police officer charged in something this serious in a long time in this community, and there's an enormous amount of criticism that has been directed at McCann's office," attorney Robin Shellow said. "I think they brought charges they had the greatest chance of proving without taking any unnecessary risks."

All three officers are charged with party to the crime of substantial battery; Bartlett and Masarik also are charged with second-degree recklessly endangering safety. Bartlett faces a heavier possible sentence on both charges if convicted of using a knife, which the complaint says he held to Jude's throat. Masarik is also charged with perjury. Bartlett, Masarik and Spengler face possible maximum penalties of 22, 19 and 3 years respectively if convicted of all counts.

Peter Kovac, a former prosecutor now working as a defense attorney, said prosecutors "could have gone overboard" and charged attempted homicide in the beating, but didn't.

"They were being careful," Kovac said, "that the evidence they cited supported the charges they did file." He noted that the evidence has yet to be challenged in the legal process.

Kovac and Shellow both said the hate-crime charges could have been left out because they weren't necessary to get substantial penalty.

"With the charges that they've filed, they've got enough exposure (to possible prison sentences) anyway," Kovac said, "so why complicate things?"

But some experts fear that such cautious decision-making muddies the question of how often hate crimes actually happen.

According to FBI statistics, Madison reported 74 hate crimes in the last five years, compared with seven in Milwaukee. The figures reflect hate-crime incidents, not convictions under hate-crime laws.

Heidi Beirich of the Southern Poverty Law Center, which tracks the topic, said the accuracy of such numbers depends on how carefully authorities report hate crimes. She said Milwaukee's reported total "seems low," but not as low as some places.

"We found several murders that were not counted in FBI statistics as hate crimes," Beirich said, including the 1999 killing of a gay man in Alabama, where the number of reported hate crimes is regularly in the single digits.

Neither McCann nor Blanchard would estimate how many hate-crime charges their offices have brought or how many convictions resulted.

There have been some notorious hate-crime cases in the state. In Kenosha County, James Langenbach was convicted of a hate crime in 2002 for driving onto a sidewalk to hit two 14-year-old African-American boys who were on bicycles. Last year, four people, one an avowed white supremacist, were convicted of beating a Hispanic man outside a Waukesha bar as a hate crime.

And there have been other public demands for the charge that went unheeded. In Milwaukee, Juana Gloria Vega, a 36-year-old Mexican-American lesbian, was murdered in 2001 by her former girlfriend's brother. Gay and lesbian activists lobbied unsuccessfully for a hate-crime enhancement.

Donald Downs, a law and political science professor at the University of Wisconsin-Madison, said the extra work required to prove a hate crime creates an incentive to avoid charging it when racial motivation isn't absolutely clear.

"When you can already punish them for an underlying assault . . . it takes time and resources that you could be spending on other law-enforcement things to go after the hate crime charge," Downs said. "You have to really show a kind of specific intent on the part of the person, and that can be difficult to show in terms of evidence."

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