SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0164-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Bergen County.
LUIS A. FIGUEROA,	:	
		Indictment No. 14-08-1256-I
Defendant-Appellant.	:	
		Sat Below:
	:	Hon. James J. Guida, J.S.C.; Hon. Christopher R. Kazlau, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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Dated: January 30, 2024

DEFENDANT IS CONFINED

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[1] The series of letters and briefs from the defense are included in the appendix because they are germane to when and whether speedy trial issues were raised. R. 2:6-1(a)(2).

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PRELIMINARY STATEMENT

Due to the State's negligence, almost four years went by before Mr. Luis Figuroa discovered the present charges against him, appeared in court, obtained counsel and received discovery. The State arrested, charged and indicted Mr. Figueroa with eluding and aggravated assault on June 6, 2014. Yet the State took zero steps to notify Mr. Figueroa of the charges or the indictment against him, or to bring him to court. Mr. Figueroa remained unaware of the charges and indictment until the spring of 2018, when he discovered a warrant for his arrest and sent a letter to the court seeking disposition of the warrant. Thereafter, Mr. Figueroa was notified of the indictment, brought to court, assigned counsel and provided with discovery. Due to the serious delay in the State's prosecution, critical evidence was lost, including the car involved in the eluding offense, which had been in the State's custody. Mr. Figueroa did not plead guilty until June 6, 2019, five years after his arrest.

The State filed no response to Mr. Figueroa's many speedy trial motions and briefs. Upon prompting by the trial court, the State provided one reason for the delay – that Mr. Figueroa had been in federal custody. Contrary to the trial court's decision, that did not excuse the State from making any effort at all to notify Mr. Figueroa of the charges against him or to prosecute the case.

The State had arrested and charged Mr. Figueroa with eluding after police attempted to pull him over on suspicion of conduct in other parts of New Jersey and Pennsylvania, which formed the basis of the federal prosecution. Although after that arrest Mr. Figueroa was held in New York for the same eluding conduct and then taken into federal custody, the State was aware of these foreign prosecutions and knew either where Mr. Figueroa was being held, or who it could ask to find out. With just a little effort, the State would have discovered that Mr. Figueroa was detained in a New Jersey jail, Essex County Correctional Center. In fact, contrary to the trial court's decision, that State never said it was unaware of Mr. Figueroa's whereabouts, or that it had been unable to locate him despite reasonable efforts. Upon locating him, the State should have notified the court so that it could have issued a writ to produce him, which is exactly what the trial court did, just four years too late.

Under a proper legal analysis of the relevant factors, the trial court should have found that each of the factors militated in favor of Mr. Figueroa – the delay was excessive, the fault of the State, objected to by Mr. Figueroa, and resulted in prejudice – and therefore that Mr. Figueroa's constitutional right to a speedy trial had been violated. This Court should reverse the trial court's decision denying Mr. Figueroa's motion to dismiss the indictment and related motor vehicle violations.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[2]

On June 6, 2014, the police in Fort Lee, New Jersey attempted to pull over the car Mr. Luis Figueroa was allegedly driving because it matched the description of a car involved in other crimes committed in other parts of New Jersey and Pennsylvania.[3] (Da 1-2, 37-38, 32-33) According to police, Mr. Figueroa did not pull over and continued to drive at a high speed through Fort Lee, over the George Washington Bridge, and into New York, resulting in collisions with police. (Da 1-2, 37-38, 32-33) Mr. Figueroa was arrested by the Port Authority of New Jersey and New York and charged by both States.[4] (Da 32, 37-38, 51-54; 2T 2-21 to 3-5) Mr. Figueroa was initially held at a New York hospital for medical treatment, before being taken to a New York jail. (Da 32, 37-38) On August 19, 2014, Mr. Figueroa was taken into federal custody on a writ for the alleged conduct in other parts of New Jersey and Pennsylvania and transported to the Essex County Correctional Facility. (Da 32-33, 37-38, 55-56; 2T 4-12 to 21)

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[2] Due to the interrelated nature of the procedural history and statements of facts in this case, the two sections have been combined for clarity.

[3] Da – Defendant's appendix
1T – May 20, 2019 (motion)
2T – June 10, 2019 (motion/plea)
3T – August 4, 2023 (sentencing)

[4] The New York charges were ultimately dismissed. (3T 4-2 to 11)

On August 27, 2014, Bergen County Indictment 14-08-1256-I was filed, charging Mr. Figueroa with second-degree eluding and second-degree aggravated assault. (Da 1-2) Mr. Figueroa was unaware that the indictment had been filed because no notice was provided to him. (Da 33, 44-45; 2T 9-1 to 3) On September 18, 2014, the Bergen County Sherriff's Department filed a warrant for his arrest. (Da 33) For an unknown reason, the warrant was refiled on July 30, 2015. (Da 33)

Mr. Figueroa became aware of the indictment in spring of 2018 after reviewing a record check that revealed the arrest warrant. He sent a letter to the Bergen County Justice Center on March 4, 2018, requesting disposition of the warrant. (Da 34, 40) Mr. Figueroa was finally arraigned on April 30, 2018, almost four years after his arrest. (Da 33) Mr. Figueroa sent a pro se letter motion dated November 30, 2018 to the Bergen County courthouse, asserting his speedy trial rights. (Da 17-20, 43) Mr. Figueroa again asserted his rights in another pro se letter motion dated January 11, 2019, this time addressed to the trial court. (Da 21-23, 43) On April 8, 2019, Mr. Figueroa filed a pro se speedy trial motion. (Da 24-31) On May 15, 2019, Mr. Figueroa's counsel filed a motion to dismiss the indictment on the basis that his speedy trial rights had been violated. (Da 32-40) Mr. Figueroa filed supplemental briefing in support of the motion on May 21, 2019. (Da 41-50)

In support of the speedy trial motion, Mr. Figueroa argued that all four factors set forth in Barker v. Wingo, 407 U.S. 514 (1972), militated in favor of dismissal of the case with prejudice. First, the delay was lengthy. (Da 34) Second, the State had failed to justify the delay because the State was obliged to provide Mr. Figueroa notice of the indictment and prosecute the case, even though Mr. Figueroa was in federal custody.[5] (Da 33-35; 1T 8-17 to 23) Third, Mr. Figueroa asserted his speedy trial right repeatedly. (Da 35) Fourth, although Mr. Figueroa did not need to prove prejudice to be entitled to dismissal, Mr. Figueroa could do so; evidence had been lost or destroyed, including the car involved in the offense and video surveillance, and Mr. Figueroa suffered anxiety upon learning of the unresolved charges. (Da 36-38)

It appears that the State did not file an opposition to any of Mr. Figueroa's letters or briefs, even after the trial court indicated that it did not want to issue a final ruling until it reviewed both parties' submissions. (1T 40-7 to 10) When the court asked the State to provide the reason for the delay during argument, the State solely stated that Mr. Figueroa had been in federal custody. (1T 15-5 to 7)

The Honorable James J. Guida, J.S.C heard argument on the motion on

[5] Mr. Figueroa also argued that he was in joint custody with New Jersey because he was arrested and charged by New Jersey and never received bail on the New Jersey warrant. (1T 9-1 to 11, 13-1 to 4; Da 51)

May 20, 2019, and issued a decision on June 10, 2019. (1T; 2T; Da 3) In considering the speedy trial motion, the Honorable James J. Guida, J.S.C applied the four-prong Barker test. (2T 5-18 to 22) First, the court found that the four-year delay was sufficient to trigger the analysis of the remaining Barker factors.[6] (2T 9-7 to 7-9) Second, the court found that the four-year delay was not attributable to the State because the court believed there was no evidence that the State knew Mr. Figueroa was being housed in the Essex County Correctional Center and available for prosecution. (2T 9-4 to 25) Third, the court said it did not hold it against Mr. Figueroa that he did not assert his speedy trial rights earlier given that Mr. Figueroa had been unaware of the indictment until the spring of 2018.[7] (2T 10-13 to 18) Fourth, the court found that Mr. Figueroa had been "minimally prejudiced" because the case was not a complicated one and even if witnesses, surveillance videos and the vehicle involved in the offense were no longer be available, "that kind of

[6] The court said that although the length of the delay is ordinarily measured from the date of arrest or indictment, whichever is earlier, to the date of trial, it instead measured the length of the delay as the time from arrest to the date of arraignment because it found that all subsequent delays were caused by the defense. (2T 7-2 to 17)

[7] The court later said it did not "put great weight on [the factor] because [Mr. Figueroa] was not aware of the indictment, although he was aware that he was arrested." (2T 12-11 to 15)

evidence is really not necessary." (2T 10-19 to 12-1) Furthermore, the court said that it could use its "equitable powers" to mitigate some of the prejudice by providing Mr. Figueroa with "equitable credits," or "jail credits" going back to the time of his arrest. (2T 11-5 to 10) Upon balancing the factors, the court denied Mr. Figueroa's speedy trial motion, particularly because it believed that the State did not know where Mr. Figueroa was housed in federal custody. (2T 12-2 to 21)

On June 10, 2019, Mr. Figueroa pleaded guilty to second-degree eluding before Judge Guida. (2T 25-6 to 26-1; Da 4-9) He preserved the right to appeal his speedy trial motion. (2T 25-10 to 22; Da 4) In exchange for the plea, the State agreed to recommend a six-year flat sentence, concurrent to any federal sentence, and to dismiss the remaining charge and motor vehicle violations, and the court agreed to impose either a time served or a suspended sentence. (2T 22-22 to 23-12, 25-23 to 26-13; Da 6, 8) On August 4, 2023,[8] Mr. Figueroa was sentenced to time served by the Honorable Christopher R. Kazlau, J.S.C., in accordance with the plea agreement. (3T 23-8 to 24-6; Da 10-12)

A timely notice of appeal was filed. (Da 13-16)

[8] The reason for the delay was that Mr. Figueroa requested that the court sentence him in person (which was impossible for a time due to COVID-19) after the resolution of his federal case.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S ORDER DENYING MR. FIGUEROA'S SPEEDY TRIAL MOTION SHOULD BE REVERSED BECAUSE THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN APPLYING EACH OF THE BARKER FACTORS. (2T 3-21 TO 12-21; Da 3)

This Court should reverse the trial court's decision denying Mr. Figueroa's speedy trial motion because the trial court erred in its application of each factor of the four-factor test set forth in Barker v. Wingo, 407 U.S. 514, 530 (1972). First, the trial court failed to recognize that the delay was longer than the three-year and eight-month delay between the arrest and arraignment because the State would not have turned over all the necessary discovery and been ready for trial at time of arraignment. In addition, the trial court failed to note that the substantial length of the delay weighed heavily in favor of Mr. Figueroa and warranted a presumption of prejudice under the fourth factor. Second, the court erred in finding that the State had justified the delay by stating that Mr. Figueroa was in federal custody. The State was aware that Mr. Figueroa was being federally prosecuted and detained for other offenses committed in New Jersey, and thus either knew where Mr. Figueroa was located or whom it could ask to find out. Having arrested, charged and issued an indictment against him, the State was obliged to put in some effort to

determine his whereabouts, provide him with notice of the complaint and indictment, turn over discovery, secure his appearance in state court with a writ, and allow him the opportunity to secure counsel who could take steps to preserve evidence. Third, the court erred in not finding that the third factor weighed in favor of Mr. Figueroa because Mr. Figueroa repeatedly and vigorously asserted his speedy trial rights upon notice of the indictment. Fourth, the court failed to apply the presumption of prejudice mentioned above and erroneously concluded that Mr. Figueroa was only minimally prejudiced, even though the car involved in the eluding offense had been destroyed while in State custody and video surveillance from the offense was no longer available. Had the trial court correctly applied the factors in accordance with the law, it would have found that Mr. Figueroa was entitled to dismissal with prejudice of the indictment and related motor vehicle violations. Thus, this Court should reverse the trial court's order.

A defendant has a constitutional right to a speedy trial. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶ 10. When evaluating whether a defendant's constitutional right to a speedy trial has been violated, a court considers and balances four factors: (1) the length of delay, (2) the reasons for delay, (3) the defendant's assertion of a speedy trial claim, and (4) the prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530 (1972); State

v. Cahill, 213 N.J. 253, 271 (2013). "No single factor is a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial." State v. Tsetsekas, 411 N.J. Super. 1, 10 (App. Div. 2009). "All factors are related, thereby requiring a balancing of all applicable factors while recognizing the fundamental right bestowed on a defendant to a speedy trial." Cahill, 213 N.J. at 267. Dismissal of the indictment with prejudice "is the only possible remedy" for a violation of the right to a speedy trial. Barker, 407 U.S. at 522; accord Cahill, 213 N.J. at 276.

A trial court's determination after "balancing all the relevant factors relating to the respective interests of the State and the defendant[] . . . should not be overturned unless clearly erroneous." State v. Merlino, 153 N.J. Super. 12, 17 (App. Div. 1977). "However, no such deference is owed to the Law Division . . . with respect to legal determinations or conclusions reached on the basis of the facts." State v. Stas, 212 N.J. 37, 49 (2012).

As to the first factor, the trial court correctly acknowledged that the nearly four-year delay between arrest and indictment was sufficient to trigger analysis of the remaining Barker factors. See Cahill, 213 N.J. at 265-266 ("[O]nce the delay exceeds one year, it is appropriate to engage in analysis of the remaining Barker factors."). This four-year delay was especially atypical for a relatively straightforward eluding and aggravated assault case. See

Cahill, 213 N.J. at 265 ("The Court thus recognized that the lapse of time that might trigger a violation of the constitutionally guaranteed speedy trial right depends on the nature of the charges lodged against the defendant.").

But the court was mistaken in measuring the length of delay as the time between arrest and arraignment, as the "delay is measured from the date of arrest or indictment, whichever is earlier, until the start of trial." United States v. Battis, 589 F.3d 673, 678 (3d Cir. 2009) (emphasis added); see also Cahill, 213 N.J. at 272 ("We measure the length of the delay from the date of filing of the driving-while-intoxicated charge to the notice of trial in the municipal court of the remanded charge."). The delay, from the date of arrest in June of 2014 until the taking of the plea in June of 2019, was five years. Although the trial court found that the delays after arraignment at the end of April of 2018 were due to the defendant's own conduct, discovery would not have been completed and the State surely could not have commenced trial immediately after arraignment. In fact, defense counsel argued to the court that discovery was still incomplete in May of 2019. (1T 4-4 to 7-1) Therefore, the delay is even longer than that contemplated by the trial court.

This substantial length of delay is significant because analysis of the first factor involves "a double inquiry." Doggett, 505 U.S. 647 at 651. First, to trigger consideration of the remaining Barker factors "an accused must allege

that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with customary promptness." Id. (quoting Barker, 407 U.S. at 530-531). After a defendant makes this preliminary showing, the second step of the inquiry considers "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." Id. "This latter enquiry is significant to the speedy trial analysis because . . . the presumption that pretrial delay has prejudiced the accused intensifies over time." Id. Here, the delay, whether four years or five years, is far greater than the bare minimum needed to trigger analysis of the remaining Barker factors. Due to the significant length of the delay, the first factor weighs heavily against the State, and, as discussed further below, prejudice to the defense is presumed under the fourth Barker factor.

Turning to the second Barker factor, the trial court erred in finding that the State had demonstrated that it was not at fault for the delay. See Tsetsekas, 411 N.J. Super. at 12 ("Barker's second prong examines the length of a delay in light of the culpability of the parties."). The burden is on the State to demonstrate the reason for the delay. Battis, 589 F.3d at 680 (citation omitted);

see also Cahill ("In the end, however, the State offers no explanation for the delay. This factor also weighs heavily against the State.").

The trial court found that the State had satisfied its burden because Mr. Figueroa was in federal custody and because the court believed there was no evidence that the State knew of Mr. Figueroa's whereabouts. (2T 8-2 to 9-25) But the State never said that it did not know where Mr. Figueroa was located or that it had attempted to locate him and been unsuccessful. In fact, the State never even filed an opposition to Mr. Figueroa's speedy trial motion. When the court asked the State to provide a reason for the delay during argument, the State's sole response was that Mr. Figueroa was in federal custody, not that it had tried and been unable to locate him. (1T 15-5 to 7) The record reveals that the State always knew his whereabouts, or at least knew how it could easily discover them. Mr. Figueroa's New Jersey case was related to his federal one. A July 9, 2014 Port Authority Complaint Report, which was attached to defense counsel's motion as an exhibit, indicates where Mr. Figueroa was housed in New York and when he was taken into federal custody and states that "Law Enforcement Agencies from other jurisdictions related to the case remained in contact regarding the case" and that the "Bergen County Prosecutor's Office and Manhattan District Attorney's Office will prosecute separately." (Da 37-38) Given that the State had been in contact with the other

jurisdictions involved, even if it had somehow been unaware Mr. Figueroa was being housed at a New Jersey jail, the State could have discovered his whereabouts at any point, with just the tiniest amount of effort. See Doggett, 505 U.S. at 652-53 ("[T]he Government's investigators made no serious effort to test their progressively more questionable assumption that [the defendant] was living abroad, and, had they done so, they could have found him within minutes."). Again, the State knew who to ask about Mr. Figueroa's whereabouts. Either the State knew where he was and did not bother to prosecute the case, or it did not bother to figure it out. Either way, the State was negligent. See Doggett, 505 U.S. at 657 ("Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun."). In addition, the State's negligence should be given heavy weight because "the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows." Id.

Even though Mr. Figueroa was in federal custody, the State was still obliged to provide him notice of the indictment and prosecute the case against him, which is what the State ended up doing, just four years late. (See Da 57) In United States v. Battis, 589 F.3d 673, 676, 680 (3d Cir. 2009), a case very

similar to this one, the Third Circuit considered whether the Government had provided a good reason for a thirty-five month delay in a federal prosecution where the defendant was in state custody on serious state charges and the Federal Government explained it had been waiting for the resolution of a state proceeding "out of deference to state's compelling interest in its case." The Third Circuit found that the Government's reasoning did not justify the delay, explaining "[t]he Government cannot indict a defendant and then delay a case indefinitely, without any notice to a federal judge, merely because it is aware of a state proceeding involving the same defendant." Id. "Once federal prosecutors bring an indictment against a defendant, they have a duty to notify the District Court that the defendant should be arraigned and appointed counsel, and to bring the defendant to trial expeditiously." Id. See also Dickey v. Florida, 398 U.S. 30, 36 (1970) (finding that incarceration does not make a defendant unavailable and that there was no good reason for the delay "since there have long been means by which one jurisdiction ... can obtain custody of a prisoner held by another" for purposes of a criminal trial); Smith v. Hooey, 393 U.S. 374, 377 (1969) ("[T]he Texas Supreme Court has held that because petitioner is, in fact, confined in a federal prison, the State is totally absolved from any duty at all under the constitutional guarantee. We cannot agree.").

So too here. Once the State charged and indicted Mr. Figueroa, it was obliged to notify the court and the defendant that Mr. Figueroa needed to be arraigned and appointed counsel.[9] The court could have secured his appearance, as it eventually did, with a writ of habeas corpus ad prosequendum.[10] Thus, the fact that Mr. Figueroa was in federal custody, in a New Jersey jail no less, does not excuse the delay. See State v. McNamara, 212 N.J. Super. 102, 105 (1986) ("The fact that defendant is incarcerated cannot in and of itself justify a denial of speedy trial. Writs may be sent to facilities where a defendant is incarcerated for purposes of bring him to trial. This is particularly true when defendant is within the state or within the jurisdiction of the Department of Corrections which can produce him for

[9] Rule 3:4-2 provides that a first appearance shall be held after the issuance of a complaint or a defendant's arrest and that the defendant shall be provided with a copy of the complaint and informed of his rights, and given an opportunity to fill out an application for assistance of counsel. Rule 3:9-1 requires that upon the return or unsealing of an indictment, a defendant shall be provided with a copy of the indictment and all available discovery, and should be notified to appear for arraignment. The rule also provides that at arraignment the court must ensure that a defendant has the assistance of counsel, advise the defendant of the charges against him, and confirm that the defendant has received discovery. While parts of the rules specifying the process and timelines for these steps have changed since 2014, what matters and what has remained true is that a defendant must be provided with a copy of the complaint, indictment and discovery, and assignment of counsel in a timely fashion.

[10] Indeed, later in the case, the State wrote a letter to the court requesting the court secure Mr. Figueroa's appearance with a writ. (Da 57)

appearance at the county level."). Thus, because the State's negligence caused an approximately four-year delay in prosecuting this case, the second factor weighs heavily in favor of Mr. Figueroa.

The trial court also should have found that the third factor weighed in favor of Mr. Figueroa. "A defendant does not . . . have an obligation to bring himself to trial." Cahill, 213 N.J. at 274. "It is the State's obligation to prosecute and do so in a manner consistent with defendant's right to a speedy trial." Id. As previously explained and acknowledged by the trial court, Mr. Figueroa did not discover that there was a warrant for his arrest until after he reviewed a record check in early 2018, at which point he promptly sent a letter to the court requesting the disposition of the warrant. (Da 34, 40) Prior to this, Mr. Figueroa had been unaware not only of the warrant but also of the indictment, and he had not yet been assigned counsel. (1T 17-7 to 11) By immediately writing a letter to the court upon learning of the warrant, before he was even assigned counsel, Mr. Figueroa demonstrated that he was concerned about any outstanding charges and wanted to make sure they had been resolved. See Battis, 589 F.3d at 681 ("[W]e have never required a defendant, much less a pro se defendant, to make a formal motion to a court, or a formal request to the Government, in order to demonstrate his desire to receive a speedy trial."). As the trial court acknowledged, Mr. Figueroa cannot

be faulted for not acting prior to being aware of the warrant or the indictment or being assigned counsel.[11] Upon learning of the warrant and the indictment, Mr. Figueroa repeatedly and vigorously asserted his speedy trial rights in a series of six letters or briefs, beginning with his initial letter seeking disposition of the warrant in March of 2018 and another letter asserting his speedy trial right in November of 2018. Thus, the court erred in not finding that this factor weighed in Mr. Figueroa's favor.

The trial court also erred as a matter of law in its analysis of the fourth factor, the prejudice to the defendant. The fourth factor generally considers "interests includ[ing] prevention of oppressive incarceration, minimization of anxiety attributable to unresolved charges, and limitation of the possibility of impairment of the defense." Cahill, 213 N.J. at 266. The Supreme Court of the United States has "recognize[d] that excessive delay presumptively

[11] Mr. Figueroa has always maintained that he was not provided notice of the complaint. (See, e.g., 1T 27-22 to 28-3) Even if Mr. Figueroa had been aware of the New Jersey complaint, the Appellate Division has explained that because "dismissal of a criminal complaint has no finality for the benefit of a defendant, and may be followed by grand jury consideration and indictment," "it appears inappropriate to assign much weight or significance to the failure of a defendant and his counsel to go through the abortive process of moving for a dismissal of a complaint prior to the return of an indictment." Merlino, 153 N.J. Super. at 17. In Mr. Figueroa's case, it would be inappropriate to assign any weight at all to a failure to file a motion to dismiss the complaint for the added reason that Mr. Figueroa did not have counsel to consult with or to assist him until April of 2018.

compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." Doggett, 505 U.S.at 655. "Barker explicitly recognized that impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" Id. (quoting Barker, 407 U.S. at 532).

Thus, it is well-settled that "consideration of prejudice is not limited to the specifically demonstrable" and that "affirmative proof of particularized prejudice is not essential to every speedy trial claim." Id.; see also Cahill, 213 N.J. at 274 ("A speedy trial violation can be established without evidence of prejudice."); State v. Farrell, 320 N.J. Super. 425, 446 (App. Div. 1999) ("[B]ecause the evaluative process involves a balancing of considerations, if the other factors weigh heavily enough, a speedy trial violation can be established without an affirmative showing of prejudice to the defendant."). When the government's negligence causes an excessive delay, a court will presume that a defendant's ability to defend his case has been prejudiced. See Doggett, 505 U.S. at 656-658 (holding that the fourth factor favored the defendant where the Government's negligence caused a six-year delay, even though the defendant did not affirmatively show any prejudice to his defense).

Indeed, courts often apply Doggett's presumption of prejudice and dismiss charges without any showing of prejudice to the ability to defend, even

when the delays have been shorter than the delay in this case. See, e.g., Battis, 589 F.3d at 683 (dismissing a gun possession charge and "hold[ing] that prejudice will be presumed when there is a forty-five-month delay in bringing a defendant to trial, even when it could be argued that only thirty-five months of that delay is attributable to the Government"); Cahill, 213 N.J. at 273-76 (dismissing based on a twenty-nine-month delay in prosecuting a DWI charge even though the defendant did "not identify any particular prejudice to him" other than seeking employment opportunities that did not require a driver's license); Tsetsekas, 411 N.J. Super. at 11-14 (dismissing based on a 344-day delay even though "the delay caused no prejudice affecting defendant's liberty interest or his ability to defend on the merits"); Farrell, 320 N.J. Super. at 428, 553 (dismissing because the 663-day delay and "prosecution's clear inattention to its responsibilities . . . were so egregious that no showing of prejudice is required in order for this defendant to succeed on his argument that, in fundamental fairness terms, he was denied his adequately asserted right to a speedy trial").

In the present matter, the trial court erred as a matter of law by failing to apply the presumption of prejudice where a four-year delay was due to the State's negligence. The court also erred in weighing this factor for another reason – Mr. Figueroa is actually able to identify and prove specific prejudice.

As Mr. Figueroa argued below, because he did not know about the indictment and was not provided with an attorney, he was unable to take steps to preserve evidence in the case, including the car identified in the indictment, which was ultimately destroyed in the State's custody, and surveillance footage. (Da 36-38, 49; 2T 11-11 to 18) See Doggett, 505 U.S. at 654 (quoting Barker, 407 U.S. at 532) (explaining that the possibility of impairment to the defense is the "most serious" form of prejudice "because the inability of a defendant adequately to prepare his case skews the fairness of the entire system"). Finally, Mr. Figueroa also pointed out the anxiety that he suffered as a result of learning about the unresolved charges close to four years after his arrest. (Da 35-36) Contrary to the trial court's finding that Mr. Figueroa was minimally prejudiced, Mr. Figueroa was substantially prejudiced by the delay and this factor weighs heavily in Mr. Figueroa's favor.

Contrary to the trial court's ruling, each of the Barker factors weighs in favor of dismissal of the indictment and the related motor vehicle violations. Thus, the trial court's order denying Mr. Figueroa's speedy trial motion should be reversed and the indictment and motor vehicle infractions should be dismissed with prejudice.

CONCLUSION

For the reasons explained above, this Court should reverse the trial court's order denying Mr. Figueroa's speedy trial motion and dismiss the indictment and the eight complaint-summons with prejudice.

Respectfully submitted,

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Dated: January 30, 2024

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LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division, Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: STATE OF NEW JERSEY (Plaintiff-Respondent) v.
LUIS A. FIGUEROA (Defendant-Appellant)
Docket No. A-0164-23
Criminal Action: On Appeal from a Final Judgment of
Conviction of the Superior Court of New Jersey,
Law Division, Bergen County.

Sat Below: Hon. James J. Guida, J.S.C.
Hon. Christopher R. Kazlau, J.S.C.

Honorable Judges:

Pursuant to Rule 2:6-2(b), and Rule 2:6-4(a), this letter in lieu of formal brief and appendix is submitted on behalf of the State.

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COUNTER-STATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

On June 6, 2014, an alarm was broadcast by George Washington Bridge (GWB) Lieutenant Hennessy about a red Dodge Caravan driven by defendant, Luis A. Figueroa, with a Pennsylvania license plate, was wanted by police departments in Pennsylvania and Warren and Passaic Counties in New Jersey on suspicion of carjacking and possible abduction while armed. (Da37 to 38). Subsequently, the Totowa Police Department broadcast an alert for a possible arson involving a white Cadillac Escalade without a driver's side front tire, driving on the rim. (Da37).

Officer Oquendo saw a Cadillac, which was driven by defendant, matching that description on I-95 north. He followed it with his vehicle's lights and siren on and, using the PA system, ordered defendant to stop but defendant ignored the order. Officer Juman radioed Officer Ahern and ordered him to set up at Post 10 to try to stop defendant. Officer Ahern drove across the toll plaza with the car's lights and sirens on but defendant drove the Cadillac into Officer Ahern's vehicle and it hit the hydro cells of the toll lane. The collision destroyed the barrels and the police car and injured Officer Ahern. (Da37).

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[1] The Procedural History and Facts are combined for clarity.

Defendant travelled in and out of the toll lanes until he turned left onto eastbound 179th Street in New York City and into oncoming traffic. He turned toward the officers' vehicle and collided with the front of a police car before hitting a wall.[2] Defendant jumped out of the car and ran away but was tackled and handcuffed by the officers. (Da37; Da51 to 53). He had deep lacerations to both arms which bled profusely and burns on his chest and back area. EMS arrived and transported defendant to New York Presbyterian Hospital. He was later transferred to Bellvue Hospital. Subsequently, defendant was arraigned in Manhattan without bail. (Da37).

On June 23, ATF agents lodged a federal detainer against defendant for the crimes committed in Warren and Passaic Counties in New Jersey. Bergen County and Manhattan would prosecute the crimes occurring in their jurisdictions. (Da38).

Defendant was charged federally with kidnapping, possession of a firearm by a convicted felon, assault of an employee of the United States and malicious damage and destruction of property. (Da39). In August 2014,

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[2] 1T refers to the transcript of May 20, 2019
2T refers to the transcript of June 10, 2019.
3T refers to the transcript of August 4, 2023.
Pa refers to appendix to this brief ;

defendant was brought to the Essex County Correctional Facility on a federal detainer. (2T4-18 to 21; Da33).[3]

On August 27, 2014, Bergen County Indictment No. 14-08-01256-I was filed, charging defendant with second degree eluding, N.J.S.A. 2C:29-2b (count one) and second degree aggravated assault, N.J.S.A. 2C:29-2 (count two). (Da1 to 2).

In a November 2018 letter to the Bergen County Court Clerk, defendant moved to dismiss the Bergen County indictment on the ground that his right to a speedy trial was violated. (Da17 to 20). In a January 11, 2019, letter to the Honorable Christopher R. Kazlau, J.S.C., defendant filed a "formal motion" to dismiss the indictment. (Da21 to 23).

On May 20, 2019, defendant appeared with counsel before the Honorable James J. Guida, J.S.C. Judge Guida noted that the trial was set for June but defendant had made a motion to dismiss the indictment on speedy trial grounds. (1T3-12 to 24). Defense counsel argued that the preliminary police report was missing as were other items, including audio and video

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[3] Defendant pled guilty in federal court to possession of a firearm by a previously convicted felon and to arson. In May 2022, defendant was convicted in a jury trial of kidnapping, criminal sexual abuse, possession of a firearm in furtherance of a crime of violence and assaulting an employ of the United States. On April 17, 2023, defendant was sentenced to forty-three years in prison. (Pa1 to 3).

recordings. (1T4-6 to 18; 1T5-11 to 19). Judge Guida pointed out that during the pretrial conference, he asked if anything was missing and defense counsel said no; both the State and court were ready to proceed to trial. (1T4-24 to 5-1; 1T5-3 to 6). Had the defense spoken up earlier, Judge Guida would had been "on top of the State" to get it done. (1T5-22 to 25).

Moreover, once defendant was brought to New Jersey, the State made an offer of seven years imprisonment which defendant accepted. However, because the New Jersey plea would impact the federal plea, which called for a twenty-seven year sentence based upon defendant not having any other charges, defendant withdrew his New Jersey and federal pleas. (1T12-22 to 14-21).

On June 10, 2019, defendant appeared before Judge Guida and entered a guilty plea to count one (eluding) pursuant to a plea agreement under which the State agreed to recommend a sentence of six years imprisonment which the court would transform into a suspended sentence or time served. Defendant admitted that on June 6, 2014, he was driving a car in Fort Lee when police officers signaled him to pull over. Instead, defendant continued driving at a high rate of speed, creating a risk of a car accident and injury to others. In fact, there was an accident and defendant's car was crashed. (2T24-1 to 25-3).

On August 4, 2023, defendant was sentenced to time served. (3T16-14 to 23). A notice of Appeal was filed on September 18, 2023. (Da113 to 116).

LEGAL ARUMENT

POINT I

THE TRIAL COURT PROPERLY DENIED THE MOTION TO DISMISS THE INDICTMENT ON SPEEDY TRIAL GROUNDS

Defendant argues that the trial court erred in rejecting his claim that the State's delay in prosecuting his case violated his right to a speedy trial. We submit that Judge Guida properly applied relevant caselaw in denying defendant's request.

The sixth amendment guarantees a speedy trial to the accused in all criminal prosecutions. Doggett v. United States, 505 U.S. 647, 651 (1992); Barker v. Wingo, 407 U.S. 514, 532-33 (1972); State v. Szima, 70 N.J. 176, 201 (1976); State v. Tsetsekas, 411 N.J. Super. 1, 8 (App. Div. 2009). If applied literally, the principle would forbid the State from delaying the trial for any reason.

However, the United States Supreme Court has established a four-part inquiry for determining whether the right was violated. These are: (1) whether delay before trial was uncommonly long; (2) whether the government or the defendant is more to blame for that delay; (3) whether defendant asserted his right to a speedy trial and (4) whether defendant suffered any prejudice as a result of the

delay. Doggett, 505 U.S. at 652; Barker, 407 U.S. at 533-34; Szima, 70 N.J. at 201); State v Douglas, 322 N.J. Super. 156, 170 (App. Div. 1999).

The length of the delay is actually a double inquiry. To trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "crossed the threshold dividing ordinary from 'presumptively prejudicial' delay," Doggett, 505 U.S. at 651, since an accused cannot allege a constitutional violation if the State has, in fact, prosecuted his case with "customary promptness." Id. at 652.

If the defendant makes that initial showing, then the court must consider, as one factor among several, the extent to which the delay stretched beyond the bare minimum needed to trigger examination of the claim. Id.; Hakeem v. Beyer, 990 F.2d 750, 759-60 (3d Cir. 1993), aff'd after remand, 27 F.3d 557 (3d Cir. 1994).

Judge Guida found that the delay of four years in prosecuting defendant justified a speedy trial analysis. (2T7-2 to 7). A finding that the State deliberately delayed the trial to hamper the defense would weigh heavily against the State while a more neutral reason such as negligence or overcrowded courts would weigh less heavily against the State.

Here, almost immediately after defendant's arrest, he was "swooped up" by the federal government and detained in the Essex County Jail on the federal charges. Nothing in the record showed that the Bergen County Prosecutor's Office

knew that he was in New Jersey. (2T8-3 to 6; 2T8-14 to 17; 2T9-23 to 24). As to whether defendant asserted his speedy trial right, the court noted that defendant claimed he did not know about the indictment until he was arraigned. However, while not assigning it great weight, Judge Guida noted that after defendant was arrested on the Bergen County charge but before his arraignment, he did not assert his speedy trial right. (2T12-11 to 15). Barker, 407 U.S. at 532. Moreover, when defendant was brought to Bergen County, his attorney asked that the matter be adjourned so that defendant could resolve the federal manner. (2T5-2 to 14; 2T7-10 to 16). N.J.S.A. 2A:162-22b(1)(d).

Finally, Judge Guida considered whether defendant was prejudiced by the delay. The mere possibility of prejudice is not sufficient to support the position that speedy trial rights have been violated. The defendant must establish actual prejudice. United States v. Loud Hawk, 474 U.S. 302, 315 (1986).

Prejudice is assessed in light of the interests which a speedy trial right was designed to prevent, including oppressive pretrial incarceration, the minimization of anxiety and concern to the accused and limiting the possibility that the defense would be impaired by diminishing memories and loss of exculpatory evidence. Barker, 407 U.S. at 532. Of these forms of prejudice, impairment of the defense is the most serious. Doggett, 505 U.S. at 653.

As Judge Guida properly found, the delay in defendant's trial did not prejudice him. He was already being detained because of the serious federal charges he was facing, which included kidnapping and possession of a firearm. The State case against defendant was relatively simple and the delay would not affect his ability to defend his case, notwithstanding his contention that he was harmed by the destruction of videos and the unavailability of witnesses. (2T10-19 to 11-6).

Moreover, defendant defense was responsible for a portion of that delay. Judge Guida noted that the court file was "replete with correspondence from counsel for the defense asking the court to adjourn on several occasions, [s]tatus conferences, pretrial conferences and any matters involving this matter." (2T5-5 to 12). In fact, the delay in trying the case, from April 2018 through June 2019 was caused by defense counsel's requesting numerous adjournments so that defendant's federal charges could be resolved. (2T5-2 to 14; 2T7-10 to 16). United States v. Ballis, 589 F. 3d 673, 680 (3d Cir. 2009) (delay caused by defense counsel weighs against defendant) . 73Defendant was minimally prejudiced by the delay because he had already served the minimum term for a second degree conviction. (2T121-7 to 20).

Defendant argues that Judge Guida wrongly calculated the actual delay under Barker because it should have been measured from the date of

indictment until the day of trial. (Db at 11). However, the record shows that the trial was to begin on June 11 but did not take place because the State and defendant reached an agreement with defendant pleading guilty to the eluding charge. As for defense counsel arguing that discovery was incomplete in May of 2019, that problem was apparently settled by June when defendant pled guilty to eluding.

In sum, the trial court properly concluded that defendant's right to a speedy trial was not violated.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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