


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL AGUIRRE MARQUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88462-COA  
**FILED**

DEC 19 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND LIMITED REMAND*

Daniel Aguirre Marquez appeals from a judgment of conviction, pursuant to a jury verdict, of battery which constitutes domestic violence, third offense. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

In August 2021, three bail bondsmen arrived at Marquez's apartment in Reno to execute an arrest warrant.<sup>1</sup> Once they reached the door, they overheard a woman's cries for help from inside the apartment. A bondsman entered the apartment and saw that Marquez's then-girlfriend, J.F., was bloody and bruised and her shirt was ripped and blood-stained. Reno Police Department Officer Kevin Bohr responded to the scene. During his investigation, Officer Bohr noticed Marquez's index finger was black and infected.<sup>2</sup> Officer Bohr ultimately determined that Marquez was the primary physical aggressor, and Marquez was taken into custody. During

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<sup>1</sup>We recount only the facts necessary for our disposition.

<sup>2</sup>While it is not clear from the record what caused Marquez's finger injury, it is undisputed that this injury was unrelated to the domestic violence incident.

a search of the residence, officers discovered a clear plastic bag containing what appeared to be methamphetamine on a bed.

Due to the condition of his injured finger, Marquez was transported by ambulance to a local hospital instead of being taken directly to jail. Before the ambulance departed for the hospital, Officer Bohr read Marquez his *Miranda*<sup>3</sup> rights and Marquez agreed to speak with Officer Bohr as emergency medical technicians treated him in the ambulance. Marquez acknowledged that he and J.F. had been in a physical altercation. He also admitted to smoking methamphetamine just before the altercation.

Officer Galen Schmidt followed the ambulance to the hospital so he could stand by while Marquez received medical treatment and then transport him to jail. However, Marquez checked himself out of the hospital against medical advice and unbeknownst to Officer Schmidt. Marquez did not return to his apartment after leaving the hospital; instead, he drove to his aunt's house. Soon thereafter, Marquez and J.F. drove to Mexico, where Marquez entered a substance abuse treatment program.

In November 2021, Officer Bohr applied for an arrest warrant for Marquez, which was issued the same day. A criminal complaint was filed charging Marquez with battery which constitutes domestic violence, third offense, and possession of a schedule I or II controlled substance, less than 14 grams, first or second offense. Marquez did not return to the United States until June 2023, when he was arrested as he crossed the border in San Diego. He was extradited to Reno and booked into jail. In September 2023, Marquez was bound over to the district court on the charge of battery which constitutes domestic violence, third offense. Marquez did not invoke

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<sup>3</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

his right to a speedy trial at the arraignment; rather, he agreed to a January 2024 trial date.

In December, one month before trial, Marquez filed a motion to dismiss for delayed prosecution and requested an evidentiary hearing. In his motion, Marquez argued his Sixth Amendment right to a speedy trial had been violated pursuant to the *Barker-Doggett*<sup>4</sup> test adopted by the Nevada Supreme Court in *State v. Inzunza*, 135 Nev. 513, 454 P.3d 727 (2019). Marquez attached seven documentary exhibits to his motion.<sup>5</sup> The State filed an opposition, and the district court held a hearing on the motion. Neither party presented evidence at the hearing; rather, both parties elected to rely on the exhibits attached to Marquez's motion. The district court denied the motion to dismiss, finding that Marquez (1) caused a minimum delay of one year by traveling to Mexico, unbeknownst to the State or any law enforcement, to obtain drug treatment; (2) had waived his speedy trial right when given the opportunity to invoke it at his arraignment;<sup>6</sup> and (3) did not argue how he was prejudiced by the delay.

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<sup>4</sup>*Barker v. Wingo*, 407 U.S. 514 (1972); *Doggett v. United States*, 505 U.S. 647 (1992).

<sup>5</sup>These exhibits include (1) Officer Bohr's 17-page police report detailing the domestic violence incident, (2) a Registrar of Actions report detailing a different case against Marquez, (3-4) written statements by two bail bondsmen, (5) Officer Bohr's affidavit in support of the November 2021 warrant, (6) the November 2021 arrest warrant, and (7) a report by the detective who flew to California to extradite Marquez.

<sup>6</sup>It is unclear whether the district court's waiver determination was made with respect to Marquez's statutory or constitutional right to a speedy trial, or both. See *State v. Robles-Nieves*, 129 Nev. 537, 543, 306 P.3d 399, 404 (2013) (recognizing that a defendant has two speedy-trial rights: "the constitutional right protected by the Sixth Amendment and a statutory right to a trial within 60 days of arraignment under NRS 178.556(1)").

The case proceeded to a two-day trial in January 2024, after which the jury found Marquez guilty of battery which constitutes domestic violence. At Marquez's sentencing, the district court orally pronounced a sentence of 24 to 70 months in prison after the relevant prior convictions were proven. The clerk asked the court to clarify that the sentence was 24 to 70 months, to which the court replied that the range was correct. However, in its judgment of conviction, the court sentenced Marquez to 24 to 72 months in prison. This appeal followed.

On appeal, Marquez argues that the district court abused its discretion in denying his motion to dismiss for delayed prosecution. Because we conclude the district court did not abuse its discretion in denying Marquez's motion, we affirm the judgment of conviction. However, as there is a discrepancy between the oral pronouncement at sentencing and the judgment of conviction, we remand this matter to the district court for the limited purpose of clarifying Marquez's sentence.

*The district court did not abuse its discretion in denying Marquez's motion to dismiss for delayed prosecution*

Marquez argues that the district court abused its discretion in denying his motion to dismiss for delayed prosecution. The State argues in response that the district court appropriately weighed the applicable *Barker-Doggett* factors and thus did not abuse its discretion in denying the motion to dismiss.

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial.” U.S. Const. amend. VI. In determining whether a defendant's constitutional right to a speedy trial was violated, this court applies the *Barker-Doggett* test, which requires the court to weigh four factors: (1) the length of the delay, (2) “the reason for the delay,” (3) “the

defendant's assertion of his right" to a speedy trial, and (4) the "prejudice to the defendant." *Inzunza*, 135 Nev. at 516, 454 P.3d at 731 (internal quotation marks omitted). No single factor is determinative; instead, the four factors are related and "must be considered together with such other circumstances as may be relevant." *Id.* (internal quotation marks omitted). "[T]his court gives deference to the district court's factual findings and reviews them for clear error, but reviews the court's legal conclusions de novo." *Id.* at 516, 454 P.3d at 730-31.

The first factor, which addresses the length of the delay, is a "double [i]nquiry." *Id.* at 516, 454 P.3d at 731 (alteration in original) (quoting *Doggett*, 505 U.S. at 651). To trigger a full *Barker-Doggett* analysis, "the delay must be presumptively prejudicial," which occurs when the delay approaches the one-year mark. *Id.* Then, if the *Barker-Doggett* analysis is triggered, the "court must consider, 'as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.'" *Id.* at 517, 454 P.3d at 731 (quoting *Doggett*, 505 U.S. at 652).

"The second factor, the reason for the delay, focuses on whether the government is responsible for the delay and is the focal inquiry in a speedy trial challenge." *Id.* (internal quotation marks omitted). "[C]onsiderable deference" is given to a district court's findings regarding the reason and justification for the delay. *Id.* at 517, 454 P.3d at 731-32 (quoting *Doggett*, 505 U.S. at 652).

The third factor, the defendant's assertion of the right, requires the court to consider whether and when the defendant asserted their right to a speedy trial. *Id.* at 518, 454 P.3d at 732. However, a defendant must be aware that charges are pending before this factor can be weighed against

him. *Id.*; see also *Doggett*, 505 U.S. at 653-54 (explaining that a defendant who is unaware of pending charges “is not to be taxed for invoking his speedy trial right only after his arrest”).

Finally, the fourth factor addresses whether the delay caused prejudice to the defendant. *Inzunza*, 135 Nev. at 518, 454 P.3d at 732. Generally, a defendant must make an affirmative showing that a delay caused the defendant actual prejudice. *Id.* at 518-19, 454 P.3d at 732-33. However, in particularly egregious cases, the court may apply a “presumption of prejudice,” thereby shifting the burden to the State to rebut that presumption. *Id.* at 519, 454 P.3d at 732-33. Although there is no “bright-line rule” governing when the presumption of prejudice should apply, courts have typically presumed prejudice in cases involving delays of five years or more. *Id.* at 519, 454 P.3d at 733 (quoting *United States v. Ferreira*, 665 F.3d 701, 709 (6th Cir. 2011)). Further, courts may apply this presumption in cases involving shorter delays, depending on the level of culpability of the State. *Id.* at 519-20, 454 P.3d at 733 (recognizing that “[t]he amount of prejudice a defendant must show is inversely proportional to the length and reason for the delay” (alteration in original) (quoting *United States v. Alexander*, 817 F.3d 1178, 1183 (9th Cir. 2016))).

For instance, in *Inzunza*, the supreme court held that the district court did not abuse its discretion when it required the State to rebut the presumption of prejudice where the State’s gross negligence had caused a 26-month delay. *Id.* at 522, 454 P.3d at 735. There, the defendant moved to dismiss an indictment after presenting evidence establishing that the North Las Vegas Police Department had actual knowledge of his whereabouts for 26 months after filing criminal charges but took no steps to arrest him other than placing his arrest warrant in the National Crime

Information Center database. *Id.* at 514-15, 454 P.3d at 729-30. Prior to filing the criminal complaint, the NLVPD had obtained “printouts from Inzunza’s Facebook profile that depicted his car, New Jersey license plate, and his employer’s work truck with the business’s name and number.” *Id.* at 514, 454 P.3d at 730.

“The State conceded that the NLVPD knew that Inzunza was in New Jersey” during the entire period of the delay. *Id.* at 515, 454 P.3d at 730. Further, there was “no evidence in the record to show that Inzunza knew about the charges or that he was fleeing from the NLVPD when he left the state.” *Id.* at 522, 454 P.3d at 735. Following an evidentiary hearing, the district court found that the State had been grossly negligent in pursuing Inzunza, based in part on the lead detective’s testimony that—despite knowing Inzunza’s whereabouts—he did not bother to follow up on the case because it was not sufficiently “high profile,” but merely “a common sexual assault case.” *Id.* at 515, 454 P.3d at 730. Under these circumstances, the Nevada Supreme Court concluded that the district court did not abuse its discretion when it presumed prejudice at step four of the *Barker-Doggett* analysis and shifted the burden to the State to rebut that presumption. *Id.* at 522, 454 P.3d at 735.

In this case, the parties do not dispute that the 20-month delay between the filing of the criminal complaint and Marquez’s arrest sufficed to trigger the *Barker-Doggett* analysis. However, Marquez contends that, because the 20-month delay established a “presumption of prejudice” under the first *Barker-Doggett* factor, the burden shifted to the State to present evidence to establish the steps it took to arrest Marquez, and because it failed to do so, the district court abused its discretion by attributing any delay to Marquez.

Marquez's argument reflects a fundamental misunderstanding of the *Barker-Doggett* framework adopted in *Inzunza*. The "presumption of prejudice" that triggers a *Barker-Doggett* analysis when a delay exceeds one year is different from the "presumption of prejudice" that a district court may apply when evaluating the fourth *Barker-Doggett* factor. While the former presumption requires the court to analyze the four *Barker-Doggett* factors, the latter presumption imposes a burden on the State to establish an absence of prejudice from the delay. Thus, application of the former does not necessitate application of the latter. *See id.* at 517, 522, 454 P.3d at 731, 735. Moreover, neither presumption impacts the court's analysis of the second *Barker-Doggett* factor: the cause of the delay.

Even though the State did not present evidence of its efforts to locate Marquez, the district court properly relied on the contents of Marquez's own motion to conclude that he was responsible for at least one year of the delay. The attached affidavit of Officer Bohr established that, after officers took Marquez into custody, Officer Bohr Mirandized Marquez in the back of an ambulance, Marquez admitted to possessing and consuming methamphetamine, and he admitted to the altercation with J.F. Further, Marquez alleged in his motion that he left the hospital "against medical advice"; that he did not return home to his apartment "[i]n light of the recent altercation"; and that, after briefly staying with his aunt, he and J.F. went to Mexico, where he entered a substance abuse treatment program. This evidence strongly indicates that Marquez fled the jurisdiction to avoid prosecution. Taking Marquez's assertions as true, the record contains substantial evidence to support the district court's finding that Marquez caused at least one year of the 20-month delay, and that



finding is entitled to “considerable deference.” *Id.* at 517, 454 P.3d at 731-32 (quoting *Doggett*, 505 U.S. at 652).

As to the third factor, the assertion of his speedy trial right, Marquez concedes that, at his arraignment, he waived his statutory right to a trial within 60 days by consenting to a trial setting in January 2024.<sup>7</sup> However, he disputes that he “waive[d] his speedy trial right entirely when he left the hospital prior to his formal discharge.” Because the district court did not find that Marquez waived his speedy trial right by leaving the hospital prior to his formal discharge, Marquez does not establish that the district court abused its discretion in analyzing the third factor.

Finally, Marquez argues that the district court abused its discretion in its evaluation of prejudice because, at trial, J.F. testified that she was having a difficult time remembering what happened during the altercation between herself and Marquez, which he claims undermined his self-defense argument. However, Marquez repeatedly relied on J.F.’s lack

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<sup>7</sup>As noted above, the district court found that Marquez waived his speedy trial right at the arraignment, but because Marquez did not include the arraignment transcript in the record, it is unclear whether the court was referring to Marquez’s statutory or constitutional speedy trial right. *See, e.g., Robles-Nieves*, 129 Nev. at 543, 306 P.3d at 404. Nevertheless, in his motion, Marquez argued that the court could calculate “a delay of 2 years and 6 months” between August 9, 2021, when he was allegedly “accused” of the crime, and the scheduled date of trial on January 9, 2024. Based on the court’s finding of waiver, it could properly attribute any post-arraignment trial delay to Marquez. However, absent a finding by the court that Marquez knew “the State had filed charges against him” between November 2021 and his arrest in June 2023, Marquez’s failure to assert his speedy trial right during that period could not be held against him. *See Inzunza*, 135 Nev. at 518, 454 P.3d at 732 (stating “a defendant must know that the State had filed charges against him to have [the period between the filing of charges and arrest] weighed against him” under the third *Barker-Doggett* factor).

of memory to argue in closing that reasonable doubt existed as to whether he was the initial aggressor and whether he was the cause of the injuries she sustained. Aside from a bare and conclusory assertion that J.F.'s memory prejudiced his defense, Marquez does not show how the district court abused its discretion in evaluating the prejudice factor.<sup>8</sup> *Cf. Sheriff v. Berman*, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983) (“Bare allegations of impairment of memory . . . do not demonstrate a reasonable possibility that the defense will be impaired at trial or that defendants have suffered other significant prejudice.”).

In light of the foregoing, we conclude the district court did not abuse its discretion by denying Marquez's motion to dismiss based on an alleged speedy trial violation.

*The district court shall clarify the sentence it sought to impose on remand*

Marquez argues, and the State agrees, that this case should be remanded to the district court to clarify an alleged sentencing discrepancy. In particular, Marquez argues that the district court orally pronounced a sentence of 24 to 70 months in prison, but that the written judgment reflects a sentence of 24 to 72 months in prison. Therefore, Marquez claims that the sentence in the written judgment should be corrected on remand to reflect the district court's oral pronouncement of 24 to 70 months.

“[A] district judge's pronouncement of judgment and sentence from the bench is not a final judgment and does not, without more, oust the district court of jurisdiction over the defendant.” *Miller v. Hayes*, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979). Rather, a judgment of conviction


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<sup>8</sup>We note that Marquez does not argue that the district court erred by requiring him to present evidence of prejudice under the fourth *Barker-Doggett* factor.

becomes final only after it “is signed by the judge and entered by the clerk as provided by NRS 176.105.” *Id.* (internal quotation marks omitted); see also *Bradley v. State*, 109 Nev. 1090, 1095, 864 P.2d 1272, 1275 (1993) (holding a district court did not err in amending its sentencing decision before the judgment was signed or entered).

Although a district court may modify an oral pronouncement of a defendant’s sentence in a subsequently entered judgment, the record is unclear as to whether the district court intended to make such a modification in this case. Thus, we are uncertain whether the discrepancy between the oral pronouncement of Marquez’s sentence and the entered judgment was the result of an oversight. The parties contend that remand is appropriate for this issue. We agree and therefore remand this matter for the limited purpose of correcting or clarifying the sentence discrepancy. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting or clarifying the judgment of conviction.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk