

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 9/30/2026 7:46 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42925

RAYMOND ROMERO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY

Douglas W. Decker, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Christa Street, Assistant Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Tania Shahani, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant Raymond Romero appeals his convictions for aggravated assault upon a peace officer, contrary to NMSA 1978, Section 30-22-22(A)(1) (1971), battery upon a peace officer, contrary to NMSA 1978, Section 30-22-24 (1971), and assault upon a peace officer, contrary to NMSA 1978, Section 30-22-21(A)(1)

(1971), arguing that the district court improperly denied his motion to dismiss for violation of his constitutional right to a speedy trial. We affirm.

DISCUSSION

{2} We evaluate Defendant’s speedy trial argument under “the four-factor test set forth in *Barker* [*v. Wingo*, 407 U.S. 514, 530 (1972)], balancing the length of delay, the reason for delay, the defendant’s assertion of the right to a speedy trial, and the prejudice to the defendant.” *State v. Ochoa*, 2017-NMSC-031, ¶ 4, 406 P.3d 505. In general, we will “defer to the district court’s factual findings in considering a speedy trial claim, but weigh each factor de novo.” *Id.* But even where, as here, the district court’s order does not contain any factual findings, “we independently review the record to determine whether a defendant was denied [their] speedy trial right, and we weigh and balance the *Barker* factors de novo.” *State v. Montoya*, 2015-NMCA-056, ¶ 12, 348 P.3d 1057.

{3} “The heart of the right to a speedy trial is preventing prejudice to the accused.” *State v. Garza*, 2009-NMSC-038, ¶ 12, 146 N.M. 499, 212 P.3d 387. *Barker*’s four-factor analytical framework for evaluating speedy trial violations “specifically rejects inflexible, bright-line approaches to analyzing a speedy trial claim.” *Id.* ¶ 13. However, unless the first three *Barker* factors weigh heavily against the State, Defendant will only prevail if he can show “particularized prejudice of the kind

1 against which the speedy trial right is intended to protect.” *See id.* ¶ 39; *State v.*
2 *Gurule*, 2025-NMSC-010, ¶ 55, 563 P.3d 775.

3 **The Length of Delay Weighs Heavily in Favor of Defendant**

4 {4} Under the first *Barker* factor, there is no dispute that the length of the delay in
5 this case crossed the threshold to trigger further inquiry. The parties agree that
6 Defendant’s speedy trial right attached on May 17, 2022, when he was arrested for
7 the events that gave rise to his convictions.¹ When calculating the delay from that
8 date, the total delay in this case amounted to twenty-three months. Because this was
9 a simple case, delay greater than twelve months is presumptively prejudicial. *See*
10 *Garza*, 2009-NMSC-038, ¶ 47. Accordingly, the length of delay, which is nearly
11 twice the presumptive period, weighs heavily against the State. *See State v. Taylor*,
12 2015-NMCA-012, ¶ 9, 343 P.3d 199.

¹ It appears from the district court’s oral ruling that the court believed Defendant’s speedy trial right did not attach until November 15, 2023, when Defendant was arraigned in the district court on charges that were refiled following the State’s August 31, 2023 nolle prosequi of the remaining original charge. As the parties correctly note, the speedy trial right attached in May 2022 when Defendant was arrested and held to answer on charges arising from the May 17, 2022 incident. *See State v. Urban*, 2004-NMSC-007, ¶ 12, 135 N.M. 279, 87 P.3d 1061 (“In general, the right [to a speedy trial] attaches when the defendant becomes an accused, that is, by a filing of a formal indictment or information or arrest and holding to answer.” (internal quotation marks and citation omitted)). The district court’s error in calculating the date of accrual of the right and the length of delay do not prevent us from conducting a de novo review of this factor, particularly in light of the parties’ agreement concerning these matters.

The Reasons for Delay Weigh Only Moderately Against the State

{5} The second *Barker* factor requires us to evaluate “to what degree, if any, the state bears responsibility for the pretrial delay.” *State v. Schuster*, ___-NMSC-___, ¶ 48, ___ P.3d ___ (S-1-SC-40419, July 8, 2026). *Barker* identified three types of delay:

First, a deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. Second, negligent or administrative delay weighs less heavily but nevertheless weighs against the [s]tate because the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Third, neutral delay, or delay justified by a valid reason, does not weigh against either party.

Ochoa, 2017-NMSC-031, ¶ 18 (alteration, internal quotation marks, and citations omitted). When “it appears that the case proceeded with customary promptness[, the] delay cannot be held against either party.” *State v. Moreno*, 2010-NMCA-044, ¶ 13, 148 N.M. 253, 233 P.3d 782.

{6} The parties do not dispute that the case proceeded with customary promptness during the first three months and three weeks, from May 12, 2022 through September 8, 2022. During the next three months, from September 8, 2022 through December 6, 2022, Defendant underwent a competency evaluation, and this period of time is attributable to Defendant. *See Gurule*, 2025-NMSC-010, ¶¶ 26-27. Accordingly, the first six months and three weeks of the case do not weigh against the State in our analysis.

1 {7} The parties appear to agree that the eight-month and two-week period between
2 December 6, 2022, and August 31, 2023, should weigh moderately against the State.
3 On December 6, 2022, the district court entered an order finding Defendant
4 competent to stand trial and remanded the case to magistrate court. On August 31,
5 2023, the State entered a nolle prosequi as to the remaining felony count and filed a
6 new criminal complaint in the magistrate court with the same felony charge and three
7 new charges. We agree with the parties that this period represents administrative
8 delay that weighs moderately against the State. *See Taylor*, 2015-NMCA-012, ¶¶ 16-
9 17; *Schuster*, ___-NMSC-___, ¶¶ 28-33.

10 {8} After the new criminal complaint was filed on August 31, 2023, the case
11 remained in magistrate court until November 15, 2023, when the State refiled the
12 charges by criminal information in the district court. From August 31, 2023, on, the
13 case proceeded normally toward an April 16, 2024 trial setting. Defendant entered a
14 conditional guilty plea on April 19, 2024.

15 {9} Defendant argues that this period of time should weigh against the State
16 because “any delay resulting from the dismissal and refiling is properly evaluated
17 under the speedy-trial framework.” *Garza* supports the idea that when the state files
18 charges in magistrate court, then dismisses and refiles those charges in district court,
19 the delay attributable to the time the case remained pending in magistrate court
20 without any apparent progress may be weighed against the state. 2009-NMSC-038,

¶¶ 4, 28. *Garza* also suggests that the state’s reasons for the dismissal and refiling can inform the weight assigned to the delay. *Id.*; see *State v. Savedra*, 2010-NMSC-025, ¶ 8, 148 N.M. 301, 236 P.3d 20 (stating that “any inquiry into the [s]tate’s reasons for dismissing and refiling in district court should be done within the context of any speedy trial challenge the defendant may raise after the case is refiled in the district court”); *Gurule*, 2025-NMSC-010, ¶ 24 (stating that deliberate delay weighs heavily, whereas negligent or administrative delay weighs less heavily). But we see nothing in *Garza* to support Defendant’s argument that the time *after* refiling must be weighed against the State. In *Garza*, the court was concerned with how to weigh a four-month period while the case was pending in the magistrate court without any progress toward trial, *before* the state refiled the charges in the district court. 2009-NMSC-038, ¶¶ 4, 28. Like in *Garza*, we have considered the period of delay while the case was pending in the magistrate court until the charges were dismissed, and have concluded the delay was negligent and weighs against the State. *Garza* does not further instruct that the period of time in which the case was pending after refiling necessarily weighs against the State.

{10} In this case, the original complaint in magistrate court was dismissed and a new complaint was filed in magistrate court on the same day. Defendant has not argued that the State dismissed and refiled the case in bad faith. After the new complaint was filed in the magistrate court on August 31, 2023, the case appears to

1 have proceeded with customary promptness. During the ten-week period between
2 the filing of the new complaint in the magistrate court and the refile of the charges
3 in the district court, the magistrate court set a preliminary hearing, placed Defendant
4 on an unsecured appearance bond, addressed Defendant's motion asking to be held
5 in custody, and the defense waived the preliminary examination. After the charges
6 were refiled in the district court, the parties promptly and actively moved the case
7 toward resolution. Given the activity in the case from the time the new complaint
8 was filed in the magistrate court through the time Defendant entered into a guilty
9 plea, we conclude that all of the time following the filing of the new complaint in
10 magistrate court weighs neutrally. *See State v. Radler*, 2019-NMCA-052, ¶ 19, 448
11 P.3d 613 (applying *Garza* and determining that after the case was refiled in district
12 court, it appeared to proceed normally and the time it was pending in district court
13 should be weighed neutrally).

14 {11} In total, approximately eight months and two weeks constitute administrative
15 delay in this case, and we therefore weigh the reasons for delay moderately against
16 the State.

17 **Defendant's Assertion of the Right Weighs Heavily in His Favor**

18 {12} In evaluating the third *Barker* factor, "we assess the timing of the defendant's
19 assertion and the manner in which the right was asserted." *Garza*, 2009-NMSC-038,
20 ¶ 32. We weigh the defendant's assertions of the speedy trial right according to their

1 “frequency and force.” *Id.* (internal quotation marks and citation omitted). Where
2 the facts “establish the legitimacy of the defendant’s stated desire for a speedy trial
3 and where that conclusion is not refuted by contrary evidence, the critical inquiry in
4 *Barker* is satisfied.” *Schuster*, ____-NMSC-____, ¶ 54. In such circumstances, “the
5 factor should weigh heavily in favor of the defendant.” *Id.*

6 {13} Here, Defendant points us to five instances in which he asserted his speedy
7 trial right. In the initial magistrate proceeding, new counsel entered on behalf of
8 Defendant on May 15, 2023, and made a pro forma speedy trial demand. Defendant
9 then moved for dismissal based on timeliness concerns on August 18, 2023. After
10 the case was refiled, Defendant filed another pro forma speedy trial demand. At
11 Defendant’s arraignment on November 27, 2023, defense counsel informed the
12 district court that she intended to file a motion to dismiss on speedy trial grounds.
13 Defendant then filed a detailed motion to dismiss on speedy trial grounds January
14 11, 2024.

15 {14} The State argues that Defendant’s August 18, 2023 motion to dismiss was not
16 an assertion of his speedy trial right because it was based on the rules of criminal
17 procedure for magistrate courts, not Defendant’s constitutional rights. However, the
18 six-month rule in magistrate court under which Defendant brought his motion was
19 adopted by our Supreme Court “in order to effectuate a criminal defendant’s right to
20 a speedy trial and to assure prompt disposition of criminal cases.” *See Savedra*,

2010-NMSC-025, ¶ 5 (internal quotation marks and citation omitted). Thus, we consider Defendant’s motion to be a legitimate assertion of his right to a speedy trial. *See Schuster*, ___-NMSC-___, ¶ 54 (warning courts not to apply “a hypertechnical standard that effectively underweighs a legitimate assertion of the right”).

{15} The State also alleges that Defendant’s pro-forma assertions should be given only slight weight. “[W]hile a single pro forma assertion of the right in isolation warrants only little weight under our precedent, a defendant’s collective assertions—including pro forma assertions—should weigh heavily when their combined force and frequency indicate the legitimacy of the defendant’s stated desire for a speedy trial, unless refuted by contrary evidence.” *Id.* ¶ 55 (emphases omitted). Here, Defendant’s five assertions “refute the concern raised in *Garza* that a defendant may have raised the issue simply as an afterthought.” *Id.* ¶ 56 (internal quotation marks and citation omitted). Accordingly, “the critical inquiry for this factor is satisfied, and we weigh this factor heavily in Defendant’s favor.” *See id.* ¶ 58.

Defendant Has Not Made a Showing of Particularized Prejudice

{16} Because not all of the first three *Barker* factors weigh heavily in Defendant’s favor, we must consider whether Defendant made a particularized showing of prejudice under the fourth *Barker* factor. We analyze prejudice to Defendant in reference to the three interests protected by the right to a speedy trial: (1) “prevent[ing] oppressive pretrial incarceration”; (2) “minimiz[ing] anxiety and

1 concern of the accused”; and (3) “limiting the possibility that the defense will be
2 impaired.” *See Garza*, 2009-NMSC-038, ¶ 35 (internal quotation marks and citation
3 omitted). To demonstrate a violation of these interests, Defendant “must make a
4 particularized showing of prejudice.” *See State v. Samora*, 2016-NMSC-031, ¶ 21,
5 387 P.3d 230. Because Defendant does not argue that his defense was impaired as a
6 result of the delay in this matter, we confine our analysis to the first two types of
7 prejudice. As “some degree of oppression and anxiety is inherent for every defendant
8 who is jailed while awaiting trial . . . we weigh this factor in the defendant’s favor
9 only where the pretrial incarceration or the anxiety suffered is undue.” *Garza*, 2009-
10 NMSC-038, ¶ 35 (alterations, internal quotation marks, and citations omitted).

11 {17} Defendant argues that his pretrial detention was “concrete prejudice” that was
12 “substantial and particularized.” We understand Defendant to argue that the duration
13 of his incarceration standing alone demonstrates prejudice sufficient to satisfy this
14 factor. However, even if Defendant was held in custody for the entire twenty-three
15 month-period at issue—a matter that is unclear from the parties’ briefing and the
16 record before us—Defendant still bore the burden to provide affirmative proof of
17 particularized prejudice. *See Ochoa*, 2017-NMSC-031, ¶¶ 51, 57 (“The oppressive
18 nature of the pretrial incarceration depends on the length of incarceration, whether
19 the defendant obtained release prior to trial, and what prejudicial effects the
20 defendant has shown as a result of the incarceration.” (internal quotation marks and

1 citation omitted)). Defendant did not do so here. Further, Defendant concedes that,
2 beginning in July 2023, he was being held on at least one other case. “Given this,
3 Defendant has not demonstrated oppressive pretrial incarceration.” *See State v.*
4 *Prieto-Lozoya*, 2021-NMCA-019, ¶ 47, 488 P.3d 715; *see also State v. Urban*, 2004-
5 NMSC-007, ¶ 17, 135 N.M. 279, 87 P.3d 1061 (holding that the defendant did not
6 suffer oppressive pretrial incarceration because he was incarcerated on other charges
7 during the relevant time period).

8 {18} Defendant also argues that given his history of mental-health treatment, his
9 prolonged detention led to heightened anxiety and uncertainty in this case. However,
10 the record does not reflect any evidence to support Defendant’s arguments beyond
11 the assertions of counsel. *See State v. Spearman*, 2012-NMSC-023, ¶ 39, 283 P.3d
12 272 (“Allegations of counsel are not generally considered evidence.”). Again,
13 Defendant has not made a particularized showing of how the delay in this case led
14 to undue anxiety or concern. “[W]ithout a particularized showing of prejudice, we
15 will not speculate as to the impact of pretrial incarceration on a defendant or the
16 degree of anxiety a defendant suffers.” *Garza*, 2009-NMSC-038, ¶ 35. In sum,
17 Defendant has not demonstrated that the delay in this case prejudiced him.

18 **Balancing the *Barker* Factors**

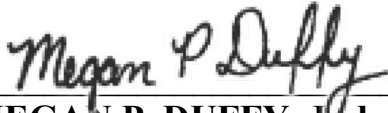
19 {19} While the first and third *Barker* factors weigh heavily in Defendant’s favor,
20 the second does not, and Defendant has not made a particularized showing that he

1 was prejudiced by the delay. We therefore affirm the denial of Defendant's motion
2 to dismiss for violation of his right to a speedy trial. *See id.* ¶ 39 (“[A] defendant
3 must show particularized prejudice . . . [unless] the length of delay and the reasons
4 for the delay weigh heavily in [the] defendant's favor and [the] defendant has
5 asserted his right and not acquiesced to the delay.”).

6 **CONCLUSION**

7 {20} We affirm.

8 {21} **IT IS SO ORDERED.**

9
10 
MEGAN P. DUFFY, Judge

11 **WE CONCUR:**

12 
JENNIFER L. ATTREP, Judge

13 
14 ZACHARY A. IVES, Judge