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1           **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2   **Opinion Number:** \_\_\_\_\_

3   **Filing Date:** December 7, 2023

4   **NO. S-1-SC-37879**

5   **STATE OF NEW MEXICO,**

6           Plaintiff-Petitioner,

7   v.

8   **JEREMIAH JOHN GURULE,**

9           Defendant-Respondent.

10   **ORIGINAL PROCEEDING ON CERTIORARI**

11   **Christina P. Argyres, District Judge**

12   Hector H. Balderas, Attorney General

13   Emily C. Tyson-Jorgenson, Assistant Attorney General

14   Santa Fe, NM

15   for Petitioner

16   Bennett J. Baur, Chief Public Defender

17   Caitlin C.M. Smith, Assistant Appellate Defender

18   Santa Fe, NM

19   for Respondent

1 **OPINION**

2 **THOMSON, Justice.**

3 {1} Defendant stood accused of killing his girlfriend by repeatedly stabbing her.  
4 Defendant was tried, and the jury found him guilty of second degree murder, a  
5 second degree felony, and tampering with evidence, a third degree felony. *See*  
6 NMSA 1978, § 30-2-1(B) (1994); NMSA 1978, § 30-22-5(B)(1) (2003). While he  
7 awaited trial, Defendant remained in custody as competency questions were  
8 resolved. He was isolated for much of that time due to his violence toward staff and  
9 the other inmates. On the eve of trial, Defendant filed a motion to dismiss for  
10 violation of his speedy trial rights. After a thorough examination of the procedural  
11 timeline, the district court denied his motion. The Court of Appeals, in a split  
12 decision, reversed Defendant’s convictions. *State v. Gurule*, A-1-CA-35724, mem.  
13 op. ¶¶ 1, 33 (N.M. Ct. App. July 31, 2019) (nonprecedential). The Court reexamined  
14 the trial court’s findings and conclusions and determined that Defendant’s speedy  
15 trial rights were violated because of the length of the delay, reasons for the delay,  
16 and the “extreme prejudice” to Defendant. *Id.* ¶ 30. We granted certiorari.

17 {2} In accordance with the required standard of review, we defer to the district  
18 court’s findings regarding Defendant’s lack of showing of particularized prejudice,  
19 his failure to assert the right to a speedy trial in a meaningful way, and the extent to

1 which “Defendant was engaged in gamesmanship.” In doing so, we affirm that  
2 delays attributable to ascertaining a defendant’s competence to stand trial “are  
3 chargeable to the defendant and must be excluded from any speedy trial analysis.”  
4 *State v. Mendoza*, 1989-NMSC-032, ¶¶ 8-10, 108 N.M. 446, 774 P.2d 440. For those  
5 reasons, we reverse the Court of Appeals, affirm the district court’s denial of  
6 Defendant’s motion to dismiss, and remand to the Court of Appeals.<sup>1</sup>

7 **I. SIXTH AMENDMENT: RIGHT TO A SPEEDY TRIAL**

8 {3} The Sixth Amendment to the United States Constitution provides that in all  
9 criminal prosecutions, “the accused shall enjoy the right to a speedy and public  
10 trial.”<sup>2</sup> As we have recognized, the speedy trial right “escapes precise definition.”  
11 *State v. Garza*, 2009-NMSC-038, ¶ 11, 146 N.M. 499, 212 P.3d 387. Rather, it is

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<sup>1</sup>Defendant raised five arguments on appeal to the Court of Appeals. The Court of Appeals reversed the district court on speedy trial grounds and therefore did not address Defendant’s other arguments. We remand for the Court of Appeals to address the remaining arguments.

<sup>2</sup>Defendant does not clarify whether his speedy trial claim is brought under the Sixth Amendment to the United States Constitution or Article II, Section 14 of the New Mexico Constitution. He does analyze the *Barker* factors, which arise from the United States Supreme Court case *Barker v. Wingo*, 407 U.S. 514 (1972). New Mexico adopted the *Barker* factor analysis in *Zurla v. State*, 1990-NMSC-011, 109 N.M. 640, 789 P.2d 588.

1 “amorphous, slippery, and necessarily relative.” *Id.* (text only)<sup>3</sup> (citation omitted).

2 “Therefore, the substance of the speedy trial right is defined only through an analysis  
3 of the peculiar facts and circumstances of each case.” *Id.*

4 {4} The first step in determining whether there has been a speedy trial violation is  
5 to divide the overall trial delay into discrete periods to allow for manageable units  
6 of analysis. *See generally id.* ¶¶ 13-14; *State v. Ochoa*, 2017-NMSC-031, ¶¶ 4-6,  
7 406 P.3d 505. We then attribute each of those units of delay to the fault of the state  
8 or the defendant. *See, e.g., id.* ¶ 18. There are circumstances where a delay cannot  
9 be attributed to either party, and those delays are weighed neutrally. *See id.* The  
10 district court entered specific findings relating to Defendant’s claim of denial of his  
11 speedy trial rights. They are summarized in relevant part as follows.

12 **A. Procedural Timeline**

13 {5} In April 2010, Defendant was arrested for murder and tampering with  
14 evidence. Defendant spent the duration of the case from indictment to trial, a period  
15 of approximately sixty-nine months, in custody.

16 {6} The State entered its appearance about one month after the arrest. Defense

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<sup>3</sup>The “text only” parenthetical as used herein indicates the omission of all of the following—internal quotation marks, ellipses, and brackets—that are present in the quoted source, leaving the quoted text itself otherwise unchanged.

1 counsel did the same two weeks later and simultaneously filed a speedy trial demand.  
2 From June 1, 2010, until October 21, 2010, both parties filed various pretrial motions  
3 as the case proceeded toward trial. On October 21, 2010, at Defendant's request, the  
4 trial judge filed an order to stay all proceedings to allow for a determination of  
5 Defendant's competence. Following entry of the order, Defendant filed a notice of  
6 the defense of insanity. Defendant also requested an order to show cause because of  
7 the delay in his transfer to the New Mexico Behavioral Health Institute (NMBHI).  
8 He was eventually transported to NMBHI, and in August 2011, NMBHI found  
9 Defendant competent to stand trial. Defendant objected and indicated he would hire  
10 an expert to contest the finding of his competence and that the new evaluation would  
11 take two months. A competency hearing was then set for October 2011, but  
12 Defendant requested a continuance of the proceeding because defense counsel was  
13 out of state. The hearing was reset for December 6, 2011 (first reset), and for  
14 unknown reasons, that hearing was cancelled.

15 {7} Over the course of approximately the next nineteen months, Defendant's  
16 competency hearing was reset again, four more times. After the December 6, 2011,  
17 hearing was cancelled, the hearing was reset for July 24, 2012 (second reset). Then,  
18 on July 2, 2012, the State sought a new competency evaluation at the  
19 recommendation of the original evaluating physician "due to the [year-long] delay

1 since the original evaluation.” The district court agreed, ordered an updated  
2 competency evaluation at NMBHI, and continued the competency hearing.  
3 Defendant was transported to NMBHI on September 18, 2012, and the competency  
4 hearing was reset for January 28, 2013 (third reset). Two weeks before the hearing,  
5 the State filed a motion requiring disclosure of Defendant’s health information.  
6 Defendant acknowledged that he had not provided the necessary documentation, and  
7 the State was compelled to file a stipulated motion to continue. This resulted in a  
8 resetting of the competency hearing to May 22, 2013 (fourth reset). On the scheduled  
9 date of the May competency hearing, NMBHI filed a written objection to the  
10 subpoenas, and as a result the competency hearing was pushed to June 26, 2013 (fifth  
11 reset). At the June hearing, the court found Defendant competent and set a jury trial  
12 for five months later.

13 {8} Defendant’s trial date was reset four times over the next thirty-one and one  
14 half months following several discovery disputes, defense motions or stipulations to  
15 continue, and other procedural delays. On November 13, 2013, the State filed a  
16 stipulated motion to continue in order to pursue plea options. The trial was reset for  
17 July 7, 2014, (first trial reset) followed by additional discovery motions, which  
18 resulted in the State’s motion to continue to resolve the issues. Due to discovery  
19 disputes from both parties, the court reset the trial for November 17, 2014 (second

1 trial reset). On the eve of trial, Defendant filed a motion to continue the November  
2 17 setting, stating that his expert needed time to evaluate Defendant's state of mind.  
3 Speedy trial issues were raised, and the parties agreed that the delay would count  
4 against Defendant. The trial was reset for February 2, 2015 (third trial reset), but a  
5 month after a new scheduling order was issued, the case was reassigned to a different  
6 judge, who reset the trial on a docket beginning January 25, 2016 (fourth trial reset).  
7 After the latest reset, both the State and the defense moved the matter toward trial  
8 by filing several motions, including motions to suppress and motions to exclude.

9 {9} As trial approached, Defendant filed a motion to dismiss based on violation  
10 of his speedy trial right. The district court held an evidentiary hearing on Defendant's  
11 motion on January 21, 2016, where Defendant submitted an affidavit describing the  
12 prejudice he experienced in segregation. In addition, a correctional officer testified  
13 about Defendant's violent behavior while incarcerated and the need to place  
14 Defendant in solitary confinement.

15 {10} Trial began on February 8, 2016. After a seven-day trial, Defendant was  
16 convicted of second degree murder and tampering with evidence. Defendant  
17 appealed based on violation of his speedy trial right, and the Court of Appeals  
18 reversed. *Gurule*, A-1-CA-35724, mem. op. ¶ 1. With this understanding of the  
19 procedural history, we now summarize how each court has analyzed Defendant's

1 speedy trial motion, beginning with the district court.

2 **B. The District Court’s Disposition of the Speedy Trial Motion**

3 {11} In order to decide whether a defendant’s speedy trial right was violated, courts  
4 weigh four factors relating to the delay: “Length of delay, the reason for the delay,  
5 the defendant’s assertion of his right, and prejudice to the defendant.” *Barker*, 407  
6 U.S. at 530 (the *Barker* factors). None of these factors are dispositive, and no single  
7 factor alone is necessary or sufficient. *See id.* at 533.

8 {12} The first factor is “a triggering mechanism,” which starts an “inquiry into the  
9 other factors that go into the balance.” *Id.* at 530. Any delay longer than eighteen  
10 months in a complex case such as this one is presumptively prejudicial and triggers  
11 an analysis of the other *Barker* factors. *State v. Spearman*, 2012-NMSC-023, ¶ 21,  
12 283 P.3d 272. In this case, because fifty-one months had passed since the triggering  
13 date, the district court found that “the delay necessitates analysis of the other *Barker*  
14 factors.”

15 {13} The district court next divided the total delay into specific periods and  
16 assigned responsibility for each period. It concluded that thirty-three months of the  
17 delay weighed against the State, twenty months weighed neutrally, and sixteen  
18 months weighed against Defendant. The district court noted that the State was  
19 responsible for most of the periods of delay but found that the delays did not weigh



1 heavily against the State because the delays were unintentional and Defendant  
2 stipulated to many of the continuances that the State requested. The district court  
3 also commented that it appeared “to some extent Defendant was engaged in  
4 gamesmanship” because his speedy trial motion asked that several of the stipulated  
5 delays be held against the State. These delays included the motion to continue the  
6 October 11, 2011, hearing; the motion to send defendant for a second evaluation; the  
7 January 22, 2013, motion to continue the January 28, 2013, competency hearing; the  
8 November 13, 2013, motion to continue for plea negotiations; and the June 20, 2014,  
9 request to resolve discovery issues. In addition to these stipulated continuances,  
10 Defendant requested his own continuances, including the first hearing to evaluate  
11 Defendant’s competency and the motion to continue the November 17, 2014, trial  
12 setting.

13 {14} Next, the district court looked at Defendant’s assertion of the speedy trial  
14 right. While the district court found that Defendant asserted his speedy trial right  
15 with each entry of appearance, the court concluded that these assertions were made  
16 as a matter of course rather than as a strong assertion of the right. In addition, the  
17 court found that Defendant moved to dismiss based on speedy trial only on the eve  
18 of trial and therefore gave the motion little weight.

19 {15} Finally, the district court evaluated whether Defendant suffered any

1 particularized prejudice. The court reasoned that, although Defendant was  
2 incarcerated both during and while awaiting trial, he still needed to show that  
3 particularized prejudice incurred from the delay. Defendant claimed he suffered  
4 particularized prejudice because of anxiety he developed while he was segregated  
5 from the other inmates. The district court rejected this claim, concluding that the  
6 detention center made efforts to put him in the general population, but that each time  
7 a transfer was initiated, Defendant's own violent actions prevented the transfer. This  
8 resulted in continued placement in the segregated unit. The district court pointed to  
9 testimony by staff members at the jail that administration attempted to move  
10 Defendant into the general population, but it acknowledged that Defendant's  
11 behavior sabotaged those efforts. The district court also considered whether  
12 Defendant's defense was impaired by the delay. The district court did not find  
13 prejudice to the defense because, although Defendant alleged that some of his  
14 witnesses were no longer available when the trial dates were changed, he did not  
15 assert that the witnesses were material or show how those witnesses would have  
16 helped his defense.

17 {16} Considering all of these factors, the district court concluded that although the  
18 *length* of the delay weighed heavily against the State, the *reasons* for delay did not  
19 weigh heavily against the State. In addition, the district court gave minimal weight

1 to Defendant’s assertion of the speedy trial right, as well as Defendant’s claim of  
2 particularized prejudice. Therefore, the district court found no constitutional  
3 violation of Defendant’s speedy trial right. We turn next to the Court of Appeals’  
4 basis for reversing the district court on speedy trial grounds.

5 **C. Court of Appeals’ Review of the District Court’s Decision on the Speedy**  
6 **Trial Motion**

7 {17} Defendant appealed the district court’s decision to the Court of Appeals,  
8 which reweighed the *Barker* factors de novo. *Gurule*, A-1-CA-35724, mem. op. ¶¶  
9 3, 30. The Court of Appeals agreed that the case was complex and that the eighteen-  
10 month threshold was the appropriate trigger for analysis of the rest of the speedy  
11 trial factors. *Id.* ¶ 4. It also agreed that a “delay of approximately seventy months”  
12 weighs heavily against the State. *Id.* ¶ 5. Weighing the reasons for delay, the Court  
13 of Appeals concluded that thirty-seven months weighed against the State, twenty  
14 months weighed neutrally, and thirteen months weighed against Defendant. *Id.* ¶ 18.  
15 Regarding Defendant’s assertion of his speedy trial right, the Court of Appeals  
16 agreed with the district court’s conclusion that Defendant’s assertions were mostly  
17 either pro forma or made on the eve of trial and therefore weighed “only slightly in  
18 Defendant’s favor.” *Id.* ¶ 21.

19 {18} The Court of Appeals further considered prejudice to Defendant. While the  
20 district court found no particularized prejudice, the Court of Appeals held there was

1 “extreme prejudice” to Defendant, acknowledging that the majority of the delay was  
2 administrative or procedural and not intentional but weighing the reasons for the  
3 delay heavily against the State. *Id.* ¶¶ 18, 29. After weighing the four factors, the  
4 Court of Appeals concluded that Defendant’s right to speedy trial was violated,  
5 reversed the judgement and sentence, and remanded with instructions to dismiss the  
6 charges. *Id.* ¶¶ 30-31.

7 {19} We granted the State’s petition for writ of certiorari. We disagree with the  
8 Court of Appeals’ decision to weigh the reasons for delay heavily against the State.<sup>4</sup>  
9 *Id.* ¶ 30. Instead, we weigh the reasons for delay in large part against Defendant  
10 because much of the delay was the result of the multiple considerations of  
11 Defendant’s competence to stand trial. The Court of Appeals erred in weighing that  
12 delay against the State. Finally, in light of Defendant’s behavior while in  
13 confinement and because he did not show particularized prejudice, we disagree that  
14 Defendant suffered extreme prejudice.

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<sup>4</sup>The Court of Appeals correctly calculated and weighed some portions of the delay during Defendant’s pretrial incarceration. We do not see a need to recite those. Instead, this opinion will only discuss, in detail, the periods of delay for which this Court’s weighing differs from the Court of Appeals’ weighing. The Appendix delineates each period of delay, lists how each court weighed the delay periods, and summarizes results of the new calculations described in this opinion.

1 **II. DISCUSSION**

2 **A. Standard of Review**

3 {20} As previously discussed, “In examining whether a defendant has been  
4 deprived of his constitutional right to a speedy trial, we use the four-factor test set  
5 forth in *Barker*.” *Ochoa*, 2017-NMSC-031, ¶ 4. Importantly however, “[w]e defer  
6 to the district court’s factual findings in considering a speedy trial claim, but weigh  
7 each factor de novo.” *Id.* We accept the standard outlined by the United States  
8 Supreme Court that factual findings of a district court are “entitled to substantial  
9 deference and will be reversed only for clear error.” *United States v. Taylor*, 487  
10 U.S. 326, 337 (1988). Like here, when a district court considers the *Barker* factors  
11 “and supporting factual findings are not clearly in error, the district court’s judgment  
12 of how opposing considerations balance should not lightly be disturbed.” *Id.* We turn  
13 now to our analysis.

14 **B. *Barker* Factors**

15 **1. Length of Delay**

16 {21} Whether the length of delay triggers an inquiry into the other three *Barker*  
17 factors depends on the complexity of the case. *Barker*, 407 U.S. at 530-31. In New  
18 Mexico, the speedy trial inquiry triggers at “twelve months for simple cases, fifteen  
19 months for cases of intermediate complexity, and eighteen months for complex

1 cases.” *Garza*, 2009-NMSC-038, ¶ 2. It is undisputed that this was a complex case,  
2 so the triggering delay for analysis of the other *Barker* factors was eighteen months.  
3 The total delay of approximately sixty-nine months in this case exceeded the  
4 eighteen-month threshold by fifty-one months, and therefore an analysis into the  
5 other three *Barker* factors is clearly warranted. *See State v. Serros*, 2016-NMSC-  
6 008, ¶¶ 23-24, 366 P.3d 1121 (holding that a fifty-one-month total delay in a case of  
7 undetermined complexity weighs heavily against the state); *State v. Flores*, 2015-  
8 NMCA-081, ¶ 7, 355 P.3d 81 (holding that a sixty-two-month total delay in a  
9 complex case weighs heavily against the state).

10 {22} It is important to note that while a delay beyond the eighteen-month limit is  
11 “presumptively prejudicial” in a complex case, the analysis of the fourth *Barker*  
12 factor, actual prejudice, is separate from this conclusion and relates to Defendant’s  
13 pretrial incarceration in this case. *See Garza*, 2009-NMSC-038, ¶¶ 6, 12, 20-21, 35  
14 (explaining that a presumptively prejudicial delay triggers analysis into the other  
15 factors, and differentiating presumptive prejudice from prejudice due to pretrial  
16 detention or pretrial release restrictions). Accordingly, we hold that a sixty-nine-  
17 month delay weighs heavily against the State as to the first *Barker* factor. We  
18 therefore move on to analysis of the other *Barker* factors.

1   **2.   Reason for the Delay**

2   {23}   *Barker*'s second factor, the reason for delay, is "[t]he flag all litigants seek to  
3   capture." *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986). Our examination  
4   of the reasons for delay recognizes that "different weights should be assigned to  
5   different reasons." *Barker*, 407 U.S. at 531.

6   {24}   In cases where a defendant causes or benefits from the delay, the time weighs  
7   against the defendant. *See Serros*, 2016-NMSC-008, ¶ 43. If a prosecutor  
8   deliberately delayed trial, the delay weighs heavily against the state. *Id.* ¶ 29. Mere  
9   negligence or administrative delays weigh less heavily against the state. *Id.* "Finally,  
10   a valid reason, such as a missing witness, should serve to justify appropriate delay."  
11   *Barker*, 407 U.S. at 531. We now turn to the particular reasons for delay in this case  
12   and conclude, as the factual and procedural recitation provides, that the delay here  
13   was principally attributable to Defendant's competency determination and the  
14   numerous stipulated continuances that served to assure Defendant's competence to  
15   stand trial. Therefore, the delays do not weigh against the State.

16   {25}   We begin with a discussion of how competency determinations can affect a  
17   court's review of a defendant's speedy trial claim. Raising competence during the  
18   course of a proceeding has a unique impact upon the proceeding and upon the ability  
19   to bring the matter to conclusion. Unlike virtually every other reason for a delay,

1 raising competence causes all other work on the case to stop. Whenever a question  
2 appears, by motion of the parties or the court, as to the mental competence of a  
3 defendant to stand trial, “any further proceeding in the cause shall be suspended until  
4 the issue is determined.” NMSA 1978, § 31-9-1 (1993). That is, no criminal jeopardy  
5 confronts the defendant as long as a question of competence remains undecided.  
6 “And one who is incompetent cannot stand trial.” *Mendoza*, 1989-NMSC-032, ¶ 8;  
7 *see also Pate v. Robinson*, 383 U.S. 375, 386 (1966) (holding that conviction of a  
8 legally incompetent accused violates due process).

9 {26} This Court has previously held that delay pending a defendant’s competency  
10 determination does not impact the defendant’s speedy trial right. *Mendoza*, 1989-  
11 NMSC-032, ¶¶ 8-9 (“During the time an accused’s competency is being assessed,  
12 he or she is unavailable for trial. Regardless of who initiates the proceeding a  
13 competency examination is clearly on behalf of the accused and in no way infringes  
14 on that person’s speedy trial rights. . . . These delays are chargeable to the defendant  
15 and must be excluded from any speedy trial analysis.”). In *Mendoza*, we explained  
16 that the competing constitutional interests at stake—due process demands that a  
17 defendant be competent to stand trial *and* that a speedy trial is the defendant’s  
18 right—reveal that delays from determinations of competence are incurred for the  
19 benefit of the defendant. *See id.* ¶¶ 4, 8-9.



1 {27} Our conclusion that delays due to competency evaluations are chargeable to  
2 the defendant is consistent with other jurisdictions' recognition that "a defendant  
3 may not complain of delays occasioned by the trial court's attempt to protect his  
4 interests." *United States v. Murphy*, 241 F.3d 447, 454 (6th Cir. 2001) (citing *United*  
5 *States v. Antwine*, 873 F.2d 1144 (8th Cir. 1989)); *see also* Mass. R. Crim. P.  
6 36(b)(2)(A)(i) (excluding from the computation of trial delay any period of "delay  
7 resulting from an examination of the defendant, and hearing on, his mental  
8 competency, or physical incapacity"); 18 U.S.C. § 3161(h)(1)(A) (excluding from  
9 delay-of-trial computations any period of delay caused by proceedings to determine  
10 the defendant's mental competence); *Henderson v. United States*, 476 U.S. 321, 326-  
11 27 (1986) (excluding from determinations of trial delay "any period of delay" from  
12 "proceedings concerning the defendant" such as "time consumed . . . by a  
13 competency examination" without requiring that the "period of delay be reasonable"  
14 (brackets, internal quotation marks, and citations omitted)); *United States v.*  
15 *McGhee*, 532 F.3d 733, 737 (8th Cir. 2008) (holding that delay for proceedings to  
16 determine the defendant's competence is "excludable under the [Speedy Trial Act],  
17 whether reasonable or unreasonable").

18 {28} The Court of Appeals relies on *State v. Stock*, 2006-NMCA-140, 140 N.M.  
19 676, 147 P.3d 885, to conclude that periods of procedural delay should be parsed

1 from within the larger category of delay for competency determinations and  
2 allocated to the State. *See Gurule*, A-1-CA-35724, mem. op. ¶¶ 8, 10, 13. This  
3 interpretation, however, is contrary to *Mendoza*, in which this Court counted the  
4 entirety of the competency proceedings, not just the competency hearing itself,  
5 against the defendant because the process of adjudicating competence is “for the  
6 benefit of the defendant” and “chargeable to the defendant.” 1989-NMSC-032, ¶ 9;  
7 *see also State v. Jaramillo*, 2004-NMCA-041, ¶ 11, 135 N.M. 322, 88 P.3d 264  
8 (interpreting *Mendoza* as counting the duration of competency proceedings against  
9 the accused because those “proceedings are clearly for the benefit of the accused”).  
10 The Court of Appeals therefore erred in allocating weight against the State for three  
11 periods of procedural delay that were directly related to determining Defendant’s  
12 competence.

13 {29} We also do not see *Stock* as supporting the Court of Appeals’ parsing of delays  
14 that were due to Defendant’s competency evaluation. The *Stock* Court considered a  
15 speedy trial issue where “the delay [was] in part attributable to the neglect of [a  
16 defendant’s] overworked public defenders.” 2006-NMCA-140, ¶ 1; *see also Serros*,  
17 2016-NMSC-008, ¶¶ 30, 42 (characterizing the issue in *Stock* as involving “attorney  
18 neglect” and as considering “the fairness of attributing to the defendant delays  
19 caused by defense counsel when the defendant was effectively blameless”); *State v.*

1 *Fierro*, 2012-NMCA-054, ¶ 43, 278 P.3d 541 (distinguishing *Stock* because in  
2 *Fierro* “the district court did not find that the delay was caused by the poor  
3 performance of [the d]efendant’s attorneys, their neglect, or any institutional  
4 deficiencies of the public defender system”). In *Stock*, both the state and defense  
5 counsel failed to take appropriate action on the case, including failing to  
6 communicate the results of the defendant’s competency evaluation, during a delay  
7 of an extraordinary length. *Stock*, 2006-NMCA-140, ¶¶ 3-5. The *Stock* Court  
8 concluded that “in [its] particular case . . . both parties bear some responsibility for  
9 the delay.” *Id.* ¶ 19.

10 {30} Notably, however, the *Stock* Court did not “quarrel with the [s]tate’s assertion  
11 that delays caused by competency evaluations should generally not count against the  
12 state for speedy trial purposes because the state cannot try an incompetent  
13 defendant.” *Id.* Rather, under the circumstances presented, the Court could not  
14 “agree that needlessly taking one and a half years to communicate the results of such  
15 evaluations is for a defendant’s benefit.” *Id.* ¶ 21; *see also Serros*, 2016-NMSC-008,  
16 ¶¶ 43, 46 (adopting *Stock* in another case involving attorney neglect and explaining  
17 that the court will not weigh stipulated delays against the defendant when the  
18 defendant “neither caused nor consented to those stipulations”). No such attorney  
19 neglect is at issue in this case.

1 {31} Turning to the case at hand, the Court of Appeals weighed the period from  
2 November 3, 2010, to February 22, 2011, amounting to three months and nineteen  
3 days, against the State as an administrative delay. *Gurule*, A-1-CA-35724, mem. op.  
4 ¶ 8. While it is true that Defendant spent this time in custody waiting for a room at  
5 NMBHI, it is also true that the district court found Defendant incompetent to stand  
6 trial on November 3, 2010. Therefore, it is obvious both that the State could not  
7 proceed to trial without violating Defendant's right to due process and that  
8 Defendant was not prejudiced because he did not face custody. Therefore, we  
9 conclude as required by *Mendoza* that this period is chargeable to Defendant and not  
10 the State because the State could not proceed to trial as a matter of law.

11 {32} The second period amounts to seven months and eighteen days from  
12 December 6, 2011, to July 24, 2012, which the Court of Appeals weighed against  
13 the State due to a reset competency hearing. *Id.* ¶ 10. Once again, during this time  
14 Defendant was considered incompetent to stand trial. As stated before, this period  
15 must be weighed against Defendant and not against the State.

16 {33} The third period of delay erroneously allocated by the Court of Appeals was  
17 one month and twenty-five days from July 24, 2012, to September 18, 2012, where  
18 the prosecution asked for a new evaluation of competence based on the previous  
19 evaluator's recommendation. *Id.* ¶ 11. During this time, Defendant stipulated to the

1 State’s motion for a more current mental health evaluation. This period of time also  
2 included the time Defendant awaited transportation to NMBHI. *Id.* Prosecutors have  
3 a duty to inspect a defendant’s competence to stand trial lest they violate due process.  
4 *Criminal Justice Standards on Mental Health*, 7-4.3(b) (Am. Bar Ass’n 2016).  
5 Although the filing was attributed to the State, defense counsel stipulated to the  
6 motion, and the delay was in Defendant’s best interest, based on the advice of his  
7 evaluator. The Court of Appeals erroneously weighed this period against the State  
8 as administrative delay. We weigh this third period against Defendant.

9 {34} We are concerned about an outcome that discourages the prosecution from  
10 requesting or agreeing to a competency evaluation for fear of having the case  
11 dismissed on speedy trial claims. This complements our view that if Defendant were  
12 found incompetent to stand trial, any order to detain him for treatment to attain trial  
13 competence aligns with protecting Defendant and society in general and is therefore  
14 not punitive. *See State v. Baca*, 2019-NMSC-014, ¶ 9, 448 P.3d 576. Finally, the  
15 reasons for the delay in this case were not due to bad faith or negligence on behalf  
16 of the State.

17 {35} As stated herein, we defer to the district court’s findings of fact. Significantly,  
18 the district court concluded that none of the delay by the State “was intentionally  
19 caused and there were no unnecessarily prolonged periods of delay, but rather the

1 parties appear [to] have been moving toward trial,” based in large part on the district  
2 court’s own review of the delay between Defendant’s April 19, 2010, indictment and  
3 the February 8, 2016, jury trial. We hereby apply our revisions for the three  
4 procedural periods of delay to the conclusions of the Court of Appeals on its  
5 assessment of the reasons for approximately seventy months of delay. Accordingly,  
6 and as the Appendix documents, we hold that twenty-four months weigh against the  
7 State, twenty months weigh neutrally, and twenty-six months weigh against  
8 Defendant. Of the twenty months that weigh neutrally, Defendant’s questionable  
9 competence caused most of that delay. We therefore correct the Court of Appeals,  
10 *Gurule*, A-1-CA-35724, mem. op. ¶¶ 18, 30 (concluding that the reason for delay  
11 weighs “heavily against the State”), and we do not weigh the second *Barker* factor  
12 against the State.

### 13 **3. Assertion of the Right**

14 {36} We turn next to the third *Barker* factor, a defendant’s assertion of the speedy  
15 trial right, and consider “[w]hether and how a defendant assert[ed] his right.” *Barker*,  
16 407 U.S. at 531. A “defendant’s assertion of his speedy trial right . . . is entitled to  
17 strong evidentiary weight in determining whether the defendant is being deprived of  
18 the right.” *Id.* at 531-32. The *Barker* Court “emphasize[d] that failure to assert the  
19 right will make it difficult for a defendant to prove that he was denied a speedy trial.”

1 *Id.* at 532. In addition, a defendant who “invoked his right to a speedy trial in words  
2 while simultaneously operating in a dilatory manner leads us to conclude that [the  
3 d]efendant’s assertions of the right were at best nominal and at worst an act of  
4 gamesmanship.” *State v. Steinmetz*, 2014-NMCA-070, ¶ 62, 327 P.3d 1145.

5 {37} When weighing delay against a defendant, we “first consider whether [the  
6 d]efendant is to blame for the delays . . . because he has personally caused or  
7 acquiesced to the delay in his case.” *Serros*, 2016-NMSC-008, ¶ 43; *see also United*  
8 *States v. Margheim*, 770 F.3d 1312, 1328 (10th Cir. 2014) (“Moving for many  
9 continuances, or otherwise indicating that the defendant is not pursuing a swift  
10 resolution of his case will tip the balance of this factor heavily against the  
11 defendant.” (text only) (citation omitted)). If delay does not weigh against a  
12 defendant, “then we consider whether the [s]tate has met its obligation to bring [the  
13 d]efendant’s case to trial.” *Serros*, 2016-NMSC-008, ¶ 43.

14 {38} In this case, the defense stipulated to at least six continuances and  
15 independently moved for continuance on the eve of trial. Therefore, we not only  
16 defer to the finding of the district court that Defendant was “to some extent . . .

1 engaged in gamesmanship,” but we also find it well supported in our review.<sup>5</sup> *See*  
2 *State v. Moreno*, 2010-NMCA-044, ¶ 14, 148 N.M. 253, 233 P.3d 782 (“The district  
3 court characterized this conduct as a form of gamesmanship in which [the d]efendant  
4 was agreeing to continuances only because he later intended to file a speedy trial  
5 claim.”); *see also Barker*, 407 U.S. at 534-35 (“[T]he record strongly suggests that  
6 . . . [the defendant] hoped to take advantage of the delay in which he had acquiesced,  
7 and thereby obtain a dismissal of the charges. . . . More important than the absence  
8 of serious prejudice, is the fact that Barker did not want a speedy trial.”).

9 {39} We consider Defendant’s behavior in weighing his assertion of the speedy  
10 trial right. *Serros*, 2016-NMSC-008, ¶ 43. Here, Defendant asserted his right to a  
11 speedy trial five times: three times during entries of appearances of counsel and  
12 twice in connection with his October 2015 motion to dismiss based on violation of  
13 his speedy trial rights. However, “pro forma motions are generally afforded

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<sup>5</sup>According to the State, this is the second time that Defendant has been charged with murder and has filed a motion to dismiss for speedy trial violation at the very last minute. The State alleged at trial and in its briefing that “it is certainly understandable that the defense filed this speedy trial motion—after all the same strategy worked in getting the Defendant’s first homicide case dismissed.” It does appear that in 2011 a district court concluded in a separate case that “Defendant’s right to a speedy trial as guaranteed by the 6th Amendment to the U.S. Constitution . . . has been violated by the delay in bringing the Defendant[] to trial.” *See Order of Dismissal, State v. Gurule*, D-202-CR-2005-02559 (May 11, 2011).



1 relatively little weight in this analysis.” *State v. Urban*, 2004-NMSC-007, ¶ 16, 135  
2 N.M. 279, 87 P.3d 1061. In this case, the district court gave little weight to the three  
3 speedy trial demands on entry of appearance. Further, this Court recognizes that “the  
4 closer to trial an assertion is made, the less weight it is given.” *Moreno*, 2010-  
5 NMCA-044, ¶ 33. Here, Defendant’s motion to dismiss for violation of speedy trial  
6 also earns little weight as the motion was made within a few months of trial after  
7 most of the delay had already passed. Finally, because Defendant acquiesced to  
8 several of the State’s continuances and moved for his own continuances, we do not  
9 weigh the third *Barker* factor against the State. *See Garza*, 2009-NMSC-038, ¶¶ 38-  
10 39.

#### 11 **4. Particularized Prejudice**

12 {40} The fourth and final factor for us to consider is prejudice to the defendant.  
13 *Barker*, 407 U.S. at 532. As it relates to pretrial incarceration, such prejudice must  
14 be particularized, and it weighs in the defendant’s favor when the “anxiety suffered  
15 is undue.” *Ochoa*, 2017-NMSC-031, ¶ 51 (internal quotation marks and citation  
16 omitted). Again, this element is not to be confused with “presumptively prejudicial  
17 delay,” which “refers to prejudice to the fundamental right to a speedy trial, not to  
18 specific prejudice covered by the fourth *Barker* element.” *Garza*, 2009-NMSC-038,  
19 ¶ 19 (text only) (citation omitted); *see Gurule*, A-1-CA-35724, mem. op. ¶¶ 22-26.

1 {41} The Court of Appeals rejected the district court’s finding that Defendant’s  
2 pretrial confinement did not cause undue anxiety and concern. In doing so, the Court  
3 of Appeals incorrectly concluded that the suffering of “extreme prejudice” occurred  
4 as a matter of law based on the length of time Defendant was incarcerated before  
5 trial. *See Gurule*, A-1-CA-35724, mem. op. ¶¶ 23, 29. (“Although we acknowledge  
6 that Defendant’s initial and continued placement in segregation was the result of his  
7 conduct while in custody, we cannot ignore the oppressive impact the conditions and  
8 duration of his incarceration had on Defendant.”).

9 {42} The Court of Appeals’ conclusion that Defendant “suffered extreme  
10 prejudice,” *id.* ¶ 29, is not supported by the record and, more importantly, ignores  
11 deference to the trial court’s discretion in finding that Defendant showed no  
12 particularized prejudice. In addition, the Court of Appeals’ conclusion is not  
13 supported by precedent in that, like all other *Barker* factors, a claim of particularized  
14 prejudice must be made “through a review of the circumstances of a case, which  
15 may not be divorced from a consideration of the [s]tate and the defendant’s conduct  
16 and the harm to the defendant from the delay.” *Garza*, 2009-NMSC-038, ¶ 13; *see*  
17 *Barker*, 407 U.S. at 533. We undertake such a review now.

18 {43} In *Barker*, 407 U.S. at 532, “[t]he United States Supreme Court . . . identified  
19 three interests under which we analyze prejudice to the defendant: (i) to prevent

1 oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the  
2 accused; and (iii) to limit the possibility that the defense will be impaired.” *Garza*,  
3 2009-NMSC-038, ¶ 35 (internal quotation marks and citation omitted). *Fierro*,  
4 2012-NMCA-054, is on point for our analysis of prejudice. In *Fierro*, the defendant  
5 claimed his speedy trial rights were violated due to a fifty-five-month period  
6 between arrest and trial. *Id.* ¶¶ 36, 57. His bond was set at \$250,000, cash only, due  
7 to allegations that the defendant had threatened the victim and her family and that  
8 the defendant tried to have the victim killed. *Id.* ¶ 58. Because the defendant could  
9 not post bond, he remained incarcerated during the entire pretrial period and was in  
10 segregation for the majority of his incarceration as a necessity “for [the d]efendant’s  
11 own safety.” *Id.* The defendant received prescribed medication to help deal with the  
12 mental toll of his incarceration. *Id.* ¶¶ 57-58. The *Fierro* Court addressed the three  
13 interests underlying prejudice analysis, concluded ultimately that the failure to show  
14 concrete prejudice defeated the defendant’s speedy trial claim, and weighed the  
15 prejudices stemming from the defendant’s pretrial incarceration neutrally. *Id.* ¶ 60.  
16 With reference to *Fierro*, our analysis here examines each of the three prejudice  
17 interests separately.

1     **a.     Prevent oppressive pretrial incarceration**

2     {44}     The district court analyzed prejudice to Defendant, the fourth *Barker* factor,  
3     using the particular facts surrounding Defendant’s segregation. Defendant was in  
4     segregation because his behavior was incompatible with placement in the general  
5     population and because the prison had an obligation to protect other inmates and  
6     staff. In particular, the district court focused on the testimony of a Metropolitan  
7     Detention Center officer, Lieutenant Abraham Gallardo. Lieutenant Gallardo  
8     testified that the Metropolitan Detention Center made several efforts to move  
9     Defendant into the general population and reported that Defendant’s violent actions  
10    stopped any and all efforts to do so. Defendant, like the defendant in *Fierro*,  
11    remained in custody and in segregation for safety reasons. *Fierro*, 2012-NMCA-  
12    054, ¶ 58 (describing circumstances that led to the conclusion that the defendant had  
13    not demonstrated any particularized or undue prejudice due to his incarceration).

14    {45}     The district court concluded that Defendant was placed in administrative  
15    segregation because of his violent behavior, not because of the charges he faced. The  
16    district court found several instances where Defendant assaulted or threatened staff.  
17    Notably, Defendant assaulted eight staff members at initial booking. The record  
18    shows and the district court recognized that jail staff attempted to move Defendant  
19    into the general population but that further violent behavior forced his continued

1 segregation. In many ways, Defendant has a weaker argument for a speedy trial  
2 claim than that presented in *Fierro*. Custodial segregation of the defendant in *Fierro*  
3 “was necessary for [the d]efendant’s own safety.” *Fierro* 2012-NMCA-054, ¶ 58. In  
4 this case, Defendant had more control than the defendant in *Fierro* over whether he  
5 remained in segregation or whether he would be allowed into general population,  
6 and here, Defendant’s own behavior was to blame for the restrictions he faced in  
7 segregation. Therefore, any prejudice suffered was due to Defendant’s own actions.  
8 *See McGhee*, 532 F.3d at 740 (“Any prejudice from pretrial incarceration was  
9 attributable to [the defendant’s] own acts.”) Accordingly, the district court correctly  
10 found that Defendant did not demonstrate particularized prejudice due to his time  
11 spent in segregation.

12 **b. Minimize anxiety and concern of the accused**

13 {46} Next, the district court considered the anxiety and concern of the accused,  
14 referring to Defendant’s affidavit stating that he was unable to maintain a  
15 relationship with his family, suffered from depression and anxiety attacks, and was  
16 kept in segregation. While Defendant asserted that he suffered from anxiety and  
17 PTSD, he did not specify when his mental conditions started, and, despite “his  
18 alleged mental state when he was first imprisoned,” the district court declined to  
19 speculate that his symptoms were caused by the delay. The district court further

1 declined to find that Defendant’s relationship with his family had changed because  
2 of incarceration, maintaining instead that loss of contact with family is a normal  
3 consequence of incarceration and that this particular set of circumstances was not  
4 unique to Defendant. Given Defendant’s erratic and violent behavior even as he was  
5 booked, it was entirely reasonable for the district court to find that Defendant did not  
6 associate his current mental state with the time he spent in incarceration, taking into  
7 consideration Defendant’s mental state before he was incarcerated. Defendant failed  
8 to state when his alleged mental conditions arose, and given the mental state he  
9 exhibited when he was first imprisoned, well before the presumptive-prejudice  
10 deadline, this Court will not speculate that the delay in trial caused the issues  
11 Defendant alleges.

12 **c. Limit the possibility that the defense will be impaired**

13 {47} The district court in this case also found that Defendant did not provide any  
14 particular testimony that would have been offered by his missing witnesses. In  
15 *Fierro*, the defendant did claim that some potentially exculpatory, albeit speculative,  
16 testimony was lost. 2012-NMCA-054, ¶¶ 59-60 (discussing the defendant’s claim  
17 concerning the death of a potential witness who the defendant alleged “would have  
18 testified that [the victim] and her mother fabricated the charges against him”).  
19 Nonetheless, the court in *Fierro* still declined to weigh the fourth factor in favor of

1 the defendant. *Id.* Here, Defendant claimed that his defense was impaired because  
2 several witnesses relocated and their memories deteriorated. However, the district  
3 court noted that Defendant did not “state with particularity what exculpatory  
4 testimony would have been offered” or “present evidence that the delay caused the  
5 witness’s unavailability,” as required by *Garza*, 2009-NMSC-038, ¶ 36 (brackets,  
6 internal quotation marks, and citation omitted). Significantly, the Court of Appeals  
7 does not discuss or give weight to any consideration of Defendant’s inability to  
8 present a defense. This is significant because *Barker* tells us, “Of these, the most  
9 serious is [possible impairment of the defense] because the inability of a defendant  
10 adequately to prepare his case skews the fairness of the entire system.” *Barker*, 407  
11 U.S. at 532.

12 {48} Finally, the district court’s decision was not contrary to *Ochoa*, 2017-NMSC-  
13 031. *Ochoa* directs us to “presume that there was some impairment of the defense”  
14 based on the length of pretrial detention, subject to a “[d]efendant’s burden of  
15 showing particularized prejudice.” 2017-NMSC-031, ¶¶ 62, 65. *See id.* ¶ 64 (“In the  
16 absence of such proof, this factor does not tip the scale in [the d]efendant’s favor.”).  
17 In addition, the Court of Appeals’ reliance on *Serros*, 2016-NMSC-008, ¶¶ 89-90,  
18 to support a conclusion that Defendant suffered from extreme prejudice is misplaced.  
19 *See Gurule*, A-1-CA-35724, mem. op. ¶ 23. The factual circumstances in *Serros*,

1 including the defendant’s pretrial detention and isolation that formed the basis of his  
2 speedy trial claim, differ from the case at hand. In *Serros*, this Court relied on  
3 unchallenged testimony that other inmates and jail officials had both verbally and  
4 physically abused the defendant. *See Serros*, 2016-NMSC-008, ¶ 91 (noting two  
5 attacks on the defendant); *State v. Serros*, A-1-CA-31565, mem. op. ¶¶ 11-12, 46  
6 (N.M. Ct. App. Mar. 10, 2014) (nonprecedential) (noting testimony from several  
7 witnesses and describing attacks on the defendant by inmates). In greatest contrast  
8 to the case at bar, the defendant in *Serros* was not permitted to move out of  
9 segregation, despite his repeated requests to do so, for safety concerns *due to the*  
10 *nature of the charges against him*. *See Serros*, 2016-NMSC-008, ¶¶ 6, 91. In our  
11 view, the Court of Appeals incorrectly relies on *Ochoa* and *Serros*—without  
12 addressing their reasoning—to conclude as a matter of law that the length of pretrial  
13 incarceration and solitary confinement is enough to find a speedy trial violation.  
14 *Gurule*, A-1-CA-35724, mem. op. ¶¶ 22-29. Here, as we have pointed out,  
15 Defendant was in segregation not because of the charges he faced but because of his  
16 clearly established violent behavior. In addition, the facts surrounding any claim of  
17 prejudice to Defendant were not established through “unchallenged testimony” as in  
18 *Serros*, 2016-NMSC-008, ¶ 88 (emphasis omitted), but instead they were highly  
19 contested facts properly reviewed and decided by the trial court.



1 {49} We agree with the district court that Defendant has not shown particularized  
2 prejudice and that any prejudice he suffered during his time in segregation was the  
3 result of his own behavior. Therefore, we decline to weigh the fourth *Barker* factor  
4 against the State.

### 5 C. Dissent

6 {50} The dissent alleges that “[t]he majority upends this Court’s speedy trial  
7 jurisprudence”<sup>6</sup> and is in strongest disagreement with the conclusion that the  
8 competency proceedings, meant to benefit this Defendant, should be weighed  
9 against the Defendant for speedy trial purposes. *Dissent* ¶ 58. The dissent also  
10 concludes that Defendant need only show prejudice suffered “as a result of the  
11 lengthy pretrial incarceration he endured” and does not need to show actual  
12 prejudice. *Dissent* ¶ 93. That is, the dissent would abandon the duty of a court to  
13 look for actual prejudice in lieu of a bright-line rule based on the duration of the

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<sup>6</sup>The dissent also alleges that the majority “engages in a cursory review of the *Barker* factors,” assuring the reader that it has taken “the time to discuss each factor and time frame thoroughly.” *Dissent* ¶ 58. The dissent’s allegation is contradicted by this time and in pages committed by this opinion to the *Barker* factors, including the Appendix herein that lays out in detail the speedy trial calculations by the different courts. What the dissent’s lengthy recitation of the time frame reveals more than anything else is that, like the Court of Appeals, it cannot resist its own factual review of the record instead of affording the deference due to the trial court judge who presided in this case.

1 pretrial incarceration. We disagree. Both positions advanced by the dissent would  
2 disrupt or likely require the reversal of years of precedent by this Court.

3 {51} The dissent allocates the time involved in a competency determination in a  
4 way that is directly at odds with *Mendoza*. 1989-NMSC-032, ¶ 9. There, this Court  
5 counted the entirety of the competency proceedings, not just the competency hearing  
6 itself, against the defendant. *Id.* This Court reasoned that the process of adjudicating  
7 competence is “for the benefit of the defendant” and, therefore, “chargeable to the  
8 defendant.” *Id.*; *see also Jaramillo*, 2004-NMCA-041, ¶ 11 (interpreting *Mendoza*  
9 as counting the duration of competency proceedings against the accused because  
10 those “proceedings are clearly for the benefit of the accused”). We trust the dissent  
11 to acknowledge that underpinning this holding is a defendant whose case comes to  
12 a halt during a competency proceeding and who faces no jeopardy to his liberty while  
13 his competence is at issue. The dissent fails to clearly justify why that time should  
14 be counted against the State. In addition, as we emphasized previously, our  
15 conclusion that delays due to competency evaluations are chargeable to the  
16 defendant is consistent with other jurisdictions’ recognition that “a defendant may  
17 not complain of delays occasioned by the trial court’s attempt to protect his  
18 interests.” *Murphy*, 241 F.3d at 454 (citing *Antwine*, 873 F.2d at 1150 ); *see also*  
19 Mass. R. Crim. P. 36(b)(2)(A)(i) (excluding from the computation of trial delay any

1 period of “delay resulting from an examination of the defendant, and hearing on, his  
2 mental competency, or physical incapacity”); 18 U.S.C. § 3161(h)(1)(A) (excluding  
3 from delay-of-trial computations any period of delay caused by proceedings to  
4 determine the defendant’s mental competence); *Henderson*, 476 U.S. at 327, 330  
5 (excluding periods of delay for pretrial motions, including motions for determination  
6 of competence from filing of the motion to conclusion of the hearing, “whether or  
7 not a delay in holding that hearing is reasonably necessary” (internal quotation marks  
8 omitted)); *McGhee*, 532 F.3d at 737 (holding that delay for proceedings to determine  
9 the defendant’s competence is “excludable under the [Speedy Trial Act], whether  
10 reasonable or unreasonable”).

11 {52} Like the Court of Appeals, the dissent reads *Ochoa* and *Serros* in tandem to  
12 conclude that the length of time served in pretrial incarceration is prejudicial on its  
13 face. *Gurule*, A-1-CA-35724, mem. op. ¶ 23. We have never announced such a rule.  
14 Instead, we have established three interests that the Court considers when analyzing  
15 prejudice to the defendant: (1) “oppressive pretrial incarceration,” (2) “anxiety and  
16 concern of the accused,” and (3) “the possibility that the defense will be impaired.”  
17 *Garza*, 2009-NMSC-038, ¶ 35.

18 {53} While it is true that there is a presumption of prejudice when there is a lengthy  
19 incarceration, it is also true that the Defendant must still show some particularized

1 prejudice from his pretrial incarceration. *Ochoa*, 2017-NMSC-031, ¶ 49 (“[W]e will  
2 not speculate as to the impact of pretrial incarceration on a defendant or the degree  
3 of anxiety a defendant suffers.” (quoting *Garza*, 2009-NMSC-038, ¶ 35) (alteration  
4 in original)). *Ochoa* also emphasizes that “[b]ecause some degree of oppression and  
5 anxiety is inherent in every incarceration, ‘we weigh this factor in the defendant’s  
6 favor only where the pretrial incarceration or anxiety suffered is undue.’” *Id.* ¶ 51  
7 (quoting *Garza*, 2009-NMSC-038, ¶ 35). *Ochoa* recognized that a “lengthy and  
8 onerous pretrial incarceration may render affirmative proof of prejudice unnecessary  
9 to find that the defendant suffered prejudice” but that “the length of incarceration is  
10 a counterweight to a defendant’s burden of production.” *Id.* ¶ 54. Although this Court  
11 in *Ochoa* found that the defendant suffered prejudice based solely on the length of  
12 the pretrial incarceration, it could not say whether the prejudice was undue. *See id.*  
13 ¶ 61. Similarly, the trial court in this case, the court we trust to make such a factual  
14 determination, could not say whether the prejudice was undue.

### 15 **III. WEIGHING THE FOUR FACTORS**

16 {54} We reaffirm our well-established holding that “the substance of the speedy  
17 trial right is defined only through an analysis of the peculiar facts and circumstances  
18 of each case.” *Garza*, 2009-NMSC-038, ¶ 11. This case exceeded the eighteen-  
19 month threshold for presumptive prejudice by approximately fifty-two months, and

1 therefore an analysis of the other three *Barker* factors is necessary. However, we  
2 hold that the issue of Defendant’s competence to stand trial caused most of the delay.  
3 In addition, both Defendant’s pro forma motions and his acquiescence to several  
4 continuances weigh against him. We agree with the district court that Defendant did  
5 not suffer particularized prejudice because the prejudice he suffered during his time  
6 in segregation was the result of his own behavior.

7 {55} “To find a speedy trial violation without a showing of actual prejudice, the  
8 Court must find that the three other *Barker* factors weigh heavily against the [s]tate.”  
9 *State v. Samora*, 2016-NMSC-031, ¶ 23, 387 P.3d 230. Because we conclude that  
10 the second and third factors weigh against Defendant and that only the first weighs  
11 heavily against the State, we hold that the delay between Defendant’s arrest and trial  
12 did not violate his right to a speedy trial.

#### 13 **IV. CONCLUSION**

14 {56} We reverse the Court of Appeals, affirm the district court’s denial of  
15 Defendant’s motion to dismiss, and remand to the Court of Appeals for further  
16 consideration of the remainder of Defendant’s arguments on appeal.

17 {57} **IT IS SO ORDERED.**

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DAVID K. THOMSON, Justice

1 **WE CONCUR:**

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**DUSTIN K. HUNTER, Judge**

4 **Sitting by designation**

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**AMANDA SANCHEZ VILLALOBOS, Judge**

7 **Sitting by designation**

8 **C. SHANNON BACON, Chief Justice, dissenting**

9 **MICHAEL E. VIGIL, Justice, concurring in dissent**

1 **BACON, Chief Justice (dissenting).**

2 {58} The majority upends this Court’s speedy trial jurisprudence in concluding that  
3 a delay of nearly six years in trying Defendant for murder is reasonable. The majority  
4 notes that this delay exceeded the eighteen-month threshold for complex cases  
5 identified in *State v. Garza*, 2009-NMSC-038, ¶ 2, 146 N.M. 499, 212 P.3d 387, by  
6 fifty-one months, which this Court deemed presumptively prejudicial and triggered  
7 an analysis into the three other *Barker* factors. *Maj. op.* ¶ 21. *See State v. Gurule*, A-  
8 1-CA-35724, mem. op. ¶ 4 (N.M. Ct. App. July 31, 2019) (nonprecedential)  
9 (deferring to “the district court’s finding that this was a complex case”); *see also*  
10 *Barker v. Wingo*, 407 U.S. 514, 530 (1972) (identifying the four factors as “[l]ength  
11 of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice  
12 to the defendant”). Even so, disregarding the presumption in *Garza*, the majority  
13 contends that the reasons for delay are primarily attributable to Defendant, mainly  
14 because his competence was at issue throughout this matter. *Maj. op.* ¶¶ 27-30.  
15 Under the majority’s view, any time spent ascertaining a defendant’s competence  
16 and upholding the defendant’s due process rights will counterbalance any of the  
17 State’s unreasonable delay and thus permissibly infringe on a defendant’s speedy  
18 trial rights. Additionally, the majority holds that Defendant had “not shown  
19 particularized prejudice and that any prejudice he suffered during his segregation

1 was the result of his own behavior.” *Maj. op.* ¶ 49. Accordingly, the majority  
2 reverses the Court of Appeals, concluding that Defendant’s constitutional right to a  
3 speedy trial was not violated. *Maj. op.* ¶¶ 55-56. Because we disagree that the  
4 reasons for delay, assertion of the right, and prejudice factors weigh against  
5 Defendant, we respectfully dissent. In addition, because the majority engages in a  
6 cursory review of the *Barker* factors, we take the time to discuss each factor and  
7 timeframe thoroughly.

8 **I. THE REASONS FOR DELAY FACTOR SHOULD NOT WEIGH**  
9 **AGAINST DEFENDANT**

10 {59} We agree with the majority that the length of delay weighs heavily against the  
11 State. *Maj. op.* ¶ 22. The next factor in the *Barker* analysis requires a court to  
12 consider “the reason the government assigns to justify the delay.” *Garza*, 2009-  
13 NMSC-038, ¶ 25 (quoting *Barker*, 407 U.S. at 531). The majority points to three  
14 periods of delay for which it disagrees with the Court of Appeals’ analysis but does  
15 not describe why it affirms the reasoning for the other periods of delay relevant to  
16 this analysis. Because we disagree with some of the majority’s and Court of Appeals’  
17 conclusions regarding periods of delay not addressed by the majority, we provide a  
18 timeline for each period of delay below.



1 **A. April 3, 2010, to October 20, 2010**

2 {60} The Court of Appeals stated, “From Defendant’s arrest on April 3, 2010, to  
3 October 20, 2010, the case was proceeding normally toward trial.” *Gurule*, A-1-CA-  
4 35724, mem. op. ¶ 7. Accordingly, the Court weighed this period of six months and  
5 seventeen days neutrally. *Id.* This determination was not contested by either party.  
6 The majority does not address this period of delay and thus seemingly affirms this  
7 holding. We would affirm this holding as well.

8 **B. October 20, 2010, to November 3, 2010**

9 {61} From October 20, 2010, to November 3, 2010, the district court found  
10 Defendant incompetent to stand trial and stayed the proceedings for a competency  
11 determination. Citing *State v. Stock*, 2006-NMCA-140, ¶¶ 19-22, 29, 140 N.M. 676,  
12 147 P.3d 885, the Court of Appeals held that this period weighed against Defendant.  
13 *Gurule*, A-1-CA-35724, mem. op. ¶ 8. The Court of Appeals reasoned that *Stock*  
14 stands for the proposition that delays resulting from competency evaluations weigh  
15 against the defendant because they are for the “defendant’s benefit.” *Id.* The majority  
16 affirms this conclusion based on an alternative analysis. *Maj. op.* ¶¶ 26-30. We  
17 disagree with both the majority’s and the Court of Appeals’ conclusion that delays  
18 attributable to competency evaluations should be weighed against the defendant.  
19 Moreover, weighing such delays against the defendant, absent a showing of bad faith

1 or deliberate attempts to delay the trial, is contrary to constitutional principles, our  
2 jurisprudence, and the United States Supreme Court’s jurisprudence on this issue.

3 {62} First, “[i]t is well established that the Due Process Clause of the Fourteenth  
4 Amendment prohibits the criminal prosecution of a defendant who is not competent  
5 to stand trial.” *Medina v. California*, 505 U.S. 437, 439 (1992). “Suspension of the  
6 criminal process where the defendant is incompetent is fundamental to assuring the  
7 fairness, accuracy, and dignity of the trial.” *State v. Rotherham*, 1996-NMSC-048, ¶  
8 13, 122 N.M. 246, 923 P.2d 1131.

9 {63} Second, it is important to recognize that the state has a “duty of insuring that  
10 the trial is consistent with due process.” *Barker*, 407 U.S. at 527. True to this  
11 principle, this Court has recognized that “[t]he State has an interest in rendering a  
12 defendant competent to stand trial, and, as long as [the defendant] remain[s]  
13 dangerous, the State has an interest in committing [the defendant] to protect the  
14 defendant[] and the public.” *Rotherham*, 1996-NMSC-048, ¶ 23.

15 {64} Therefore, not only do competency evaluations benefit a defendant, they also  
16 are beneficial to the state in ensuring that it complies with its constitutional  
17 obligations. *See id.* ¶ 13. The majority cites *State v. Mendoza* for the proposition that  
18 “a competency examination is clearly on behalf of the accused and in no way  
19 infringes on that person’s speedy trial rights.” 1989-NMSC-032, ¶ 8, 108 N.M. 446,

1 774 P.2d 440. However, we distinguish between a competency-related delay not  
2 infringing on speedy trial rights and that delay being *solely* for the benefit of the  
3 defendant, especially as the latter proposition is not expressly supported by the  
4 underlying authorities on which *Mendoza* relied. *See, e.g., Commonwealth v.*  
5 *Millard*, 417 A.2d 1171, 1176 (Pa. 1979) (asserting that competency-related “delay  
6 must be attributed to the unavailability of [the defendant] and, therefore, excluded  
7 from” a speedy trial analysis (internal quotation marks and citation omitted)); *Jones*  
8 *v. People*, 711 P.2d 1270, 1281 (Colo. 1986) (excluding competency-related delay  
9 from speedy trial computation); ABA Standards for Criminal Justice, *Speedy Trial*  
10 *and Timely Resolution of Criminal Cases* § 12-2.3(a)(i) (3d ed. 2006) (including  
11 “examination and hearing on competency” in the “periods [that] should be excluded  
12 in computing allowable time under the speedy trial rule or statute”). *Mendoza* and  
13 its underlying authorities acknowledge that competency-related delays benefit both  
14 parties and clarify that such delays should be *excluded* from speedy trial analysis—  
15 in other words, weighed neutrally—rather than weighed against the defendant.

16 {65} Moreover, Defendant contends that he should not have to choose between his  
17 right to a speedy trial and his due process rights. We agree. This proposition is  
18 supported by this Court’s analysis in *State v. Serros*, 2016-NMSC-008, 366 P.3d  
19 1121, interpreting *Stock*, 2006-NMCA-140, on which the Court of Appeals relies.

1 Accordingly, we disagree with the majority’s conclusions regarding *Stock* and its  
2 implications for this analysis. In *Serros*, we discussed the holding in *Stock* and its  
3 implications for a speedy trial analysis. *See Serros*, 2016-NMSC-008, ¶¶ 35-38. We  
4 began by noting that the *Stock* Court “held that both parties shared responsibility for  
5 the delay” related to the defendant’s competency evaluation under the circumstances  
6 in that case. *Id.* ¶ 36 (citing *Stock*, 2006-NMCA-140, ¶ 19). The fact that the delay  
7 in *Stock* was “extraordinary” was partially attributable to the state because it had  
8 done ““little or nothing to ascertain what was happening in the case or to move the  
9 case forward.”” *Serros*, 2016-NMSC-008, ¶ 37 (quoting *Stock*, 2006-NMCA-140, ¶  
10 25). We determined that in *Stock*, although the delay related to the defendant’s  
11 competency evaluations, “the reasons for the delay weighed against the State  
12 because of its ‘failure to monitor the case and ensure that steps were being taken to  
13 bring [the defendant] to trial in a timely manner.’” *Serros*, 2016-NMSC-008, ¶ 37  
14 (alteration in original) (quoting *Stock*, 2006-NMCA-140, ¶ 29).

15 {66} We found *Stock*’s reasoning to be “compelling,” especially “when the delay  
16 is extraordinary and the defendant is detained while awaiting trial.” *Serros*, 2016-  
17 NMSC-008, ¶ 38. We explained that “[u]nder such circumstances, we agree that it  
18 may be appropriate to shift the focus to the State’s efforts to bring the case to trial,  
19 at least when the record demonstrates that the defendant did not affirmatively cause

1 or consent to the delay.” *Id.* This aligns with the United States Supreme Court’s  
2 decision in *Vermont v. Brillon*, 556 U.S. 81 (2009). The *Brillon* Court announced  
3 for the first time that some delay may be charged to the defendant in a speedy trial  
4 analysis. *Id.* at 92-93. In *Brillon*, the defendant deliberately delayed his own trial by  
5 forcing the withdrawal of two out of six of his attorneys by attempting to fire one in  
6 the middle of a hearing and by threatening the life of another. *Id.* at 86-87, 94. Under  
7 these circumstances, the *Brillon* Court concluded that the defendant caused most of  
8 the delay in his case and held, “Just as a State’s deliberate attempt to delay the trial  
9 in order to hamper the defense should be weighted heavily against the State, so too  
10 should a defendant’s deliberate attempt to disrupt proceedings be weighted heavily  
11 against the defendant.” *Id.* at 93-94 (text only) (citation omitted).

12 {67} Under this rationale, in *Serros* we analyzed whether delays caused by the  
13 defendant seeking new counsel weighed against the defendant in that case. 2016-  
14 NMSC-008, ¶ 47. We acknowledged that the inquiry “effectively pits [a d]efendant’s  
15 right to a speedy trial against his right to effective assistance of counsel, and he  
16 should not have to surrender one right to assert the other.” *Id.* Thus, we concluded  
17 that we could only weigh the delay associated with the defendant’s request for new  
18 counsel against him if “his assertion was unreasonable.” *Id.* We held that the

1 defendant's assertions were not unreasonable, unlike the defendant in *Brillon*, and  
2 did not weigh the delay against the defendant. *Id.* ¶¶ 55-56.

3 {68} We face a similar situation here, where Defendant's right to due process is  
4 pitted against his right to a speedy trial. Accordingly, we should only weigh delays  
5 resulting from competency evaluations against Defendant if such delays were  
6 "unreasonable." *Id.* ¶ 56. It cannot be said that taking the time to determine  
7 Defendant's competence here was unreasonable or a tactic employed by Defendant  
8 to delay his trial. *See id.* This is demonstrated by the fact that both parties requested  
9 inquiries into Defendant's competence. The record does not support, nor does the  
10 State contend, that Defendant himself deliberately sought competency evaluations  
11 to delay his own trial.

12 {69} Thus, we would weigh the periods of delay attributable to Defendant's  
13 competency evaluations in this case neutrally absent evidence that Defendant  
14 unreasonably sought competency evaluations to delay his trial. To hold otherwise is  
15 unconstitutional.

16 **C. November 3, 2010, to February 22, 2011**

17 {70} The district court found Defendant incompetent to stand trial and ordered him  
18 to be transported to the New Mexico Behavioral Health Institute ("NMBHI") for  
19 treatment on November 3, 2010. By February 21, 2011, Defendant still had not been

1 transported to NMBHI, prompting him to file a motion to show cause for this delay.  
2 Defendant was transported to NMBHI on the following day, February 22, 2011. The  
3 Court of Appeals weighed this delay of three months and nineteen days against the  
4 State as administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 8. We agree with  
5 the Court of Appeals’ holding regarding this period of delay, and it is uncontested  
6 by either party. Nonetheless, the majority departs from the Court of Appeal’s  
7 analysis and holds this period of delay against Defendant because it relates to a  
8 competency evaluation. *Maj. op.* ¶ 31. We disagree that the delay in Defendant’s  
9 transport to NMBHI due to a lack of beds can be weighed against Defendant.  
10 Moreover, Defendant’s filing of the motion to show cause indicates that Defendant  
11 sought swift transport to NMBHI and in no way contributed or acquiesced to this  
12 delay. Additionally, Defendant was detained during this time, and there is no  
13 argument that detention was in any way beneficial to Defendant. We reiterate that it  
14 is the state’s obligation to bring a defendant to trial in a timely manner, and when it  
15 fails to do so, such delay should weigh against the state. *See Serros*, 2016-NMSC-  
16 008, ¶ 38 (“[W]hen the delay is extraordinary and the defendant is detained . . . it  
17 may be appropriate to shift the focus to the State’s efforts to bring the case to trial,  
18 at least when the record demonstrates that the defendant did not affirmatively cause  
19 or consent to the delay.”).

1 **D. February 22, 2011, to December 6, 2011**

2 {71} An examiner at NMBHI submitted a report on August 2, 2011, indicating that  
3 Defendant was competent to stand trial. On August 9, 2011, the district court  
4 scheduled a competency hearing for August 23, 2011. Defendant requested an  
5 evidentiary hearing regarding his competence on August 17, 2011, which prompted  
6 the district court to vacate the August 23, 2011, competency hearing and reschedule  
7 the hearing for October 11, 2011. The State filed motions for an “order requiring  
8 disclosure and protecting the privacy of records and other health information” and  
9 requested a hearing on the motions. Additionally, Defendant filed a stipulated  
10 motion for continuance from the October 11, 2021, competency hearing because  
11 defense counsel had plans to be out of state. The district court rescheduled the  
12 hearing to December 6, 2011. The Court of Appeals weighed this period of delay of  
13 nine months and fourteen days against Defendant because the delay related to  
14 Defendant’s competency evaluation. *Gurule*, A-1-CA-35724, mem. op. ¶ 10.

15 {72} Defendant contests this holding in relation to the period of delay between  
16 February 22, 2011, and August 23, 2011, during which he was at NMBHI until the  
17 original competency hearing was set. He argues that this period of delay, totaling  
18 one hundred eighty-two days, should bear neutral weight. The majority seemingly  
19 affirmed the Court of Appeals as it did not address this period of delay. We would



1 weigh this period neutrally, in accordance with the analysis above addressing delays  
2 resulting from competency evaluations.

3 {73} Defendant agrees that the delay attributable to the delay he requested, from  
4 August 23, 2011, to December 6, 2011, should weigh against him. Accordingly,  
5 defense counsel’s requested continuance, approximately three months, to  
6 accommodate his travel plans should be weighed against Defendant. We agree.

7 **E. December 6, 2011, to July 24, 2012**

8 {74} The Court of Appeals weighed the seven months and eighteen days from  
9 December 6, 2011, to July 24, 2012, against the State due to the “absence of evidence  
10 in the record demonstrating the reasons the district court vacated the December 6,  
11 2011, competency hearing.” *Gurule*, A-1-CA-35724, mem. op. ¶ 10. The State  
12 contests this holding, stating, “[t]here was evidence in the record,” including a  
13 “stipulated motion to send Defendant for his second evaluation at NMBHI,” which  
14 included information that “Judge Candelaria had retired and the parties had to wait  
15 until a new judge was appointed.” The State also provides that “[e]ven after the new  
16 judge was appointed, Defendant represented he was still in the process of getting a  
17 third competency evaluation, which he stated he was seeking on August 16, 2011[,]  
18 after NMBHI determined he was competent.” Thus, the State argues that this time  
19 should weigh against Defendant as time spent ascertaining his competence.

1 {75} The State filed a stipulated motion on July 2, 2012, to send Defendant to  
2 NMBHI for another competency evaluation. The district court granted the stipulated  
3 motion on July 5, 2012. The competency hearing was set for July 24, 2012. The  
4 majority weighed this period of delay against Defendant. *Maj. op.* ¶ 32. Absent  
5 evidence that Defendant was leveraging a third competency evaluation to delay his  
6 trial, and because both parties sought to determine Defendant’s competence  
7 throughout this timeframe, we would weigh this period of seven months and  
8 eighteen days neutrally.

9 **F. July 24, 2012, to September 18, 2012**

10 {76} The district court granted the State’s stipulated motion for the court to  
11 continue the July 24, 2012, competency hearing “to a later date when . . . Defendant  
12 has been returned from NMBHI and another evaluation has been completed.”  
13 Defendant was not transported to NMBHI until September 18, 2012. As a result, the  
14 Court of Appeals weighed this period of one month and twenty-five days against the  
15 State as administrative delay. *Gurule*, A-1-CA-35724, mem. op. ¶ 11. The majority  
16 disagrees with this analysis and weighs this period of delay against Defendant. This  
17 conclusion is beyond the pale. We would affirm the Court of Appeals’ analysis, as  
18 the State bears the burden of explaining pretrial delay and offered no explanation for  
19 this delay.

1 **G. September 18, 2012, to January 28, 2013**

2 {77} Another evaluator from NMBHI found Defendant competent to stand trial,  
3 and the district court scheduled a competency hearing for January 28, 2013. We  
4 agree with the Court of Appeals' determination that this period of four months and  
5 ten days should be weighed neutrally. *Gurule*, A-1-CA-35724, mem. op. ¶ 13. The  
6 majority seemingly affirms the Court of Appeals, although it weighs other delays  
7 attributable to Defendant's competency evaluations against Defendant. It is unclear  
8 why this inconsistency exists because the majority does not engage in a thorough  
9 analysis of each period of delay. The district court, not either of the parties,  
10 scheduled the competency hearing related to this period of delay. However, under  
11 the majority's rationale, delays relating to ascertaining a defendant's competence are  
12 always on behalf of the defendant, regardless of who initiates an evaluation or  
13 hearing. Thus, this conclusion is directly contradictory to the majority's principal  
14 basis for holding that Defendant's speedy trial rights were not violated here.

15 **H. January 28, 2013, to May 22, 2013**

16 {78} On January 22, 2013, the State filed a stipulated motion to continue the  
17 January 28, 2013, competency hearing, citing both parties' need for more time to  
18 prepare. In its motion, the State also explained that Defendant did not respond to the  
19 State's request for information until January 18, 2013. Thus, the Court of Appeals

1 weighed this period of three months and twenty-four days neutrally “as it was the  
2 result of both parties’ need for additional time to prepare, as well as defense  
3 counsel’s failure to respond to the State’s request for information.” *Gurule*, A-1-CA-  
4 35724, mem. op. ¶ 13. This timeframe went unaddressed by the majority, so we  
5 assume it affirms the Court of Appeals. We agree with this conclusion.

6 **I. May 22, 2013, to June 26, 2013**

7 {79} The district court rescheduled the competency hearing set to take place on  
8 May 22, 2013, to June 26, 2013, because the New Mexico Department of Health  
9 objected to the State’s subpoenas, contending they were issued too close to the  
10 scheduled competency hearing and many witnesses could not attend. We agree with  
11 Court of Appeals’ determination that this period of one month and four days should  
12 be weighed against the State as negligent or administrative delay. *Gurule*, A-1-CA-  
13 35724, mem. op. ¶ 14. *See Garza*, 2009-NMSC-038, ¶ 26 (weighing “negligent or  
14 administrative delay” against the state). The majority does not address this  
15 timeframe, so we assume it affirms the Court of Appeals.

16 **J. June 26, 2013, to December 2, 2013**

17 {80} The district court found Defendant competent to stand trial following the June  
18 26, 2013, competency hearing and scheduled the trial to begin on December 2, 2013.  
19 Absent any argument that this delay is attributable to either party, the Court of

1 Appeals weighed this period of five months and six days neutrally. *Gurule*, A-1-CA-  
2 35724, mem. op. ¶ 14. The majority does not address this timeframe, so we assume  
3 it affirms the Court of Appeals. We would do the same.

4 **K. July 7, 2014, to October 20, 2014**

5 {81} The State filed another stipulated motion to continue the trial setting, and the  
6 district court rescheduled the trial to begin on October 20, 2014. In its motion, the  
7 State explained that it needed more time to conduct pretrial interviews and resolve  
8 discovery issues. Consequently, we agree with the Court of Appeals' determination  
9 that this delay of three months and thirteen days weighs against the State. *Gurule*,  
10 A-1-CA-35724, mem. op. ¶ 15. The majority seemingly affirms this holding as it  
11 does not address this timeframe.

12 **L. December 2, 2013, to July 7, 2014**

13 {82} The State filed a stipulated motion to continue the December 2, 2013, trial for  
14 the purpose of pursuing a plea deal. The Court of Appeals weighed this delay of  
15 seven months and five days against the State. *Gurule*, A-1-CA-35724, mem. op. ¶  
16 15. In support of this finding, the Court of Appeals cited *State v. Samora*, 2016-  
17 NMSC-031, ¶ 13, 387 P.3d 230, which provides that “it is well settled that the  
18 possibility of a plea agreement does not relieve the State of its duty to pursue a timely  
19 disposition of the case” (internal quotation marks and citation omitted.). Further,

1 *Samora* weighed the period of delay caused by the parties’ pursuit of a plea deal  
2 against the state. *Id.*

3 {83} We agree with the Court of Appeals’ determination relating to this timeframe.  
4 Even if pursuing a plea was in both parties’ best interests, the State was not relieved  
5 of its duty to keep the case moving towards trial. *See id.* The majority does not  
6 address this timeframe and thus seemingly affirms this holding.

7 **M. October 20, 2014, to November 17, 2014**

8 {84} Defendant filed a motion to continue the October 20, 2014, trial setting on  
9 September 8, 2014. Defendant cited defense counsel’s schedule and the need for  
10 additional time to interview witnesses and resolve discovery disputes as his reasons  
11 for doing so. The district court granted the motion over the State’s objection, and the  
12 trial was rescheduled for November 17, 2014. We agree with the Court of Appeals’  
13 determination that this period of twenty-eight days weighs against Defendant  
14 because defense counsel requested this delay. *Gurule*, A-1-CA-35724, mem. op. ¶  
15 16 (citing *State v. Deans*, 2019-NMCA-015, ¶ 10, 435 P.3d 1280 (“[A]ny delay  
16 caused by the defendant generally weighs against the defendant.”)). The majority  
17 does not address this timeframe, and thus we assume it affirms this holding.

1 **N. November 17, 2014, to February 2, 2015**

2 {85} Defense counsel filed another motion for continuance from the scheduled  
3 November 17, 2014, trial, citing the need for more time for expert preparation, more  
4 time to explain the State’s plea to Defendant, and a change in defense counsel. The  
5 district court scheduled the trial for February 2, 2015. The Court of Appeals weighed  
6 this period of two months and sixteen days against Defendant. *Gurule*, A-1-CA-  
7 35724, mem. op. ¶ 16 The majority does not address this timeframe and thus  
8 seemingly affirms this holding. We would do the same.

9 **O. February 2, 2015, to February 8, 2016**

10 {86} The district court vacated the February 2, 2015, trial setting and scheduled  
11 trial for February 8, 2016, as a result of “a congested court docket” and “the  
12 impending imposition of LR2-400” NMRA (subsequently amended and recompiled  
13 as LR2-308 NMRA). We agree with the Court of Appeals’ analysis, weighing this  
14 factor against the State. *Gurule*, A-1-CA-35724, mem. op. ¶ 17. In coming to this  
15 conclusion, the Court of Appeals cited *Garza*, 2009-NMSC-038, ¶ 29, which  
16 identified congested court dockets as negligent delay to be weighed against the State.  
17 The majority does not address this timeframe, and we again assume that it affirms  
18 the Court of Appeals.

1 **II. THE STATE BEARS THE VAST MAJORITY OF RESPONSIBILITY**  
2 **FOR THE LENGTHY DELAY IN THIS CASE**

3 {87} In sum, we would weigh approximately thirty-four months neutrally, twenty-  
4 nine months against the State, and seven months against Defendant. While different  
5 from the exact categorizations by the Court of Appeals, this finding would fall in  
6 line with its conclusion that this factor weighs heavily against the State. *Gurule*, A-  
7 1-CA-35724, mem. op. ¶ 18. We also note that, even under the totals it reached, the  
8 majority offers no authority for *not* weighing the presumptively excessive twenty-  
9 four months against the State due to a larger number of months being attributed to  
10 Defendant—essentially counterbalancing the State’s liability without providing a  
11 legal rationale for such a proposition. The analysis of how to assess each delay is not  
12 a balancing of whether the State or Defendant caused more delay. Instead, the  
13 analysis is whether the State caused delay of unconstitutional proportion. *See*  
14 *Barker*, 407 U.S. at 527 (“A defendant has no duty to bring himself to trial; the State  
15 has that duty as well as the duty of insuring that the trial is consistent with due  
16 process.” (footnote omitted)). There is no question that the time assessed against the  
17 State here is unconstitutional and violates Defendant’s right to a speedy trial.



1 **III. THE ASSERTION OF THE RIGHT FACTOR SHOULD WEIGH**  
2 **AGAINST THE STATE**

3 {88} The majority disagrees with the Court of Appeals’ holding that the “assertion  
4 of the speedy trial right” factor should weigh against the State. *Maj. op.* ¶ 39. We  
5 would affirm the Court of Appeals’ holding as to this factor. The majority’s primary  
6 reasoning for its holding is that because Defendant “acquiesced to several of the  
7 State’s continuances and moved for his own continuances,” this factor should weigh  
8 against him. *Maj. op.* ¶ 39. The majority relied on *Serros* for the proposition that we  
9 “first consider whether [the d]efendant is to blame for the delays . . . because he has  
10 personally caused or acquiesced to the delay in his case.” *Maj. op.* ¶ 37 (alteration  
11 and omission in original) (quoting *Serros*, 2016-NMSC-008, ¶ 43).

12 {89} The Court of Appeals acknowledged that this factor should only weigh  
13 slightly in Defendant’s favor. *Gurule*, A-1-CA-35724, mem. op. ¶ 20. Defendant  
14 asserted his right to a speedy trial on five different occasions. *Id.* He first asserted  
15 his right to a speedy trial as part of an entry of appearance on April 16, 2010. *Id.*  
16 Next, Defendant asserted his right on May 26, 2010, as a part of defense counsel’s  
17 entry of appearance in district court. *Id.* Defendant asserted his right a third time on  
18 January 22, 2015, again in conjunction with defense counsel’s entry of appearance.  
19 *Id.* The Court of Appeals gave these three assertions little weight, citing *State v.*  
20 *Urban*, 2004-NMSC-007, ¶ 16, 135 N.M. 279, 87 P.3d 1061, for the proposition that

1 “[s]uch pro forma motions are generally afforded relatively little weight in this  
2 analysis.” Defendant’s fourth and final assertions were filed on October 5, 2015, and  
3 February 4, 2016. *Gurule*, A-1-CA-35724, mem. op. ¶ 20. The majority also based  
4 its conclusion partially on the fact that Defendant’s assertions of the right were pro  
5 forma. *Maj. op.* ¶ 39.

6 ¶90} We disagree that *Urban* compels us to weigh this factor against Defendant.  
7 Our jurisprudence requires us to consider all of the circumstances surrounding the  
8 case before determining whether a defendant’s assertion of the right has been  
9 mitigated. *See State v. Ochoa*, 2017-NMSC-031, ¶ 42, 406 P.3d 505 (“In evaluating  
10 the [assertion of the right] factor, this Court has also noted the importance of closely  
11 examining the circumstances of each case.”). In *Garza*, the defendant only asserted  
12 his right to a speedy trial once as part of his waiver of arraignment and plea of not  
13 guilty. 2009-NMSC-038, ¶ 4. We acknowledged, “[T]he timeliness and vigor with  
14 which the right is asserted may be considered as an indication of whether a defendant  
15 was denied needed access to speedy trial over his objection or whether the issue was  
16 raised on appeal as afterthought.” *Id.* ¶ 32. We also emphasized the importance of  
17 analyzing the circumstances of each case. *Id.* ¶ 33. In doing so, we held that the  
18 defendant’s seemingly pro forma singular assertion of his right was sufficient for  
19 this factor to weigh in his favor, partially because he did not directly cause or

1 acquiesce to the delay in his case. *Id.* ¶ 34. Here, we cannot say that Defendant’s five  
2 assertions of his right to a speedy trial were “raised on appeal as afterthought.” *See*  
3 *id.* ¶ 32. Nor can we say that, under the circumstances, Defendant caused or  
4 acquiesced to most of the delay such that his five speedy trial right assertions are  
5 now void. While this Court’s jurisprudence indicates that we may consider whether  
6 a defendant’s assertions are pro forma, we disagree that this shifts the weight in favor  
7 of the state under the circumstances in this case. *See Ochoa*, 2017-NMSC-031, ¶ 41  
8 (“The frequency and force of the objections can be taken into account in considering  
9 the defendant’s assertion, as well as whether an assertion is purely pro forma.”).

10 {91} We also question courts’ continued reliance on *Urban* for the proposition that  
11 pro forma assertions of the right must be given slight weight. A defendant’s manner  
12 in asserting a constitutional right should not be diminished based on the form used  
13 to assert the right. While asserting the right timely and with vigor may afford more  
14 weight to the defendant under this factor, the fact that a defendant made such  
15 assertion via an entry of appearance should not lessen its impact.

16 {92} Finally, the Court of Appeals acknowledged, “To the extent that  
17 [Defendant’s] motions were efforts to expedite the time in which Defendant was  
18 brought to trial, . . . ‘Defendant’s assertions of the right were mitigated by his  
19 acquiescence to, and responsibility for, numerous delays.’” *Gurule*, A-1-CA-35724,

1 mem. op. ¶ 21 (quoting *Samora*, 2016-NMSC-031, ¶ 20). In our view, Defendant  
2 was not responsible for the vast majority of the delay in this case, but he did bear  
3 some responsibility for the delay. Moreover, Defendant asserted his right to a speedy  
4 trial five times. This leads to our conclusion that this factor should weigh against the  
5 State. Further, mitigating factors present sound reasoning for the Court of Appeals’  
6 conclusion that the weight is slight. Accordingly, we respectfully disagree with the  
7 majority that this factor should weigh in the State’s favor.

#### 8 **IV. THE EXTRAORDINARY DELAY IN THIS MATTER PREJUDICED** 9 **DEFENDANT**

10 ¶3} The majority contends that the prejudice factor weighs against Defendant. We  
11 disagree with this analysis, as it is contrary to our own jurisprudence. We therefore  
12 would affirm the Court of Appeals’ holding that Defendant suffered prejudice as a  
13 result of the lengthy pretrial incarceration he endured.

14 ¶4} This Court acknowledged in *Garza* that, “if the length of delay and the reasons  
15 for the delay weigh heavily in [the] defendant’s favor and [the] defendant has  
16 asserted his right and not acquiesced to the delay, then the defendant need not show  
17 prejudice for a court to conclude that the defendant’s right has been violated.” *Garza*,  
18 2009-NMSC-038, ¶ 39. It follows that “[a]lthough a defendant bears the burden of  
19 proving prejudice, this burden varies with the length of pretrial incarceration.”  
20 *Ochoa*, 2017-NMSC-031, ¶ 52. “Thus, the length of incarceration is a counterweight

1 to a defendant’s burden of production.” *Id.* ¶ 54. Therefore, the Court of Appeals  
2 held that “[a]s Defendant was incarcerated for over five years before he was brought  
3 to trial, we presume that he was prejudiced.” *Gurule*, A-1-CA-35724, mem. op. ¶  
4 23.

5 {95} This holding falls in line with this Court’s jurisprudence. This Court held in  
6 *Ochoa* that the defendant’s two-year incarceration was presumptively prejudicial.  
7 2017-NMSC-031, ¶ 57. We acknowledged “excessive delay presumptively  
8 compromises the reliability of a trial in ways that neither party can prove or, for that  
9 matter, identify.” *Id.* ¶ 56 (text only) (quoting *Doggett v. United States*, 505 U.S.  
10 647, 655 (1992)). Further, we held that “[c]ontinuous pretrial incarceration is  
11 obviously oppressive to some degree, even in the absence of affirmative proof.”  
12 *Ochoa*, 2017-NMSC-031, ¶ 57. Furthermore, this Court held in *Serros* that a period  
13 of four years of pretrial incarceration “is oppressive on its face.” 2016-NMSC-008,  
14 ¶ 90. Over five years of incarceration well exceeds the lapses of time that were found  
15 to be presumptively prejudicial in *Ochoa* and *Serros*.

16 {96} It is also important to recognize that even though the *Serros* Court discussed  
17 the circumstances surrounding the defendant’s incarceration, those circumstances  
18 ultimately were not a key factor in its finding of prejudice. The Court indicated this  
19 by stating that it “already [had] determined that the first three factors weigh heavily

1 in [the d]efendant’s favor, and [it] therefore need not consider whether [the  
2 d]efendant has made a particularized showing of prejudice.” *Serros*, 2016-NMSC-  
3 008, ¶ 87. In addition, the *Serros* Court only addressed the prejudice factor “to clarify  
4 what [it] view[ed] as a misapplication of the law by the Court of Appeals majority.”  
5 *Id.*

6 ¶97} Finally, we agree with the Court of Appeals and would affirm its analysis of  
7 the prejudice factor in *State v. Brown*, 2017-NMCA-046, 396 P.3d 171. In *Brown*,  
8 the Court of Appeals determined that the defendant was “substantially prejudiced”  
9 by a pretrial incarceration period of thirty-three months. *Id.* ¶ 36. The state presented  
10 other mitigating factors, “including that [the d]efendant finished his high school  
11 education, did not suffer reported incidents of violence, and did not receive any  
12 behavioral misconduct violations while incarcerated.” *Id.* However, the *Brown* Court  
13 determined those factors “d[id] not sufficiently affect the degree of prejudice  
14 suffered as a result of [the d]efendant’s extended pretrial incarceration.” *Id.* It  
15 reasoned that “[b]ecause [the d]efendant need not prove both undue pretrial  
16 incarceration and undue anxiety suffered, but may prove either, a determination of  
17 substantial prejudice arising from undue pretrial incarceration is justified in this  
18 case.” *Id.*

1 {98} Thus, under *Brown*, because the length of delay here was extraordinary, and  
2 because the reasons for delay weigh in Defendant’s favor, the delay in this case is  
3 presumptively prejudicial, and it is not necessary for Defendant to prove he suffered  
4 undue anxiety. *See id.*; *see also State v. Spearman*, 2012-NMSC-023, ¶ 36, 283 P.3d  
5 272 (“[W]e weigh this factor in the defendant’s favor . . . where the pretrial  
6 incarceration *or* the anxiety suffered is undue.” (second alteration in original)  
7 (quoting *Garza*, 2009-NMSC-038, ¶ 35)). This analysis would lead to the same  
8 conclusion as the Court of Appeals that “[a]lthough we acknowledge that  
9 Defendant’s initial and continued placement in segregation was the result of his  
10 conduct while in custody, we cannot ignore the oppressive impact the conditions and  
11 duration of his incarceration had on Defendant.” *Gurule*, A-1-CA-35724, mem. op.  
12 ¶ 29. We further agree with the Court of Appeals’ conclusion that “Defendant’s  
13 motions for continuances . . . resulted in only a minor delay in his pretrial  
14 incarceration. We therefore conclude that Defendant suffered extreme prejudice.”  
15 *Id.*

## 16 **V. CONCLUSION**

17 {99} We would hold that all four *Barker* factors weigh against the State, thus,  
18 Defendant’s speedy trial rights were violated. Our main disagreements with the  
19 majority are its weighing of periods of delay related to competency evaluations

1 against Defendant and its finding that Defendant suffered no prejudice as a result of  
2 almost six years of pretrial incarceration. For these reasons, we respectfully dissent.

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**C. SHANNON BACON, Chief Justice**

5 **I CONCUR:**

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**MICHAEL E. VIGIL, Justice**



## APPENDIX

### Months of Delay Weighed Against the Parties and Neutrally, in Three Courts

	State	Neutrally	Defendant
<b>District Court</b>	<b>33 months</b>	<b>20 months</b>	<b>16 months</b>
<b>Court of Appeals</b>	<b>37 months</b>	<b>20 months</b>	<b>13 months</b>
<b>Supreme Court</b>	37 months -3 months, 19 days -7 months, 18 days -1 month, 25 days = 37 months -11 months, 62 days = 37 months -13 months = <b>24 months</b>	20 months = = =	13 months +3 months, 19 days +7 months, 18 days +1 month, 25 days = 13 months +11 months, 62 days = 13 months +13 months = <b>26 months</b>