IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. RIGOBERTO INZUNZA, Respondent.	Case No. 75662

APPELLANT'S OPENING BRIEF

Appeal From Grant of Motion to Dismiss
Eighth Judicial District Court, Clark County

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

P. DAVID WESTBROOK
Deputy Public Defender
Nevada Bar #009278
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. RIGOBERTO INZUNZA, Respondent.	Case No. 75662

APPELLANT'S OPENING BRIEF

Appeal from Grant of Motion to Dismiss
Eighth Judicial District Court, Clark County

ROUTING STATEMENT

Routing of this appeal is submitted to the Supreme Court's discretion, as NRAP 17 expresses no presumption of retention or assignment to the Court of Appeals in an appeal from the granting of a motion to dismiss.

STATEMENT OF THE ISSUES

Whether the District Court Erred in Granting Inzunza's Motion to Dismiss.

STATEMENT OF THE CASE

On or between March 1, 2008, and October 31, 2010, Respondent Rigoberto Inzunza (hereinafter "Inzunza") sexually assaulted E.J., a minor. AA 38-42; 15-22. Between the time of the abuse and when E.J. disclosed to her therapist in 2014,

Inzunza left Nevada. See AA 5; 106-07. After a Criminal Complaint and warrant issued in December of 2014, Inzunza was eventually arrested in New Jersey on January 29, 2017. AA 1-4; 5.

On December 5, 2014, Inzunza was charged by way of Criminal Complaint with ten counts of Sexual Assault with a Minor Under Fourteen Years of Age and five counts of Lewdness with a Child Under the Age of 14. Appellant's Appendix (hereinafter "AA") 186; 1-4.

Inzunza was arrested on January 29, 2017. AA 5. On March 8, 2017, the Grand Jury convened, and on March 9, 2017, the State filed an Indictment charging Inzunza with Counts 1 through 3, 5 through 8 and 11 through 14 – Sexual Assault with a Minor Under Fourteen Years of Age; and Counts 4, 9, 10, 15 and 16 – Lewdness with a Child Under the Age of 14. AA 6-37; 38-44. On March 15, 2017, the State dismissed the Criminal Complaint and that case was closed. AA 187.

On March 20, 2017, Inzunza was arraigned by the district court, pleaded not guilty, waived his right to trial within 60 days, and his trial was set to begin on December 4, 2017. AA 45-46.

On January 29, 2018, at calendar call, defense counsel raised an oral motion to continue the trial so he could further investigate his case and try to obtain the victim's counseling records. Inzunza's trial was continued to April 23, 2018. AA 47-48.

On March 2, 2018, Inzunza filed a Motion to Dismiss, Pursuant to Doggett v. United States, for Violation of State and Federal Constitutional Rights. AA 49-76. On March 13, 2018, the State filed its Opposition, and on March 15, 2018, Inzunza filed a Reply. AA 77-83; 84-91. An evidentiary hearing was held on April 4, 2018, at which time the district court granted Inzunza's Motion. AA 92-167. The district court's Order was filed on April 11, 2018. AA 168-80. The State filed a Notice of Appeal on April 16, 2018. AA 181-82.

STATEMENT OF THE FACTS

Victim E.J. was born on January 18, 1999. AA 12. Inzunza was a family friend who was a little older than E.J.'s mom. AA 13. He previously lived with her and her mother at apartments on Yerba Lane in Las Vegas, Clark County, Nevada. Id. While living at the Yerba Lane Apartments in September of 2008, Inzunza touched E.J. inappropriately with his penis, his fingers, his tongue, and would make her suck on his penis. AA 13-14. Inzunza would also touch her breasts under her clothing. AA 19. E.J. had two other siblings living with her, but Inzunza would wait until E.J.'s mom was at work and would rape only her. AA 15. Once E.J.'s mother was gone and her siblings were asleep, Inzunza would wake her up and take her to his room. Id. E.J. testified that Inzunza would do these things to her "almost every night." AA 16.

After the Yerba Lane Apartments, E.J. and her family moved to a house on Celeste Avenue, and Inzunza also lived with her family in that house. AA 20. In that house, Inzunza would rape E.J. in the same manner as he did at the apartment. AA 21. In addition, Inzunza would rub his penis on E.J.'s vagina while they were both naked. AA 24. After approximately one year, E.J.'s family moved out of the Celeste Avenue house into a house on Webster Circle. AA 25. Again, Inzunza lived with the family at that house and continued to rape E.J. in the same manner. AA 25-26. Inzunza told E.J. that if she told anyone he would harm her family and/or get her in trouble. AA 22-23.

On October 30, 2014, E.J. disclosed to her therapist that she was abused by Inzunza. AA 105. An investigation began and a Criminal Complaint was filed on December 5, 2014, charging Inzunza with conduct related to E.J.'s allegations, and a warrant issued for Inzunza's arrest. AA 186; 1-4. Inzunza was eventually arrested in New Jersey on January 29, 2017. AA 5.

SUMMARY OF THE ARGUMENT

The district court abused its discretion by granting Inzunza's Motion to Dismiss. First, although the delay in time between filing the Criminal Complaint and Inzunza's arrest was sufficient to trigger the threshold question for Sixth Amendment purposes, the district court was still required to examine how the length of the delay impacted Inzunza, which it did not do. Second, the district court erred

in ruling that the government was negligent in its pursuit of Inzunza. The detective assigned to the case properly followed the procedure in place by the North Las Vegas Police Department. He attempted to located Inzunza within the jurisdiction, and then took the steps necessary for an arrest warrant to issue. Even if the detective's actions were negligent, the negligence of the government did not outweigh the remaining factors, and the district court abused its discretion by so ruling. Third, because Inzunza was not aware of the charges against him he could not invoke his right to a speedy trial, and the district court therefore did not consider this a relevant factor. Fourth, the district court erred in ruling that the presumptive prejudice was great. Inzunza did not suffer prejudice as a result of pre-trial incarceration or anxiety. Instead, the only prejudice he could have suffered was evidentiary prejudice. However, evidentiary prejudice must be considered in light of the length of the delay. The delay in this case was far less than the eight and a half year delay in Doggett.[1] Further, the Legislature has found that the evidentiary prejudice for a delay of this length is acceptable in a case involving the sexual assault of a child. Indeed, the State voluntarily dismissed the Criminal Complaint and established a separate case via indictment. Such was permissible because the statute of limitations had not expired. Therefore, it cannot logically be said that the delay alone is presumptively prejudicial enough to justify dismissing the case. Taken as a whole,

[1] Doggett v. United States, 505 U.S. 647, 112 S. Ct. 2686 (1992).

the district court failed to consider one necessary factor, and gave impermissible weight to two others. Therefore, the court abused its discretion and reversal is warranted.

ARGUMENT

Inzunza's Sixth Amendment Speedy Trial Right Was Not Violated

"Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay." Doggett v. United States, 505 U.S. 650, 651-52, 112 S. Ct. 2686, 2690 (1992). If this hurdle is overcome, a court determines if a constitutional speedy trial violation has occurred by applying the four-part test laid out in Barker v. Wingo, which examines the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Prince v. State, 118 Nev. 634, 640, 55 P.3d 947, 951 (2002) (quoting, Barker v. Wingo, 407 U.S. 514, 530, 92 S. Ct. 2182, 2192 (1972)). The Barker factors must be considered collectively as no single element is necessary or sufficient. Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973) (quoting, Barker, 407 U.S. at 533, 92 S. Ct. at 2193). However, to warrant relief, "failure to accord a speedy trial must be shown to have resulted in prejudice attributable to the delay." Anderson v. State, 86 Nev. 829, 833, 477 P.2d 595, 598 (1970).

/ / /

a. Length of the Delay

In Doggett the Supreme Court examined the threshold requirement and the length of delay element together. Doggett, 505 U.S. at 651-52, 112 S. Ct. at 2690. The first part of this double inquiry is the threshold requirement. In order to meet the threshold requirement appellants must demonstrate "that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay. Id. The Court justified the imposition of this threshold requirement by noting that "by definition he cannot complain that the government has denied him a 'speedy trial' if it has, in fact, prosecuted the case with customary promptness." Id. at 651-52, 112 S. Ct. at 2690-91. Courts have generally found post-accusation delays to presumptively prejudicial as they approach the one-year mark. Id. at 652 n.1, 112 S. Ct. at 2691 n.1.

As to the threshold question, a Criminal Complaint was filed on December 5, 2014, and Inzunza was arrested on January 29, 2017. AA 1-4; 5. The State does not dispute that the two year and two month delay in apprehending Inzunza is sufficient to trigger the analysis.[2]

[2] It is important to note that it is this two year and two month time period between the filing of the Criminal Complaint and Inzunza's arrest that the district court based its decision upon. AA 164. In his Motion to Dismiss before the district court Inzunza conflated the issues and complained of the length of the entire process, including that from after he was arrested and a separate case via indictment was established. AA 53. However, the period after arrest was not a consideration for the district court when making its decision, and is therefore not an appealable issue here.

However, even if a defendant satisfies the threshold question, the court is still required to consider "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." Doggett, 505 U.S. at 652, 112 S. Ct. at 2691. Inzunza did not address anything more than the threshold question in his Motion to Dismiss. AA 53-54. Likewise, the district court also did not address anything more than the threshold question. AA 155; 172-73. Unlike Doggett, wherein there was a delay of eight and a half years, in this case the delay was slightly over two years. While this is a lengthy delay, it is not so lengthy as to greatly prejudice Inzunza. Two years is a reasonable time frame in which to expect to be arrested after sexually assaulting a child. In other words, one would not, after just two years, think their crime had been forgotten or that the authorities had no interest in them. The Court in Doggett discussed that the defendant had moved in and out of the United States, interacted with government authorities, married, gone to college, found steady work, lived openly under his own name, and stayed within the law. Id. at 526-27, 112 S. Ct. at 2689. The length of time and change in the defendant's circumstances in that case would cause a reasonable person to believe the authorities were no longer interested in them. In this case, while some of the same factors may apply to Inzunza, the length of time was not nearly as long, nor was it sufficient to cause a reasonable person to believe there would be no repercussions for sexually assaulting a nine year old. As such, the length of delay

should not weigh in his favor. Moreover, the fact that the district court did not consider this factor beyond the threshold question, as required by Doggett, shows an abuse of discretion.

b. Reason for Delay

As for the second factor, the Barker Court made clear that different weights should be assigned to different reasons for delay. Barker, 407 U.S. at 531, 92 S. Ct. at 2192. While delaying in order to hamper the defense is weighed heavily against the State, negligence is weighed less heavily. Id. Similarly, delay for "a valid reason, such as a missing witness, should serve to justify appropriate delay." Id.

Here, there is no indication that the State delayed Inzunza's arrest in order to hamper the defense. At worst, the State, through the North Las Vegas Police Department (hereinafter "NLVPD"), was negligent in its pursuit of Inzunza. Detective Hoyt testified at the evidentiary hearing that after speaking with the victim and her mother he attempted to located Inzunza and could not so he submitted the case to the District Attorney's office for prosecutorial review. AA 106. At the time he submitted the case, the mother of the victim had provided Detective Hoyt with screenshots she had taken from Facebook which purported to show Inzunza's location. Id. Because there was not yet an arrest warrant and because he did not find Facebook to be a trustworthy investigative tool, Detective Hoyt did not follow up on the information from Facebook. Id. Indeed, Detective Hoyt testified that he

does not find social media in general to be trustworthy – at the time of testifying he had the persona of a 13 year old girl on his Facebook account and knew first-hand that information from Facebook can be misleading and inaccurate. AA 126. Moreover, because there had not been an arrest warrant issued, it would have been futile to contact authorities in New Jersey and ask them to look for Inzunza. AA 137-38. Even if authorities there found Inzunza, they would not have had authority to arrest him. Id. Instead, Detective Hoyt attempted to find Inzunza through local means. AA 106-07. While Detective Hoyt could not remember exactly what investigative leads he had followed, he remembered that he followed the limited information that was provided to him by the victim's mother. AA 125; 132. When that was unsuccessful, Detective Hoyt submitted the case to the District Attorney's office to see if an arrest warrant would issue. AA 107. He testified that once a case is submitted to the District Attorney, individual officers do not follow up on it due to their caseload. Id. Instead, the case is reviewed by the District Attorney's office, which can take two to four weeks. Id. Then it is presented to a judge, which can take an additional week or two. Id. If the judge approves the warrant, it is returned to the police department where it is put into NCIC. AA 108. The officer who initially sent the case to the District Attorney's office is never notified whether a warrant issued or not. Id. However, because NCIC is a national database, the suspect is subject to arrest in any jurisdiction if they come into contact with law

enforcement or undergo a background check. Id. While Detective Hoyt expressed his frustration at not having the manpower to follow up with each case, he recognized the limitations on the police department due to caseload and testified that he trusts NCIC to work as intended. AA 135-36.

As the Barker Court ruled, negligence on behalf of the State is a factor to be considered, but is not determinative. Barker, 407 U.S. at 531, 92 S. Ct. at 2192; see also, Sondergaard v. Sheriff, 91 Nev. 93, 95, 531 P.2d 474, 475 (1975) (wherein the State's inability to give *any* reason for the delay was "exceedingly disturbing" but did not outweigh the other factors). Indeed, in Barker, the Court found that the government purposefully delayed the accused's trial in order to strengthen its case, but that was not sufficient to overcome the other factors. Barker, 407 U.S. at 516, 536, 92 S. Ct. at 2184, 2195.

Here, Detective Hoyt followed the procedure set forth by the NLVPD. He was assigned a case, investigated it within his jurisdiction, and – when that was unsuccessful – submitted the case to the District Attorney's office so an arrest warrant could issue. At that point, the warrant was entered into NCIC so that Inzunza could be arrested through the normal course, whether that be interacting with law enforcement in some way, or something as simple as undergoing a background check for a job. Additionally, the North Las Vegas Problem Solving Unit also periodically checks NCIC for local warrants. AA 112. Detective Hoyt testified that

there are six detective assigned to the Special Victims Unit of the NLVPD, and he averages 50 cases at any given moment. AA 113.

The State does not concede that it was negligent of Detective Hoyt to follow the procedure established by the NLVPD. Although unlimited resources would be ideal, Detective Hoyt and the NLVPD must work within their means. The fact that Inzunza left the jurisdiction and could not be located was a valid reason for the delay, and should serve to justify the delay. Barker, 407 U.S. at 531, 92 S. Ct. at 2192.

Even assuming, *arguendo*, that the procedure in place by the NLVPD was negligent, that factor must still be weighed against the others. The district court did not do that. The district court did not address the length of delay beyond the triggering factor, did not consider the lack of assertion of his right to a speedy trial relevant, did not consider whether Inzunza was actually prejudiced, and did not properly weigh the presumptive prejudice. Thus, the district court's main focus was on whether the State caused the delay. However, without weighing that against the other factors, government negligence is not sufficient to dismiss a case and the district court abused its discretion by doing so.

c. Inzunza's Assertion of His Right to a Speedy Trial

As for the third Barker factor, Inzunza did not assert his right to a speedy trial during the time frame considered by the district court. During the evidentiary hearing, the district court repeatedly stated that its ruling was based on the two year

time period between the State filing the Criminal Complaint and Inzunza being arrested. AA 164. During this time frame Inzunza did not know there were criminal charges pending against him and therefore did not assert his speedy trial right. AA 145. Inzunza argued before the district court that this factor weighed in his favor because he preserved his federal speedy trial rights at arraignment. AA 56. However, because the time period after arrest was not a consideration in the district court's ruling, Inzunza cannot be said to have asserted his right during the time period in question and the district court ruled that this factor was therefore not relevant. AA 155; 176-77.

d. Prejudice to Inzunza

As for the fourth Barker factor, Inzunza was not harmed by the delay. When examining prejudice, courts look to "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence." Doggett, 505 U.S. at 654, 112 S. Ct. at 2692 (internal citations omitted). As in Doggett, the only one of these which could apply to Inzunza is the last form of prejudice. Inzunza was not incarcerated during the time frame considered by the district court, nor does it appear he knew of the charges so he could not have suffered any anxiety due to them. AA 145. Because the only remaining type of prejudice, evidentiary prejudice, is

difficult to prove, it is presumed to exist and it is presumed to grow stronger over time. Id. at 656, 112 S. Ct. at 2693.

In spite of the presumptive prejudice, if this Court finds that the procedure in place by the NLVPD constituted reasonable diligence, Inzunza's claim must fail absent a showing of specific prejudice to his defense. Doggett, 505 U.S. at 656, 112 S. Ct. at 2693. Regarding the time frame between the filing of the Criminal Complaint and his arrest, Inzunza complained to the district court that he would not be able to present an alibi defense because he could not reliably account for his whereabouts and defense witnesses would be less reliable because of decreased memory. AA 58. Additionally, Inzunza presumed the State would argue a lack of physical evidence due to the delay rather than there being a lack of physical evidence because the acts did not occur. Id. None of these constitute showings of specific prejudice. Rather, they are mere suppositions of what may happen due to the delay. Inzunza did not claim to have an alibi, nor did he present any evidence that witnesses would not be able to speak on his behalf. His speculations about the way the State may present its evidence, likewise, does not actually show he has suffered prejudice. Thus, to the extent the NLVPD diligently pursued Inzunza by following its policy, Inzunza's claim must fail and the district court erred by dismissing the case.

Assuming, *arguendo*, that the delay was caused by negligence on part of the government, such delay is not "tolerable simply because the accused cannot

demonstrate exactly how it has prejudiced him." Doggett, 505 U.S. at 657, 112 S. Ct. at 2693. However, the Doggett Court ruled that "negligence *unaccompanied* by particularized trial prejudice *must have* lasted longer than negligence demonstrably causing such prejudice." Doggett, 505 U.S. at 657, 112 S. Ct. at 2694 (emphasis added). Indeed, presumptive prejudice alone is not sufficient to support a Sixth Amendment claim without regard to the other factors, and the importance of presumptive prejudice increases with the length of delay. Id. at 656, 112 S. Ct. at 2693.

Here, however, the length of delay is not sufficient for the presumptive prejudice to justify dismissal of the case. Unlike Doggett, wherein *eight and a half years* had passed, Inzunza was arrested two years and two months after the initial Criminal Complaint was filed. The Supreme Court made clear that presumptive prejudice increases over time, and it was only where a significant amount of time had passed that the Court found that presumptive prejudice was sufficient to justify dismissal. Here, almost one-quarter of the amount of time had passed as in Doggett. As discussed *supra*, two years and two months is not a sufficient amount of time to cause a reasonable person to think they would not still be liable for sexually assaulting a child. Moreover, Inzunza was arrested within the statute of limitations

for this crime.[3] While filing charges within the statute of limitations does not automatically overcome a speedy trial violation, it goes to the actual prejudice endured by a defendant. Every moment from the occurrence of a crime to the trial arguably lessens memory and carries a risk of degraded evidence in every case. In spite of that, the Legislature has spoken that certain time periods are acceptable – i.e., the risk of evidentiary prejudice is not overwhelming. Particularly in cases of heinous or serious crimes, the Legislature has decided that prejudice associated with delays is not to be weighed as heavily. See NRS 171.095(b)(1) (child sexual assault charges may be brought until the victim is 36 years old); NRS 171.083 (sexual assault has no statute of limitations if a written report is filed with law enforcement). To claim that Inzunza is presumptively prejudiced by a level of evidentiary prejudice deemed appropriate by the Legislature is nonsensical and should not be a basis for dismissal.

[3] The district court found that the State did not rebut the presumption of prejudice because it focused on Inzunza's part in causing delays after his arrest and not the time period the court was concerned with. AA 179. However, Inzunza's Motion to Dismiss focused largely on the time period after arrest, arguing that he suffered prejudice due to pre-trial incarceration and anxiety. AA 57-58. That is what the State responded to in its written Opposition. AA 81-82. At the evidentiary hearing, when the court clarified the time period it was interested in, the State attempted to offer argument as to the prejudice, including an argument regarding the statute of limitations, and was told to stop by the district court. AA 144-45. Instead of disobeying a court order, the State moved on to discuss the remaining factors. Id.

The State could have simply waited until Inzunza was arrested to bring charges against Inzunza. Indeed, from Inzunza's perspective, that is exactly what happened. He was not aware of the charges. He was not incarcerated or suffering any anxiety from these charges. The fact that the State filed a Criminal Complaint when a warrant issued rather than waiting to file it when Inzunza was arrested is not dispositive. The State could have waited until Inzunza was arrested in 2017 and filed the charges then. In fact, under the current Indictment, that *is* what happened. When Inzunza was returned to Las Vegas, the State chose to proceed to the Grand Jury and dismiss the Criminal Complaint. AA 187. Because the statute of limitations had not expired, the State was able to secure an Indictment through the Grand Jury. Thus, to the extent the district court found fault with the Criminal Complaint, it abused its discretion by failing to recognize that the Indictment constituted a new case (including an additional charge and a different date range). Compare AA 1-4 with AA 38-43. Therefore, Inzunza's complaint is that the Criminal Complaint for a *now closed case* lingered for just over two years. The case which he is complaining about no longer exists because it was voluntarily closed by the State. Thus, as to *this* case, Inzunza failed to show he suffered any prejudice, and the district court abused its discretion by dismissing this case based on a finding of presumptive prejudice on a separate case.

Moreover, this Court has previously addressed a substantially similar case. In State v. Fain, 105 Nev. 567, 568, 779 P.2d 965, 965 (1989), the defendant was suspected of committing a murder but the State did not have enough evidence to move forward. Two years later the defendant pleaded guilty to murder in a separate case. Id. Three years after that, the defendant called the police and wished to discuss the initial murder, indicating that he may have been involved. Id. The police asked the District Attorney's office to file a complaint, which it did. Id. However, in spite of the defendant being incarcerated and easily accessible to police, the complaint was not served on the defendant. Id. Three years after *that*, the defendant again called police and it was discovered there was an active warrant. Id. A second complaint was filed. Id. The justice court dismissed the complaint due to a Sixth Amendment violation. Id. at 568, 779 P.2d at 966. The State then obtained an indictment, which the district court dismissed. Id. Despite finding that the delay was substantial, that there was negligence on behalf of the State, and that the defendant asserted his right after being served with the complaint, this Court overturned the district court because the defendant did not demonstrate significant prejudice. Id. at 569-70, 779 P.2d at 966-67. This Court found that "[p]rejudice to the accused is a paramount concern in speedy trial cases," and that "'bare allegations of impairment of memory, witness unavailability, or anxiety, unsupported by affidavits or other offers of proof, do not demonstrate a reasonable probability that

the defense will be impaired at trial or that defendants have suffered other significant prejudice.'" Id. at 569, 779 P.2d at 966 (quoting Sheriff v. Berman, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983)). Moreover, "while a showing of prejudice to the defense is not essential, *the court may weigh such a showing, or its absence, more heavily than other factors*." Id. at 570, 779 P.2d at 967 (citing Berman, 99 Nev. at 107, 659 P.2d at 301). While Fain predates Doggett, Doggett does not change the analysis except to clarify that evidentiary prejudice may be presumed – however, that still must be examined in light of the length of delay, as well as weighed against the other factors.

In this case, the Indictment constituted an entirely new case and Inzunza failed to demonstrate prejudice – or any of the factors – as to this case. Even taking the events as a whole, the length of delay was significantly shorter than Doggett, where the Court ruled that the presumption of evidentiary prejudice warranted relief. Moreover, the presumption of evidentiary prejudice in this case should be viewed lightly, as Inzunza was arrested well within the time frame governed by the Legislature.

The district court did not allow the State to present its argument regarding prejudice. Moreover, the court failed to recognize that the presumptive prejudice applied to a separate case. Even conflating the two cases, the presumptive prejudice was slight, due to the significantly shorter timeframe here than in Doggett and the

fact that the level of evidentiary prejudice has been deemed appropriate by the Legislature.

In this case, the district court failed to address the length of delay beyond the threshold question. It erroneously ruled that the NLVPD acted with gross negligence. Even if the NLVPD was negligent, the district court failed to give that factor the appropriate weight given the other factors. The district court properly ruled that Inzunza's assertion of his right was not a relevant factor, but improperly refused to let the State present an argument on prejudice for the relevant time period, and gave the presumptive evidentiary prejudice too much weight given the time period. Taken as a whole, the district court abused its discretion by granting the Motion to Dismiss, and its ruling should be overturned.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the district court's grant of Inzunza's Motion to Dismiss be REVERSED.

Dated this 24th day of September, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 4,856 words and 20 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of September, 2018.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 24th day of September, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

P. DAVID WESTBROOK
Deputy Public Defender

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

/s/ J. Garcia
Employee, Clark County
District Attorney's Office

JEV/Ann Dunn/jg