IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, vs. RIGOBERTO INZUNZA, Respondent.	)	NO. 75662

RESPONDENT'S ANSWERING BRIEF

(Appeal from Grant of Motion to Dismiss
Eighth Judicial Distrtict Court, Clark County)

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Appellant,	)	
	)	
vs.	)	
	)	
RIGOBERTO INZUNZA,	)	
	)	
Respondent.	)	
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RESPONDENT'S ANSWERING BRIEF

STATEMENT OF ISSUES

Whether the district court abused its discretion by granting Respondent's "Motion to Dismiss, Pursuant to **Doggett v. United States**, for Violation of State and Federal Constitutional Rights."

STATEMENT OF THE CASE AND FACTS[1]

On November 3, 2014, the North Las Vegas Police Department began investigating allegations of sexual abuse involving Respondent Rigoberto Inzunza. (AA 52, 71). The police were aware that Mr. Inzunza was living in New Jersey and they had his home and business addresses, his cell phone number, and detailed information from his public Facebook profile. (AA 71-

[1] Because the procedural and factual histories in this case are inextricably entwined together, Mr. Inzunza is presenting the Statement of the Case and Statement of the Facts together in a single section.

72, 137).[2] Mr. Inzunza had enabled location settings on his Facebook account, allowing Facebook to pinpoint his exact location on a map when he entered certain commercial establishments and public areas, like restaurants and parks. This information was displayed on his Facebook page for anyone to see. (Respondent's Appendix (RA) at 34-36).

On December 3, 2014, a criminal complaint was publicly filed, charging Mr. Inzunza with ten counts of sexual assault with a minor and five counts of lewdness with a child. (AA 1-5). Along with the criminal complaint, a warrant for Mr. Inzunza's arrest was issued. (AA 5, RA 80-88); see also, Appellant's Opening Brief ("AOB") at 2.

Despite having detailed and accurate information about Mr. Inzunza's precise whereabouts, the State of Nevada **never notified him** about the arrest warrant and the fifteen serious charges pending against him. Mr. Inzunza first learned about the charges on January 29, 2017, when he was arrested in New Jersey on the outstanding warrant. (AA 5, 50, 170). This was **two years and two months** after the charges were originally filed. (AA

[2] A "Crime Report" dated November 18, 2014 listed Mr. Inzunza's home and business addresses in New Jersey (AA62) along with his current cellular phone number, and information from his public Facebook profile. (AA 71-72).

1-5). Until that time, Mr. Inzunza had **no knowledge** that he had been publicly charged with any crime by the State of Nevada. (AA 5, 50, 170).[3]

On February 11, 2017, Mr. Inzunza was transported to Nevada and booked into the Clark County Detention Center pursuant to the 26-month old warrant. (AA 5).

On March 8, 2017, a Grand Jury was convened. (AA 6-37). On March 9, 2017, the State filed an Indictment in district court charging Mr. Inzunza with 11 counts of sexual assault with a minor and 5 counts of lewdness with a child. (AA 38-44).

At his arraignment on March 20, 2017, Mr. Inzunza waived his statutory right to a trial within 60 days pursuant to **NRS 178.556(2)**, but **expressly reserved the right to raise a federal speedy trial claim.** (AA 56, 99, 146, 169).

A. Mr. Inzunza's Motion to Dismiss

On March 19, 2018, Mr. Inzunza filed his motion to dismiss the charges against him pursuant to **Doggett v. United States**, 505 U.S. 647

[3] In its Statement of the Facts, Appellant recounts the inflammatory allegations against Mr. Inzunza as though they are established "facts". However, there has been no trial in this case and Mr. Inzunza remains innocent of these charges unless proven guilty. Indeed, the only "facts" that have been found by the court in this case are: (1) that the State was "grossly negligent" in failing to prosecute Mr. Inzunza for 26 months after publicly charging him with these crimes, and (2) that Mr. Inzunza lacked knowledge of the pending charges during the relevant time-frame. (AA 178).

(1992). (AA 49-76). In his motion to dismiss, Mr. Inzunza presented evidence that the North Las Vegas Police Department was aware of his location for more than 2 years, but failed to take any actions to arrest him or even *notify* him of the pending charges. (AA 50-52). Mr. Inzunza attached a copy of a North Las Vegas "Crime Report" dated 11/18/2014, listing Mr. Inzunza's actual home address and his actual work address in New Jersey, proving that the State knew exactly where he was. (AA 50, 62). The "Crime Report" also included Mr. Inzunza's license plate number, his business telephone number, and even his public Facebook page. (AA50, 66). Mr. Inzunza attached a declaration demonstrating that the State had the accurate contact information for him for the entire 26-month period that the charges were pending against him, but that it failed to contact him until his arrest more than 2 years later. (AA 50). Mr. Inzunza argued that this delay was presumptively prejudicial under **Doggett** and violated his speedy trial rights under the Sixth Amendment to the United States Constitution. (AA 53).

The State filed a written opposition to Mr. Inzunza's motion to dismiss on March 13, 2018. (AA 77-83). However, the State's opposition failed to address either the cause *or* the legal effect of its 26-month delay in arresting Mr. Inzunza. (AA 81). Instead, the State made a conclusory claim

that the pre-arrest delay was "not extraordinarily long" and then argued that all post-arrest delays were Mr. Inzunza's fault. (AA 81-82).

Mr. Inzunza filed a Reply in support of his motion to dismiss on March 15, 2018. (AA 84-91).

B. The Hearings on Mr. Inzunza's Motion to Dismiss

On March 19, 2018, the district court heard oral argument on Mr. Inzunza's motion to dismiss. (RA 22-30).[4] At the hearing, the district court expressed "concern" that the State's opposition had not actually addressed the issue raised by Mr. Inzunza about the presumptively-prejudicial 26-month delay between the filing of the criminal complaint and Mr. Inzunza's arrest. (RA 22-23). The district court explained that **Doggett** required an evidentiary hearing to find out what efforts the State had taken to locate Mr. Inzunza after filing the criminal complaint. Id. The district court informed the State that it needed to know "what steps, if any, they took" to locate Mr. Inzunza and whether there was "any evidence that he knew" of the charges during that time-frame. (RA 26). The State agreed that an evidentiary hearing was the "only way" to get the district court that information and stated that it would "get Detective Hoyt, here for a hearing on the Court's pleasure". (RA 27).

[4] Argument regarding the Motion to Dismiss begins at RA 22, Ln. 21.

The evidentiary hearing was held on April 4, 2018. (AA 92-167). At the hearing, Detective Hoyt, the lead detective in the case, made a number of damning admissions that established the State was "grossly negligent" in failing to locate Mr. Inzunza. (AA 175). Although Detective Hoyt had *all* of Mr. Inzunza's contact information at his fingertips before submitting the case to the District Attorney's office,[5] Detective Hoyt admittedly did nothing with that information:

> Q Now, at the time of the submission you were provided with an email that had photographs attached purporting to be where [Mr. Inzunza] was, correct?
>
> A Correct, yes.
>
> Q Can you talk about how that came about?
>
> A That was the mother of the victim. She had – she gave me all the information that I was using to try to make contact with both. And the – some of those emails included some Facebook pictures, screen shots, if you will, of possible locations for Rigoberto.
>
> Q Did you do any follow-up on those Facebook pictures, screenshots that you recall?
>
> A I did not, no. I did local stuff, but it's Facebook, so it's – can't really trust the stuff on Facebook right now.

(AA 106).[6] Although Detective Hoyt had a picture of Mr. Inzunza's vehicle that had his current phone number on it, Detective Hoyt never tried calling

[5] Detective Hoyt testified that he submitted the case to the District Attorney's office on November 19, 2014 and that the criminal complaint was issued just two weeks later on December 3, 2014. (AA125).

[6] Later in the hearing, Detective Hoyt claimed that he *did* look at Mr. Inzunza's Facebook page but was unable to find him. (AA126). However,

that phone number. (AA 130-31). Although Detective Hoyt had access to Mr. Inzunza's public Facebook profile, he never left a message on that page notifying Mr. Inzunza of the charges or the warrant. (AA 129). Detective Hoyt never contacted any of Mr. Inzunza's Facebook friends in an effort to find him. (AA 128). When questioned directly by the court, Detective Hoyt admitted that he did not call "anybody, any friends or associates of the Defendant" in an effort to locate him. (AA 132).

Rather than take any affirmative steps to apprehend Mr. Inzunza, Detective Hoyt merely "hoped" that Mr. Inzunza would be found someday:

> After we submit the case to the District Attorney's Office, it goes into a file cabinet. In there we're **hoping** that that arrest warrant is issued. And then we're **hoping** that NCIC in another jurisdiction would **hopefully** pick him up if not ours. So this is just in **hopes** that he is located. I wish there was more we could do.

(AA 136)(emphasis added).

Detective Hoyt testified that once a case has been submitted to the District Attorney's office, it is "pretty much just out-of-sight out-of-mind when it comes to follow-up." (AA 107). Detective Hoyt used the phrase

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Detective Hoyt admitted that Mr. Inzunza's Facebook page contained GPS information identifying his precise location on multiple dates. (AA 127). Detective Hoyt further admitted that Mr. Inzunza's Facebook page identified multiple "friends" that he could have contacted, but chose not to. (AA 126-28).

"out-of-sight out-of-mind" at least **three** additional times during the hearing to explain his complete lack of diligence:

- (AA107) ("It goes into a case file and **out-of-sight out-of-mind** for us until we get subpoenaed in this instance.")
- (AA135) ("I've submitted my case to the District Attorney in hopes that they issue the arrest warrant. If they do then **out-of-sight, out-of-mind** for me, so.")
- (AA137) ("So at that point when I submit the case the arrest warrant is not issued, so if it takes a month or two to be issued, and we're never notified and it's **out-of-sight out-of-mind**.")

After listening to Detective Hoyt's troubling testimony, the district court asked Detective Hoyt why he couldn't have simply picked up the phone and contacted authorities in New Jersey to locate Mr. Inzunza. (AA 137). In response, Detective Hoyt admitted that he has called other jurisdictions when investigating "high profile" cases in the past, but he chose not to here because, "this is a – I hate to say it but a common sexual assault. We deal with this a lot. So much so, to where it's common practice for us to just submit the case, and hope[] that a warrant's issued." (AA 137). The court pressed Detective Hoyt further:

> Q Okay, but do you – do you understand that under our constitution there's a right to a **speedy trial**?
>
> A **Yes**.
>
> Q And that that starts to **attach** as soon as an arrest warrant has – a Complaint a **charging document has been filed?**
>
> A **Yes**.

Q And you knew that? And did you know that you're potentially then by not following up **jeopardizing the Defendant's right to a speedy trial**?

A **If I know where he is, I guess**, but I don't know exactly – what I have is Facebook. I don't really rely on information from Facebook.

. . . .

Q Okay. So you're still not understanding about this right to speedy trial thing, the Sixth Amendment?

A Okay.

Q So did you go through the academy?

A Yes.

Q Okay. Okay. Did they talk to you about the – how long have you been a Detective?

A Almost ten years.

Q Okay. So the case law regarding right to speedy trial *Barker versus Wingo*, the *Doggett* case for that matter, has all been Black Letter Law since you've been a Detective. You don't remember anything about that? How about – how you need to try and follow those leads so that at least you're telling the Defendant: Hey we want you. You've committed a crime, you need to come in and talk to us. Try and locate him, because otherwise **you're jeopardizing the case**. You don't know anything about that?

A **I do know that, yes**. I just -- I --

Q You do know that, okay?

A -- we just -- I wish we had the time to do it.

Q Okay, so you intentionally just left it because you figured well if we ever pick him up, well that will be good enough?

A I don't intentionally do that, ma'am, no. I just -- it's with the caseload that we have we just hope that he gets picked up in a timely manner. I never intentionally, not do something, against the Sixth Amendment, no ma'am.

(AA 138-140)(emphasis added). After listening to Detective Hoyt's shocking testimony, the district court found that the State had been grossly

negligent in failing to locate Mr. Inzunza for 26 months. (AA 175). The district court also found that Mr. Inzunza was unaware of the charges during those 26 months. (AA 151).

C. The District Court's Order Granting Defendant's Motion to Dismiss

On April 11, 2018, the district court filed a detailed, 12-page Order Granting Defendant's Motion to Dismiss. (AA 168-180). In its Order, the court correctly identified and applied the four-part test set forth in **Barker v. Wingo**, 407 U.S. 514 (1972) and **Doggett v. United States,** 505 U.S. 647 (1992). (AA 171-79). Specifically, the district court considered "the length of the delay, the reason for delay, the defendant's assertion of his right, and prejudice to defendant." (AA168-180).

First, the district court found that the 26-month delay was "presumptively prejudicial" and, therefore, sufficient to trigger the speedy trial analysis. (AA 172). Second, the district court found that the State was solely responsible for the 26-month delay and that, based on the testimony from Detective Hoyt, the delay was attributable to the State's "gross negligence" – which was to be weighed more heavily against the government than "mere negligence". (AA 173-179). The district court deemed Detective Hoyt's testimony to be "shocking" and found the delay to be the result of "willful neglect" on the part of the State. (AA178). Third,

the district court found that Mr. Inzunza did not waive his right to a speedy trial because he "could not have asserted his right to a speedy trial before his arrest on the warrant". (AA176-177). Fourth, because the "26 month delay was solely due to the state's gross negligence", the district court properly required the State to rebut the presumption of prejudice. (AA177-78). Although the district court gave the State chances to rebut the presumption of prejudice both in writing and at the evidentiary hearing, the State "offered nothing". (AA 171,177-179).[7] After weighing all four factors, the court ruled that **Doggett** compelled dismissal of the charges. (AA179). The State filed a notice of appeal on April 16, 2018. (AA 38-44).

SUMMARY OF THE ARGUMENT

The district court's decision to grant Mr. Inzunza's motion to dismiss was not an "abuse of discretion." Before granting the motion, the district court reviewed written briefs submitted by both parties, did exhaustive independent research, and held two oral arguments, including, a **one hour 35-minute** evidentiary hearing. The court properly identified the four-part legal test established by **Doggett** and **Barker** and considered arguments as to each prong. Rather than ruling from the bench immediately following the

[7] Both before and after Detective Hoyt testified, the State was given multiple opportunities to explain why Mr. Inzunza's motion should be denied. (AA95-103;144-45;147-49;152-54;156-57;163-64).

evidentiary hearing, the court considered the matter for a full week before issuing a detailed, accurate, and well-researched 12-page order granting Mr. Inzunza's motion to dismiss. It would be difficult to imagine a more cautious, considered, and complete application of judicial discretion. The district court's decision is entitled to considerable deference and must be affirmed.

In its appeal, the State is asking this Honorable Court for a bailout, plain and simple. The State wants the Court to *ignore* the willful and appalling lack of diligence by their lead detective, the dearth of credible arguments made by the State at the district court level, and most of all, the clearly established requirements of the Sixth Amendment and the **Doggett** line of cases. The State has failed to support its arguments with relevant legal precedence or citation to the record—even the numerous *new* arguments it improperly advanced for the first time on appeal. As a result, there are no grounds to reverse the ruling of the district court. The case should be affirmed.

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ARGUMENT

I. The District Court did not abuse its discretion in dismissing the case against Rigoberto Inzunza.

A. Standard of Review

In its Opening Brief, the State asks this Court to apply an abuse of discretion standard of review. See AOB at 4, 6, 20. Mr. Inzunza agrees that this Court should apply an abuse of discretion standard of review on appeal in this case. See **United States v. Santiago-Becerril**, 130 F.3d 11, 21 (1st Cir. 1997) ("This court reviews a district court's speedy trial determination under the Sixth Amendment for abuse of discretion.")

As the Supreme Court explained when it first announced the four-factor balancing test for speedy trial claims in **Barker v. Wingo**, 407 U.S. at 528-29, the balancing test "allows the trial court to exercise a judicial discretion based on the circumstances" and permits courts to attach "different weight[s]" to different situations.

As set forth herein, there is no clear showing of an abuse of discretion—that the district court failed to exercise its discretion or that its application of the four **Barker** factors exceeded the bounds of reason or rested on an error of law or fact. See **Jackson v. State**, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) ("An abuse of discretion occurs if the district

court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason."). This Court should affirm.

B. Legal Standards Applicable to Sixth Amendment Speedy Trial Claims

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial". **U.S. Const. amend. VI**. The right to a speedy trial is a fundamental right enforced against the states through the Fourteenth Amendment of the United States Constitution. **Barker**, 407 U.S. at 515. When a defendant's right to a speedy trial has been violated, dismissal "is the only possible remedy." **Id.** at 522.

In **Barker**, 407 U.S. at 531, the Supreme Court identified four factors that courts must consider when determining if a defendant's speedy trial right has been violated: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." How trial courts weigh those four factors is a matter of "judicial discretion based on the circumstances." See **Id.** at 528-29.

As to the first factor, in order 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**, 505 U.S. at 651-52. Courts have generally found delay

"presumptively prejudicial" as it approaches the **one year** mark. **Id**. at 652 n.1(emphasis added).

As to the second factor – the reason for the delay – different weights should be assigned to different reasons:

> Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, *neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him*.

Doggett, 505 U.S. at 656-67 (emphasis added). Furthermore, although mere negligence is weighed less heavily than a "deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun." **Id.**

As to the third factor – the defendant's assertion of his speedy trial right – the Supreme Court recognized that it would be unfair to require a defendant to demand a speedy trial while "unaware of the charge" or while "without counsel." **Barker**, 407 U.S. at 529 n.28. Therefore, a defendant "is not to be taxed for invoking his speedy trial right only after his arrest." **Doggett**, 505 U.S. at 654.

The fourth factor – prejudice to the defendant – should be assessed in light of the defendant's interests. **Barker**, 407 U.S. at 532. Prejudice

generally derives from: (1) oppressive pre-trial incarceration; (2) anxiety and concern caused by excessive confinement and delay; or (3) impairment to the defendant's ability to present a defense. **Id**. However, in **Doggett**, the Supreme Court held that "*affirmative proof of particularized prejudice is not essential to every speedy trial claim.*" **Doggett**, 505 U.S. at 655 (emphasis added).[8] As a result, when the government is solely responsible for a presumptively prejudicial delay, "and when the presumption of prejudice, albeit unspecified, is neither extenuated, as by the defendant's acquiescence, *nor persuasively rebutted*, the defendant is entitled to relief." **Doggett**, 505 U.S. at 658 (emphasis added).

C. The State's claim that the district court "did not address anything more than the threshold question" about the delay is false.

Throughout its Opening Brief, the State makes the repeated, conclusory, and inaccurate claim that the district court failed to weigh all four **Barker** factors:

- "the district court also did not address anything more than the threshold question" (AOB at 8).

[8] Although it was not necessary for the defense to put forth claims of particularized prejudice in this case, it did so nonetheless. See, e.g., AA 89-90. The State failed to rebut prejudice in any form, whether particularized or presumed.

- "the district court did not address the length of delay beyond the triggering factor" (AOB at 12).

- "the district court failed to address the length of the delay beyond the threshold question." (AOB at 20).

The State's claims are belied by the record.

In an extremely detailed, 12-page Order, the district court addressed each and every one of the **Barker** factors – length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant – and found that they all weighed in favor of dismissal. (AA 168-180).

As to the first factor, the court found that the 26-month delay was "presumptively prejudicial" and, therefore, sufficient to trigger the speedy trial analysis. (AA172). The State admits that post-accusation delays are "presumptively prejudicial as they approach the one-year mark" while recognizing that the delay in this case was more than twice that long. AOB at 7. As such, the State concedes that this first factor supports the dismissal of charges against Mr. Inzunza. See AOB at 7 ("The State does not dispute that the two year and two month delay in apprehending [Mr.] Inzunza is sufficient to trigger the analysis").

As to the second factor, the district court found that the State was solely responsible for the 26-month delay and that, based on Detective Hoyt's "shocking" testimony, the "government's lack of diligence in

apprehending Mr. Inzunza was grossly negligent". (AA 179). Although the State takes issue with the court's factual findings regarding this factor (AOB at 9-12), those findings are entitled to "considerable deference" on appeal as explained in **Section I (D)**, *infra*.

As to the third factor, the district court correctly found that Mr. Inzunza did not acquiesce to the 26-month delay because he "could not have asserted his right to a speedy trial before his arrest on the warrant". (AA176-177). See **Doggett**, 505 U.S. at 654 (a defendant "is not to be taxed for invoking his speedy trial right only after his arrest."). On appeal, the State does not challenge the district court's findings on this factor. See AOB at 12-13.

Finally, as to the fourth factor, the district court properly required the State to rebut the presumption of prejudice because the "26 month delay was solely due to the state's gross negligence." (AA 177-78). See **Doggett**, 505 U.S. at 658 (when the government is solely responsible for a presumptively prejudicial delay, "and when the presumption of prejudice, albeit unspecified, is neither extenuated, as by the defendant's acquiescence, nor persuasively rebutted, the defendant is entitled to relief."). Although the district court gave the State chances to rebut the presumption of prejudice, both in writing and at the evidentiary hearing, the State "offered nothing".

AA 171,177-179. After weighing all four factors, the court ruled that **Doggett** compelled dismissal of the charges. (AA179). Therefore, the State's claim that the court "failed to consider one necessary factor" (AOB at 6) is false. The record demonstrates that the court considered *everything*—the State is just unhappy with the result.

On Appeal, the State **does not challenge** the district court's findings as to the first or third factors.[9] See AOB at 7, 12-13. Instead, the State challenges the district court's findings as to the second and fourth factors – "the reason for the delay" and "prejudice to the defendant". As set forth herein, the State cannot show that the district court abused its discretion in its application or weighing of *either* of those factors.

D. The district court's finding that the State was solely responsible for a "grossly negligent" delay is entitled to "considerable deference."

In its Opening Brief, the State ignores the district court's express findings of "gross negligence" and "sole[] responsibility for the delay" and improperly asks this Court to **reevaluate** the cause of delay on appeal. See AOB at 9-12. The State devotes four pages of its Opening Brief to an argument that Detective Hoyt's actions did not even amount to *simple*

[9] As to the first factor, the district court found the delay to be "presumptively prejudicial" and as to the third factor, the district court found that Mr. Inzunza must not be "taxed" for invoking his speedy trial right when he did.

negligence because he supposedly "followed the procedure set forth by the LNVPD" by submitting the case and relying on NCIC to locate Mr. Inzunza. AOB at 11-12. The State's argument is without merit.

Before Mr. Inzunza was ever charged with a crime in this case, the North Las Vegas Police Department knew exactly where to find him. Detective Hoyt had accurate contact information for Mr. Inzunza, including his home address, his business address, his cellular phone number, his public Facebook page, his Facebook friends list, and even GPS tracking information. Thanks to his smart phone, Detective Hoyt had all these resources at his fingertips, yet he never made any effort to contact Mr. Inzunza or reach out to law enforcement in New Jersey. (AA 71-72; 106-07; 126-132; 137). Detective Hoyt was *literally* unwilling to lift a finger.

Rather than take any affirmative steps to apprehend Mr. Inzunza, Detective Hoyt merely "hoped" that an arrest warrant would issue, that NCIC would be notified, and that Mr. Inzunza would be arrested someday. (AA136). Once Detective Hoyt submitted the case to the District Attorney's office, the case was "out-of-sight, out-of-mind" for him. (AA107,135,137). In fact, Detective Hoyt used the phrase "out-of-sight, out-of-mind" four different times during the hearing, further supporting the district court's finding of "willful neglect". (AA 178).

Detective Hoyt admitted that the reason he didn't pick up the phone and call New Jersey law enforcement to pick up Mr. Inzunza was because the case just wasn't important to him:

> [HOYT]: I understand if it's a **high profile** case maybe I've called a jurisdiction or two in my past ten years of being there, but this is a – I hate to say it but a **common** sexual assault [case]. We deal with this a lot. So much so, to where it's common practice for us to just submit the case, and hope[] that a warrant's issued.

(AA137)(emphasis added). So, Detective Hoyt *does* contact outside jurisdictions if there's a chance he might see his name in the newspaper, but these "common" sexual assault cases just aren't worth his valuable time—not even the time it would take to make a single phone call. And Mr. Inzunza's Sixth Amendment rights were worth even less.

Detective Hoyt admitted that his own records department was aware that a criminal complaint had been filed in this case and an arrest warrant issued. (AA 110). Detective Hoyt also knew that his records department doesn't notify the lead detective when a warrant has issued. When asked whether the rest of the North Las Vegas Police Department was aware of this "communication problem," Detective Hoyt responded: "I don't—**who's calling it a problem**? I don't know who's calling it a problem." (AA 112)(emphasis added).

Detective Hoyt testified that he didn't think it was a "problem" if a case "languishes out there for 2 or 3 years with nobody following up on it." (AA 112). Detective Hoyt *claimed* that it was his department's "common practice" to handle cases in this manner, but there is no other evidence to support this. During oral argument, the Deputy District Attorney even admitted, "**I don't know that he [Hoyt] can speak for the entire police department**..." (AA 97), so the State's claim on appeal that Detective Hoyt was "following departmental procedure" is disingenuous.[10]

Of course, the question of whether Detective Hoyt was "just following orders" or disregarding them is irrelevant to our analysis. The fact is: the practice *itself* was "grossly negligent", and Detective Hoyt followed the practice even though he *knew* it could adversely impact Mr. Inzunza's speedy trial rights. (AA 138-140).

The district court established that Detective Hoyt knew about the Sixth Amendment and the constitutional right to a speedy trial through his academy training and his 10 years of experience as a detective. Id. Detective Hoyt also knew that his lack of diligence could jeopardize Mr. Inzunza's speedy trial rights:

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[10] Certainly, the State *could have* presented credible evidence regarding departmental procedure during the evidentiary hearing, for example, through the presentation of NLVPD managerial witnesses or procedural manuals, but it declined to do so.

Q -- do you understand that under our constitution there's a right to **speedy trial**?

A **Yes**.

Q And that that starts to **attach** as soon as an arrest warrant has -- a Complaint a charging document has been **filed**.

A **Yes**.

Q **And you knew that?** And did you know that you're potentially then by not following up **jeopardizing the Defendant's right to a speedy trial?**

A **If I know where he is**, I guess, but I don't know exactly – what I have is Facebook. I don't really rely on information from Facebook. I could, but I -- in this case and in other cases I haven't. I've submitted several cases to the District Attorney's Office, we've -- for prosecutorial review and I've had several cases that have gone into arrest warrant. It's just not common practice for us to follow-up. We just -- I wish we had the time to do it.

(AA 138-139).

Detective Hoyt offered two excuses for his lack of diligence. First, he claimed that he didn't know "exactly" where Inzunza was and said, "what I have is Facebook." This was patently untrue, given that Detective Hoyt had every conceivable form of contact information for Inzunza, including his address and phone number. Detective Hoyt's second excuse was that he didn't have enough *time* to follow up. In this case, "following up" was as easy as entering ten digits into a telephone. The North Las Vegas Police Department must be very busy indeed when their lead detective does not

have the time to dial a phone in a sexual assault case, where the penalty for conviction is a *mandatory* 35 years-to-life.

Detective Hoyt knew about Mr. Inzunza's speedy trial rights. He also knew that, by not following up, he would be jeopardizing those rights. Detective Hoyt chose to do *nothing* with the information he had, and he did so with full knowledge of the damage that choice could do. Given Detective Hoyt's admissions, the court's determination that he was "grossly negligent" may have been overly generous. The same evidence could easily have supported a finding of "bad faith."

The district court's factual finding that the State engaged in "gross negligence" by failing to timely locate and prosecute Mr. Inzunza is entitled to "considerable deference" by this Court and should not be disturbed on appeal. See **Doggett**, 505 U.S. at 652 (observing, in the context of speedy trial claims, that "we review trial court determinations of negligence with considerable deference").

The State argues that Detective Hoyt could properly rely on NCIC and "hope" that Mr. Inzunza was one day apprehended, but the **Doggett** court has already rejected such an argument. In **Doggett**, federal agents made similar, half-hearted attempts to apprehend Doggett, including sending word of his arrest warrant to all United States Custom stations and updating

national registries and NCIC. **Id**. at 648-649. Yet, the Supreme Court found those efforts to be inadequate because the government "could have found him within minutes" if they had bothered to actually look. **Id**. at 652-53 (emphasis added)("[w]hile the government's lethargy may have reflected no more than [the defendant's] relative unimportance in the world of drug trafficking, it was still findable negligence, and the finding stands.")

As the defense argued below, the State's inaction in this case was far more egregious than the simple negligence found in **Doggett** because the State knew exactly where he was the entire time. (AA54-55). The State had Mr. Inzunza's home address, business address, and phone number. Mr. Inzunza had an open Facebook profile that advertised his landscaping business, so he was literally *advertising* his whereabouts. In fact, on **November 6, 2014**, the complaining witness emailed three photographs from Mr. Inzunza's Facebook page to the lead detective. (AA 74). There is absolutely no question that the State knew precisely where Mr. Inzunza was, but did absolutely nothing to advance the prosecution against him.

The **Doggett** Court noted that federal agents were negligent because they "could have found him within minutes." **Doggett**, 505 U.S. at 654. The State's lack of diligence in this case is much more egregious. They did not

need to "find" Mr. Inzunza; they already knew where he was. They simply needed to pick up a telephone. The district court's finding must stand.

E. The court did not improperly weigh the second factor, the "reason for delay".

The State argues that the district court gave an unfair amount of weight to the State's "gross negligence" when it granted Mr. Inzunza's motion to dismiss. (AOB at 12, 20). Citing **Barker**, 407 U.S. at 516, the State claims that even *intentional delays* to strengthen the government's case are insufficient to warrant dismissal. AOB at 11. Yet, **Barker** does not stand for such a sweeping proposition. Rather, as the **Barker** court recognized:

> We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.

Barker, 407 U.S. at 533.

Every speedy trial case is different – that is why district courts are afforded "judicial discretion" to evaluate the facts and circumstances of the cases appearing before them and to assign different weights to the different factors. See **Id**. at 528-29. Here, the district court found that the State was grossly negligent in failing to apprehend Mr. Inzunza for 26 months despite

having all of his contact information at its fingertips. (AA178). Because of the State's heightened degree of culpability in this case, the district court correctly applied "more weight" to this factor than it would apply to a finding of "mere negligence." (AA178). Again, as the Supreme Court recognized in **Doggett**, 505 U.S. at 652, the district court's determination of negligence must be reviewed with "considerable deference."

F. The district court properly required the State to rebut the presumption of prejudice and the State failed to do so.

The State relies heavily on the pre-**Doggett** case, **State v. Fain**, 105 Nev. 567, 779 P.2d 965 (1989), to suggest that Inzunza was required to present evidence of "significant prejudice" in order to prevail on his speedy trial claim. AOB at 18-19. In **Fain**, this Court placed an evidentiary burden on the defendant to establish a speedy trial violation, holding that:

> [b]are allegations of impairment of memory, witness unavailability, or anxiety, unsupported by affidavits or other offers of proof, do not demonstrate a reasonable possibility that the defense will be impaired at trial or that defendants have suffered other significant prejudice.

Although the State claims that **Doggett** did not meaningfully "change the analysis" that this Court employed in **Fain**, **Doggett** *rejected* the notion that a defendant had to affirmatively establish prejudice in order to prevail on a speedy trial claim.

After **Doggett**, defendants are no longer required to "make any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence" if presumptive prejudice has been shown and if the State is responsible for the delay. **Doggett**, 505 U.S. at 655. As the Supreme Court explained, "affirmative proof of particularized prejudice is not essential to every speedy trial claim", *in part because particularized prejudice often cannot be established*. **Doggett**, 505 U.S. at 655 ("excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify").

Where **Fain** placed an affirmative burden on the *defendant* to establish particularized prejudice, **Doggett** held that *the State* bears the burden of persuasively *rebutting* a presumption of prejudice when the State is at fault for a presumptively prejudicial delay. **Doggett**, 505 U.S. at 658. In cases such as this one, where presumptive prejudice has been shown, and where the defendant is not at fault in causing the delay, **the State** bears the burden of rebutting prejudice and the district court did not abuse its

discretion when it held the State to its burden.[11] See, e.g., **Doggett**, 505 U.S. at 658.

The State had ample opportunity to rebut the presumption of prejudice but it failed to do so in the district court. The State had an opportunity to do so in writing when it submitted its Opposition to Mr. Inzunza's motion to dismiss. (AA 77-83). The State had another opportunity to do so at the March 19, 2018 hearing on Mr. Inzunza's motion to dismiss. (RA at 22-30). The State had a final opportunity to do so at the April 4, 2018 evidentiary hearing which lasted from 11:35 a.m. until 1:10 p.m. (AA 92-167). Both before and after Detective Hoyt testified, the State was given multiple chances to explain why Mr. Inzunza's motion should be denied. (AA 95-103; 144-45; 147-49; 152-54; 156-57; 163-64). But as the district court found, "[t]he State argues only that none of the four *Barker* factors favor Mr. Inzunza and that any prejudice suffered by him is of his own making." (AA178). As such, the State failed to persuasively rebut the presumption of prejudice.

[11] To the extent the State relies on **Anderson v. State**, 86 Nev. 829, 477 P.2d 595 (1970), that case predates both **Barker** and **Doggett**, and as the Supreme Court recognized, **Barker** "expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial." **Moore v. Arizona**, 414 U.S. 25, 26 (1973).

G. The State's unpreserved appellate arguments about the lack of prejudice are unavailing.

On appeal, the State raises several **brand new arguments** that it never raised below, including an argument that Mr. Inzunza could not possibly be prejudiced because the he was arrested before the relevant "statutes of limitation" had expired. AOB at 15-20. It is well-settled that parties are not permitted to raise new arguments on appeal, a rule that was reaffirmed just last week by this Honorable Court in **State v. Second Judicial District Court (Ojeda)**, 134 Nev. Adv. Op. 94 *p.3 (2018) ("And while the State attempts to categorize the veniremember information as its work product, this argument was not made before the district court and is therefore inappropriately presented to this court."). See also, **Old Aztec Mine, Inc. v. Brown**, 97 Nev. 49, 52, 623 P. 2d 981, 983 (1981) ("A point not urged in the trial court ... is deemed to have been waived and will not be considered on appeal."); **Davis v. State**, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (this court need not consider arguments raised on appeal that were not presented to the district court in the first instance), overruled on other grounds by **Means v. State**, 120 Nev. 1001, 1012–13, 103 P.3d 25, 33 (2004).

The State claims it is free to make its brand new statute of limitations argument because, at one point during the evidentiary hearing, the district

court told the deputy district attorney to "stop" talking about statutes of limitations. AOB at 16 n.3. The State's claim that it was "prevented" from arguing is belied by the record.

As set forth above, the State had *numerous* opportunities to present arguments in opposition to Mr. Inzunza's motion, both orally and in writing. (AA 77-83); (RA 22-30); (AA 92-167). Although the State *claims* that it "attempted to offer argument as to the prejudice, including an argument regarding the statute of limitations" (AOB at 16 n. 1), there is no support for this in the record. The State never *actually* argued that statutes of limitation were relevant to the issue of prejudice. All the State said about statutes of limitation was, "Now it was 2, 2 ½ years later, but he was picked up and we're still within the statute of limitations. Which I think is the ultimate guide--" (AA 144-45). This comment—which was a non-sequitur to begin with—was not related to the question of prejudice.

Even after the deputy district attorney was supposedly stopped from arguing about statutes of limitation, the court gave the State yet another opportunity to address all four **Barker** factors without limitation. (AA147-49). However, the State said nothing to suggest that statutes of limitation would affect the degree of prejudice suffered by the defense. (AA 147-48). The State simply argued:

> Now we go to the last factor, which specific prejudice articulated. What specific prejudice has he suffered due to the lapse of time here? Because it appears Mr. Westbrook was able to track down all these people who will be able to testify in his behalf. And so my question is what specific prejudice has transpired beyond what was already present with the late disclosure of the victim? So the victim disclosed years after this abuse occurred. So he's already got some prejudice there being that, well I would have to go back and find all of these witnesses. Okay that's already existing. But what prejudice beyond that has been – has the Defendant suffered based upon the delay in him being arrested for 2 ½ years? And so I think the factors once we get into the *Doggett* and *Barker* the *Barker* test weigh in favor of the State her. **And that's my argument here, Your Honor.**

(AA 148)(emphasis added).

The court did not cut off the deputy district attorney or limit his argument. He said everything he wanted to say, made every argument he wanted to make, and then ended his presentation in the most literal way possible by saying, "And that's my argument here, Your Honor." The statute of limitations argument didn't appear in the State's written opposition or during either of the *two* oral arguments. In addition, the court took a **full week** to carefully consider all the evidence before filing its written order. If the State's trial attorney *legitimately* felt he had been prevented from making an argument, any argument, he should have filed an offer of proof. This didn't happen because the trial attorney never intended to advance the argument in the first place. This argument was invented for the appeal.

Because the State's statute of limitation argument was not preserved, it may not be considered on appeal. **See State v. Second Judicial District Court (Ojeda),** supra, 134 Nev. Adv. Op. 94 at *p.3 **Old Aztec Mine, Inc.**, supra, 97 Nev. at 52, 623 P. 2d at 983.

However, even if this Court were to consider the State's argument on its merits, it would still fail. In the first place, the State fails to cite a single case to suggest that statutes of limitation are relevant in the context of a Sixth Amendment speedy trial claim. See **Maresca v. State**, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.")(emphasis added).

Although the State is correct that sexual assault claims have lengthy statutes of limitation, this does not mean that "the Legislature has decided that prejudice associated with delays is not to be weighed as heavily" for Sixth Amendment purposes. Cf. AOB at 16. The statutes of limitation referred to in the State's Opening Brief govern when a prosecution must be commenced and when an indictment must be filed. See, e.g., **NRS 171.083** (where a written report concerning sexual assault is filed within the limitation period, "there is no limitation of the time within which a prosecution for the sexual assault or sex trafficking must be

commenced")(emphasis added); **NRS 171.095** ("an indictment for the offense must be found . . . within the periods of limitation prescribed [by statute]"). These statutes say nothing about the time-frame *between* the commencement of a prosecution and the eventual trial. This is the period of time that is at issue in a Sixth Amendment speedy trial claim. See **Doggett**, 505 U.S. at 655 ("the Sixth Amendment right of the accused to a speedy trial has no application beyond the confines of a formal criminal prosecution."). As such, statutes of limitations do not support the State's argument that Nevada's legislature "intended" to preclude speedy-trial claims from accruing before the relevant statutes of limitations have expired. Statutes of limitation are wholly irrelevant to the analysis undertaken in the instant case: we are talking about completely different amendments.

In any case, the State's statute of limitations argument was squarely rejected more than twenty years ago by the Ohio Supreme Court:

> Appellant contends that prejudice, presumptive or otherwise, cannot occur when an action is brought within the six-year period of limitations for the commencement of a felony prosecution under R.C. 2901.13(A)(1). Thus, according to appellant, because appellee was indicted within six years of the alleged offense, *Barker* is inapplicable.
>
> However, appellant's argument overlooks the fact that R.C. 2901.13 is a statute of limitations, not a prescribed minimum of time which must run before prejudicial delay can occur. In addition, the *Barker* court specifically rejected a fixed approach to speedy trial analysis by finding "no constitutional basis for

> holding that the speedy trial right can be quantified into a specified number of days or months." *Id.* at 523, 92 S.Ct. at 2188, 33 L.Ed.2d at 113. While acknowledging that states are free to set such time periods, the court stated that they must be reasonable and within constitutional standards. *Id.* at 523, 92 S.Ct. at 2188, 33 L.Ed.2d at 113. Adopting appellant's assertion that presumptive prejudice cannot arise until after the six-year statute of limitations contained in R.C. 2901.13 has expired would ignore the *Barker* court's recognition that prejudice to a defendant varies and ought to be reviewed on a case-by-case basis.
>
> Further, the United States Supreme Court recognized in a later case, *Doggett v. United States* (1992), 505 U.S. 647, 652, 112 S.Ct. 2686, 2691, 120 L.Ed.2d 520, 528, fn. 1, that "courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year." In the instant action, there was a ten-month delay from the filing of the criminal complaint until appellee was indicted and a one-year delay from the filing of the criminal complaint until appellee was arraigned.

State v. Selvage, 80 Ohio St. 3d 465, 467-69, 687 N.E.2d 433, 435-36 (Ohio 1997). Because the State's statute of limitations argument is unsupported, it need not be considered further by this Court. See **Maresca**, 103 Nev. at 673, 748 P.2d at 6.

On appeal, the State also makes the brand new argument that Mr. Inzunza could not have been prejudiced by the 26-month delay because "two years and two months is not a sufficient time to cause a reasonable person to think they would not still be liable for sexually assaulting a child". (AOB at 15). This argument too has been improperly presented for the first time on

appeal. It also ignores an important fact: an innocent man would have no reason to suspect that he was wanted. And that is what Mr. Inzunza is: an innocent man.

Next, the State claims that any "presumptive prejudice" that Mr. Inzunza suffered as a result of the State's delay in prosecuting him after filing the 2014 criminal complaint and warrant was somehow "cured" by the State's subsequent filing of a new indictment within the statute of limitations period. AOB at 17-20. This, again, is an entirely new argument that was never raised below and should not be considered on appeal. See **Old Aztec Mine, Inc.**, supra, 97 Nev. at 52.

Even so, the State has not cited a single case that would permit it to "cure" a speedy trial violation that *has already occurred* by simply dismissing the old prosecution and filing a new indictment. See **Maresca**, 103 Nev. at 673, 748 P.2d at 6 ("It is appellant's responsibility to present relevant authority and cogent argument" and this court need not address issues "not so presented"). Simply changing the number at the top of the case cannot cure a constitutional violation, and allowing the State to use the grand jury system to circumvent the United States Constitution would undermine the most basic principles of our judicial system.

/ / /

CONCLUSION

Based upon the foregoing points and authorities, Mr. Inzunza respectfully asks this Court to affirm the well-reasoned ruling of the district court.

Respectfully submitted,

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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 10 day of December, 2018.

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