NOT DESIGNATED FOR PUBLICATION

No. 105,007

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

JUAN SALCIDO-QUINTANA,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID J. KAUFMAN, judge. Opinion filed August 10, 2012. Affirmed.

Boyd K. Isherwood, assistant district attorney, *Nola Tedesco Foulston*, district attorney, and *Derek Schmidt*, attorney general, for appellant.

Randall L. Hodgkinson, of Kansas Appellate Defender Office, for appellee.

Before STANDRIDGE, P.J., MCANANY and ATCHESON, JJ.

ATCHESON, J.: The State appeals an order of the Sedgwick County District Court dismissing traffic offenses, including a charge of felony driving under the influence, against Defendant Juan Salcido-Quintana based on a violation of his constitutional right to a speedy trial. The district court ruled correctly.

FACTUAL AND PROCEDURAL HISTORY

Sedgwick County Sheriff's Deputy Jon Gill arrested Salcido-Quintana on March 6, 2007, for driving under the influence in violation of K.S.A. 8-1567. Salcido-Quintana was promptly released from custody without charges having been filed against him. The circumstances of the stop and arrest were not presented to the district court and do not appear in the appellate record. But they are not, in and of themselves, necessarily germane to the speedy trial issue. The parties obviously did not consider those facts informative in arguing the motion at the trial level, and this court is in no position to say otherwise.

On December 31, 2007, Salcido-Quintana was charged with felony DUI, under K.S.A. 8-1567, and driving while suspended, under K.S.A. 8-262, and a summons was issued for him to appear on January 29, 2008. Salcido-Quintana never received or acknowledged the summons. The district court issued an arrest warrant for Salcido-Quintana on February 20, 2008. Salcido-Quintana was arrested on the warrant exactly 1 year later on February 20, 2009. The case then began what was, for the most part, an unexceptional journey through the court system. Salcido-Quintana had his first appearance 3 days after his arrest, when a preliminary hearing was set for early March. Out on bond, Salcido-Quintana requested and received brief continuances of the preliminary hearing and then waived the hearing in late March. The district court set the case for a jury trial to begin on June 22, 2009. Again, Salcido-Quintana repeatedly continued the trial and then waived his right to jury trial on January 19, 2010.

Following the jury trial waiver, Salcido-Quintana filed several pretrial motions, including a request the case be dismissed because his constitutional speedy trial rights had been violated. The district court held an evidentiary hearing on the motions on May 14, 2010, and granted the motion to dismiss, finding a speedy trial violation. At the hearing, Salcido-Quintana testified that he lived continuously at the same address he

provided law enforcement officers at the time of his arrest and made no effort to hide from or evade the authorities.

The motion primarily focused on the State's failure to produce a digital video recording of the traffic stop and arrest. At the hearing, Deputy Gill testified that the patrol car he used at the time of Salcido-Quintana's arrest was equipped with a video recording system that activated when he turned on the vehicle's emergency lights. The camera then recorded to a hard drive in the car. On a periodic basis, sheriff's department personnel would download the data from the hard drives in the patrol cars to a server for retention. Deputy Gill testified that he followed the department's standard procedures for turning in the hard drive so the contents could be stored. He also testified that the traffic stop should have been recorded, but he did not review the video in preparing his written reports or at any time before he turned in the hard drive.

Deputy Erin Wannow testified to the departmental procedures for storing the data from the hard drives. At the hearing, she explained that the data is downloaded from a patrol car's hard drive and placed on a dedicated server. It is stored on the server for 3 to 6 months before it is then archived elsewhere on the server. Deputy Wannow testified that locating and retrieving archived data can be difficult. Sometimes, she said, an archived video cannot be extracted from the server. The parties stipulated the State attempted to find any archived data depicting the stop and arrest of Salcido-Quintana but could not produce anything.

The district court concluded that the delay in prosecuting Salcido-Quintana coupled with the unavailability of the video of the stop and arrest impermissibly compromised his constitutional right to a speedy trial. The district court dismissed the case. The State has timely appealed that ruling.

Before turning to the legal analysis, we note that the district court supplemented its decision to dismiss by later granting Salcido-Quintana's motion to suppress evidence related to the stop as a sanction for the State's failure to produce the archived video. As we understand the suppression order, it would effectively leave the State with insufficient evidence to prosecute Salcido-Quintana at least on the DUI charge. The State has also appealed that decision. Because we affirm the speedy trial ruling, we need not and do not consider the suppression order.

LEGAL ANALYSIS

Standard of Review

In reviewing a district judge's ruling on a pretrial motion of the sort lodged here, an appellate court applies a bifurcated standard. The appellate court accepts the factual findings of the district court if they are supported by competent evidence having some substance. The appellate court exercises plenary review over legal conclusions based upon those findings, including the ultimate ruling on the motion. See *State v. Woolverton*, 284 Kan. 59, 70, 159 P.3d 985 (2007); *State v. Thompson*, 284 Kan. 763, 772, 166 P.3d 1015 (2007). We do not understand there to be material factual disputes and treat the issue—violation of Salcido-Quintana's constitutional right to a speedy trial—as one of law. See *United States v. Larson*, 627 F.3d 1198, 1207 (10th Cir. 2010); *United States v. Seltzer*, 595 F.3d 1170, 1175 (10th Cir. 2010); accord *State v. Edwards*, 291 Kan. 532, 537, 243 P.3d 683 (2010) (applying bifurcated standard in reviewing statutory speedy trial claim).

Constitutional Speedy Trial Rights and Factors in Assessing Their Violation

The Sixth Amendment to the United States Constitution and Section 10 of the Kansas Constitution Bill of Rights guarantee criminal defendants the right to speedy

trials. The Kansas Supreme Court has viewed the state constitutional right to be coextensive with the federal constitutional right and applies the same test to determination if a violation has occurred. *State v. Jamison*, 248 Kan. 302, 306-07, 806 P.2d 972 (1991); see *State v. Mann*, 274 Kan. 670, 700-01, 56 P.3d 212 (2002); *State v. Rosine*, 233 Kan. 663, 666-67, 664 P.2d 852 (1983) (quoting the functionally identical language from each constitution and using the same standard to evaluate the claimed violation of each). The United States Supreme Court set out the guiding factors for measuring a constitutional speedy trial violation 40 years ago in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). The *Barker* Court identified four considerations: (1) the length of delay; (2) the reasons for the delay; (3) the defendant's assertion of the right; and (4) the prejudice to the defendant arising from the delay. 407 U.S. at 530; see *State v. Weaver*, 276 Kan. 504, 506, 78 P.3d 397 (2003) (applying *Barker* to Sixth Amendment speedy trial challenge).

The factors should not be applied in a way that isolates each from the others or that treats them as separate boxes on a scorecard to be tallied to reach a result. They ought to be considered holistically to gauge the impact of the relevant circumstances in a given case. *Barker*, 407 U.S. at 530, 533; *State v. Rivera*, 277 Kan. 109, 113, 83 P.3d 169 (2004); *State v. Waldrup*, 46 Kan. App. 2d 656, 679, 263 P.3d 867 (2011). Thus, "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case." *Barker*, 407 U.S. at 522. The *Barker* Court acknowledged the list to be nonexclusive. *Barker*, 407 U.S. at 530. And the Court noted an array of direct and indirect societal costs attendant to inordinate delays in bringing criminal cases to trial. 407 U.S. at 519-21.

We next turn to an examination of those factors in the context of the prosecution of Salcido-Quintana. But we mention two matters on our way. Salcido-Quintana does not argue and this court does not consider his statutory speedy trial right under K.S.A. 22-3402. The statutory right is measured differently. Compliance with that right does not

necessarily obviate a constitutional speedy trial violation. Second, the State does not contend the driving while suspended charge can or should be treated separately from the DUI charge for purposes of assessing a constitutional violation. We, therefore, apply the governing criteria to the DUI offense and assume a like result for the driving while suspended offense.

Length of Delay

As discussed in *Barker* and since applied elsewhere, the length of delay operates, in part, as a gatekeeper to the remaining factors. That is, a defendant, in light of the circumstances of his or her case, must show that the properly measured delay may be considered likely or presumptively prejudicial. *Barker*, 407 U.S. at 530-31; *Waldrup*, 46 Kan. App. 2d at 679. The requirement for something more than a minimal delay prevents what otherwise might be a flood of motions claiming constitutional error based on a matter of days or weeks. But a sufficient "triggering" delay abides no strict measurement in months or years imposed across a range of cases. See *State v. Hayden*, 281 Kan. 112, 128, 130 P.3d 24 (2006); *Weaver*, 276 Kan. at 509-10; *Waldrup*, 46 Kan. App. 2d at 679. As the *Barker* Court pointed out, a delay that might be tolerable for a "serious, complex conspiracy charge" would be wholly unacceptable for "an ordinary street crime." *Barker*, 407 U.S. at 530-31. For all that appears in the record, this was a routine DUI, meaning there were few witnesses and no significant investigation beyond the stop and arrest. Accordingly, the constitutional dictates for a speedy trial point toward a relatively abbreviated time period as acceptable.

For Salcido-Quintana, the court necessarily focuses on the period between the formal filing of charges and the first jury trial setting, less a couple of weeks attributable to his continuances of the preliminary hearing in March 2009. The law is well settled that speedy trial time does not accumulate if a defendant is arrested and promptly released without charges having been filed. See *Doggett v. United States*, 505 U.S. 647, 654-55,

112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992); *United States v. Loud Hawk*, 474 U.S. 302, 310, 106 S. Ct. 648, 88 L. Ed. 2d 640 (1986) ("The Court has found that when no indictment is outstanding, only the 'actual restraints imposed by arrest and holding to answer a criminal charge . . . engage the particular protections of the speedy trial provision of the Sixth Amendment.'"); *United States v. MacDonald*, 456 U.S. 1, 7, 102 S. Ct. 1497, 71 L. Ed. 2d 696 (1982) (holding that the Sixth Amendment right to speedy trial does not apply to the delay between initial arrest and indictment if, after arrest, the initial charges are formally dropped). The time between Salcido-Quintana's arrest on March 6, 2007, and the filing of charges against him on December 31, 2007, does not figure in the speedy trial determination. Rather, the delay for constitutional speedy trial purposes started on December 31 and ran continuously until Salcido-Quintana's arrest on February 20, 2009—nearly 14 months. That much is plain.

The State argues to the contrary based on K.S.A. 21-3106(7), but the contention is untenable. That statute provided "prosecution is commenced when a complaint or information is filed" so long as the charging document is "executed without unreasonable delay." K.S.A. 21-3106(7). The State seems to suggest that the prosecution did not commence within the meaning of the statute precisely because Salcido-Quintana was *not* timely served after the charges were filed on December 31, 2007. The State concedes the delay in serving Salcido-Quintana was presumptively prejudicial for speedy trial purposes. In turn, the delay of more than a year in notifying Salcido-Quintana of the charges could not, therefore, be considered reasonable under K.S.A. 21-3106(7), especially since Salcido-Quintana could have been readily found. So, the State reasons, the prosecution did not "commence" on December 31, 2007, at all.

The State's position turns the statute inside out and misconstrues its scope and purpose. The statute protects the State from losing a prosecution to a statute of limitations bar if it files the charging instrument before the limitation period expires and then diligently sets about securing service or execution, even though the defendant may not

receive the documents until after the period otherwise would have run. But the Sixth Amendment speedy trial right attaches no later than the filing of formal charges against a defendant. (The right attaches at the time of arrest if the defendant is charged before being released. But that did not happen here.) The constitutional right is triggered by the filing of charges, not a definition of commencement of prosecution contained in the law of a particular state. The State's argument fails. If accepted, the State's position would also have the disturbingly peculiar effect of insulating it against a constitutional speedy trial claim based on its own failure to reasonably effect service of criminal charges on the defendant. As we discuss below, that would be difficult to reconcile with a proper application of the *Barker* considerations.

After his arrest on the warrant, Salcido-Quintana quickly received a first appearance and his preliminary hearing was set for March 9. He continued the preliminary hearing twice and waived it on March 23, when he received a jury trial setting of June 22. For 6 months, Salcido-Quintana repeatedly requested and received continuances of the jury trial. He waived jury trial in January 2010. Salcido-Quintana filed the motion to dismiss on April 8, 2010—his first assertion of his constitutional speedy trial right. How that time should be treated in a *Barker* analysis is not so obvious, and we do not suggest or apply a firm rule or mean to say the constitutional speedy trial right depends on an exact to-the-day assessment of periods marked by defense continuances. For purposes of this case, however, we treat the time between the first appearance and the initial setting of the preliminary hearing and between the waiver of the preliminary hearing and the first jury trial setting as part of the delay. That's roughly 3 1/2 months.

The remainder of the time between Salcido-Quintana's arrest and the filing of his speedy trial motion appears to be attributable solely to his requests for continuances of various proceedings, primarily the jury trial. In this case, we think that time ought not be considered part of the speedy trial delay, absent some compelling reason otherwise. And

Salcido-Quintana presents no such reason. *Weaver*, 276 Kan. at 508 (time attributable to defense continuances given limited significance in constitutional speedy trial determination); *United States v. Erenas-Luna*, 560 F.3d 772, 778 (8th Cir. 2009) (same). The case was extended during those periods to accommodate his requests and desires. Salcido-Quintana does not suggest he sought those extensions because of actions of the State in prosecuting the case. Rather, they appear to have been for his convenience in or timetable for resolving the charges.

In addition, Salcido-Quintana did not affirmatively assert his speedy trial right during that period. His failure weighs against counting that time and illustrates the seamlessness of the *Barker* considerations in assessing a constitutional violation. Accordingly, the speedy trial delay amounts to roughly 17 1/2 months or 1 1/2 years.

The State, as we have noted, concedes the delay to be presumptively prejudicial for purposes of triggering a review of all of the *Barker* factors. The concession is a wise one given the nature of the charges and the length of the delay. See *Weaver*, 276 Kan. at 510-11 (299-day delay presumptively prejudicial in routine drug possession case resulting from search incident to an arrest for an active warrant); *Rivera*, 277 Kan. at 114 (244-day delay presumptively prejudicial in aggravated robbery case when defendant in custody); see also *Doggett*, 505 U.S. at 652 n.1 ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."). Apart from the presumption, the lapse of time is significant. Even if the delay were bounded by the filing of charges and Salcido-Quintana's arrest, a period of almost 14 months, the constitutional result would be the same. The delay is inordinate given the nature of the offenses charged. See *Barker*, 407 U.S. at 523 (The Court "find[s] no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months.").

Reasons for Delay

The second *Barker* factor looks at the reason for the delay and is, thus, especially closely allied with the first factor. Its treatment here is comparatively straightforward. At the hearing, the State offered no explanation or justification for the delay between the filing of charges against Salcido-Quintana and his arrest 14 months later. Although a court ought not impute to the State delay for deliberate tactical advantage from silence absent some other evidence to suggest bad motive, an unexplained period, especially of extended duration, weighs against the State. *Barker*, 407 U.S. at 531; *Rivera*, 277 Kan. at 114 (deliberate delay "would weigh heavily" against the State, but negligence less so); 277 Kan. at 116 (unexplained delay not treated as deliberate tactic to disadvantage defense absent some supporting evidence but nonetheless counted against State for speedy trial purposes). As the United States Supreme Court has observed: "The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice." *Doggett*, 505 U.S. at 657. The same may be said of governmental dilatoriness in pressing ahead after having simply initiated prosecution with the filing of charges. Here, without some explanation for the lengthy delay in serving notice of the criminal charges on Salcido-Quintana whether by summons or warrant, a court reasonably could infer negligence or such laxity in the sheriff's policies and practices as would amount to negligence.

Defendant's Assertion of Speedy Trial Right

The third factor rests on a defendant's assertion of the constitutional right to a speedy trial. Salcido-Quintana did not formally assert the right until fairly late in the judicial process and shortly before trial. But he did do so. We have accounted for the timing of Salcido-Quintana's invocation of the right by effectively discarding those time periods directly attributable to his request for continuances of the preliminary hearing and

the trial. See *Erenas-Luna*, 560 F.3d at 778 (trial delays resulting from defense motions not attributed to government for constitutional speedy trial purposes). Those requests came before he sought to enforce speedy trial protections and were essentially inimical to those protections. In the usual course of a criminal prosecution, it would be difficult to reconcile a defendant's claimed desire for a speedy trial with repeated motions for trial continuances in an otherwise straightforward case.

But, of course, for the bulk of the pertinent time here, Salcido-Quintana could not have asserted a speedy trial claim. Although he had been officially charged, he had not been informed of those charges. See *Doggett*, 505 U.S. at 653-54 (A defendant may not be penalized in the speedy trial analysis for failing to assert his or her right when he or she has no knowledge of the pending charges.). Salcido-Quintana floated around in that criminal justice limbo for well over a year. That delay did not simply drop out of the picture because Salcido-Quintana declined to press for a speedy trial at his earliest opportunity. That would amount to an unacceptable backhanded waiver of a constitutional right. See *Barker*, 407 U.S. at 525 (Court declines to presume waiver of Sixth Amendment speedy trial right from inaction); 407 U.S. at 528 (rejecting a "rule that a defendant who fails to demand a speedy trial forever waives his right").

Both the State and the defendant have some obligation to act to insure a speedy trial. 407 U.S. at 527 ("A defendant has no duty to bring himself to trial."). The State stands as "society's representative[]" in the criminal justice system and, therefore, has a responsibility to advance the societal benefits flowing from "bringing swift prosecutions." 407 U.S. at 527.

In keeping with those varied interests, we have given due regard to Salcido-Quintana's assertion of his right to a speedy trial, the timing of that assertion as comparatively late in the prosecution, and the separate obligation of the State in securing prompt resolution of criminal charges. Those considerations effectively reduce the

duration of the delay for Sixth Amendment purposes and afford less weight to Salcido-Quintana's invocation of speedy trial protections than it would have carried if raised earlier. 407 U.S. at 529 (court should consider "the frequency and force of" defendant's requests for a prompt trial).

Prejudice to Defendant

The final *Barker* consideration looks at prejudice to the defendant. The United States Supreme Court identified three types of potential prejudice to a criminal defendant the speedy trial right curtails: oppressive pretrial incarceration; a defendant's anxiety and concern sparked by the ongoing proceedings; and possible impairment of the defense. *Barker*, 407 U.S. at 532; *Rivera*, 277 Kan. at 118. Only the last comes into play here. Salcido-Quintana was on bond and suffered no significant pretrial detention. For most of the time period considered for speedy trial purposes, he was unaware of the charges and, therefore, could not have been emotionally upset by them.

The United States Supreme Court identified potential harm to the defense as "the most serious" consequence of delay "because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Barker*, 407 U.S. at 532. As the *Barker* Court pointed out, an extended delay generally tends to impair the truth-seeking function of a trial because some witnesses may be lost altogether and the memories of those who testify may well be dulled by the passage of time. 407 U.S. at 521; see *Doggett*, 505 U.S. at 654. But the cost typically is difficult to assess and to allocate. *Doggett*, 505 U.S. at 655. The State, as the party bearing the burden of proof in a criminal prosecution, may be more significantly disadvantaged in a given case than a defendant. *Barker*, 407 U.S. at 521. But the defendant may be jeopardized in another case. 407 U.S. at 526.

Ultimately, as the *Doggett* Court recognized, "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Doggett*, 505 U.S. at 655. Accordingly, prejudice for Sixth Amendment speedy trial purposes "is not limited to the specifically demonstrable, and . . . affirmative proof of particularized prejudice is not essential to every speedy trial claim." 505 U.S. at 655. Although that sort of presumed prejudice "cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria [citation omitted], it is part of the mix of relevant facts." 505 U.S. at 655-56. Consistent with the integrated analysis of the *Barker* considerations, the longer the delay the greater the importance of such presumptive harm to the trial process generally and to the defendant specifically. 505 U.S. at 656.

In sum, amalgamating the difficulty in measuring actual prejudice flowing from extended trial delays not of a defendant's own making, the importance of the constitutional right to a speedy trial to both a given defendant and the public at large, and the joint responsibility of the State and the defendant to foster that right, the United States Supreme Court had held that a constitutional violation may be found without demonstrable prejudice. *Doggett*, 505 U.S. at 655-65; see also *United States v. Ferreira*, 665 F.3d 701, 706 (6th Cir. 2011) (applying *Doggett* to find speedy trial violation without specific prejudice in light of government's gross negligence in timely pursuing prosecution and length of resulting delay); *Erenas-Luna*, 560 F.3d at 778-79 (applying *Doggett* to reverse district court's denial of speedy trial motion, given government's negligent failure to actively pursue execution of warrant for defendant and resulting delay in his prosecution). A defendant may prevail if the circumstances point to some degradation of the trial process resulting from a lengthy delay the State could have prevented through ordinary diligence.

Here, Salcido-Quintana has not identified specific prejudice in the sense of a lost witness or other evidence that clearly would have aided his defense. From the record, it is unclear just who might even be a potential witness in this case. Obviously, Salcido-

Quintana and Deputy Gill have firsthand knowledge of the stop and the arrest. We don't know if others saw some or all of the relevant events. We suppose, too, there was some blood-alcohol test performed. There might be additional witnesses associated with that testing.

In any event, the recollections of Salcido-Quintana and Deputy Gill probably have faded to some degree. That would not invariably disadvantage Salcido-Quintana, as the defendant. But Deputy Gill prepared a contemporaneous written report of the encounter that he could then use to refresh his recollection or that could be introduced as past recollection recorded with the proper evidentiary foundation. Criminal defendants typically have no comparable memory aids to assist them in testifying or otherwise presenting their evidence. It is difficult to assay how much that might figure into a judge or juror's credibility determinations. But a factfinder might tilt toward a "refreshed" recollection rather than one still covered with the dust of time gone by.

More to the point, here, Salcido-Quintana contends the video recording of the stop and arrest would likely be an equalizer. The video ought to allow the factfinder to see the events as they happened rather than imagining them filtered through the memories and biases of witnesses. There are, however, uncertainties about the video on several levels relevant to a speedy trial determination. The State suggests Deputy Gill's digital recorder may have failed, so no recording ever existed. While the record contains some anecdotal references to the in-car systems failing on occasion, nothing supports the State's suggestion that a malfunction happened during the stop of Salcido-Quintana. The evidence produced at the hearing, instead, generally supports the notion that the stop and arrest were recorded, then transferred to the server, and later archived in accordance with departmental procedures.

Because the video has not been produced, there is no way to know whether it would favor the State or Salcido-Quintana. Videotaping DUI and other traffic stops

serves several purposes. As we have noted, the recording furnishes a comparatively objective depiction of what actually happened, particularly as the stop is made and the driver is then questioned about drinking and asked to perform field sobriety tests. The visual record may graphically show the driver's impaired speech, coordination, and mental acuity—all signs indicative of intoxication. The audio portion will memorialize a defendant's incriminating description of alcohol consumption or feeble efforts to otherwise explain apparent intoxication. In some cases, however, the video record may show an unimpaired driver.

A video can protect an officer from suggestions that he or she overstated the driver's impairment or otherwise overreached in conducting the stop and arrest. Or it may prove just that sort of overselling in an officer's report and testimony. And its very existence may furnish an incentive for an officer to avoid embellishing in the first place.

What often may not be shown in a video is the full extent of the officer's reasonable suspicion in deciding to make a stop. Deputy Gill testified that the video automatically began to run when he turned on his patrol car's emergency lights. But an officer usually does that only after he or she has determined there is reasonable suspicion to make a stop. In some instances, an officer may manually engage the video and will do so to record the poor driving prompting the stop.

From an evidentiary standpoint, the missing video is akin to a faded memory or lost witness. The absence of that evidence probably assists one side or the other in a given case. A court faces a difficult, often nearly impossible, task in making that determination about fuzzy recollections and vanished witnesses. With the lost video, this court confronts the same dilemma.

But there are a couple of significant differences between the video, on the one hand, and diminished or lost witness testimony, on the other. The passage of time hasn't

dulled what the video would contribute if it could be retrieved. More important here, perhaps, the State bears direct responsibility for the loss of the video. The sheriff's department developed the procedures and the system for archiving and retrieving the digital recordings. And Deputy Wannow testified that sometimes videos simply cannot be retrieved once archived—something that happens on a regular and predictable, if relatively infrequent, basis. Loss of archived data was a known consequence of the equipment and processes the sheriff's department used. Under those circumstances, the prejudice to Salcido-Quintana should be considered more significant for purposes of establishing a constitutional speedy trial violation than the purely inferential type recognized in *Doggett*.

With the passage of time, witnesses and memories come and go. But that loss cannot be attributed directly to the State. The missing video, however, can and should be imputed to the State. If the sheriff's department used a more reliable data storage and retrieval system, the evidence would be available. The failure to do so may be analogized to the government's negligence in failing to make diligent efforts to notify a defendant of criminal charges after they have been filed. That negligence cuts against the State in a *Barker* analysis. The State's inability to produce the video data of the stop and arrest similarly burdens Salcido-Quintana's speedy trial rights. In this case, there is nothing he could have done to avoid that result. Accordingly, the loss of the video should be weighed at least somewhat more heavily against the State than the inferred prejudice recognized in *Doggett*.

The State argues that the video likely would have been archived 3 to 6 months after Salcido-Quintana's arrest in March 2007 and, thus, before the formal filing of charges at the end of 2007 when his constitutional right to a speedy trial accrued. The State says the loss of the video happened before Salcido-Quintana's right arose, so there can be no violation of that right. Even assuming the accuracy of that chronology, which would be consistent with the department's procedures, the argument misses the basic

point. The prejudice to Salcido-Quintana did not occur when the video was archived. If he had never been charged, he would have had no interest in the video and would have suffered no prejudice. The degradation of Salcido-Quintana's Sixth Amendment right to a speedy trial happened after he was charged and haled into court at the point he requested a copy of the video—and the State could not *then* produce it.

Conclusion

Applying the *Barker* factors, the strongest case for a defendant would entail an exceptionally long delay the State deliberately caused to aid its prosecution, while the defendant promptly requested a speedy trial and suffered actual prejudice in countering the charges. Conversely, a weak claim would involve a short delay, no identifiable prejudice, a lax assertion of the right, and some justification for the government's delay. Most cases, of course, fall between such extremes and are more difficult to analyze.

In keeping with the totality-of-the-circumstances evaluation for speedy trial violations, the guiding precedent recognizes the longer the delay, the less tangible the prejudice need be and the less culpable the State's conduct and so forth. In other words, an extreme factual showing as to one of the *Barker* factors tends to offset more moderated facts as to the others. Ultimately, however, there is no formula or fixed measure for a violation. The courts have expressly rejected that approach to parceling out Sixth Amendment speedy trial rights.

On balance, the length of the delay properly measured at more than a year and the comparative simplicity of the case itself coupled with the State's failure to offer any justification for the delay in notifying Salcido-Quintana of the charges well support the district court's conclusion in finding a constitutional speedy trial violation. Salcido-Quintana's relatively late assertion of his right does not materially change the picture; it is otherwise accounted for in measuring the delay. As we have explained, the prejudice

assessment cannot be treated as neutral. It, too, tilts against the State. The district court, therefore, made the correct call in granting Salcido-Quintana's motion and dismissing the case.

Affirmed.