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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3752-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL J. DOCE,

Defendant-Appellant.

Submitted May 22, 2024 – Decided June 11, 2024

Before Judges Vernioia, Gummer, and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 15-07-0801.

Duane Morris LLP, attorneys for appellant (Eric Robert Breslin, Melissa S. Geller, and Sarah Fehm Stewart, on the briefs).

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (Nancy Anne Hulett, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Michael J. Doce appeals from an order entered following our remand on his direct appeal, State v. Doce, No. A-0967-17 (App. Div. May 7, 2020) (slip op. at 16-24), denying his motion for vacatur of his judgment of conviction for conspiracy to commit murder and murder and for dismissal of the charges on speedy-trial grounds. Because the court did not comply with our mandate on remand, we vacate the court's order and remand for further proceedings.

I.

As we detailed in our decision on defendant's direct appeal, "[o]n November 6, 2011, defendant's codefendant Daniel Medaglia murdered K.D." Id. at 1-2. Three days later, police arrested defendant and Medaglia for the murder. Id. at 12. A grand jury later returned an indictment charging defendant, Medaglia, and codefendant Ryan Morrell "with conspiracy to commit murder, murder, and other related charges" in connection with K.D.'s homicide. Ibid. "[T]hree years after the original indictment, a grand jury returned a superseding indictment adding additional charges" against defendant. Ibid.

Defendant remained free on bail following his 2011 arrest, and his trial commenced more than five-and-a-half years later in May 2017. Id. at 17. During the proceedings prior to the trial, "[t]here were numerous motions that

were filed relating to discovery," and "[d]efendant filed motions to sever, dismiss, and to exclude certain evidence at trial" and to "waive his right to a jury trial." Ibid. Also, Medaglia and Morrell pleaded guilty to various offenses and agreed to testify against defendant at trial. Id. at 12.

In December 2016, defendant's counsel sent a letter to the court asserting defendant's right to a speedy trial and "object[ing] to any further delay of the trial based on the State's need to 'prepare,' or its failure to take the currently scheduled trial date into account." Id. at 18. At a January 7, 2017 hearing, the trial court noted "the case was not moving along 'as expeditiously as' it would have liked . . . and that 'the only saving grace' was that defendant was not imprisoned."¹ Ibid. As noted, the trial commenced five months later in May, and the jury returned its verdict in June 2017, finding defendant guilty of conspiracy to commit murder and murder.

On his direct appeal, defendant argued in part his convictions should be reversed because he had been denied his right to speedy trial. See generally State v. Cahill, 213 N.J. 253, 276 (2013) (explaining "[t]he only remedy" for a violation of a defendant's speedy trial right "is dismissal of the charge"). We

¹ Our decision on defendant's direct appeal misstated that the hearing took place in January 2016. Ibid.

noted that when it addressed defendant's speedy trial claim during the January 7, 2017 hearing, the court did not make "any findings with respect to any of the factors that must be considered when addressing a speedy trial claim" under the United States Supreme Court's decision in Barker v. Wingo, 407 U.S. 514, 530 (1972).² Doce, slip op. at 18-19.

We also explained we did not "have the benefit of a comprehensive trial court decision that divides the overall delay into discrete periods and then explains and evaluates the reasons for delay in each of these time periods." Id. at 22. We listed various circumstances that should be considered in the trial court's analysis of the speedy trial claim and explained we otherwise would not exercise original jurisdiction to decide the issue because fact-finding is required. Id. at 22-23.

We concluded that "[a] trial court is better suited . . . to undertake 'the difficult task of balancing all the relevant factors relating to the respective interests of the State and the defendant[],' and to provide 'subjective reactions to the particular circumstances [to] arrive[] at a just conclusion.'" Id. at 23-24 (first

² We also explained that an alleged speedy-trial violation requires consideration of the following four factors: "(1) the '[l]ength of [the] delay'; (2) 'the reason[s] for the delay'; (3) '[w]hether and how [the] defendant assert[ed the] right' to a speedy trial; and (4) the prejudice the delay caused to the defendant." Doce, slip op. at 20 (alterations in original) (quoting Barker, 407 U.S. at 530-31).

alteration added) (quoting State v. Merlino, 153 N.J. Super. 12, 17 (App. Div. 1977)). We remanded-defendant's speedy-trial claim with the directive that the court:

(1) catalog and compartmentalize all of the discrete periods of delay; (2) determine and evaluate the specific reasons for delay; and (3) as to delay attributed to the State, determine whether the delay was the product of the case's complexity, some other legitimate justification, was the product of purposeful delay tactics, or mere inaction.

[Id. at 24.]

We also directed that the court "apply the Barker factors in light of those findings" and noted the requisite "analytical process 'necessarily involves subjective reaction to the balancing of circumstances.'" Ibid. (quoting State v. Szima, 70 N.J. 196, 201 (1976)).

We otherwise affirmed defendant's convictions and rejected his arguments the court committed errors requiring reversal. Ibid. We remanded for the court to consider and determine defendant's claim his right to a speedy trial had been violated. Ibid. We directed the court to vacate defendant's judgment of conviction and dismiss the superseding indictment if it determined defendant's speedy-trial right had been violated. Ibid.

On remand, the court held an evidentiary hearing at which defendant testified on his own behalf and presented his trial counsel and mother as witnesses. Defendant testified concerning his loss of employment following his arrest, his inability to obtain comparable employment thereafter, the ensuing financial issues that resulted in the loss of his home, and various physical and psychological issues he attributed to the pendency of the charges against him. His mother similarly testified concerning defendant's numerous physical ailments during the pendency of the charges prior to trial and she explained she had "watched" defendant "deteriorate" from physical ailments during the long period awaiting trial.

Defendant's trial counsel testified concerning the pretrial proceedings, her difficulties obtaining discovery from the State, the filing and disposition of various pretrial motions, and her frustrations with the State during attempts to resolve evidentiary issues. Counsel also asserted the State had unduly delayed portions of defendant's trial by requesting adjournments and calling only one witness on certain days during the trial.³

³ We also observe that forty exhibits were identified during the two-day remand hearing, but the hearing transcripts included in the record on appeal reflect that the exhibits were not admitted into evidence.

Following the presentation of the evidence, and the parties' submission of post-hearing briefs,⁴ the court issued a written decision denying defendant's motion for vacatur of his judgment of conviction and dismissal of the charges. The court summarized the testimony presented by the witnesses and generally addressed each of the Barker factors. In doing so, the court made cursory and conclusory findings concerning some delays attendant to the pretrial proceedings and trial, noting delays were attributable to the court's calendar and the disposition of the numerous motions filed by the parties.

The court further noted that defendant did not assert his right to a speedy trial until December 29, 2016, and explained the court "never felt it was prevailed upon to address" defendant's assertion of the right due to the court's "limited ability to . . . do more than it was handling." The court also rejected defendant's and his mother's testimony concerning the alleged prejudicial effects of the five-and-a-half-year delay in bringing the matter to trial. The court rejected as incredible defendant's testimony that he suffered physical ailments due to the pendency of the charges prior to the return of the jury's verdict.

⁴ In his brief on appeal, defendant claims his post-hearing submissions included seventy-three exhibits detailing "the extensive delays created by the State."

Without any further analysis, the court concluded that defendant's right to a speedy trial had not been violated. The court entered an order denying defendant's motion. This appeal followed.

In his merits brief on appeal, defendant presents the following arguments for our consideration:

POINT I

APPLICABLE LAW ON A SPEEDY TRIAL APPLICATION[.]

POINT II

THE TRIAL COURT COMMITTED CLEAR ERROR BY FAILING TO ACCORD THE LENGTH OF THE DELAY SUFFICIENT WEIGHT IN ITS ANALYSIS[.]

POINT III

THE TRIAL COURT ERRED BY FAILING TO ACCURATELY OR THOROUGHLY ANALYZ[E] THE REASON FOR THE DELAY[.]

- A. The Trial Court's Finding that No Delays Could be Attributed to the State is Not Supported by the Record and is Clear Error.
- B. The Trial Court Erroneously Attributed the Delay to Defense Motion Practice.
- C. The Defense Did Not Produce Thousands of Text Messages That the State was Technologically Unable to Produce.

POINT [IV]

THE TRIAL COURT CLEARLY ERRED IN FINDING THAT DECEMBER 29, 2016 WAS THE FIRST TIME [DEFENDANT] ASSERTED HIS SPEEDY TRIAL RIGHTS AND BY WEIGHING THIS HEAVILY AGAINST [DEFENDANT.]

POINT [V]

THE TRIAL COURT CLEARLY ERRED IN FINDING THAT [DEFENDANT] DID NOT SUFFER PREJUDICE AS [A] RESULT OF THE DELAY[.]

In his brief in reply to the State's opposition, defendant argues:

POINT I

THE STATE'S OPPOSITION MISSTATES THE RELEVANT LAW[.]

POINT II

THE STATE'S OPPOSITION IS A PREJUDICIAL RECITATION OF IRRELEVANT EVENTS[.]

POINT III

THE STATE ADMITS THE FIRST BARKER FACTOR WEIGHS IN [DEFENDANT]'S FAVOR[.]

POINT IV

THE STATE PROVIDES NO MEANINGFUL ANALYSIS OF THE SECOND BARKER FACTOR[.]

POINT V

THE STATE'S RELIANCE ON [DEFENDANT]'S DECEMBER 29, 2016 LETTER IS IN ERROR; [DEFENDANT] SUFFICIENTLY ASSERTED HIS SPEEDY TRIAL RIGHT BEGINNING IN 2012[.]

POINT VI

THE STATE IGNORES THE PRESUMPTIVE PREJUDICE CAUSED BY THE EXTRAORDINARY DELAY, AND OTHER EVIDENCE OF [DEFENDANT]'S EMOTIONAL, MEDICAL AND FINANCIAL DISTRESS[.]

We begin our analysis by noting the remand court did not comply with our plainly-stated and unequivocal directive that it "catalog and compartmentalize all of the discrete periods of delay," "determine and evaluate the specific reasons for delay," and determine whether specific periods of delay were attributable to the State and, if so, whether the delays were based on a legitimate justification. See Doce, slip op. at 24. Thus, contrary to our directive, the court could not, and did not, "apply the Barker factors in light of those findings" because the court had not made the requisite factual findings.

The court did not catalog or compartmentalize any discrete periods of delay occurring during the five-and-a-half years between defendant's arrest and the commencement of his trial. Instead, the court made vague references to various pretrial proceedings and motions and the court's calendar and obligation

to handle other matters, without making the factual findings or conducting the analysis mandated by our remand order. See State v. Tsetsekas, 411 N.J. Super. 1, 10 (App. Div. 2009) (explaining the Barker "factors are interrelated, and each must be considered in light of the relevant circumstances of each particular case").

It is well-established that "[w]hether in agreement or not, a trial judge is 'under a peremptory duty to obey in the particular case the mandate of the appellate court precisely as it is written.'" State v. Kosch, 454 N.J. Super. 440, 443-44 (App. Div. 2018) (quoting Flanigan v. McFeely, 20 N.J. 414, 420 (1956)). "[T]he very essence of the appellate function is to direct conforming judicial action." Id. at 444 (quoting Tomaino v. Burman, 364 N.J. Super. 224, 233 (App. Div. 2003)).

The remand court failed to abide by the directive in our decision on defendant's direct appeal. As a result of that failure, we are left without the findings of fact and analysis of the Barker factors that are essential for proper appellate review and for which we expressly remanded in the first instance. Most importantly, the court failed to make findings of fact concerning the discrete periods of delay during the pretrial proceedings, the reasons for the

delay, and the causes for each as we directed.⁵ If we had not determined that such findings were essential to proper appellate review of defendant's speedy trial claim, we would not have ordered the remand court to consider and make such findings in the first instance. And the court's failure to make the requisite findings of fact as otherwise required under Rule 1:7-4 prevents proper appellate

⁵ For example, and not by way of limitation, we note defendant argues that the various discrete periods of delay included: nearly seven months during the pre-indictment period, November 9, 2011, to May 30, 2012; the thirteen months between May 31, 2012, and June 20, 2013, when the State allegedly refused to provide discovery; the fourteen months between July 1, 2013, and September 2, 2014, during which the court addressed various motions related to collection and preservation of cell-phone evidence, for dismissal of the indictment, for suppression of evidence, and for an adverse inference; the ten months from September 2, 2014, to July 4, 2015, during which defendant contends the State did not provide discovery, disregarded court orders, and otherwise delayed the proceedings by requesting various adjournments; the six months from July 5, 2015, to January 7, 2016, during which there were proceedings related to what defendant characterizes as the "very strange superseding indictment" he contends the records "suggests" was brought by the State with "a bad motive"; the almost sixteen months from January 8, 2016, to May 1, 2017 during which defendant was required to "do nothing else but wait for a trial date"; and during defendant's trial, May 2, 2017, to June 20, 2017, during which defendant contends the State employed numerous delaying tactics.

We do not list the foregoing for the purpose of defining any discrete periods of delay or to suggest that defendant's version of the events, or assertions concerning the alleged periods of delay, are binding on the trial court. They are not. We summarize defendant's position merely to highlight the trial court's failure to comply with our directive on remand to "catalog and compartmentalize all of the discrete periods of delay" and determine the reasons for them, and the State's role, if any, in causing them.

review of the significant speedy-trial issues presented here. See Curtis v. Finneran, 83 N.J. 563, 569-70 (1980).

We are therefore constrained to again remand to the trial court to make findings of fact and conduct the analysis of the Barker factors based on those findings as we directed in our decision on defendant's direct appeal. Doce, slip op. at 24. We recognize the remand will result in additional delay in the determination of defendant's speedy trial claim, but we are convinced it would be inappropriate to exercise original jurisdiction because further fact-finding is required. See generally Price v. Himeji, LLC, 214 N.J. 263, 294 (2013) (discussing the standard for a reviewing court's exercise of original jurisdiction under Rule 2:10-5); see also State v. Santos, 210 N.J. 129, 142 (2012) (explaining exercise of original jurisdiction under Rule 2:10-5 is discouraged "if factfinding is involved").

Because the judge who entered the order has retired, the matter shall be decided by a new judge on remand. The court shall conduct such proceedings it deems appropriate to properly address and decide defendant's speedy-trial claim anew in accordance with our prior remand order, based on an application of all pertinent legal principles, and without regard to the decision and order from which this appeal is taken. The court shall make appropriate findings of

fact and conclusions of law in support of its decision. R. 1:7-4. Nothing in this decision shall be interpreted as making findings of fact or expressing an opinion on the merits of defendant's motion or the parties' arguments.

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION