20-5206

ORIGINAL

SUPREME COURT OF THE UNITED STATES OF AMERICA
1 1st St. NE
Washington, DC 20543

Jefferson County District Court,
Case No. 2014CR572
Colorado Court of Appeals Case No. 2016CA1311
Colorado Supreme Court Case No. 2019SC745

Petitioner:

Nathan Daniel Knuth

v.

Respondents:

THE PEOPLE OF THE STATE OF COLORADO.

Nathan Knuth, 125833
PO Box 999
Canon City, CO 81215

PETITION FOR A WRIT OF CERTIORARI

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LIST OF PARTIES

Colorado Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203

BASIS FOR JURISDICTION

Mr. Knuth's pteition for writ of certiorari to the Colorado Supreme Court was denied on April 27, 2020(App. pg. 1). The Colorado Court of Appeals entered its opinion on AUgust 22, 2019 (App. pg.3), then issued the mandate on April 29, 2020 (App. pg. 2).

USCS Supreme Court Rules 10, 11 and 20, confer on this Court jurisdiction to review the issues at hand.

STATEMENT OF THE CASE

The Respondent, Nathan Knuth, was charged with second degree assault, menacing with a deadly weapon, second degree kidnapping, false imprisonment, criminal mischief, and third degree assault. (R.CF pp. 33-43.) These charges arose from allegations that on March 1, 2014, Mr. Knuth and Andrea Sandoval, who had been in a domestic relationship for approximately 12 years and who have two children together, got into an argument during which Mr. Knuth allegedly assaulted Ms. Sandoval with his hands. (Id.) The prosecution later added six counts of habitual criminal, one count of second degree assault causing serious bodily injury, and seven additional misdemeanor charges. (Id. at 67-69, 289-290,352-354.) Prior to trial, the district court granted the prosecution's motion to dismiss count 14 for second degree assault causing serios bodily injury. (R.CF PP. 1775.)

After a jury trial was conducted on April 18-21, 2016, at which Mr. Knuth appeared pro se, the jury found Mr. Knuth guilty of Second degree assault, menacing with a deadly weapon, second degree kidnapping, false imprisonment, criminal mischief, driving while ability impaired, third degree assault, and violation of a protection order. However, the jury found Mr. Knuth not guilty of the remaining counts. (R.CF pp. 2700-2712).

After a hearing, the district court adjudicated Mr. Knuth as a habitual criminal based on counts 9,10,11, and 12, but dismissed counts 7 and 8. (R.tr. 6/29/16 pp. 92, 93, 100-101.) The district court subsequently sentenced Mr. Knuth to 32 years for second degree assault, 12 years for menacing with a deadly weapon, and 24 years for second degree kidnapping, all to be served concurrently in the department of corrections. (R.Tr. 6/29/16 pp. 116-117.)

Mr. Knuth then sought direct appeal in the Colorado Court of Appeals

of the above 3 questions presented for review.(App. 37-39, 8.) Then on certiorari to the Colorado Supreme Court,(App. 170-171.) These three questions were also properly preserved for appeal in the court of first instance, (R.Tr. 4/20/16 pp. 214-223.),(R.CF pp. 1764, 1739; R.Supp.CF pp. 153, 158.) (R.Tr. R.CF 573-574, 677-688, 695-706, 712-723, 810-819, 953-984, 1299-1311, 1382-1393; R.Tr. 3/17/16 a.m. pp. 28-32; R.Tr. 3/17/16 p.m. pp. 34-35; R.Tr. 4/11/16 pp. 4-10). (R.CF pp. 1382-1393; R.Tr. 3/25/16 pp. 37; R.Tr. 4/11/16 pp. 24.)

ARGUMENT FOR QUESTION I

I. WHETHER COLORADOS SECOND DEGREE ASSAULT STATUTES 18-3-203 (1)(b),18-3-204,and 18-3-203(1)(g) ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED TO MR. KNUTH.

As an initial matter, I request this Honorable Court to construe the following claims liberally, as due to COVID-19 the facility "law Library" is closed and I have no way to further develop these claims. If this Court has the ability to provide counsel on this petition, it is hereby requested, as I believe my constitutional rights of access to the courts is being violated by this closure of the law library.

Equal protection of the law is guaranteed by the United States Constitution and by the Due Process Clause of the Colorado Constitution. **U.S. Const. amend. XIV; Colo. Const. art. II, § 25.** Equal protection assures that those who are "similarly situated" will be afforded similar treatment. **People v. Gardner,** 919 P.2d 850, 853 (Colo.App.1995). Criminal defendants are similarly situated for purposes of equal protection analasys if their conduct was similar. **People v. Oglethorpe,** 87 P.3d 129, 135 (Colo.App.2003). Equal protection is implicated where two statutes proscribe the same conduct but impose different criminal sanctions. **People v. Onesimo Romero,** 746 P.2d 534, 537 (Colo.1987). Additionally, statutes which impose different penalties for what ostensibly may be different conduct, but offer no intelligible standard for distinguishing between varieties of proscribed conduct, violate guarantees of equal protection **Gardner,** 919 P.2d at 853. "In order for an equal protection violation to exist... it is not necessary that each statute proscribe identicle conduct in all the possible applications of each statute; it is sufficient that with respect to the conduct charged, both of the statutes apply and prescribe disparate penalties." **Onesimo Romero,** 746 P.2d at 542(Jones, J., dissenting)

(citing **People v. Bramlett**, 194 Colo. 205, 210; 573 P.2d 94, 97 (1977)).

While equal protection of the law requires statutory classifications of criminal behavior to be based on differences that are real in fact and reasonably related to the general purposes of criminal legislation, the General Assembly may prescribe more severe penalties for conduct it percieves to have more severe consequences, even if the differences are only a matter of degree. **People v. Jefferson**, 748 P.2d 1223 (Colo.1988). However, statutes which impose different penalties for what ostensibly might be different conduct, but offer no intelligible standard for distinguishing the proscribed conduct, violate equal protection. **People v. Macy**, 628 P.2d 69 (Colo.1981).

People v. Gardner, 919 P.2d 850, 853 (Colo.App.1995), holding modified by **People v. Hickman**, 988 P.2d 628 (Colo.1999)

Harsher penalties for crimes committed under different circumstances than those which accompany the commission of other crimes do not violate **equal protection** guarantees if the classification is rationally based upon the variety of evil proscribed. The classification, however, must reflect substantial differences having a reasonable relationship to the persons involved and the public purposes sought to be achieved. **People v. Bramlett, supra; People v. Hulse**, Colo., 557 P.2d 1205 (1976); **People v. Calvaresi**, 188 Colo. 277, 534 P.2d 316 (1975). Where two statutes provide disparate penalties for similar criminal conduct, **equal protection** guarantees are violated. **People v. Bramlett supra; People v. Mckenzie**, 169 Colo. 521, 458 P.2d 232 (1969).

People v. Montoya, 196 Colo. 111, 113, 582 P.2d 673, 675 (1978)

EQUAL PROTECTION VIOLATION No. I.

Mr. Knuth was charged with second degree assault based on the allegation that Mr. Knuth's hands were a deadly weapon. Specifically, the charge of second degree assault alleged that Mr. Knuth's intent was to cause only bodily injury. (R.CF pp.2674) and that he caused only bodily injury.Id. However, the charge of second degree assault also alleged that Mr. Knuth used a deadly weaponin the form of his hands. In order for the jury to find that Mr. Knuth's hands were a deadly weapon,the jury was required to find that his hands "in the manner it is used or intended to be used, is capable of causing death or serious bodily injury." (R.CF pp. 2671-2672)

The Colorado Courts have recognized that hands can in some circumstances satisfy the deadly weapon element. **People v. Ross.** 831 P.2d 1310 (Colo.1992); **People v. Saleh**, 45 P.3d 1272(Colo.2002). However, in every case to have addressed the issue whether hands (or any body part) can satisfy the deadly weapon element, involved the body part being used as an instrumentality to

an assaultin which serious bodily injury or death **did** occur, thus justifying the body parts use as a deadly weapon, or object "capable of producing serious bodily injury or death" under § 18-1-901(3)(e),C.R.S. **Ross**, 831 P.2d at 1311 (victim had eight major fractures around eyes, nose, and mouth; victim had great risk of severe permanent damage; and victim had to have his lower jaw replaced as result of punch to the face); **Saleh**, 45 P.3d at 1273(victim suffered a severely broken wrist, sprained ankle, and fractured pelvis and was hospitalized for six weeks) as a result of being kicked down a flight of stairs); **Grass v. People**, 471 P.2d 602, 603 (Colo.1970)(victim suffered broken nose and several lacerations to the face as result of punches and kicks); **People v. Hayes**, 923 P.2d 221, 224-25 (Colo.App.1995)(victim sustained svere injuries including a broken nose, lacerations to her face, and a hole in her lip as a result of punches).

Here, Mr. Knuth did not use his hands in a manner to cause serious bodily injury or death. The prosecution dropped the charge alleging serious bodily injury in this case, and Mr. Knuth was charged and convicted under § 18-3-203(1)(b),C.R.S. (2014)"with intent to cause bodily injury to another person he or she causes such injury to any person by means of a deadly weapon." Throughout the Colorado District Court Systems this type of conduct would usually result in a third degree assault prosecution. **See § 18-3-204, C.R.S.** (defining third degree assault as knowing or recklessly causing bodily injury to another) and **§ 18-1-901(3)(c),C.R.S.** (defining bodily injury as "physical pain, illness, or any impairment of physical or mental condition"). Indeed, there is not a single published Colorado Case that has concluded that fists or feet (or any body part) is a deadly weapon, when there was no resulting serious bodily injury or death. To conclude otherwise would transform any assault in which fists are used, but no serious bodily injury results, into a second degree assault by use of a deadly weapon because the use of fists could have caused a fracture or break. These situations are prosecuted as third degree assaults, a misdemeanor offense.

Here, Mr. Knuth was similarly situated to others who used there hands in an altercation with another. However, most defendants are charged with the lesser offense of third degree assault, a misdemeanor offense, in circumstances where there is no serious bodily injury or death resulting in an

altercation using hands or fists.

Elevating an assault involving only bodily injury to a second degree assault by alleging hands are a deadly weapon transforms the offense from a misdemeanor offense which carries a maximum sentece of two years in jail to a class four felony classified as a crime of violence and of which carries a sentence of 5-16 years in prison. **Thus,** the equal protection violation results from the disparate treatment of similarly-situated individuals who are involved in an altercation resulting in only bodily injury(as opposed to serious bodily injury) in which hands are used-most of whom are prosecuted only for third degree assaults, but some of whom, like Mr. Knuth are prosecuted for the more serious second degree assault felony. Individuals charged with third degree assaults aresimilarly situated to Mr. Knuth because the hands in any altercationare "capable of causing serious bodily injury or death" Therefore, equal protection is violated.

Because Mr. Knuth was treated differently from other similarly situated individuals and prosecuted for a much more serious offense, based on nothing more than the whim of the prosecutor, his conviction for second degree assault can not stand. The application of the statutes to Mr. Knuth under the circumstances of this case has violated equal protection of the U.S.Constitution.

EQUAL PROTECTION VIOLATION No. II.

Mr. Knuth hereby incorporates the above argument and laws into this argument.

If, as result of a particular statutory scheme, an offender who acts with less culpable intent and causes a less grievous result is afforded a greater penalty, then the statute involved may violate constitutional principles of equal treatment under the law. **People v. Suazo,** 867 P.2d 161, 164 (Colo. App. 1993). Even where the offenses implicated are different and therefore persons charged under them are not "similarly situated" irrational classifications may be nonetheless violative of fundamental constitutional principles if the penalty prescribed is not rationally related to the recognized legislative objective of establishing "more severe penalties for acts which it believes have...more grave consequences." **Id. See also: U.S. Const. Amend. V,VI, and XIV. People v. Marcy,** 628 P.2d 69, 74-75 (Colo.1981); **People v. Jefferson,** 748 P.2d 1223, 1226 (Colo.1988).

People v. Duc Nguyen, 900 P.2d 37, 39 (Colo. 1995)(Subsection (1)(b) violates equal protection guarantees, because a more severe sentence is imposed for an attempt to commit bodily injury than an attempt to commit serious bodily injury,)

Pursuant to subsection (1)(b) of the second degree assault statute, a person commits second degree assault if "with intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon." **§ 18-3-203(1)(b), C.R.S. (2014).** Additionally, pursuant to subsection (1)(g), a person commits second degree assault if "with intent to cause bodily injury to another person, he or she causes serious bodily injury to that person or another." **§ 18-3-203(1)(g), C.R.S. (2014).**

Pursuant to these statutes, a defendant who causes only bodily injury with his hands is punished the same, and then in other circumstances he is punished more severe than one who caused serious bodily injury with his hands. If one were to recieve a sentence of 16 years for causing bodily injury under subsection(1)(b) then another recieves a sentence of 5 years under (1)(g) for causing serious bodily injury with his hands. Whether he is punished the same or more severe, this is an irrational classification violative of equal protection of the law and due process.

Then if you add the misdemeanor assault statute from the previous argument you have even more of a cluster. This is an irrational classification . Mr. Knuth has recieved a more severe sentence under (1)(b) for causing bodily injury with his hands than thousands of others who caused bodily injury with their hands, who were only charged with misdemeanor assault. Then He also recieved the same and/or a more severe sentence than thousands of others who caused serious bodily injury with their hands under 18-3-203(1)(g). Thus equal protection is violated.

EQUAL PROTECTION VIOLATION No. III.

All previous arguments and laws hereby incorporated by reference.

Here, Mr. Knuth's hands were not used or intended to be used in a manner capable of causing death or serious bodily injury. Rather. "the manner (Mr. Knuth's hands were) used " was to cause only bodily injury, as evidenced by the fact that Ms. Sandoval suffered only bodily injury, not serious bodily injury. Furthermore, "the manner (Mr. Knuth's hands were)

...**intended** to be used "was also to cause bodily injury, not serious bodily injury, as evidenced by the charge of second degree assault which alleged that Mr. Knuth's **intent** was to cause only bodily injury. In other words, Mr. Knuth's hands were used or intended to be used in a manner capable of causing only bodily injury, because (a) Ms. Sandoval suffered only bodily injury, not serious bodily injury, and (b) the charge of second degree assault alleged that Mr. Knuth's **intent** was only to cause bodily injury, notserious bodily injury. Yet, Mr. Knuth was punished the same and/or more severely than one who causes serious bodily injury.

Therefore, this Court should hold that the second degree assault statute violates equal protection, both on its face and as applied to Mr. Knuth. Upon reversing Mr. Knuth's conviction for second degree assault, this Court should remand this matter for further proceedings and plea negotiations, as the only offer the prosecution extended to Mr. Knuth was to plead guilty to the unconstitutional charge of second degree assault. (R.Tr. 3/25/16 pp. 28.) If this Court reverses Mr. Knuth's conviction for second degree assault because his hands were improperly charged as deadly weapons, then his conviction for menacing with a deadly weapon must also be reversed, as this conviction is also based off his hands as a deadly weapon.

ARGUMENT FOR QUESTION II.

II. WHETHER MR. KNUTHS CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL WERE VIOLATED, BY THE STATE TAKING NEARLY TWO AND ONE HALF YEARS TO BRING HIM TO TRIAL WITH VERY MINIMAL DELAY BEING ATTRIBUTABLE TO MR. KNUTH.

Both the Sixth Amendment and Art. II, Section 16 of the Colo. Const. guarantee the accused the right to a speedy trial. **People v. Small**, 631 P.2d 148, 154 (Colo.1981). Under both provisions, the right to a speedy trial attaches with the filing of a formal charge, or with a defendants arrest. **U.S. v. Marion**, 404 U.S. 307, 320 92 S.Ct 455, 30 L.Ed 2d 468 (1971); ... "the defendant has the burden of proving that his constitutional right to a speedy trial has been denied" **Small**, 631 P.2d at 154.

The determination of such a claim is measured by an ad hoc balancing of four factors: The length of the delay, the reason for the delay, the defendants assertion or demand for a speedy trial, and prejudice to the defendant. **Barker v. Wingo** , 407 U.S. 514, 92 S.Ct 2182, 33 L.Ed 2d 101 (1972); **Small** 631 P.2d at 154.

Gelfand v. People, 586 P.2d 1331, 1332 (1978) (none of these factors is dispensible to a finding that speedy trial has been denied nor is any one of them ipso facto sufficient to require such a finding. Rather all are interrelated and must be considered together with any other relevant circumstatances)

Moody v. Corsentino, 843 P.2d 1355, 1363-64 (Colo.1993) (Although these factors must be considered in combination, the length of the delay must be presumptively prejudicial before other inquiry into the other factors is warranted).**People v. Glaser**, 250 P.3d 632, 635 (Colo.App.2010) (Thereis no established time period that automatically constitutes undue delay Id. at 1364, But in **Dogget v. U.S.**, 505 U.S. 647, 652 n.1 112 S.Ct 2686, 120 Ed. 2d 520 (1992), the Supreme Court noted that, depending on the nature of the charges, generally lower courts have found post accusation delay to be prejudicial as it approaches one year).

A. LENGTH OF THE DELAY

Mr. Knuth was arrested on 3/1/14, and was incarcerated until he went to trial on 4/18/16. This is a delay of 2 years, 1 month, and 18 days (25 1/2 months)

"the delay that can be tolerated for an ordinary street crime is considerably less than a complex conspiracy charge" **Barker** 407 U.S. at 530-531.

Mr. Knuth's crimes **are** ordinary strret crimes and the state should not have needed 25 1/2 months to bring him to trial. **U.S. v. Batie,** 433 F.3d 1287, 1290 (10th Cir. 2006).

The first factor of the Barker test - Length of the Delay - is actually a dual inquiry. First as a threshold matter, only if the delay is "presumptively prejudicial" need we inquire into the remaining Barker factors, **Barker,** 407 U.S. at 530, Second if the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim" **Doggett,** 505 U.S. at 652, 112 S.Ct. 2686; Cited in: **Jackson v. Ray,** 390 F.3d 1254, 1261 (10th Cir. 2004)

The delay from arrest to trial is 25 1/2 months, this is 13 1/2 months longer than needed to trigger judicial examination. Therefore, the **A. Length of the delay** Weighs entirely in Mr. Knuth's favor, **U.S. v. Margheim,** 770 F.3d 1312, 1329 (10th Cir. 2014)

B. REASON FOR THE DELAY

The reason for the delay is the second prong in the Barker analasys, **Barker at 530.** The Supreme Court places the burden on the state to provide an inculpable explanation for delays in speedy trial claims. **Id** at 531 (focusing its evaluation of the delay on "the reason the government assigns to justify the delay") (fn3)... See **Wiggins** 539 U.S. at 521, 123 S.Ct 2527. **Jackson v. Ray supra at 1261.** Different weights should be assigned to different reasons, **Barker at 531, Cited in : People v. Glaser,** supra at 635. Following these guidlines a court should analyze these claims on a period by period basis **Glaser supra at 635.**

In Mr. Knuth's case, he was set for arraignment on May 27, 2014, which wascontinued because private counsel Martha Eskesen moved to withdraw. (R.Tr. 5/27/14 pp. 2-3). The district court granted the motion and appointed a public defender to represent Mr. Knuth. (Id) The case was set for arraignment on June 23, 2014, which was continued at the request of the public defender. (R.Tr. 6/23/14 pp. 2-3.) On July 7, 2014, a not guilty plea was entered on behalf of Mr. Knuth, but Mr. Knuth did not enter this plea personally and orally.(R.Tr. 7/7/14 pp. 3.)[1]

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[1] Colorado Rules of Criminal Procedure (C.R.C.P.) 10 provides: the arraignment shall be conducted in open court...**requiring him to enter a plea to the charge....** See also **People v. Boyd,** 116 P.2d 193 (1941)(the plea must be entered orally and in open court)

On December 10, 2014, the district court conducted a hearing on the public defender's motion for continuance of trial scheduled for December 15, 2014. The public defenders motion was based on the defense's inability to contact the emergency room physician who saw Ms. Sandoval, and based on the prosecutions late endorsement of eyewitness Andrew Aucoin. (R.Tr. 12/10/14 pp. 2-22.) Although Mr. Knuth waived his speedy trial rights, he did so only after a fair amount of hesitation and extensive advisement by the court. Id at22-27.) The Court then rescheduled the trial for March 23, 2015. (Id at 27.) At his next appearance on January 28, 2015, Mr. Knuth asserted that his prior waiver of speedy trial was ineffective, which the district court rejected. (R.Tr. 1/28/15 pp. 17-18.)

On February 18, 2015, after conducting a conflict hearing, the district court found a breakdown in communication between Mr. Knuth and the public defender. (R.Tr. 2/18/15 pp. 30.) The court then appointed alternate defense counsel, and speedy trial started anew on March 2, 2015. (R.Tr. 3/2/15 pp.4.)

On April 3, 2015, the district court conducted another conflict hearing, and Mr. Knuth raised a not guilty by reason of insanity defense (NGRI) during this hearing. (R.Tr.4/3/15 conflict hearing pp. 11. Mr. Knuth also expressed concern about his speedy trial and UMDDA rights. (Id. at 28-29.) After the court denied Mr. Knuth's motion for substitution of counsel and advised him of his rights, he chose to not proceed pro se. (Id at 58.)

After the conflict hearing, the district court conducted a preliminay hearing on April 3, 2015 regerding added count 14. (R.Tr. 4/3/15 prelim. hearing pp.3.) At this hearing, Mr. Knuth unequivically indicated that he wished to enter a plea of NGRI. Specifically, his counsel stated that Mr. Knuth was "insistent that he wants to enter (a plea of NGRI)" (Id at 38.) However, Mr. Knuth's counsel stated "I do not feel there is any legal or factual merit to the plea that Mr. Knuth wants to enter." (Id) The district court then stated:

> Mr. Knuth, to enter a plea of guilty is obviously your sole decision; however, whether to enter a not guilty plea or not guilty by reason of insanity plea is a legal strategy decision to be made by legal counsel, and I believe the court will only and only has to accept a not guilty by reason of insanity plea if there is a legal basis or a good faith basis for the plea that is not being interposed solely for the purposes of delay. So if you have some legal basis or good faith basis to indicate why that plea should enter, I'll consider it, but otherwise I'm not going to allow this just because thats what you want to enter, because it's a choice that's available.(Id).

(Id.) The court then asked Mr. Knuth how he wished to proceed, and Mr. Knuth replied, "I'd just like to let you know it's not delay. I believe I've got a reason from what I've read and case law I've read. I'd like to enter a not guilty by reason of insanity plea.")Id. at 39.) The court denied Mr. Knuth's request to enter an NGRI plea and instead entered a plea of not guilty on all charges. (Id. at 42.) The district court then calculated speedy trial as August 30, 2015 and scheduled trial for July 13, 2015. (Id. at 42-44.)

On May 26, 2015, private counsel Thomas Henry appeared with Mr. Knuth and entered an NGRI plea on his behalf, and the district court accepted the NGRI plea and ordered a psychiatric evaluation for Mr. Knuth. (R.Tr. 5/26/15 pp. 13-14.) Mr. Henry also raised concerns about Mr. Knuth's UMDDA rights at this hearing. (Id. at 19-21.)

On June 8, 2015, the district court acknowledged that Mr. Knuth had filed a UMDDA request on March 10, 2015, but stated his speedy trial and UMDDA rights were tolled pending the evaluation.(R.Tr. 6/8/15 pp. 5.)

On December 2, 2015, the district court conducted another conflict hearing based on Mr. Henry's motion to withdraw, and Mr. Knuth again raised concerns about his speedy trial and UMDDA rights. (R.Tr. 12/2/15 pp.14,29.) On December 7, 2015, Mr. Knuth expressed frustration with the delay in his case becasuse he believed that the psychiatric evaluation would be completed within six months of entering his NGRI plea. (R.Tr. 12/7/15 pp. 8-10)

On February 1, 2016, the district court conducted a hearing after the psychiatric evaluation report was filed on January 14, 2016. (R.Tr. 1/1/16 pp. 2.) At this hearing, Mr. Knuth indicated that he wished to remove Mr. Henry based on ineffective assistance of counsel, and again raised his right to speedy trial. (Id. at 5-9.) The court set a hearing regarding the issue of speedy trial for March 17, 2016, and tantavely set trial for May 2, 2016. (Id.)

On March 17, 2016, Mr. Knuth reiterated, "I'm not willing to waive my constitutional speedy trial rights" (R.Tr. 3/17/16 a.m. pp. 42) and "I have a constitutional right to speedy trial. I'm not willing to waive that right by obtaining alternate defense counsel" (Id. at 49).

On April 11, 2016, the district court determined that Mr. Knuth was entitled to a speedy trial by April 18, 2016, despite Mr. Knuth's argument that his speedy trial rights had already been violated. (R.Tr. 4/11/16 pp. 4-24.) During the first two days of trial, Mr. Knuth objected to having

to choose between his constitutional right to speedy trial and his constitutional right to effective assistance to counsel. (R.Tr. 4/18/16 pp. 11-16, 24-25, 41-44; R.Tr. 4/19/16 pp. 175-176.) Mr. Knuth proceeded to trial pro se starting on April 18, 2016.

Generally, a defendant has the right to determine what plea to enter. **Bergerud,** 223 P.3d at 699. The defense of insanity may only be raised by a specific plea entered at the time of arraignment, except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. **§ 16-8-103(1), C.R.S. 2014.** The Court must balance "the public's interest in not holding criminally liable a defendant lacking criminal responsibility and the defendants interest in autominously controlling the nature of (his or) her defense." **Hendricks v. People,** 10 P.3d 1231, 1240 (Colo.2000). The court must consider a defendant's interest in autonimous decision making with respect to his choice of defense. **Id at 1242.** The defendant's choice should be accorded substantial weight in evaluating whether imposition of a mental status defense results in a " just determination of the charge against the defendant." **Id at 1242.**

Once a defendant has shown that the insnity plea is tendered in good faith, the court's inquiry must be focused on the reason for the delay in entering the plea, rather than the potential merits of the insanity defense. **People v. Red,** 692 P.2d 1150, 1152(Colo.App.1984). In Reed, the defendant stated that he did not enter the plea during his arraignment because of difficulties he had with his attorney which eventually led to new counsel being assigned to represent him. **Id.** Where substitute counselmoved to enter the NGRI plea at the first hearing after he was convinced that he had a good faith basis for it, the **Reed** court concluded that the trial court abused its discretion in denying the defendants motion to enter a plea of NGRI. **Id.**

In Mr. Knuth's case , the district court erroneously delayed his trial in derogation of his right to a speedy trial. When the court accepted Mr. Knuth's NGRI plea on May 26, 2015, the court specifically stated:

> The Court is going to find good cause to enter a not guilty by reason of insanity plea at this point in time....
>
> The Court finds credible that (Mr. Knuth) probably did inquire of (the public defender) or suggest ot her that he intended to file or enter such a plea. The Court will also note that after the preliminary hearing on the added counts, that he also indicated

> to former (ADC Attorney) as well, his desire to enter a not guilty by reason of insanity plea, even though that attorney thought there was no legal basis for it.
>
> Mr. Knuth now has new counsel, who shortly after entering on this case, has filed a motion to allow the entry of the plea of not guilty by reason of insanity. **The Court will find that it believes that Mr. Knuth has always wanted to enter such a plea.** The entry of a plea in a criminal proceeding is one of those rights that is generally reserved to the defendant, regardless of the position of legal counsel.

(R.Tr. 5/26/15 pp. 13-14.)[1]

Under the circumstances of this case, the district court should have calculated Mr. Knuth's speedy trial rights based on it's finding that Mr. Knuth "**has always wanted to enter such a plea,**" specifically starting when he was represented by the public defender on July 7, 2014. If the Court would have followed the statutory mandates and required Mr. Knuth to enter his plea personally and orally on July 7, 2014, by the Court's own findings, there is no doubt Mr. Knuth would have entered the NGRI plea on July 7, 2014. If the Court had calculated Mr. Knuth's speedy trial rights starting on July 7, 2014, then he would have been entitled to proceed to trial sometime in early 2015 (after a period of tolling during a psychiatric evaluation), nearly a year earlier than his April 18, 2016 trial.

Thus, the district court violated Mr. Knuth's constitutional rights to due process and speedy trial by conducting his trial on April 18, 2016, and the charges in this case should have been dismissed.

Additionally, the district court erroneously denied Mr. Knuth's specific request to enter an NGRI plea on April 3, 2015, and did not accept his NGRI plea until May 26,2015, which was 53 days after Mr. Knuth first asked the court to enter an NGRI plea. When Mr. Knuth stated that he wished to enter an NGRI plea on April 3,2015, the district court mistakenly focused on the merits of an MGRI plea. See **Reed**, 692 P.2d at 1152. Instead, the district court should have focused

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[1] The Court had also previously noted, "it may be true that defendant wished to enter the (NGRI) plea (on July 7, 2014), but his counsel disagreed." (R.CF pp. 1388.)

on the reason for the delay in entering the plea, and the court should have accorded substantial weight to Mr Knuth's choice in evaluating whether to allow him to enter an NGRI plea. Dee **id.** Thus, by the court not accepting Mr Knuth's NGRI plea on April 3, 2015, and Mr. Knuth ultimately not getting his plea of choice entered on record until May 26,2015 the Court delayed his trial by 53 days.

Furthermore, at this May 26, 2015 hearing, Upon the entrance of Mr. Knuth's NGRI plea the Court had several statutory duties to perform.

16-8-106 C.R.S. (2014), provides:

> All examinations ordered by the court in criminal cases **shall** be accomplished by the entry of an order of the court specifying the place where suvh examination is to be conducted and the period of time allocated for such examination. The defendant may be committed for such examination to the Colorado mental health institute at Pueblo, **the place where he or she is in custody,** or such other public institution designated by the court. In determining the place where such examination is to be performed, **the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or psychiatrists of forensic psychologists during such period as the court directs...."**

The Court failed in many of these statutory mandates. Under these laws, the Courts first duty was to consider the "nature and circumstances of Mr. Knuth's NGRI plea. The Court did not perform this duty.(Hr,g Tr. 5/26/15)(R.Cf. pp. 592-593). Within the Court's 5/26/15 "ORDER-IN CUSTODY EVALUATION" Par. 4, provides an area for the Court to fill out, specifying why the examination is to be performed at the Colorado Mental Health Institute at Pueablo(CMHIP), instead of the county jail. The Court left this area blank. The nature and circumstances of Mr. Knuth's plea was based on him being involuntarily drugged on the night of his arrest.(R.Tr. 4/3/15,pp. 40:1-6). Further Mr. Knuth had already been subjected to nearly an 11 month delay in entering his NGRI plea.

After considering the nature and circumstances entering the plea, the Court must enter an order specifying where such examination is to be conducted. Upon entrance of this order, the court **"shall give priority to the county jail"** unless the nature and circumstances of the examination require designation of a different facility. The Court ordered the examination to be completed at CMHIP. The nature and circumstances of Mr. Knuth's NGRI plea did not require designation of a different facility. In fact ~~the~~ during the examination period, the Court recieved letters from CMHIP requesting the Court to change the

place of examination to the county jail. (R.Cf. pp. 960, 1818). Also, upon the entrance of Mr. Knuth's NGRI plea the Court informed Mr. Knuth the only place his examination could be performed was at CMHIP.(R.Tr. 5/26/15,pp. 8:15-21.)

On 9/15/15 CMHIP sent a letter to the Court providing that it could perform Mr. Knuth's examination at the county jail,(R.CF. pp.960.), and that CMHIP would not be able to comply with the Court order to have Mr. Knuth's examination completed by 9/28/15,(Id.)

After the Court takes no action, CMHIP again on 10/23/15 sends the Court a letter , this time explaining to the Court how to properly interpret **16-8-106,C.R.S.(2014).** Mr. Knuth confronted the Court with this letter via motion and in open court.(R.Tr. 4/11/16). The Court could not provide any answers as to why it subjected Mr. Knuth to a 7 month and 19 day examination period when ultimately after Mr. Knuth's examination period was changed to the county jail on 12/2/15,(R.CF. pp. 2781), the examination was performed 30 days later and the report filed 15 days after that.

Furthermore, during the same timeframe Mr. Knuth was being subjected to this delay to obtain his examination, there was a court order in place that mandated CMHIP to provide speedy evaluations to pretrial detainees, **Center for Legal Advocacy v. Bicha, civil action No. 11-cv-2285-BNB, United States District Court for the District of Colorado, 2012 U.S. Dist. LEXIS 49681, April 9, 2012.** The agreement reached in this case requires the department of human services to admit a pretrial detainee to CMHIP within 28 days of a judge determining the need for an evaluation or restorative treatment and to obtain a monthly average of no more than 24 days for all patients admitted to CMHIP for evaluation or treatment. **(Id.)** I currently am unable to research this subject any further due to COVID-19 and the facility "law library" being closed. Would this Honorabe Court please review the attached copies of newspaper articles on this subject,(App. pgs. 191 - 195). If there is any other research this Court can perform it would be greatly appreciated.

The Colorado High Courts have long held the examination and report must be completed in a reasonable time. See: **People v. Renfrow,** 564 P.2d at 413; **People v. Brown,** 622 P.2d 573 (1980); **People v. Deason,** 670 P.2d 792, 798 (Colo.1983).

If this Court does not already find the timeframe in between April 3, 2015 until The examination and report was filed on January 14, 2016 is

attributable to the state due to the errors of the July 7, 2014 arraignment, then Mr. Knuth requests the Court find that the 53 days from 4/3/15 to 5/26/15 are attributable to the state, and further find that the lower court should have ordered Mr. Knuth's evaluation to be performed at the county jail in the first place and that only 45 days of the time period between 5/26/15 and 2/1/16 was needed to complete the examination. That leaves nearly 6 months of time attributable directly to the state. For a total of around 8 months of time from the 4/3/15 arraignment, and if counted from the July 7, 2014 arraignment there would be nearly 1 and 1/2 years of time attributable to the state .

Therefore, this period of time weighs heavily in Mr. Knuth's favor.

C. ASSERTION OF THE RIGHT

Thedefendants assertion of the right is "perhaps the most important" of the four Barker factors, **Batie**, 433 F.3d at 1291, "the defendants assertion of the right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right" **U.S. v. Dirden**, 38 F.3d 1131, 1138 (10th Cir. 1994) while a defendant who fails to demand a speedy trial does not inherently waive that right "we emphasize that failure to assert the right will make it difficult for a defendant to prove he was denied a speedy trial" **Barker** at 532, and the defendants burden of showing he sesired a speedy trial is not satisfied merely by moving to dismiss after the delay has already occured" **Batie** at 1291, Thus, if the defendant fails to demand a speedy trial, moves for many continuances, or otherwise indicates he is not pursuing a speedy resolution of his case, this factor weighs heavily against the defendant, **U.S. v. Gould**, 672 F.3d 930, 938 (10th Cir. 2012).

"the sooner a criminal defendant raises the speedy trial issue, the more weight this factor lends to his claim, **Jackson v. Ray**, 390 F.3d 1254,1263 (10th Cir. 2004)

"the more serious the deprivation, the more likely a defendant is to complain" **Barker** at 531.

"in assessing a defendants assertion of the right, it is appropriate to consider" the frequency and force of his objections" **U.S. v. Hicks**, 779 F.3d 1163, 1168(10th Cir. 3-6-2015).

Mr. Knuth was arrested on 3/1/14. His speedy trial rights were first asserted on 7/7/14 when the not guilty plea was entered on his behalf. See:

18-1-405, C.R.S. (2014). The accused's speedy trial rights are initiated upon the entrance of a plea. "ah accused personsright to speedy trial is ultimately grounded on the federal and state constitutions, and statutes rekating to speedy trial are intended to render these constitutional guarantees more effective, **Simakis v. District Court,** 577 P.2d 3 (1978)

"The UMDDA is one of several statutes implememting a defendants constitutional rights to speedy trial" **People v. Higinbotham,** 712 P.2d 993 (Colo. 1996).

"This rule and 18-1-405 clarify and simplify the parameters of the constitutional right to a speedy trial" **People v Chavez,** 779 P.2d 375 (Colo. 1979.)

Mr. Knuth was set for trial on 12/15/14, 3/23/15, and 7/13/15 all of these trials were vacated, due to Mr. Knuth's effort to seek a trial that was held under the pretenses of a NGRI plea. Mr. Knuth could not proceed to trial on any of these dates because he did not have his plea of choice entered on record. Mr. Knuth has constitutional rights to present a complete and meaningful defense, fair trial, and due process, If Mr. Knuth would have proceeded to trial on any of these dates it would have been in violation of these rights, as he did not have his plea of choice on record. The Court placed Mr. Knuth into an intolerable position of choosing between constitutional rights and left him without an effective remedy at trial. **Simmons v. United States,** 390 U.S. 377, 394 (1968) (to require a person to surrender one constitutional right in order to gain the benefit of another is simply intolerable). See also: **McGautha v California,** 402 U.S. 183, 213 (1971).

An overview of the record in this case reflects that Mr. Knuth went through a great effort to get his plea of choice entered on record and to proceed to trial with an NGRI plea and defense. The record or an evidentiary hearing would reflect Mr. Knuth lost two seperate counsels of choice in his pursuit to enter his NGRI plea.

On 3/10/15 Mr. Knuth again asserted his Constitutional speedy trial rights by filing a demand for speedy disposition of his case pursuant to the UMDDA **16-14-101 - 108, C.R.S.(2014), Higinbotham** supar at 994. (R.CF. pp. 405-406).The Court recognized this filing and Mr. Knuth's right to speedy trial in open court. (R.Tr. 6/8/15, pp. 3-- 6). Mr. Knuth proceeded to trial at his earliest ability to have a trial to an NGRI defense.

Would the Court also review the previous pages for an overview

of the instances Mr. Knuth demanded and asserted his rights to speedy trial.

THEREFORE, the C. Assertion of the Right weighs heavily in Mr. Knuth's favor.

D. PREJUDICE TO THE DEFENDANT

"The defendant need not show actual prejudice (the fourth factor) to succeed in showing a violation of his right to a speedy trial" **Doggett supra.** ""where the other Barker factors, especially the length and reason for the delay, weigh heavily in the defendants favor" **Nelson v. Hargett,** 989 F.2d 847, 853(5th Cir.1993) "if the government is more to blame than the defendant than prejudice is presumed" **Doggett at 657.** Cited in: **U.S. v. Fernandez** (D.D.C. 5-26-2009) at 73. "no showing of prejudice is required when the delay is over a year and attributable to the government" **United States v. Shell,** 974 F.2d 1035, 1036 (9th Cir 1992),(Citing Doggett at 657-58.)

Mr. Knuth requests the Court find the prejudice in this case is presumed due to the length of the delay attributable to the state. If the Court needs a showing of actual prejudice, then Mr. Knuth makes the following argument.

In assessing the degree of prejudice, the court must consider any specific prejudice, as well as the three kinds of harm identified by the Supreme COurt that generally are caused by delays from indictment to trial, **Doggett at 654.**

First, Mr. Knuth was erroneously denied an evidentiary hearing to present specific prejudice into the court record,(R.CF pp. 1987.) **Doggett supra at 654** provides he is entitled to an evidentiary hearing. If specific prejudice is needed Mr. Knuth should be remanded for an evidentiary hearing.

Second, Mr. Knuth was held in custody for the entire 25 1/2 months, the seriousness of a pre trial delay worsens when it is accompanied by pre trial incarceration, **Barker at 533.** Pro-longed pre trial incarceration is a well established type of prejudice a defendant may rely on. **U.S. v. Margheim,** 770 F.3d 1312, 1329 (10th Cir. 10-29-14)

Due to prolonged pre trial incarceration and everything else depicted above, the defendants anxiety and concern has been increased beyond thase simislrly situated, **U.S. v. Benally,** at 15 (N.M. 12-28-2010)

THEREFORE, the remedy is severe, dismissal of the information . **United States v. Seltzer,** 595 F.3d 1170, 1175 (10th Cir. 2010)

ARGUMENT FOR QUESTION III.

III. WHETHER MR. KNUTH'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND FAIR TRIAL WERE VIOLATED BY THE TRIAL COURT CONVICTING HIM OF SECOND DEGREE KIDNAPPING WITHOUT THERE BEING SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THIS CHARGE.

(Mr. Knuth moved for judgment of aquittal,(R.Tr.4/20/16pp.214-223) Due process of law requires the prosecution to prove beyond a reasonable doubt every fact necessary to constitute the crime charged before the accused may be convicted and subjected to punishment. **In re Winship,** 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368(1970);**Hendershott v. People,** 653 P.2d 385, 390 (Colo.1982). When reviewing a ruling on a motion for judgment of aquittal, an appellate court must determine whether the relevant evidence, both direct and circumstantial, when viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable person that a defendant is guilty of the charge beyond a reasonable doubt. **People v. Paiva,** 765 P.2d 581 (Colo. 1988).

Although the prosecution is given the benefit of every reasonable inference that might fairly be drawn from the evidence, there must be a logical and convincing connection between the facts established and the conclusion inferred. **People v. Gonzales,** 666 P.2d 123, 128 (Colo.1983.) The conclusion inferred may not be based on guessing, speculation, or conjecture. **Kogan v. People,** 756 P.2d 945, 950 (Colo.1988). Nor will a modicum of evidence rationally support a conviction beyond a reasonable doubt. **Id.** A judgment of aquittal must be entered where the evidence is insufficient to support a verdict of guilty. **People v. Rickman,** 155 P.3d 399(Colo.App.2006)(reversing trial court's denial of motion for judgment of aquittal).

SECOND DEGREE KIDNAPPING

"Any person who knowingly seizes and carries any person from one place to another, without his consent and without lawful justification commits second degree kidnapping." **§ 18-3-302(1), C.R.S. 2014.** The asportation element of second degree kidnapping is satisfied when "the defendant moves a victim from one place to another." **People v. Owens,** 97 P.3d 227, 235 (Colo.App.2004),citing **People v. Harlan,** 8 P.3d 448, 476-477 (Colo.2000).

The movement of a victim necessary to sustain a second degree kidnapping conviction--from one place to another--need not be substantial

and may be incidental to another crime. **People v. Bell**, 809 P.2d 1026, 1033 (Colo.App.1990). Where the prosecution relies on insubstantial movement , a showing that the movement substantially increased the risk of harm to a victim suffices to support the conviction. **People v. Fuller**, 791 P.2d 702, 706 (Colo. 1990).The defendant's conduct substantially increasing the risk of harm to the victim is not a material element of second degree kidnapping, but instead is a factual circumstance reciewing courts consider to determine whether there is sufficient evidence to prove that the defendant moved the victim from one place to another. **Harlan**, 8 P.3d at 476.

In **Bell**, 809 P.2d 1026, a division of the Colorado Court of Appeals concluded that forcing a victim from the living room to a bedroom, leaving him alone in the bedroom, and confining him for a short period of time did not substantially increase the risk of harm to the victim. **Id.** at 1033. As such, the defendants conviction for second degree kidnapping was reversed because the circumstances, as a matter of law, did not satisfy the asportation requirement of second degree kidnapping. **Id at 1033;** see also : **Owens**, 97 P.3d at 237 (reversing conviction for second degree kidnapping because trial courts instructions may have caused jury erroneously to believe that (1) increased risk of harm was of no relevance to second degree kidnapping and (2) any movement, however short, would in and of itself support a conviction for second degree kidnapping).

Mr. Knuth was charged with second degree kidnapping based on allegations that when Ms. Sandoval was at the door of their bedroom, she tried to walk down the hallway to get away from Mr. Knuth. Mr. Knuth then allegedly picked her up from the hallway outside their bedroom and carried her down the stairs to the front door of their shared house, and then dragged her from the front door back to hteir bedroom. In sum, Mr. Knuth allegedly moved Ms. Sandoval, from the hallway outside their bedroom to inside their bedroom. Under these circumstances, even when viewed as a whole and in the light most favorable to the prosecution, the evidence was insufficient to support a conclusion by a reasonable person that Mr. Knuth was guilty beyond a reasonable doubt of second degree kidnapping.

Like in **Bell**, in which the court found that moving the alleged victim from the living room to the bedroom of his home did not substantially increase the risk of harm to him, Mr. Knuth's movement of Ms. Sandoval from the hallway outside their bedroom to inside their bedroom did not substantially increase the risk of harm to her. See: **People v. Bondsteel**, ---P.3d---(Colo.App.2015)

(reversing conviction for second degree kidnapping as to one of two alleged victims because evidence was insufficient where insubstantial movemet next to trail did not substantially increase the risk of harm to her); see also **Brimage v. State,** 918 S.W.2d 466, 487 (Tex.Crim.App. 1994)(stating "The removal of a rape victim from room to roomwithin a dwelling solely solely for the convenience and comfort of the rapist is not kidnapping; the removal from a public place to a place of seclusion is. The forced direction of a store clerk to cross the store and open a cash register is not kidnapping; locking him in a cooler to facilitate escape is")

Here, the movement of Ms. Sandoval from the hallway outside the bedroom to inside the bedroom did not rise to the level of second degree kidnapping because it did not substantially increase her risk of harm. Being in the bedroom did not make Ms. Sandoval substantially less able to leave than if she were in the hallway. To the contrary, Ms. Sandoval ultimately left the house from the bedroom. Even if there was some **minimal** increase in the risk of harm to Ms. Sandoval because she was a few steps further from the door of the house, this is certainly not a **substantial** increase in the risk of harm to her, as required by the law.

Under the facts of this case, any evidence in support of Mr. Knuth's conviction for second degree kidnapping amounted to a "modicum" of evidence, which can not properly support a conviction under any circumstances, especially in a emotionally charged case alleging domestic violence. Any inference that Mr. Knuth committed second degree assault instead of misdemeanor false imprisonment would have been improperly based on guessing, speculation, or conjecture.

REASON II.

Here, as in **Owens supra at 237,** the jury was instructed in such a way as to lesson the prosecutions burden of proof,(R.CF pp. 2654 -2713) The jury instructions tracked the statutory language, Id. If it takes a substantially increased risk of harm to convict Mr. Knuth then the jury should have been instructed in such a way. Here, the Courts have long held that the type of movement alleged here is "insubstantial" **Fuller at 706; Bell at 1033.** **Owens supra at 235** provides "where it is unclear whether the victim's movement was substantial, jury should be instructed on the relevance of increased risk of harm"

Here, the jury was not instructed on the increased risk of harm factor,

(R.CF pp. 2654 - 2713). Thus as in **Owens at 237** the conviction must be reversed because "the trial court's instructions may have caused the jury erroneously to believe that (1) increased risk of harm was of no relevance to second degree kidnapping and (2) any movement, however short, would in and of itself support a conviction for second degree kidnapping." See also: **People v. Kanon,** 186 Colo. 255, 259 (1974) (prejudice to the defendant is inevitable when the court instructs the jury in such a way as to lesson the prosecutions burden of proof to prove each element beyond a rasonable doubt).

Whether a victims harm is substantially increased is a factual determination for a jury to decide. See: **In re Winship,** 397 U.S. 358, 364 (1970)(holding that the government must prove "every fact necessary to constitute the crime" beyond a reasonable doubt) See also: **U.S v. O'Brien,** 560 U.S. 218, 224 (2010).

The Winship "beyond a reasonable doubt" standard applies in both federal and state proceedings, **Sullivan v. La.** 508 U.S. 275, 278 (1993).

Therefore, Mr. Knuth's Fifth, Sixth, and Fourteenth amendmentrights of the U.S. Constitution are being violated due to there being insufficient evidence in the record to support the conviction, and this charge must be vacated. as the courts have made the determination that the victims harm was substantially increased not a jury.

Sincerely Nathan Knuth 7/15/2020

Nathan Knuth