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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38868

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

GALE EDWARD ELDRIDGE,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Robert A. Aragon, District Judge

Raúl Torres, Attorney General
Maris Veidemanis, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Nina Lalevic, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

BACA, Judge.

{1} Defendant entered into a conditional plea agreement wherein he pleaded guilty to criminal sexual contact of a minor in the third degree (child under 13), contrary to NMSA 1978, Section 30-9-13(C)(1) (2009), but reserved his right to appeal his motion to suppress and his motion to dismiss. On appeal, Defendant argues that (1) his Fifth Amendment rights were violated because officers failed to read him his *Miranda* warnings, (2) the officers coerced his incriminating statement, (3) the twenty-nine-month delay in resolving this case violated his right to a speedy trial, and (4) the district court

erred in denying his speedy trial motion without holding an evidentiary hearing. *See Miranda v. Arizona*, 384 U.S 436 (1966). Concluding that the district court erred in failing to provide Defendant an evidentiary hearing on his speedy trial motion, we reverse and remand so that Defendant may have a hearing on this issue. Otherwise, we affirm.

BACKGROUND

{2} On July 18, 2017, Detective Andrew Gilbert called Gale Eldridge (Defendant) asking him to come to the Sherriff's Office to discuss his daughter's allegation that he had sexually assaulted her. Defendant agreed to be interviewed, but asked to be given a polygraph as part of the interview. Defendant drove himself to the Sheriff's Office. Upon arrival, Detective Gilbert escorted Defendant to an interrogation room, which is about a 10-foot by 10-foot room, accessible by a single door that has no windows apart from a one-way viewing window. The door to the interrogation room was left unlocked during the entire period that Defendant was in the room. When Defendant arrived in the interrogation room, Detective Gilbert informed him that he was free to leave at any time.

{3} Defendant was taken to a second interrogation room, where Captain Dowdy administered a polygraph test as well as a pre- and post-polygraph interview. At the outset of the polygraph test, Captain Dowdy told Defendant that he was not trying to add more charges. The polygraph examination and post-polygraph interview lasted approximately one hour and eight minutes.

{4} Following the post-polygraph interview with Captain Dowdy, Detective Gilbert re-entered the room. Defendant was then interrogated by Detective Gilbert, Captain Dowdy, and then again by Detective Gilbert, in tag-team fashion. This interrogation lasted approximately two hours.

{5} At the beginning of the interrogation, Detective Gilbert positioned himself between Defendant and the door. Detective Gilbert admitted to having Defendant in the corner with his back against the wall. Though Defendant repeatedly denied the charges, Detective Gilbert told Defendant, "I don't know what to do to get you over the hump as far as being able to be honest and getting you out of this room and being done and moving on with life."

{6} After interrogating Defendant for some time, Detective Gilbert left the room again, and Captain Dowdy reentered. Neither, Captain Dowdy nor Detective Gilbert offered Defendant a break before they started another round of interrogation. Upon the commencement of this portion of the interrogation, Defendant said, "I'm tired. I want to go home. I'm tired." Captain Dowdy responded, "I know," and patted Defendant on his knee. Defendant again stated, "Guys, I want to go home. I'm done," to which Captain Dowdy said, "We can't stop you from walking out of here, and I think you know the ramifications if you do. We don't have your side of the story."

{7} When defense counsel asked Captain Dowdy if it would be reasonable for a person in Defendant's position to believe he was not free to leave when he asked numerous times and the officers did not let him go, Captain Dowdy responded that potentially a reasonable person might not think he was free to leave. At one point during the interrogation, Captain Dowdy placed his knees over Defendant's knees. As well, during the interrogation, Defendant was confronted with a letter allegedly written by his daughter and was told that the officers thought he did what she accused him of.

{8} Later, Detective Gilbert once again re-entered the room. He then stated, "I wouldn't keep you in a room talking about the same stuff if I didn't feel confident." By this point, Defendant had asked to leave twice.

{9} In response to a third request to leave, Detective Gilbert responded, "I can't stop you from walking out that door, but something happened. You walk out this door on your terms, you're the one that's going to make your bed, you've got to lie in it."

{10} At the end of the questioning, Defendant stated that on one occasion, when his daughter was twelve years old, she slept in his bed and when he woke up, his hand was rubbing her crotch, for maybe a "few minutes," while he had an erection.

{11} In total, Defendant was at the police station for approximately four and a half hours. Detective Gilbert never informed Defendant that he was not under arrest, and Defendant was never read his *Miranda* warnings.

{12} A hearing was held on Defendant's motion to suppress his statement to the police. Following the hearing, the parties submitted proposed findings of fact and conclusions of law. On November 14, 2019, the district court issued its order on Defendant's motion to suppress statements. In its order, the district court made several findings of fact, chief among them that Defendant voluntarily spoke to the police, voluntarily participated in a polygraph examination, Defendant was told by police at the start of and repeatedly throughout the interview that he was free to leave at any time, Defendant was never restrained or denied permission to terminate the interview or leave, and Defendant was never in custody.

DISCUSSION

{13} On appeal, Defendant advances four grounds for his appeal. He contends that: (1) his Fifth Amendment Rights were violated because officers failed to read his *Miranda* warnings, (2) the officers coerced his incriminating statement, (3) the twenty-nine-month delay in resolving this case violated his right to a speedy trial, and (4) the district court erred in denying his speedy trial motion without an evidentiary hearing. We address each of Defendant's arguments below.

I. Motion to Suppress

A. Standard of Review

{14} "A ruling on a motion to suppress evidence presents a mixed question of law and fact. In reviewing a district court's rulings on a motion to suppress, we review factual findings under a substantial evidence standard, viewing the facts in the light most favorable to the prevailing party, and we review de novo whether the district court correctly applied the law to the facts. In addition, we indulge in all reasonable inferences in support of the district court's ruling and disregard all evidence and inferences to the contrary. Whether a defendant was subject to a custodial interrogation and whether a defendant's statement was voluntarily given are legal determinations that we review de novo on appeal." *State v. Olivas*, 2011-NMCA-030, ¶ 8, 149 N.M. 498, 252 P.3d 722 (alterations, internal quotation marks, and citations omitted).

B. Defendant Has Not Established That the District Court Erred by Denying His Motion to Suppress.

{15} Defendant appeals the denial of his motion to suppress statements he made during a police interview contending that the police violated his Fifth Amendment rights. According to Defendant he was in custody during the interrogation and was therefore entitled to, but did not receive, *Miranda* warnings prior to being questioned.

{16} To ensure that a person suspected of a crime is not compelled to make incriminating statements, the United States Supreme Court held in *Miranda* that a person "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." 384 U.S. 436, 444; *see State v. Snell*, 2007-NMCA-113, ¶ 9, 142 N.M. 452, 166 P.3d 1106.

{17} *Miranda* warnings are required during custodial interrogation. *See State v. Nieto*, 2000-NMSC-031, ¶ 20, 129 N.M. 688, 12 P.3d 442. Thus, the obligation to administer *Miranda* warnings arises where there has been such a restriction on a person's freedom as to render him in custody. *See id*. If during custodial interrogation, *Miranda* warnings are not read, a suspect's statements cannot be used against him as substantive evidence at trial. *See Miranda*, 384 U.S. at 444; *Snell*, 2007-NMCA-113, ¶ 9.

{18} Custody is determined objectively, and not from the subjective perception of any of the participants (Defendant or police) of the interrogation. *See Snell*, 2007-NMCA-113, ¶ 10. Whether an interrogation is custodial turns on whether there was a "formal arrest or restraint on freedom of movement to the degree associated with a formal arrest." *Nieto*, 2000-NMSC-031, ¶ 20 (internal quotation marks and citation omitted). A suspect is also in custody if a reasonable person would believe that he or she was not free to leave. *See Snell*, 2007-NMCA-113, ¶ 10.

{19} This Court has held that important factors in the custody determination are "the purpose, place, and length of interrogation." *Id.* (internal quotation marks and citation omitted). Additional factors to consider are "the extent to which the defendant is confronted with evidence of guilt, the physical surroundings of the interrogation, the

duration of the detention, and the degree of pressure applied to the defendant." *Id.* (internal quotation marks and citation omitted).

{20} As to whether Defendant's statements to police were voluntary, "[t]he [State] has the burden of proving the voluntariness of a defendant's statement by a preponderance of the evidence." *State v. Fekete*, 1995-NMSC-049, ¶ 34, 120 N.M. 290, 901 P.2d 708. "[T]he preponderance of the evidence must establish that the confession was not 'extracted from an accused through fear, coercion, hope of reward or other improper inducements.'" *State v. Cooper*, 1997-NMSC-058, ¶ 30, 124 N.M. 277, 949 P.2d 660 (quoting *State v. Turnbow*, 1960-NMSC-081, ¶ 41, 67 N.M. 241, 354 P.2d 533). "If the state fails to prove voluntariness by a preponderance of the evidence, the [district] court must rule that the confession was involuntary as a matter of law." *Aguilar v. State*, 1988-NMSC-004, ¶ 11, 106 N.M. 798, 751 P.2d 178.

{21} Preliminarily, we observe that the district court's order on Defendant's motion to suppress statement contained findings of fact and conclusions of law and that Defendant has not directly challenged them in compliance with Rule 12-318(A)(4) NMRA. A failure to directly challenge the findings results in waiver of the challenge and the findings are conclusive. *See* Rule 12-318(A)(4) ("The argument shall set forth a specific attack on any finding, or the finding shall be deemed conclusive. A contention that a verdict, judgment, or finding of fact is not supported by substantial evidence shall be deemed waived unless the argument identifies with particularity the fact or facts that are not supported by substantial evidence."), and *State ex rel. Foy v. Vanderbilt Capital Advisors*, 2022-NMCA-026, ¶¶ 26, 27, 28, 511 P.3d 329, 337.

{22} The district court made the following findings of fact in its order:

1. Defendant voluntarily submitted to an interview with San Juan County Detective Gilbert and others at the San Juan County Sherriff's Office in Aztec, New Mexico;

2. [D]efendant was told by the investigator that he was free to leave at any time at the very commencement of the interview;

3. During the course of the interview, Defendant voluntarily submitted to a polygraph examination administered by Captain Dowdy of the Farmington Police Department;

4. Detective Gilbert informed Defendant repeatedly that he was free to leave the interview at any time;

5. [D]efendant announced that he was tired and ready to go home and then continued to give a statement;

6. At another point . . . Defendant announced his intent to "walk out of here" and was told by the investigator "we can't stop you from walking out of here";

7. [D]efendant then asked "what do I need to do?" and resumed responding to the questions of the investigator;

8. When Defendant ultimately decided to conclude the interview, no effort was made to restrain or deter him;

9. [D]efendant was never restrained or was he ever denied permission to terminate the interview or leave the room in which the encounter took place;

10. [D]efendant was never in custody nor was any restraint upon him ever exercised or expressed;

11. Defendant made statements to the officers during the interview.

Based on these findings, the district court concluded that "Defendant was never in custody, [and] that his statements were given voluntarily" and denied the motion.

{23} On appeal, we presume that the district court has ruled correctly, and it is the burden of Defendant to show that the district court has erred. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (explaining that "[t]here is a presumption of correctness in the district court's rulings. Accordingly, it is [the d]efendant's burden on appeal to demonstrate any claimed error below" (alterations, internal quotation marks, and citation omitted)).

{24} Because Defendant does not challenge the district court's findings, we do not address whether they are supported by substantial evidence and treat them as conclusive in resolving the issues. Here, Defendant contends that his statements to the police should be suppressed because they were made while he was in their custody, and the police did not inform him of his *Miranda* rights, and that his statements to the police were not voluntary because the police coerced them from him. As to the issue of whether Defendant was in custody of the police while he was providing them his statement, the district court found, in relevant part, that (1) Defendant voluntarily spoke to the police; (2) Defendant voluntarily participated in a polygraph examination; (3) Defendant was told by police at the start of and repeatedly throughout the interview that he was free to leave at any time; (4) Defendant was never restrained or denied permission to terminate the interview or leave the room in which the encounter took place; (5) when Defendant concluded the interview, no effort was made to restrain or deter him; and (6) Defendant was never in custody nor was any restraint upon him ever exercised or expressed. Based on these findings, the district court concluded that Defendant "was never in custody." Defendant has not persuaded us that this conclusion was erroneous in light of the unchallenged factual findings. In the absence of a custodial

interrogation, the police were not obligated to inform Defendant of his *Miranda* rights. *See Nieto*, 2000-NMSC-031, ¶ 20 (stating that "[a] suspect's *Miranda* rights attach only when he is the subject of a custodial interrogation." (internal quotation marks and citation omitted).

{25} Next, as to Defendant's contention that the police coerced his statements from him, the district court found, in addition to those findings it made concerning whether Defendant was in custody, that (1) Defendant announced that he was tired and ready to go home and then continued to give a statement; (2) at another point, Defendant announced his intent to "walk out of here" and was told by the investigator "we can't stop you from walking out of here;" (3) Defendant then asked, "What do I need to do?" and resumed responding to the questions of the investigator; and (4) Defendant made statements to the officers during the interview. Based on these findings, the district court concluded that Defendant's "statements were given voluntarily." Defendant has not persuaded us that this conclusion was erroneous in light of the unchallenged factual findings.

{26} Because Defendant has not carried his burden of establishing that the district court erred by denying his motion to suppress, we affirm the district court's ruling. We next analyze whether the district court erred by failing to provide Defendant a hearing upon his motion to dismiss for a speedy trial violation.

II. Defendant was Entitled to a Hearing on His Motion to Dismiss

{27} Defendant contends that the failure of the district court to provide him with an evidentiary hearing at which he could present evidence and testimony in support of his motion deprived him of due process. We agree and explain.

{28} We review de novo claims involving the denial of procedural due process. *See State v. Worley*, 2020-NMSC-021, ¶ 16, 476 P.3d 1212 (stating "'[c]laims involving the denial of procedural due process are legal questions that this Court reviews de novo.'" (quoting *Miller v. Tafoya*, 2003-NMSC-025, ¶ 9, 134 N.M. 335, 76 P.3d 1092). The Due Process Clause protects against the "depriv[ation] of life, liberty or property without due process of law." U.S. Const. amend. V; *See* U.S. Const. amend XIV, § 1 (same); *see also* N.M. Const. art. II, § 18 ("No person shall be deprived of life, liberty or property without due process of law."). The Due Process Clause has been interpreted to protect individuals against substantive and procedural due process violations. *State v. Druktenis*, 2004-NMCA-032, ¶ 46, 135 N.M. 223, 86 P.3d 1050 (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987)).

{29} "Procedural due process requires the government to give notice and an opportunity to be heard before depriving an individual of liberty or property." *Titus v. City of Albuquerque*, 2011-NMCA-038, ¶ 40, 149 N.M. 556, 252 P.3d 780 (internal quotation marks and citation omitted). Procedural due process specifically requires that "a person be accorded an opportunity to be heard at a meaningful time and in a meaningful manner." *State ex rel. Child., Youth & Fams. Dep't v. Ruth Anne E.*, 1999-NMCA-035, ¶

17, 126 N.M. 670, 974 P.2d 164 (internal quotation marks and citation omitted). "The opportunity to be heard in a 'meaningful manner,' generally includes an opportunity to review and present evidence, confront and cross[-]examine witnesses, and consult with counsel, either by way of an informal or formal hearing." *State ex rel. Child., Youth & Fams. Dep't v. Maria C.*, 2004-NMCA-083, ¶ 26, 136 N.M. 53, 94 P.3d 796.

{30} Because this is a criminal case where Defendant may be imprisoned, we are dealing with a deprivation of Defendant's liberty. Therefore, we will proceed to determine whether Defendant was denied due process when the district court did not hold an evidentiary hearing on his motion to dismiss for speedy trial violation.

{31} We begin, by reviewing the right to speedy trial and what a defendant must prove in bringing a successful challenge to a prosecution for violation of his right to speedy trial. We will then review the pertinent facts and circumstances of this case. Finally, we will determine if the district court erred by not providing Defendant an evidentiary hearing on his motion to dismiss.

{32} Both the Sixth Amendment of the United States Constitution and Article II, §14 of the New Mexico Constitution guarantee an accused the right to a speedy trial. U.S. Const. amend. VI; N.M. Const. art. II, § 14. The right to a speedy trial "escapes precise definition" and is "amorphous, slippery, and necessarily relative." *State v. Spearman*, 2012-NMSC-023, ¶ 16, 283 P.3d 272 (internal quotation marks and citation omitted). As such, any determination of whether the right to a speedy trial has been violated requires an analysis of the particular facts and circumstances of the case. *Id.*

{33} In *Barker v. Wingo*, the United States Supreme Court provided four factors for consideration: (1) length of delay, (2) reason for delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant. 407 U.S. 514, 530, (1972); *Spearman*, 2012-NMSC-023, ¶ 17. Each of the factors is weighed either in favor of or against the defendant or the state, and then balanced to decide if a defendant's speedy trial right was violated. *See Spearman*, 2012-NMSC-023, ¶ 17. None of the factors have talismanic qualities, nor are any of them a necessary or sufficient condition to a finding that a defendant's right to speedy trial was violated. *Id.* ¶ 18. Rather, the factors must be considered together with other relevant circumstances. *Id.* "Before applying this balancing test, we first assess whether the length of the delay was 'presumptively prejudicial,' depending on the complexity of the case." *State v. Montoya,* 2015-NMCA-056, ¶ 11, 348 P.3d 1057. "[A] 'presumptively prejudicial' length of delay is simply a triggering mechanism, requiring further inquiry into the *Barker* factors." *State v. Garza*, 2009-NMSC-038, ¶ 21, 146 N.M. 499, 212 P.3d 387. "A delay of trial of one year is presumptively prejudicial in simple cases, fifteen months in intermediate cases, and eighteen months in complex cases." *Spearman*, 2012-NMSC-023, ¶ 21. Finally, the court defers to the district court's factual findings but reviews the balancing of the *Barker* factors de novo." *Id.* ¶ 19. The "accused does not need to be incarcerated to suffer some of the same hardships and prejudice the right to a speedy trial was meant to prevent." *Id.* ¶ 37.

{34} On December 4, 2019, Defendant filed his motion to dismiss for speedy trial violation (the Motion). In the title of the Motion Defendant included a "request for immediate evidentiary hearing." On December 5, 2019, the State filed its response. Defendant filed his reply to the State's response on December 13, 2019. In his reply, Defendant renewed his demand for an evidentiary hearing "to present the prejudice he has experienced as a result of the delay." On December 23, 2019, the district court issued its order denying the Motion (the Order). The district court issued its order without holding an evidentiary hearing.

{35} Defendant argues that there was a twenty-nine-month delay in his case and that this delay violated his right to a speedy trial. The district court agreed that the delay was twenty-nine months and also found that the case was a complex case. Defendant contends that the case was simple or at most an intermediate case. The State, on the other hand, contends that substantial evidence supports the district court's finding that this was a complex case, given that Defendant named forty-seven witnesses, including three experts and reserved four days for trial.

{36} On questions concerning the complexity of a case for speedy trial analysis, "[w]e defer to the district court's finding on the question of complexity when it is supported by substantial evidence since the 'trial court [is] familiar with the factual circumstances, the contested issues and available evidence, the local judicial machinery, and reasonable expectations for the discharge of law enforcement and prosecutorial responsibilities.'" *State v. Laney*, 2003-NMCA-144, ¶ 11, 134 N.M. 648, 81 P.3d 591 (quoting *State v. Manzanares*, 1996-NMSC-028, ¶ 9, 121 N.M. 798, 918 P.2d 714). In this instance, due to the number of witnesses, including experts, and the number of days reserved for trial, we agree with the district court's determination that this case is a complex case. We observe, however, that the twenty-nine-month delay in this case far exceeds the threshold for the presumption of prejudice for speedy trial analysis whether the case is designated simple, intermediate, or complex. *See Spearman*, 2012-NMSC-023, ¶ 21. Therefore, there was a presumption of prejudice against Defendant because this complex case was older than eighteen months, which is the threshold for presumptive prejudice for a complex case. *See id*.

{37} We note that "[w]hen weighing the length of delay, we consider the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Id.* ¶ 23 (internal quotation marks and citations omitted). "The weight we assign this factor is proportional to the length of the delay—'[a]s the delay lengthens, it weighs increasingly in favor of the accused.'" *State v. Deans*, 2019-NMCA-015, ¶ 6, 435 P.3d 1280 (quoting *State v. Ochoa*, 2017-NMSC-031, ¶ 14, 406 P.3d 505). In this case the delay was eleven months past the threshold for a complex case. Consequently, the district court decided Defendant's motion to dismiss without a hearing even though, under speedy trial analysis, there was a presumption of prejudice.

{38} Because we begin from a point of presumed prejudice, where Defendant argues that he was prevented from showing that he was prejudiced by the delay in his prosecution due to the district court's denial of an evidentiary hearing and because

"[t]he heart of the right to a speedy trial is preventing prejudice to the accused," *see Garza*, 2009-NMSC-038, ¶ 12, we will primarily focus on this factor in determining if Defendant was entitled to an evidentiary hearing.

{39} "Ordinarily, a defendant bears the burden of proof on this factor by showing 'particularized prejudice' when claiming a speedy trial violation." *State v. Serros*, 2016-NMSC-008, ¶ 86, 366 P.3d 1121. The right to speedy trial protects three interests. *Spearman*, 2012-NMSC-023, ¶ 34. First, the right to speedy trial prevents oppressive pretrial incarceration. *Id.* Both parties agree the first interest is not at issue since Defendant was not incarcerated while the case was pending. Second, the right to speedy trial minimizes the anxiety and concern of the accused. *Id.* Finally, the right to a speedy trial limits the possibility that the defense will be impaired. *Id.*

{40} In this case Defendant claims to have suffered prejudice because of the twenty-nine-month delay in bringing him to trial. First, he alleges he has suffered severe anxiety, concern, and societal discrimination due to the nature of the charges against him. As evidence, Defendant states that he has lost his position as a pastor at his church and his employment situation suffered. Second, Defendant argues that "key witnesses have either disappeared or lost memory of key times, places and events related to the allegations and potential alibis in this matter." Third, Defendant argues that the victim herself now claims to have lost her memory about the events. Lastly, because of the length of delay in bringing this matter to trial, Defendant argues that he is now unable to prepare an adequate defense.

{41} The State responds that "Defendant's claims were not supported by affidavit or any other actual evidence" and that he made no showing that any alleged prejudice that occurred was a result of the delay and not the prejudice that arose from the indictment itself. If Defendant's assertions of prejudice are true, he undeniably suffered some prejudice as a result of the pending charges against him. However, we are unable to determine from the record before us if any of the prejudice Defendant asserts, resulted from the delay in this case. And although Defendant bears the burden of demonstrating particularized prejudice resulting from the delay, the district court's decision not to hold an evidentiary hearing, prevented Defendant from presenting live testimony and perhaps other evidence in support of his speedy trial motion.[1] Which, in turn, denied Defendant of several of the elements that we recognized as essential to due process in *Titus*, including: an opportunity to make an oral presentation to the decision-maker; an opportunity to present evidence or witnesses to the decision-maker; a chance to confront and cross-examine the adversarial witnesses or evidence. *See id*. ¶ 42. "As it

1To the extent *State v. Urban*, 1989-NMCA-053, ¶ 15, 108 N.M. 744, 779 P.2d 121 applies to the situation before us, we conclude that, under the facts and circumstances of this case where (1) there was a twenty-nine-month delay in resolving the case, (2) prejudice was presumed because the delay was beyond the eighteen-month threshold for the presumption of prejudice in a complex case, (3) the delay was eleven months past the threshold for the presumption of prejudice, and (4) Defendant was claiming particularized prejudice as a result of the delay ("[K]ey witnesses have either disappeared or lost memory of key times, places and events related to the allegations and potential alibis in this matter."), it was error for the district court to decide that a hearing was not necessary and to decide the motion without the benefit of a hearing to determine if there was evidence to support Defendant's claims.

stands, however, there is simply no evidence in the record from which the district court, let alone this Court, can make a determination as to whether or not Defendant was prejudiced by the delay in bringing this matter to trial." *Spearman*, 2012-NMSC-023, ¶ 39.

{42} We, therefore, conclude that the failure to provide Defendant an evidentiary hearing on his motion to dismiss violated Defendant's right to due process.

{43} Accordingly, an evidentiary hearing allowing Defendant a meaningful opportunity to be heard is necessary; therefore, we reverse and remand with direction that the district court hold an evidentiary hearing on Defendant's motion to dismiss for speedy trial violations. Because we reverse on this issue we do not address the denial of Defendant's motion to dismiss for speedy trial violations.

CONCLUSION

{44} For the reasons set forth above, we reverse and remand for a hearing on Defendant's speedy trial motion and affirm the district court's denial of Defendant's motion to suppress.

{45} IT IS SO ORDERED.

GERALD E. BACA, Judge

WE CONCUR:

JACQUELINE R. MEDINA, Judge

ZACHARY A. IVES, Judge