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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICOLAS GARCIA,

Defendant and Appellant.

B335616

(Los Angeles County
Super. Ct. Nos. BA471603
& GA105379)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin Stennis, Judge. Affirmed.

Stanley Dale Radtke, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Idan Ivri, Lauren N. Guber and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The People charged Nicolas Garcia with crimes he committed against his spouse Rosa¹ during incidents in 2017 and 2018. For several reasons, he did not go to trial until nearly five and a half years after being arrested. Among other things, Garcia was declared not competent to stand trial. The competency proceedings began just before the onset of the COVID-19 pandemic, and emergency pandemic-related safety measures prolonged those proceedings. After spending time in two state hospitals, Garcia was found competent to stand trial. When the criminal proceedings resumed, Garcia represented himself for an extended period of time, and sought and received multiple continuances, before requesting representation just as his trial began. This led to further delay so that Garcia's new counsel could get up to speed. Garcia was eventually tried and found guilty on six of seven counts. He was sentenced to three years in state prison but spent no further time in custody through the application of custody credits.

Garcia asks us to reverse his conviction based on two alleged errors: the trial court's denial of Garcia's motion to dismiss his case on speedy trial grounds, and its orders limiting his cross-examination of Rosa. We conclude the trial court did not err and affirm.

¹ We identify Rosa by her first name only to protect her privacy (Cal. Rules of Court, rule 8.90(b)(1), (4)) and for ease of reading; no disrespect is intended.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize only those portions of the facts and proceedings necessary to discuss the issues raised on appeal.

A. Garcia Is Charged with Domestic Violence Based on a September 2018 Incident and Represents Himself

On November 13, 2018, the People filed an information (case No. BA471603) charging Garcia with committing domestic violence against Rosa on September 20, 2018 (Pen. Code,² § 273.5, subd. (a)), violating a restraining order on that day (§ 166, subd. (c)(1)), stalking Rosa between April 1 and September 20, 2018 (§ 646.9, subd. (a)), and making criminal threats against Rosa on or about June 1, 2018 (§ 422, subd. (a)). Garcia pleaded not guilty.

At a hearing on January 2, 2019, the court noted that Garcia had a right to have his trial held within 10 days of that date. Defense counsel informed the court that he had explained to Garcia the prosecutor was starting trial in a different case and would be requesting a continuance under section 1050.³ Counsel continued that, in response, Garcia “became [so] thoroughly incensed” about the prospect of a continuance that counsel was unable to discuss section 1050 with him. Defense counsel also told the court he had attempted to discuss various evidentiary matters with Garcia “but [counsel] was unable to maintain a conversation with [Garcia].” Garcia then spoke and accused the

² Unspecified statutory references are to the Penal Code.

³ Section 1050, subdivision (e) authorizes a court in a criminal matter to grant a continuance of the trial date “upon a showing of good cause.”

prosecutor of “evidence tampering.” When the court informed Garcia that he should communicate “through counsel,” Garcia responded, “I don’t need to speak through counsel. You know what, I can get rid of him and then I can speak to you, is that better?” Garcia later stated he was “dismiss[ing]” his defense counsel. The court held a *Marsden*⁴ hearing, after which defense counsel continued to represent Garcia.

At a hearing on January 8, 2019, the prosecutor moved for a continuance under section 1050 because he was in trial on another matter. Garcia, still represented by counsel, personally objected to the continuance. Garcia then indicated he wished to file a motion that he had personally prepared, which he had not shown to his counsel. The court informed Garcia that he would have to show the motion to his counsel before it could be filed, at which point Garcia stated he would prefer to represent himself. The court granted Garcia’s self-representation request. The court also granted the prosecutor’s continuance motion, declaring January 22, 2019 as the new last day for trial.

Garcia filed his motion later that day. Garcia, identifying himself as “Levi Rockefeller,” moved to dismiss the case with prejudice based on purported misconduct by (1) a prior lawyer who represented him through the preliminary hearing, (2) the defense counsel the court had just relieved, (3) the prosecutor, and (4) the court. As pertinent here, Garcia claimed his former defense counsel had requested a “waiver of time” over his objection on October 5 and 22, 2018, prior to the preliminary hearing taking place on October 30, 2018. The record does not

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

contain any court orders from either October 5 or October 22, 2018. The court denied the motion on January 10, 2019.

On January 17, 2019, Garcia waived his speedy trial right and the court set the matter for a jury trial on January 28, 2019, as day 0 of 20. On January 28, 2019, Garcia informed the court he would be ready for trial in 20 days. He was not, and Garcia later filed a motion to continue under section 1050, which the court granted on February 13, 2019. The court set the matter for a pretrial conference on March 26, 2019, with trial to commence within 20 days.

Garcia waived his speedy trial rights at hearings on March 22 and May 30, 2019.

B. Garcia Is Separately Charged and the Court Finds Garcia Is Not Mentally Competent

On March 14, 2019, the People filed a complaint (case No. GA105379) charging Garcia with committing domestic violence against Rosa on April 2, 2017 and August 17, 2018 (§ 273.5, subd. (a)), and violating a restraining order on August 17, 2018 (§ 166, subd. (c)(1)).

On March 20, 2019, Garcia, represented by an alternate public defender, pleaded not guilty to the charges in case No. GA105379. On April 2, 2019, the date for the preliminary hearing in case No. GA105379, Garcia filed a motion to continue under section 1050, and the court rescheduled the preliminary hearing for April 23, 2019. On April 23, Garcia objected to proceeding with the preliminary hearing, requested to represent himself, and asked for a continuance. The court denied his requests and indicated Garcia could either proceed with the preliminary hearing with his appointed counsel or waive his right to the hearing. Garcia failed to respond to the court's inquiry and

talked over the court. Garcia then made a “continuing objection,” claiming the district attorney’s office had a conflict of interest. After Garcia again refused to state whether he wanted to proceed with the preliminary hearing and continued talking over the court, the court directed the bailiff to remove Garcia for being disruptive. Before he left the courtroom, Garcia stated to the judge that she “w[ould] be dealing with [the Commission on Judicial Performance] very soon” and “w[ould] be added to the list of those that are already being investigated.” The prosecutor noted for the record that Garcia was “yelling” and stated she was “afraid.” Defense counsel declared a doubt as to Garcia’s mental competency under section 1368, which the court joined based on “[Garcia’s] refusal or inability to focus on the court’s questions,” and the court suspended the proceedings.

On May 14, 2019, the mental health court appointed Dr. Chris Chen to evaluate Garcia.

On June 18, 2019, Dr. Chen submitted her report finding Garcia was not competent to assist in his own defense and the mental health court found Garcia to be mentally incompetent under section 1368. On July 23, 2019, the mental health court ordered Garcia placed with the Department of State Hospitals.

C. The Court in Garcia’s First Case Also Declares a Doubt as to Garcia’s Competency to Stand Trial

On July 15, 2019, the court in case No. BA471603 declared a doubt as to Garcia’s competency, and proceedings in that case were suspended. On July 23, the court revoked Garcia’s pro. per. status, appointed the alternate public defender’s office to represent him, and transferred the matter to the mental health court.

D. Garcia Is Twice Sent to State Hospitals

On October 18, 2019, Garcia was admitted to Patton State Hospital (PSH). On December 12, 2019, hospital staff opined that Garcia's competency had been restored and he was returned to jail. When the mental health court attempted to hold restoration hearings on December 24, 2019 and January 3, 2020, Garcia refused to come to court despite orders for his appearance. As a result, on January 21, 2020, the mental health court appointed Dr. Chen to evaluate Garcia for a second time. On February 19, 2020, Dr. Chen submitted her report, concluding that Garcia was not competent to stand trial. Dr. Chen reported that when she went to evaluate Garcia on January 30, 2020 in jail, Garcia refused to meet with her despite jail deputies encouraging Garcia to speak with Dr. Chen. Garcia "appeared irritable and hostile," and custody personnel reported to Dr. Chen that Garcia "ha[d] been very agitated and observed to be talking to himself as if in response to voices of unseen persons."

On that day, February 19, the mental health court ordered Garcia back to the Department of State Hospitals. On May 27, 2020, the mental health court found good cause to continue the matter due to the spread of the COVID-19 virus and a March 17, 2020 administrative order issued by the presiding judge of the superior court. On December 2, 2020, Garcia was admitted to Atascadero State Hospital (ASH).

On March 12, 2021, psychiatric staff at ASH issued a report opining that Garcia was competent to stand trial. On April 8, 2021, the mental health court found that Garcia was competent and reinstated the criminal proceedings.

E. Criminal Proceedings Resume and Garcia Is Granted Permission to Again Represent Himself

Garcia appeared in court on case No. GA105379 on April 9, 2021, and in case No. BA471603 on April 12, 2021, represented by counsel in both cases.

On May 7, 2021, the court resumed the preliminary hearing in case No. GA105379 and held Garcia to answer the charges. That day the People filed an amended felony complaint charging Garcia with committing domestic violence against Rosa on August 17, 2018 (§ 273.5, subd. (a)) and violating a restraining order on that day (§ 166, subd. (c)(1)). On May 24, 2021, the People filed an information charging Garcia with these same crimes as well as false imprisonment by violence (§ 236).

On May 14, 2021, the court in case No. BA471603 granted Garcia's request to represent himself.

On May 24, 2021, the court in case No. GA105379 granted Garcia's request to represent himself.

On May 28, 2021, the court consolidated the two cases. That day, the People filed an amended information charging Garcia with two counts of domestic violence (§ 273.5, subd. (a); counts 1 & 5), two counts of violating a restraining order (§ 166, subd. (c)(1); counts 2 & 6), and one count each of stalking (§ 646.9, subd. (a); count 3), making criminal threats (§ 422, subd. (a); count 4), and false imprisonment by violence (§ 236; count 7).

F. The Trial Court Continues the Trial for Two Months Due to the COVID-19 Pandemic

On June 7, 2021, the court declared, pursuant to a Judicial Council order, that the date to begin trial was extended by 30 days due to the spread of the COVID-19 virus, so the last day for trial was July 12, 2021. On June 30, 2021, the court declared the

date to begin trial had been extended by another 30 days to August 11, 2021, due to another Judicial Council order.⁵

G. The Trial Date is Continued from July 2021 through August 2022 at Garcia's Request

Beginning on July 30, 2021, and continuing through August 2, 2022, Garcia filed a series of motions to continue under section 1050 on the ground he needed time to retain counsel. The court continued the matter during this period.⁶

H. The Court Denies Garcia's Motions to Continue in September 2022 and Begins Trial, Prompting Garcia to Request Representation and the Trial Date to Be Continued Again

When Garcia filed another motion to continue on September 6, 2022, the court denied it and set the case for a jury trial on September 21, 2022. On September 16, the court denied another motion to continue that Garcia had filed and deemed him ready for trial over his objection. On September 21, the court denied yet another motion to continue filed by Garcia and appointed stand-by counsel for him. On September 22, the court began jury voir dire. On September 27, while jury voir dire was continuing, Garcia requested to revoke his pro. per. status and to be represented by his stand-by counsel. The court approved the request and granted Garcia's new counsel a continuance to

⁵ Presumably in light of these orders, the court took no action on a motion for continuance under section 1050 filed by the prosecutor on June 28, 2021.

⁶ The court denied Garcia's June 29, 2022 motion to continue but granted a renewed motion Garcia filed on August 2, 2022.

prepare for trial. Garcia waived his speedy trial rights, and the court set the matter for a pretrial conference on January 10, 2023.

On January 10, February 28, April 11, May 24, June 28, July 20, August 28, September 28, and October 24, 2023, the court continued the matter and Garcia waived his speedy trial rights.

I. Garcia Files a Motion to Dismiss for Violation of his Speedy Trial Rights

On November 21, 2023, Garcia filed a motion to dismiss for violation of his speedy trial rights. Garcia contended those rights were violated due to the “failure to timely transport [Garcia] for treatment and to prepare appropriate reports—over a period of nearly two years” from when he was initially declared incompetent to stand trial until the court found his competency had been restored.

On December 18, 2023, the court denied the motion. The court found that Garcia had failed to establish prejudice from any violation of his state speedy trial rights and his federal constitutional claim failed because the delay was shorter than delays caused by Garcia himself, the prosecution was not responsible for the delay, Garcia did not promptly assert his right after the delay, and Garcia was not prejudiced by the delay.

J. Trial

On January 17, 2024, both parties announced ready for trial. The court scheduled the matter for trial on February 14, 2024; Garcia waived his speedy trial rights.

Trial commenced on February 15, 2024. The following testimony was adduced at trial.

1. *Prosecution Case*

- a. Rosa

Rosa married Garcia in 2015. Rosa tried to leave Garcia multiple times during their relationship because he hit her. In 2017, Rosa and Garcia were living in a home paid for by Garcia's mother. Rosa was financially dependent on Garcia and his mother because she did not work.

On April 2, 2017, Rosa tried to leave Garcia because he was forcing her to live with him by threatening to hurt her children. Rosa tried to escape from the home while Garcia was asleep, but he woke up and ran after her. Garcia threw Rosa on the bed and pressed against her throat with both hands, making it difficult for her to breathe. Rosa was able to get Garcia to stop when she said that she loved him. She then ran out the back door and her nephew called the police. During the incident, Garcia scratched the side of Rosa's face, causing it to bleed.

After this incident, Rosa continued to have a relationship with Garcia because he "would go looking for [her] wherever [she] was." Garcia also threatened to harm Rosa if she refused to get back together with him. In July 2018, after Rosa had left Garcia and moved into her own apartment, Garcia told Rosa that if she ever called the police, he would look for her and kill her. Rosa believed Garcia's threat because he was "very aggressive."

On August 17, 2018, Garcia was waiting for Rosa when she left work. Garcia stood between Rosa and her car, demanding that she leave with him. Rosa left with Garcia in his car because she was afraid. Garcia told Rosa he wanted her to go to his apartment and, when she refused, Garcia began to hit her and pull her hair. Rosa tried to get out of the car, but Garcia pulled her back into the car by her hair.

Garcia drove to a mall parking lot, where he forced Rosa to have sex with him in the car. Rosa complied because she was afraid and did not want Garcia to continue to hurt her. Rosa suffered bruising to her arms from this attack. She reported to law enforcement that Garcia hit her while they were in the car, but she did not report that he forced her to have sex because she was ashamed.

Garcia appeared outside Rosa's apartment every day in August of 2018 and texted or called her to say he was there. On August 18, Rosa was in her apartment when Garcia contacted her and said he was outside her apartment. Photographs of the call log and text messages Garcia sent Rosa that day were admitted as exhibits.

On the morning of September 20, 2018, Rosa drove to the Los Angeles State Historic Park to walk. After Rosa parked her car, Garcia appeared and got into the passenger seat⁷ while she was still seated in her car. Garcia hit Rosa and grabbed her by the neck with both hands before taking her car keys and leaving in her car. Rosa was walking home when Garcia drove by in her car. Garcia told Rosa to get in the car and she complied. At the time of this incident, a protective order was in place that prohibited Garcia from contacting Rosa.

b. Officer Christopher Bates

Alhambra Police Department officer Christopher Bates responded to Garcia's and Rosa's home on April 2, 2017. He noted that Rosa had a scratch on the left side of her cheek and

⁷ Rosa testified at the preliminary hearing that Garcia was in the driver's seat, and she was in the passenger seat when he hit her.

bruising around her neck. Officer Bates obtained an emergency protective order for Rosa.

c. Robert Kunz

On September 20, 2018, Robert Kunz was working near the Los Angeles State Historic Park. Kunz heard loud yelling and screaming and he saw what appeared to be a struggle inside a sedan. Kunz saw a man and a woman in the front seats of the car; the woman appeared to be trying to get out of the car, and the man appeared to be attempting to keep her inside. The man was eventually able to pull the woman over into the driver's seat and out of the car. Kunz saw the woman walk away from the car. The man got back into the car, following the woman and attempting to engage her in conversation. The woman did not stop to converse with the man and continued to move away from the car.

d. Lieutenant Ian Ward

On September 20, 2018, Los Angeles Police Department Lieutenant Ian Ward was eating breakfast near the Los Angeles State Historic Park when he noticed what appeared to be a problem outside the restaurant. Ward went outside and was told that a woman was being attacked in a car down the street. After receiving a description of the car, he and his partner drove to intercept the suspect car. When Ward spotted the car, he observed a female driver and a male passenger inside. It appeared that the passenger was yelling at the driver and pointing his finger in her face. Ward and his partner conducted a traffic stop. Ward saw that Rosa "had red marks around her neck. She had kind of a strawberry or burst blood vessels on her cheek, and she had a cut on her finger."

e. Recording of Garcia's Call from Jail

An audio recording of a telephone call Garcia made from jail on December 14, 2018, was played for the jury. During the call, Garcia asked his mother Maria Rivera to tell Rosa that spousal privilege would apply in his case and that Rosa did not have to testify against him. He also instructed Rivera to tell Rosa to assert her Fifth Amendment privilege to avoid testifying or to say she did not remember anything.

2. *Defense Case*

Rivera testified that she and Garcia rented an apartment where Rosa and Garcia lived together between 2015 and 2018. During that time, Rivera visited the apartment on Fridays and occasionally on Sundays. Rosa told Rivera that she had a job. During that period, Rosa had her own car, and Rivera had seen Rosa driving alone in the car without Garcia. Rivera also saw Rosa's belongings in the apartment. Rosa never told Rivera that Garcia was abusing her.

Rivera testified that Rosa's skin as shown in pictures taken after the domestic violence incidents was in its normal condition. On April 2, 2017, Garcia and two of his friends had breakfast at her home because Garcia's friends were going to do construction on Rivera's patio.

Garcia did not testify.

K. The Verdict and Sentencing

The jury returned guilty verdicts on all counts except count 4. Garcia waived a jury trial on aggravating sentencing factors and admitted an aggravating factor under California Rules of Court, rule 4.421(b)(4). Garcia also waived time for sentencing.

On February 23, 2024, the trial court imposed the midterm of three years in state prison on count 1. The court imposed concurrent terms on counts 2, 5, and 7 (two years on count 2, three years on count 5, and two years on count 7), all stayed under section 654. The court credited Garcia with 1,015 actual custody days and 1,014 days of conduct credit; these credits exceeded the sentence term and the court applied the excess credits to reduce Garcia's parole period. As to counts 3 and 6, both misdemeanors, the court denied probation and imposed a 364-day term in county jail to run concurrently and applied custody credit for the full sentence.

Garcia timely appealed.

DISCUSSION

A. Garcia Was Not Denied His Right to a Speedy Trial

1. *Legal Principles and Standard of Review*

a. Federal Constitutional Speedy Trial Right

“The right to a speedy trial is a fundamental right secured by the Sixth Amendment to the federal Constitution and is made applicable to the states by the Fourteenth Amendment.” (*Sykes v. Superior Court* (1973) 9 Cal.3d 83, 88, fn. omitted.) In *Barker v. Wingo* (1972) 407 U.S. 514 [92 S.Ct. 2182, 33 L.Ed.2d 101] (*Barker*), the United States Supreme Court adopted “a balancing test, in which the conduct of both the prosecution and the defendant are weighed,” to determine whether an accused's Sixth Amendment speedy trial right has been violated. (*Barker, supra*, at p. 530, fn. omitted.) The court identified four key factors a court should consider in this determination: “Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.” (*Ibid.*, fn. omitted.) A court can

consider other relevant circumstances. (*Id.* at pp. 530, 533.) The defendant bears the burden of demonstrating a speedy trial violation. (*People v. Williams* (2013) 58 Cal.4th 197, 233.)

“The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case.” (*Barker, supra*, 407 U.S. at pp. 530-531, fn. omitted.)

“Closely related to length of delay is the reason the government assigns to justify the delay. . . . A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” (*Barker, supra*, 407 U.S. at p. 531, fn. omitted.)

Prejudice is determined based on three “interests of defendants which the speedy trial right was designed to protect”: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” (*Barker, supra*, 407 U.S. at p. 532, fn. omitted.) The last interest is “the most serious.” (*Ibid.*) “[D]elay that is ‘uncommonly long’ triggers a presumption of prejudice [citation], [and thus] a defendant can

establish a speedy trial claim under the Sixth Amendment without making an affirmative demonstration that the government's want of diligence prejudiced the defendant's ability to defend against the charge." (*People v. Martinez* (2000) 22 Cal.4th 750, 755.)

b. State Constitutional Speedy Trial Right

"Article I, section 13, of the California Constitution independently guarantees the right to a speedy trial. In addition, our Legislature has made provision for 'a speedy and public trial' as one of the fundamental rights preserved to a defendant in a criminal action." (*Sykes v. Superior Court, supra*, 9 Cal.3d at p. 88, fn. omitted, citing § 686, subd. (1).) "Under state constitutional analysis, '[t]he prejudicial effect of the delay on [a defendant] must be weighed against any justification for the delay.'" (*People v. Roybal* (1998) 19 Cal.4th 481, 513.)

c. The State Statutory Right to a Speedy Trial

"Section 1382 . . . implements the [California] constitutional and statutory guarantees [to a speedy trial] by providing that, absent a showing of 'good cause,' a defendant accused of a felony is entitled to have the charges against him dismissed if he is not brought to trial within 60 days after the filing of criminal charges or after particular events necessitating a retrial thereof." (*Sykes v. Superior Court, supra*, 9 Cal.3d at p. 88, fn. omitted; see § 1382, subd. (a)(2).) As relevant here, the 60-day period begins again upon "reinstatement of criminal proceedings" after a defendant has been found mentally competent under section 1370, subdivision (a)(1)(A). (§ 1382, subd. (a)(2).)

There is no violation of section 1382 "when a defendant requests or consents to the setting of a trial date beyond the 60-

day period. In that situation, . . . section 1382, subdivision (a)(2)(B) provides, in relevant part, that ‘[w]hen a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.’ The 10-day period does not begin to run until the defendant announces ready for trial on the date to which the trial was continued, or on a later date to which the defendant impliedly or expressly consented if the case was again continued.” (*Medina v. Superior Court* (2000) 79 Cal.App.4th 1280, 1286, fn. omitted; see § 1382, subd. (a)(2)(B).)

“‘[T]he state Constitution in article VI, section 13, forbids reversal for nonprejudicial error,’ and so on appeal from a judgment of conviction a defendant asserting a statutory speedy trial claim must show that the delay caused prejudice, even though the defendant would not be required to show prejudice on pretrial appellate review.” (*People v. Martinez, supra*, 22 Cal.4th at p. 769; see also *People v. Johnson* (1980) 26 Cal.3d 557, 574 [“Upon appellate review following conviction, . . . a defendant who seeks to predicate reversal of a conviction upon denial of his right to speedy trial must show that the delay caused prejudice”].)

d. The Standard of Review for Prejudice

The existence of prejudice is a factual question we review for substantial evidence. (*People v. Hill* (1984) 37 Cal.3d 491, 499.)

2. *Garcia’s Federal Constitutional Right to a Speedy Trial*

a. Length of Delay

The delay in this case from Garcia’s arrest in September 2018 until his trial began in February 2024—a period of nearly

five and a half years—was “ ‘presumptively prejudicial’ ” under the first factor identified in *Barker*. (See *Doggett v. United States* (1992) 505 U.S. 647, 652, fn. 1 [112 S.Ct. 2686, 120 L.Ed.2d 520].)

b. The Reason for the Delay

The reasons for the delay in Garcia’s trial do not favor finding a federal constitutional speedy trial right violation. First, Garcia does not contend, and nothing in the record suggests, that there was any “deliberate attempt to delay the trial in order to hamper the defense.” (*Barker, supra*, 407 U.S. at p. 531.)

Second, substantial evidence supports the trial court’s finding that the delay was not caused by any negligent governmental conduct. The prosecution sought and received only one continuance of the trial, on January 8, 2019, based on the unavailability of the prosecutor on the scheduled trial date—a basis which is good cause for a continuance (§ 1050, subd. (g)(2)). On that same day, the court granted Garcia’s request to represent himself and Garcia began to prepare his own defense. The prosecution caused none of the delay between the time when Garcia began to represent himself and when criminal proceedings in the two cases were suspended due to the competency proceedings.⁸ When criminal proceedings resumed in April 2021,

⁸ Although he does not attribute it to the prosecution, for the first time in his reply brief Garcia contends his speedy trial rights were violated on April 23, 2019, because in one case (No. GA105379) his public defender declared a doubt as to his competence while in the other case (No. BA471603) he was permitted to represent himself. Garcia has forfeited this claim. (See *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11 [“Obvious reasons of fairness militate against consideration

the court consolidated the cases and continued them due to the COVID-19 pandemic, as authorized by emergency orders issued by the Judicial Council.

After that point, Garcia himself was the cause of the delay. Garcia filed a series of motions seeking to postpone trial on the ground he was seeking to retain counsel. When the trial court denied Garcia's September 2022 motions to continue and proceeded to trial, Garcia engineered further delay by requesting to be represented by the attorney who had been appointed as his stand-by counsel, who in turn needed time to prepare. Garcia then waived his speedy trial rights until trial began on February 15, 2024.

Garcia argues "the negligence of the authorities" caused the delay between when the mental health court ordered his competency to be re-assessed (February 19, 2020) and when he was transported to ASH (December 2, 2020). We disagree. The delay was instead caused by the spread of the COVID-19 virus, a global pandemic which significantly disrupted the court system and other government operations. (See *Elias v. Superior Court* (2022) 78 Cal.App.5th 926, 941-942, 943 [holding the COVID-19 pandemic was a "valid reason[]" for a 13-month delay under the federal constitutional speedy trial right].) In denying Garcia's motion to dismiss based on alleged speedy trial right violations,

of an issue raised initially in the reply brief of an appellant"].) Furthermore, even were we to consider this argument, we would reject it because separate counsel and judges were involved in the two cases. Counsel and the court in case No. GA105379 declared a doubt about Garcia's competence based on what they personally observed during the preliminary hearing in that case, and Garcia does not directly challenge the actions of the court or counsel.

the trial court specifically found that “[t]he transportation was delayed during a pandemic when there was no transportation of any inmates, to or from any prison or the Department of State Hospitals.” Substantial evidence supports this finding. On May 27, 2020, the mental health court continued the matter to September 18, 2020, based on the Governor’s declaration of a state of emergency due to the spread of COVID-19 and the presiding judge’s resulting March 17, 2020 administrative order. On September 18, 2020, the court held a status conference to monitor Garcia’s situation and set the matter for a further status conference on December 17, 2020. Then, on November 20, 2020, the court issued an extraction order for Garcia to be transported “with or without [his] consent,” leading to the logical inference that Garcia had refused to be transported voluntarily.

Garcia contends he was “misdiagnos[ed]” during his competency proceedings and associated commitments to the state hospitals. Even if we take that claim as true, we decline to hold the state responsible for delays caused by individual mental health professionals disagreeing as to the proper diagnosis for a criminal defendant as to which multiple officers of the court have declared a doubt regarding competency. Diagnosis of the type of mental disorders at issue in this case is subject to reasonable disagreement between different medical professionals. Further, the diagnoses in this case depended upon the professionals’ interactions with and observations of Garcia, and there is substantial evidence Garcia failed on occasion to cooperate with those professionals as they sought to examine him.⁹

⁹ Garcia complains that Dr. Chen issued her second report in February 2020 without meeting with him. He glosses over

c. Garcia's Assertion of His Speedy Trial Right

The third factor concerns the defendant's assertion of his speedy trial right. In assessing that factor, "[t]he issue is not simply the number of times the accused acquiesced or objected; rather, the focus is on the surrounding circumstances, such as the timeliness, persistence, and sincerity of the objections, the reasons for the acquiescence, whether the accused was represented by counsel, the accused's pretrial conduct (as that conduct bears on the speedy trial right), and so forth. [Citation.] The totality of the accused's responses to the delay is indicative of whether he or she actually wanted a speedy trial.'" (*People v. Williams, supra*, 58 Cal.4th at p. 238.)

Garcia did on occasion complain to the court that his speedy trial rights had been violated and expressed that he desired a prompt trial.¹⁰ This includes motions to dismiss Garcia

why that occurred—namely, that Garcia refused to meet with Dr. Chen. Dr. Chen thus based her assessment on her observations of Garcia, who “appeared irritable and hostile,” reports from custody personnel that Garcia “ha[d] been very agitated and observed to be talking to himself as if in response to voices of unseen persons,” jail medical records from the period after his return, the reports from PSH, and other documents she had reviewed for his initial evaluation. Dr. Chen was unable to perform any further assessment without Garcia's cooperation.

¹⁰ Garcia asserts that in his January 8, 2019 motion to dismiss in case No. BA471603, he claimed his first attorney waived his speedy trial rights before the preliminary hearing was held on October 30, 2018. To the extent Garcia reasserts this claim on appeal, he has failed to provide an adequate record for review. (*People v. Barton* (1978) 21 Cal.3d 513, 519-520.) As the

filed in pro. per. on January 8, 2019 and May 14, 2021.¹¹

However, throughout the case, Garcia took many actions that caused delay, including failing to cooperate with his appointed defense counsel when represented. Both before and after the competency proceedings, Garcia requested and was permitted to represent himself, but he did not then move the case towards trial. He instead continued to seek to delay it.

The trial court found that Garcia did not “promptly assert[] his right [to a speedy trial] following criminal proceedings being reinstated [after the competency proceedings].” This finding is supported by substantial evidence. A little over two months after requesting and being granted self-representation status in May 2021, Garcia filed successive motions to continue the trial over the course of more than a year (from July 2021 to September 2022). When the court refused to grant any more such requests, Garcia again sought delay. As voir dire began, he moved to give up his self-represented status and asked to be represented by his stand-by counsel. Then, when he was represented by that counsel, he began to request continuances again.

People point out, the record does not contain any transcripts or orders regarding the hearings in October 2018 before the preliminary hearing.

¹¹ Garcia erroneously asserts that the trial court never ruled on his January 8, 2019 motion. In fact, the court addressed the motion at a hearing on January 10, 2019, and heard extensive argument from Garcia on it. The court denied the May 14, 2021 motion on May 28, 2021.

d. Prejudice

Garcia's appeal brief does not claim that the delay in his case being tried resulted in a loss of evidence or otherwise impacted the available evidence. Garcia did suffer prejudice under the *Barker* test in that he was held in custody during the proceedings; he was in custody for just over two years and nine months.

Garcia contends he was prejudiced because he was forced to take anti-psychotic medications while at the state hospitals. This argument fails because the nature of Garcia's treatment at the state hospitals is unrelated to any alleged delay.

e. Conclusion

The trial court reasonably concluded that Garcia's federal speedy trial rights were not violated, and substantial evidence supports its finding that the prosecution and the court were not responsible for any delay in bringing Garcia's case to trial. Although it took substantial time for trial to commence, the delays resulted from Garcia's own conduct and the unavoidable consequences of the COVID-19 pandemic. Garcia contends that even if each incremental delay was justified by good cause, the overall delay was so lengthy that his speedy trial rights were violated given the trial court's "burden . . . to assure that cases are brought to trial." (*Barker, supra*, 407 U.S. at p. 529.) However, Garcia fails to show the trial court caused any substantial delay. The trial court reasonably granted successive motions to continue that Garcia filed from July 2021 through August 2022, to give Garcia an opportunity to find an attorney. Then, to move the case along, the court denied Garcia's September 2022 continuance requests. This prompted Garcia to accept representation from his stand-by counsel. At that point,

Garcia needed additional time for his counsel to prepare for trial, which resulted in additional delays for Garcia's benefit until the February 2024 trial.

In addition, the trial court's finding that Garcia did not "promptly assert[] his [speedy trial] right following criminal proceedings being reinstated" is supported by substantial evidence. Although Garcia expressed an interest in vindicating his speedy trial right, his actual actions suggested this expression was tactical and not a sincere desire to resolve his case quickly.

Lastly, even if Garcia suffered from being incarcerated for a period of time prior to trial, given that the prosecution and the court were not responsible for any meaningful delay, his constitutional speedy trial right was not infringed.

3. *Garcia's California Constitutional Speedy Trial Right*

Garcia's speedy trial claim under the California constitution fails for the same reasons his claim under the federal constitution fails. (See *Craft v. Superior Court* (2006) 140 Cal.App.4th 1533, 1540 [balancing test in state constitutional speedy trial right claim involves substantially the same factors as under the federal constitutional test articulated in *Barker*].) Garcia makes no argument that his claim under the state constitution could survive if his claim under the federal constitution fails.

4. *Garcia's Claim Under Section 1382*

Garcia's claim under section 1382 fails because he does not identify any prejudice to his defense. (*People v. Martinez, supra*, 22 Cal.4th at p. 769; *People v. Johnson, supra*, 26 Cal.3d at p. 574.) The trial court found Garcia had failed to show that his defense had been negatively impacted by any delay. This finding

is supported by substantial evidence, and Garcia makes no claim that he made any such showing.

B. The Court’s Evidentiary Rulings Were Not Erroneous

Garcia contends we also should reverse because the court prejudicially erred in three rulings related to his cross-examination of Rosa. The trial court (1) precluded Garcia from asking Rosa about any attempts to obtain an immigration visa, (2) sustained objections to certain questions about whether Rosa had been hospitalized around the time of the August 17 and September 20, 2018 incidents, and (3) precluded Garcia from asking Rosa about details of her divorce from Garcia.

1. *Legal Principles and Standard of Review*

Trial courts have broad discretion in determining the relevance of evidence. (Evid. Code, § 210; *People v. Jones* (2017) 3 Cal.5th 583, 609.) In addition, Evidence Code section 352 provides the trial court with “discretion [to] exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (*Ibid.*) This provision “‘permits the trial court “to strike a careful balance between the probative value of the evidence and the danger of prejudice, confusion and undue time consumption.” ’” (*People v. Nicolaus* (1991) 54 Cal.3d 551, 578.) “We review for abuse of discretion rulings by the trial court on the admissibility of evidence, including rulings that turn on the relative probativeness and prejudice of the evidence in question.” (*People v. Hamilton* (2009) 45 Cal.4th 863, 930.)

A criminal defendant has the right under the federal and state Constitutions (U.S. Const., 6th Amend.; Cal. Const., art. I,

§ 15) to confront and cross-examine adverse witnesses. (*People v. Wilson* (2008) 44 Cal.4th 758, 793.) “ [T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679 [106 S.Ct. 1431, 89 L.Ed.2d 674].) Thus, “notwithstanding the confrontation clause, a trial court may restrict cross-examination of an adverse witness on the grounds stated in Evidence Code section 352.” (*People v. Quartermain* (1997) 16 Cal.4th 600, 623; accord, *People v. Harris* (1989) 47 Cal.3d 1047, 1090-1091.)

“ “[A] criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby, ‘to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.’ ” [Citation.] However, not every restriction on a defendant’s desired method of cross-examination is a constitutional violation. Within the confines of the confrontation clause, the trial court retains wide latitude in restricting cross-examination that is repetitive, prejudicial, confusing of the issues, or of marginal relevance. [Citations.] California law is in accord. [Citation.] Thus, unless the defendant can show that the prohibited cross-examination would have produced “a significantly different impression of [the witnesses’] credibility” [citation], the trial court’s exercise of its discretion in this regard

does not violate the Sixth Amendment.’ ” (*People v. Linton* (2013) 56 Cal.4th 1146, 1188.)

We review a trial court’s evidentiary rulings regarding the scope of cross-examination by a criminal defendant for abuse of discretion. (*People v. Linton, supra*, 56 Cal.4th at p. 1188.)

2. *The U Visa*

a. Background

On February 16, 2024, the court held an Evidence Code section 402 hearing concerning the defense’s intent to question Rosa about whether she had received or applied for a U visa. A U visa is “a type of visa that can provide legal status [in the United States of America] for victims of certain crimes who assist in the investigation of those crimes.” (*People v. Castaneda-Prado* (2023) 94 Cal.App.5th 1260, 1267, fn. omitted.) Rosa testified that she had not applied for a U visa and had learned of the existence of the U visa program that day from a victim services representative from the district attorney’s office. When asked whether she knew what a U visa was at the time she reported the incidents involving Garcia to the police in 2018, Rosa responded, “I don’t recall.” Rosa testified that she became a citizen of the United States in 1992 or 1993. She denied ever having a problem with her citizenship status. Defense counsel asked Rosa four questions about her son’s immigration status; the court sustained the prosecutor’s objection on relevance grounds.

At the conclusion of the Evidence Code section 402 hearing, the court prohibited the defense from asking Rosa about the U visa program or her son’s immigration status, stating, “She stated she’s been a citizen since the early 90’s. I don’t know what the relevance would be regarding her son’s status. So far that has not come up in this trial. He does not appear to be a

percipient witness to any of the dates or the incidents that the court has heard so far”

b. Analysis

The court did not err in excluding evidence about the U visa program and Rosa’s son’s immigration status because the evidence was not relevant. Rosa testified that she was a United States citizen, which meant she would not personally need a U visa. Garcia fails to identify anything in the record suggesting any doubt about Rosa’s citizenship. Rosa’s son’s immigration status was not relevant absent any showing that Rosa’s participation in the case would help her son obtain a U visa or that she believed that to be the case. Garcia never proffered any such proof. (See *People v. Harris*, *supra*, 47 Cal.3d at p. 1091 [finding “the trial court did not abuse its discretion in” excluding proffered evidence of a witness’s motivation to lie “[i]n the absence of any offer of proof by [the] defendant” to support a claim of motivation to lie].) Garcia relies on *People v. Castaneda-Prado*, *supra*, 94 Cal.App.5th 1260, but that case is distinguishable because the witness “believed that, by accusing [the defendant] of sexual molestation, she was helping her mother obtain a ‘U visa.’” (*Id.* at p. 1267.)

3. *The Hospital Stay*

a. Background

During cross-examination, Rosa denied that she bruised easily due to a medical condition. She admitted that she had been hospitalized in August 2018. Defense counsel showed Rosa People’s exhibit 9, a picture of her right hand and wrist area taken after the August 17, 2018 incident, and asked, “Is that where you had IVs or needles put in . . . at the hospital?” The court overruled the prosecutor’s objection and Rosa responded

that the bruising shown in the picture was the result of Garcia grabbing her. Defense counsel later asked, in reference to the September 20, 2018, incident, “And at that point, you had recently come back from the hospital as you—which we had talked about earlier; right?” The court sustained the prosecutor’s objection on the ground the question misstated the evidence and struck Rosa’s response.

Defense counsel then asked, “How long—previous to September 20th, did you come back from the hospital?” The prosecutor objected on the ground of relevance and the court sustained the objection.

Defense counsel then asked Rosa, “Had you been seeing Mr. Garcia? Had you been meeting with Mr. Garcia?” and then clarified the time period he was asking about, and Rosa responded, “No. He’s saying that for people to believe that the bruises were coming from the needles.” The trial court then struck Rosa’s response based on the prosecutor’s objection it was nonresponsive.

b. Analysis

Garcia claims the trial court erred in sustaining the prosecutor’s three objections. The trial court did not err. The first question misstated the evidence by suggesting Rosa had testified that on September 20, 2018, she had “recently” returned from the hospital, when in fact she testified her hospitalization was a month earlier. The second question did not seek relevant evidence as the defense had not established a connection between Rosa’s hospital visit and the September 20, 2018 incident; the primary injuries in the September 20, 2018 incident were to Rosa’s neck, cheek, and finger and she had already testified any bruising to her wrist area after Garcia’s attack did not result

from treatment during her August 2018 hospital visit. Rosa's answer to the last question was nonresponsive, and appropriately stricken for that reason. In any event, defense counsel posed substantially the same question a second time and Rosa answered.

4. *The Divorce Proceedings*

a. Factual Background

Defense counsel asked Rosa during cross-examination if she had been "involved in a family law matter with Mr. Garcia," and Rosa responded yes and stated that she had "divorced" Garcia. When defense counsel started to ask another question about the divorce, the court stopped the proceedings and held a sidebar, during which defense counsel stated the divorce proceeding was "contentious" and that this evinced Rosa's bias. Counsel further stated, "There are financial concerns as well. I don't plan on spending a great deal of time on it. I'm just asking if she was involved in a contentious divorce" and that Garcia alleged in the divorce proceedings that Rosa took his property.

The court ruled, "We're not going to go into the divorce unless you can explain to me where it's relevant," and that any questioning about the divorce proceedings would result in an undue consumption of time because it would require litigation of issues raised in the divorce proceedings.

b. Analysis

The court acted within its discretion under Evidence Code section 352 in excluding evidence regarding Garcia's and Rosa's divorce proceedings because its probative value was limited, and admitting the evidence would lead to an undue consumption of time as the parties would likely seek to re-litigate the issues which arose in the dissolution proceeding.

In addition, the court's ruling did not infringe on Garcia's confrontation clause rights. The court permitted Garcia to elicit Rosa's testimony that she had been involved in a dissolution proceeding with Garcia, as well as other evidence concerning their relationship during the time of the alleged incidents. In addition, Garcia was permitted to impeach Rosa in various ways, including that she stayed with him and interacted with him despite his abusive conduct and the protective order barring such contact and that after the April 2, 2017 incident, the Alhambra Police Department received a document in Rosa's handwriting stating, "I think that I started the argument or the issue. I don't want any charges because it is my fault as well."

C. Cumulative Error

Garcia argues that, when considered cumulatively, the trial court's errors denied him a fair trial. We have concluded the trial court did not err, and therefore Garcia's cumulative error claim fails.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

WEINGART, J.

We concur:

BENDIX, Acting P. J.

M. KIM, J.