District Court, City and County of Denver, Colorado Lindsey-Flanigan Courthouse, Room 135 1520 West Colfax Avenue Denver, CO 80204	DATE FILED: December 7, 2023 5:27 PM FILING ID: 475D8CFADECC7 CASE NUMBER: 2006CR6594
Plaintiff: THE PEOPLE OF THE STATE OF COLORADO **v.** **Defendant: JASON KEITH GROSHART** **DOB** [redacted]	σ COURT USE ONLY σ Case Number: **06 CR 6594** Div.: **Criminal** Ctrm: **5B**
McKenna Burke, Reg. No. 49550 Deputy District Attorney Dawn Weber, Reg. No. 23433 Senior Chief Deputy District Attorney Cold Case Unit For: **Beth McCann**, Reg. No. 5834 DISTRICT ATTORNEY 201 West Colfax Ave., 8th floor Denver, CO 80202 Phone Number: 720-913-9000	

PEOPLE'S RESPONSE TO "MR. GROSHART'S MOTION TO DISMISS FOR VIOLATION OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL" [DEFENSE MOTION D-5]

BETH McCANN, District Attorney for the Second Judicial District of the State of Colorado, by and through the undersigned Senior Chief Deputy District Attorney, respectfully submits the People's response to the "Mr. Groshart's Motion to Dismiss for Violation of His Constitutional Right to a Speedy Trial" (defense motion D-5; "defense motion").

I. RELEVANT FACTUAL & PROCEDURAL HISTORY

1. The Defendant is charged with Sexual Assault (F2), Second Degree Kidnapping (F2), First Degree Burglary (F3) and one crime-of-violence sentencing enhancer.

2. On March 30, 2004, the defendant donned a mask and entered the northwest Denver home of the victim, A.R. He woke her up, handcuffed her, placed a mask over her face and sexually assaulted her at gunpoint in her bedroom. He wore gloves during the attack and

kept his mask on, even when he compelled A.R. to shower with him in order to destroy evidence.

3. He made her strip her bedsheets off the bed and collected her towels as a further means of destroying evidence. After the assault, A.R. made immediate outcry to the police and underwent a sexual assault exam the same day. The defendant had vaginally assaulted A.R. and thereafter, semen and/or seminal fluid was collected as drainage from her body.

4. From that semen and/or seminal fluid, a male DNA profile was generated and uploaded into the Combined DNA Index System ("CODIS") database. No matches were produced. Additionally, a familial search conducted in the state of Colorado's state-level database ("SDIS") produced negative results.

5. In 2006, criminal charges were filed against that DNA profile as a "John Doe" case. In other words, the relevant statutes of limitation were preserved as to each charge but, since the defendant's identity was unknown at the time, the charges were filed against the perpetrator's DNA profile and not against him as a named defendant. That John Doe filing is the reason why a case being prosecuted in 2023 bears a 2006 CR case number.

6. The case remained unsolved for 18 years, from 2004 until 2022, when law enforcement utilized a technique called Forensic Investigative Genetic Genealogy ("FIGG") to identify the defendant.

7. After the FIGG investigation identified the defendant as the suspect, law enforcement agents travelled to Sedalia, Missouri and, on September 24, 2022, collected surreptitious samples of the defendant's DNA from utensils he had placed in his mouth at a Chinese restaurant there. Those samples were put forward for testing and the DNA profile developed from the abandoned DNA on them matched that of the defendant, thus confirming his identity as A.R.'s assailant.

8. On October 3, 2022, a mere 9 days after the abandoned utensils were collected, law enforcement obtained an at-large arrest warrant for the defendant.

9. The next day, on October 4, 2022, the same three law enforcement agents returned to Missouri and placed the defendant under arrest. The defendant invoked his right to remain silent and questioning of him ceased immediately.

10. A little over three weeks later, on October 26, 2022, the defendant was transported from Missouri to Denver to face charges here.

11. Two days later, on October 28, 2022, the defendant received a second advisement in Courtroom 2300.

12. On December 27, 2022, a preliminary hearing was held in the defendant's case. The court listened to live testimony and bound over each of the counts.

13. On February 9, 2023, the case was set for first arraignment. The defense sought a continuance of the arraignment. The continuance was granted.

14. On March 23, 2023, the defense again sought to continue the arraignment. That motion was likewise granted.

15. On May 4, 2023, Courtroom 5B was in trial and its docket was being handled by a covering courtroom. The arraignment date was continued by agreement of the parties so that the normally-assigned judge in Courtroom 5B could have continuity on the case.

16. On the next court date, June 30, 2023, the defendant entered a plea of not guilty for the first and only time in the case. Speedy trial was set for December 29, 2023. The defendant then tolled speedy trial until the next court date, set for July 19, 2023.

17. On July 19, 2023, the court heard argument on a variety of issues, including the defense demand for discovery of certain FIGG materials. That day, a disposition date was set for November 2, 2023 and a motions hearing date was set for November 17, 2023. On July 19, 2023, the defendant agreed to continue to toll speedy trial until the November 2, 2023 disposition date (which then extended the speedy trial deadline until May 2, 2023).

18. On November 2, 2023, lead defense counsel was out sick and the defense sought - and was given - a continuance in order to schedule a mitigation meeting and to receive a complete packet of DNA discovery. On that date, the defendant again waived speedy trial and tolled until the January 12, 2024 motions date. The effect of that combined waiver and tolling created a new speedy trial date of July 12, 2024.

19. The case is currently set for motions on January 12, 2024.

20. There is no trial date currently set.

21. The prosecution has vigilantly preserved each of the defendant's constitutional and statutory rights.

22. The defendant's right to a speedy trial has not been violated and such claim in the defense motion must be rejected.

II. SUMMARY OF THE PEOPLE'S ARGUMENT

1. Here, the defense's speedy trial claim lacks merit and, as such, should be summarily rejected.

2. The defense has erroneously framed their argument as if the speedy trial period started to run in 2004 when the defendant broke into A.R.'s house and raped her. *See* paragraph 31 ("[T]he delay in time from the filing of the initial complaint against Mr. Groshart and arresting him was 16 years. This far exceeds the one-year period required for a presumption of prejudice against Mr. Groshart").

3. However, the time it took to identify the defendant as the attacker does not count towards a speedy trial calculation.

4. The defendant's speedy trial rights have not been violated. Indeed, due to the combination of waiving and tolling, there remains more than 7 months' worth of speedy trial in this case.

III. LEGAL ANALYSIS

1. Section 18-1-405(1), C.R.S. provides that a defendant must be brought to trial within six months of a plea of not guilty. *See also* Crim.P. 48(b). If the defendant is not "and no valid statutory basis exists for extending the six-month period, the court must dismiss the charges[.]" *P. v. Nelson*, 360 P.3d 175, 179 (2014 COA 165) *cert. den'd Nelson v. People,* 2015 WL 6121587 (Colo. 2015).

2. The defendant has the burden of proving that he was denied his constitutional right to a speedy trial. *P. v. Nelson*, 360 P.3d 175, 2014 COA 165.

3. The constitutional right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by article II, section 16 of the Colorado Constitution. Under both provisions, "the right to a speedy trial attaches with the filing of a formal charge or with a defendant's arrest." *P. v. Nelson*, 360 P.3d 175, 181 (2014 COA 165).

4. The defense incorrectly cites the balancing test of *Barker v. Wingo*, 407 U.S. 514 (1972) to claim that the defendant's Sixth Amendment speedy trial rights have been violated.

5. The balancing test outlined in *Barker* only applies when there has been a delay in the period between arrest and charging and the trial**.** There has been no such delay here.

6. Interestingly, the most salient language in *Barker* is the court's observation that the "unsatisfactorily severe remedy of dismissal" of charges is "indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free." *Barker* 407 U.S. at 522.

7. That is worth considering here where state-of-the-art DNA evidence proves that the defendant handcuffed, masked and sexually assaulted a woman in her own home, at gunpoint.

8. The case of *United States v. MacDonald*, 456 U.S. 1 (1982) must also guide the court here. There, the defendant, a captain in the Army Medical Corps, was investigated and charged by the Army on grounds that he murdered his pregnant wife and two children. At some point, the military charges were dismissed and the defendant was later indicted by a criminal grand jury on three counts of murder. He was convicted. He argued on appeal that the delay between the dismissal of the military charges and the convening of the grand jury that ultimately indicted him violated his Sixth Amendment right to a speedy trial.

9. The United States Supreme Court rejected this claim, holding that "[t]he Speedy Trial Clause of the Sixth Amendment ***does not apply to the period before a defendant is indicted, arrested, or otherwise officially accused.***" *MacDonald*, 456 at 6 (internal citation omitted) (emphasis supplied)

10. Four years later, in 1986, the United States Supreme Court announced its opinion in *United States v. Loud Hawk*, 474 U.S. 302 (1986). In that case, the Court noted that "the Speedy Trial Clause's core concern is impairment of liberty; it does not shield a suspect or a defendant from every expense or inconvenience associated with criminal defense." *United States v. Loud Hawk*, 474 at 312.

11. More to the point, the Court acknowledged that only the "*actual* restraints imposed by arrest and holding to answer a criminal charge . . . engage the particular protections of the speedy trial provision of the Sixth Amendment." *Id*. at 310 (emphasis in original) (internal citation omitted) *See also Metoyer v. Scott*, 70 Fed.Appx. 524, 530 (10th Cir. 2003) (decided in a cold case homicide context in which murder charges were filed against the defendant seven years after the murder, then the charges were dismissed and later re-filed twelve years after the murder; the United States Court of Appeals for the Tenth Circuit held that the defendant's speedy trial right did not apply after the charges were dismissed before re-filing).

12. Indeed, that same court had followed the same logic seven years earlier in *United States v. Reardon*, 787 F. 2d 512, 518 (10th Cir. 1986), holding that "the Sixth Amendment's guarantee of an individual's right to a speedy trial does not apply to the time preceding an indictment" and thus the "time period following the trial court's dismissal of charges against the defendant, during which the defendant is neither under indictment nor subject to any restrictions on his liberty, must be excluded from any calculations for alleged violations of the defendant's Sixth Amendment Speedy Trial Clause rights."

13. Here, the defendant's liberty interests were never impaired between March 30, 2004 (the date of his attack against A.R.) and the date of his arrest, October 4, 2022. The defendant was free in his chosen community in Missouri. His liberty was never curtailed during that time. And, since he had been placed in custody, his speedy trial rights have been honored. Any delays in his case have been attributable to defense-initiated continuances.

14. What's more, due to the combination of waiving and tolling, there remain approximately 8 months before the expiration of the current speedy trial period (which greatly exceeds the 6-month statutory period). *Accord City of Aurora v. Allen*, 885 P.2d 207, 210 (Colo. 1994) (the computation of the speedy trial period "begins from the entry of the last not-guilty plea").

15. Here, the defendant's speedy trial rights were set afresh on November 2, 2023 when he waived his speedy trial rights and tolled them until January 12, 2024. Thus, the speedy

trial clock has not even begun to run in this case and the defendant is not entitled to any relief, much less the drastic (and undeserved) remedy of dismissal.

16. The defense motion must be denied.

Respectfully submitted this 7th day of December, 2023.

Respectfully submitted,

BETH McCANN
District Attorney

/s/ *Dawn Weber, Reg. No. 23433*
Senior Chief Deputy District Attorney
Cold Case Unit
201 West Colfax Ave., 8th floor
Denver, CO 80202

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of December, 2023, I e-filed the above pleading to opposing counsel.

Steven Graziano, Esq.
Denver Office of the Public Defender

/s/ DAWN WEBER, REG. NO 23433