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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ANTHONY PAUL MENDIOLA,
Defendant-Appellant.

Supreme Court Case No.: CRA14-019
Superior Court Case No.: CF0218-13-02

OPINION

Cite as: 2015 Guam 26

Appeal from the Superior Court of Guam
Argued and submitted on February 25, 2015
Dededo, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] The dispute in this case centers on whether Defendant-Appellant Anthony Paul Mendiola's constitutional and statutory rights to a speedy trial were violated by Plaintiff-Appellee People of Guam ("the People"). Mendiola claims that the trial court erred in denying his motion to dismiss. Specifically, Mendiola asserts that the trial court should have found that the delay in bringing him to trial constituted a violation of his speedy trial rights under both the United States Constitution and applicable Guam law. He further suggests that the appropriate remedy for such violation is to vacate his convictions and dismiss the charges against him. For the reasons set forth herein, we affirm the judgment of the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The case arises from a criminal conviction for burglary, robbery, and assault. The acts underlying these charges occurred in the home of the victim, Rebecca Piper, on or about April 20, 2013. The People initially indicted Mendiola and co-defendants Raymond Tedtaotao and Kyle Cruz on May 7, 2013. The People charged Mendiola with (1) Attempted Murder (As a First Degree Felony); (2) Guilt by Complicity to Commit Attempted Murder (As a First Degree Felony); (3) First Degree Robbery (As a First Degree Felony); (4) Aggravated Assault (As a Second Degree Felony); and (5) Burglary (As a Second Degree Felony). Mendiola asserted his right to speedy trial on May 15, 2013. The Superior Court set the matter for jury trial on June 26, 2013, in contemplation of the 45-day speedy trial clock for defendants in confinement.

[3] On June 12, 2013, the People filed a Motion for Good Cause Continuance of Trial. In the Motion, the People argued that there was good cause for a six-month continuance because Piper was unavailable to testify due to necessary off-island medical treatments for her injuries. On June 25, 2013, the Superior Court found good cause to postpone the trial and to exclude the delay from affecting the speedy trial calculation. The court vacated the June 26, 2014 trial date and signed the Order *nunc pro tunc* to June 17, 2014. However, the court did not find cause for a six-month delay as requested, and ordered the People to provide the court with additional information supporting the length of the requested delay. The court ultimately granted a shorter 120-day postponement to provide time for the victim to receive treatment and return to Guam.

[4] Mendiola later filed a “Defendant’s Pretrial Motion to Dismiss for Violation of Sixth Amendment Right to a Speedy Trial and Memorandum of Points and Authorities.” He argued in his motion that the delay due to the victim’s treatment had violated his right to a speedy trial. This argument was premised on the assertion that Piper was not an essential witness since the People knew she had no memory of the events which transpired on the night she was injured. Mendiola supported this contention by citing to a Naval Criminal Investigation Service (“NCIS”) investigation report which he stated showed that Piper was unable to recall the assault and was suffering from severe memory loss. Mendiola argued that, because Piper was able to provide testimony only on the extent of her injuries, her appearance was cumulative and duplicative since healthcare professionals could provide such information for the People’s case. The People opposed Mendiola’s motion, arguing that Piper was an essential witness whose testimony was neither duplicative nor superfluous.

[5] During the arguments on the motion, the People emphasized that, as a victim, Piper offered a unique perspective and understanding of the effects of her injuries and recovery that could not be duplicated by other witnesses. The People further asserted that she was entitled to testify due to her special status under Guam's Victim's Bill of Rights, 8 GCA § 160.50. Mendiola countered by reiterating that Piper would be unable to recall the events of her assault and her testimony on her injuries was replaceable. Further, he argued that Piper's status under the Victim's Bill of Rights did not supersede his constitutional speedy trial rights. After considering the parties' arguments, the court denied the motion from the bench later that day.

[6] During the prosecution's case-in-chief, Piper was called to testify. Her testimony included a detailed account regarding the magnitude of her injuries and their effect on her, as well as the extensive rehabilitation therapy she required on Guam and off-island in order to regain her ability to speak and walk. Further, despite significant memory issues suffered as a result of her injuries, she was able to verify her previous photo identification of Mendiola and identified him in court.

[7] The jury returned a verdict finding Mendiola guilty of (1) Second Degree Robbery (As a Second Degree Felony); (2) Assault (As a Misdemeanor); and (3) Burglary (As a Second Degree Felony). Following a sentencing hearing, Mendiola was sentenced to ten years of imprisonment for each of the felony charges for which the jury found him guilty and one year of imprisonment for the misdemeanor assault conviction, all sentences to run consecutively. Pursuant to the judgment of conviction, Mendiola is to serve a total of 21 years in prison.

[8] Mendiola timely filed a notice of appeal challenging his conviction and seeking dismissal of all charges.

II. JURISDICTION

[9] This court has jurisdiction over the appeal from a final judgment in a criminal case. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-40 (2015)); 7 GCA § 3107(b) (2005); *see also* 8 GCA § 130.15(a) (2005) (permitting defendant’s appeal from a final judgment of conviction).

III. STANDARD OF REVIEW

[10] Constitutional and statutory speedy trial claims are distinct, with different legal standards applicable to each. *People v. Julian*, 2012 Guam 26 ¶ 19 (“As the People correctly point out, a statutory right to a speedy trial is separate and distinct from a constitutional speedy trial.”); *see also People v. Naich*, 2013 Guam 7 ¶¶ 47-48; *Ungacta v. Superior Court (People)*, 2013 Guam 29 ¶ 28.

[11] We review a Sixth Amendment constitutional speedy trial claim *de novo*. *People v. Flores*, 2009 Guam 22 ¶ 9; *People v. Mendiola*, 1999 Guam 8 ¶ 22. By contrast, “[a] trial court’s denial of a defendant’s motion to dismiss on statutory speedy trial grounds is reviewed for an abuse of discretion.” *Flores*, 2009 Guam 22 ¶ 9 (citing *Nicholson v. Superior Court (People)*, 2007 Guam 9 ¶ 8).

[12] Finally, an order “denying a motion to dismiss an indictment is generally reviewable for abuse of discretion.” *People v. Gutierrez*, 2005 Guam 19 ¶ 13 (citing *United States v. Derr*, 726 F.2d 617, 619 (10th Cir. 1984)).

IV. ANALYSIS

A. Mendiola’s Motion to Dismiss on Constitutional Speedy Trial Grounds

[13] The Sixth Amendment of the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial” U.S. Const.

amend. VI. The Organic Act of Guam applies this provision specifically to Guam. 48 U.S.C.A. § 1421b(u); *see also Naich*, 2013 Guam 7 ¶ 49. The United States Supreme Court has put forth a four-part analysis for determining whether a Sixth Amendment speedy trial violation has occurred. This test instructs the examining court to consider the “[l]ength of the delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *see also Mendiola*, 1999 Guam 8 ¶ 22. None of these factors standing alone is dispositive of whether a constitutional violation has occurred. *Flores*, 2009 Guam 22 ¶ 42. Rather, “the factors must be considered together and balanced in relation to all of the relevant circumstances of the delay in bringing the defendant to trial.” *Id.* (citing *Barker*, 407 U.S. at 533).

1. Length of delay

[14] We first consider the length of the delay in bringing Mendiola to trial. “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.” *Barker*, 407 U.S. at 530. In prior cases, this court has found delays of six years and four years to be prejudicial enough to warrant examination of the other *Barker* factors. *See Flores*, 2009 Guam 22 ¶¶ 43-44; *Mendiola*, 1999 Guam 8 ¶ 24. However, this court has also held that an 18-month delay did not rise to the level of a constitutional violation. *Naich*, 2013 Guam 7 ¶ 57. The delay in this case is significantly shorter, totaling just over six months. *See Appellant’s Br.* at 3-6 (Dec. 15, 2014); *Appellee’s Br.* at 18 (Dec. 30, 2014). Citing United States Supreme Court precedent, this court has ruled that the length of a delay becomes “presumptively prejudicial” as it approaches one year. *People v. Stephen*, 2009 Guam 8 ¶ 16 (citing *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992)). If a case does not approach that

threshold, then this factor disfavors a finding of constitutional violation. *Id.* As correctly noted by the People, this conclusion is consistent with federal case law examining lengths of delay similar to that found in the present case. *See, e.g., United States v. Jackson*, 549 F.3d 963, 971 (5th Cir. 2008); *United States v. Lozano*, 413 F.3d 879, 883 (8th Cir. 2005); *Hogan v. McBride*, 74 F.3d 144, 145 (7th Cir. 1996); *United States v. White*, 985 F.2d 271, 275 (6th Cir. 1993).

[15] However, despite these guidelines, the precise length of time necessary to trigger a constitutional violation cannot “be quantified into a specified number of days or months.” *Flores*, 2009 Guam 22 ¶ 43 (quoting *Barker*, 407 U.S. at 523). Instead, the court must examine the particular circumstances and complexities of the case to determine whether the length of delay gives rise to a presumption of prejudice. *Barker*, 407 U.S. at 530-31. For example, the Ninth Circuit has found that, under certain circumstances, a delay of merely six months may be “sufficiently prejudicial to trigger an inquiry into the other factors.” *United States v. Simmons*, 536 F.2d 827, 831 (9th Cir. 1976). It is also possible to determine that, while a delay is not excessive to the level of itself becoming a constitutional violation, it is sufficient to warrant examination of the remaining *Barker* factors. *See United States v. White*, 443 F.3d 582, 590 (7th Cir. 2006). Thus, despite the length of delay weighing in favor of the People, it is not so insignificant as to foreclose inquiry into the other constitutional factors.

2. Reason for delay

[16] We next consider the reason for the delay. “Closely related to length of delay is the reason the government assigns to justify the delay.” *Barker*, 407 U.S. at 531. As with the length of delay, the reasons for an allegedly unconstitutional postponement must be assessed by the particular facts of each case. *Mendiola*, 1999 Guam 8 ¶ 25 (citing *United States v. Marion*, 404 U.S. 307, 325 (1971)). As this court articulated in *Flores*:

Barker identifies three types of reasons for delay: (1) deliberate delay, (2) negligent delay, and (3) justified delay. Different weights are assigned different reasons for delay. Deliberate delay which includes an “attempt to delay the trial in order to hamper the defense” or “to gain some tactical advantage over (defendants) or to harass them” is weighted heavily against the government. Negligent delay is weighted less heavily against the government than is deliberate delay “but nevertheless should be considered” Justified delay . . . is not weighted against the government.

2009 Guam 22 ¶ 45 (citations omitted); *see also Naich*, 2013 Guam 7 ¶ 51.

[17] Mendiola contends that the People’s attempt to secure a six-month delay was deliberately sought without legitimate reason. Appellant’s Br. at 10-11. The basis of Mendiola’s argument is that, due to the memory loss suffered as a result of her injury, the victim could not have provided testimony sufficient to make her an essential witness in the People’s case. *Id.* at 9-11. He further asserts that the People had knowledge that her testimony would not be essential based on the NCIS investigation report stating that Piper was unable to recall the attack on her. *Id.* at 9-11; *see also* Record on Appeal (“RA”), tab 59 at 2 (Mot. Dismiss, Mem. P. & A.) (citing People’s Discovery at 1081 (NCIS Report, May 21, 2013)). However, as the People properly point out, the “essential witness” inquiry is not a Sixth Amendment requirement. Rather, it is imposed statutorily at the federal level by the Speedy Trial Act. 18 U.S.C.A. § 3161(h)(3) (2008).¹ This court has held, consistent with federal case law, that a statutory right to a speedy trial is separate and distinct from a constitutional speedy trial right. *Julian*, 2012 Guam 26 ¶ 19; *see also Naich*, 2013 Guam 7 ¶ 48; *United States v. Porchay*, 651 F.3d 930, 940 (8th Cir. 2011) (Sixth Amendment violation is separate from violation of Speedy Trial Act). Thus,

¹ In evaluating federal speedy trial claims, multiple federal circuits have defined an essential witness as one who is unquestionably important and whose testimony would not be merely cumulative or substantially irrelevant. *See United States v. Ortiz*, 687 F.3d 660, 663-64 (5th Cir. 2012); *United States v. Hamilton*, 46 F.3d 271, 277 (3d Cir. 1995); *United States v. McNeil*, 911 F.2d 768, 773 (D.C. Cir. 1990); *United States v. Eagle Hawk*, 815 F.2d 1213, 1218 (8th Cir. 1987).

because Mendiola does not explain how the delay was intended to harass him or hamper his defense, the extent to which the People considered Piper's testimony essential is not relevant to whether the reason for delay is permissible under the Sixth Amendment.

[18] When evaluating a constitutional claim, both the U.S. Supreme Court and this court have specifically held that a missing witness is a valid reason for appropriate delay, so long as the People act in good faith to secure the witness and promptly bring a defendant to trial. *See Barker*, 407 U.S. at 531; *Flores*, 2009 Guam 22 ¶ 45; *Mendiola*, 1999 Guam 8 ¶ 25. Further, many courts addressing similar issues have explicitly found that medical rehabilitation to secure the testimony of a victim or other witness is a legitimate justification to postpone trial. *See, e.g., United States v. Koller*, 956 F.2d 1408, 1415 (7th Cir. 1992) (unavailability of government witness who suffered heart attack justified delay); *United States v. Brewer*, 515 F. Supp. 644, 646 (E.D. Ark. 1981) (continuance appropriate to allow "potentially important witness" to recover from injury). Here, it is clear that the subject matter of Piper's testimony was both relevant and beneficial to the People's case. *See, e.g., United States v. Rodriguez*, 581 F.3d 775, 808 (8th Cir. 2009) (victim testimony of injury in sexual assault case); *State v. Telles*, 973 P.2d 845, 849 (N.M. Ct. App. 1999) (testimony regarding victim's injuries was relevant to demonstrate bodily harm). Additionally, the People are not obligated to find an alternate means of evidence to replace relevant testimony of an unavailable witness so long as they show due diligence in trying to obtain the witness for trial. *See United States v. Bourne*, 743 F.2d 1026, 1030 (4th Cir. 1984). Given that the People could appropriately call Piper as a witness and made a good faith effort to do so, the victim's medical unavailability is a constitutionally sufficient reason for delay.

3. Assertion of right to speedy trial

[19] We next consider Mendiola's assertion of his right to a speedy trial. In order to successfully argue that a Sixth Amendment violation has occurred, a defendant bears the responsibility to proactively assert a speedy trial claim. *Mendiola*, 1999 Guam 8 ¶ 29 (citing *Barker*, 407 U.S. at 529). "[F]ailure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Barker*, 407 U.S. at 532. Further, assertion of the right is "entitled to strong evidentiary weight," though such assertion must be "viewed in light of defendant's other conduct." *Flores*, 2009 Guam 22 ¶ 47 (citing *United States v. Loud Hawk*, 474 U.S. 302, 314 (1986)).

[20] In this instance, both parties agree that Mendiola promptly and diligently asserted his right to a speedy trial as soon as he was able to do so. See Appellant's Br. at 11-12; Appellee's Br. at 26. This contention is also supported by the record, which shows that Mendiola asserted his right to a speedy trial on May 15, 2013. RA, tab 10 (Assertion or Waiver of Speedy Trial, May 16, 2013). It is therefore undisputed that this particular factor should weigh in Mendiola's favor.

4. Prejudice resulting from delay

[21] The fourth and final *Barker* factor is prejudice to the defendant. When assessing prejudice, a court must consider three separate interests that the speedy trial right was meant to secure: "(1) preventing oppressive pretrial incarceration, (2) minimizing anxiety and concern of the defendant, and (3) limiting the possibility that the defense will be impaired." *Flores*, 2009 Guam 22 ¶ 49 (citing *Barker*, 407 U.S. at 532). Of these three factors, impairment of the defense is most significant due to the skewing of fairness in the judicial system. *Id.* Prejudice which

impairs the defense may include the death or disappearance of a witness due to delay or the inability of a defense witness to recall events from the distant past. *Barker*, 407 U.S. at 532.

[22] Mendiola's period of incarceration was just over six months. While not minimizing the impact of such detention, this court has recognized that "[o]ppression, anxiety, and concern of a defendant incarcerated while awaiting trial are certainly present to some degree in every case." *Flores*, 2009 Guam 22 ¶ 50 (citing *Morris v. Wyrick*, 516 F.2d 1387, 1391 (8th Cir. 1975)). Consequently, "evidence of a lengthy pre-trial incarceration, standing alone, is insufficient to establish that a defendant's right to a speedy trial has been violated [The defendant must] show how the delay was unduly burdensome or oppressive to him." *Id.* (citation and internal quotation marks omitted). Mendiola has offered no explanation as to how his delay resulted in uniquely oppressive incarceration conditions or anxiety beyond that faced by anyone accused of a serious crime. Thus, we must turn to the third factor to determine if prejudice exists.

[23] In this case, Mendiola does not articulate any specific prejudice resulting from delay of his trial. Instead he relies solely on the "presumption of prejudice" resulting from a "long, unexplained pretrial delay." See Appellant's Br. at 12-13 (citing *Naich*, 2013 Guam 7). However, as explained above, the length of delay necessary to trigger presumptive prejudice must approach one year. *Stephen*, 2009 Guam 8 ¶ 16 (citing *Doggett*, 505 U.S. at 652 n.1). Further, Mendiola explicitly concedes that, unless all of the other three *Barker* factors weigh in his favor, actual prejudice must be shown to warrant dismissal. Reply Br. at 1-2 (citing *Flores*, 2009 Guam 22 ¶ 52). As the delay in this case was significantly shorter than one year, and because both the first and second factors weigh in favor of the People, Mendiola was required to make a showing of actual prejudice. The fact that he did not provide any tangible evidence of prejudice suffered from the delay weighs heavily against dismissal.

[24] As three of the four *Barker* factors (length of the delay, reason for delay, and prejudice suffered as a result) weigh against finding a constitutional speedy trial violation, we conclude that no such violation occurred. Additionally, because the delay in this case did not violate the Sixth Amendment, there is no tension between Mendiola's speedy trial rights and the victim's right to testify under 8 GCA § 160.50 (the Victim's Bill of Rights). Accordingly, the court declines to address the constitutionality of that statute. See *I.N.S. v. St. Cyr*, 533 U.S. 289, 299-300 (2001) (where fairly possible, courts must interpret statute to avoid constitutional problems); *Kosmyna v. Botsford Cmty. Hosp.*, 607 N.W.2d 134, 138 (Mich. Ct. App. 1999) ("This [c]ourt may decline to address issues not necessary to the resolution of the case at hand." (citation omitted)).

B. Mendiola's Motion to Dismiss on Statutory Speedy Trial Grounds

[25] In addition to the constitutional speedy trial requirements under the Sixth Amendment, the Guam Legislature has enacted statutory guarantees of a defendant's right to a speedy trial. See 8 GCA § 80.60 (2005). Mendiola argues that by failing, without good cause, to bring him to trial within 45 days of arraignment, the People violated these legislative protections. Appellant's Br. at 13-14. However, the People allege that Mendiola waived the right to present this argument on appeal by failing to properly raise it in his original motion to dismiss. Appellee's Br. at 12-16, 27. Therefore, this court must first address whether Mendiola preserved his right to argue a violation of his statutory speedy trial rights on appeal.

1. Waiver

[26] As a general rule, this court will not evaluate an argument which was not presented for consideration to the trial court. See *Univ. of Guam v. Guam Civil Serv. Comm'n (Foley)*, 2002 Guam 4 ¶ 20 (declining to address argument raised by appellant for first time on appeal); *B.M.*

Co. v. Avery, 2001 Guam 27 ¶ 33; *Guam Bar Ethics Comm. v. Maquera*, 2001 Guam 20 ¶ 39. Further, raising a constitutional speedy trial violation will not be treated the same as asserting a statutory right. *Naich*, 2013 Guam 7 ¶ 48. Rather, a party seeking review must “clearly raise[] the statutory issue.” *Id.* Therefore, the pertinent inquiry is whether Mendiola challenged the delay of his trial under statutory speedy trial grounds.

[27] Mendiola’s pretrial motion to dismiss is somewhat ambiguous on this point. *See* RA, tab 59, at 1 (Mot. Dismiss, Mem. P. & A., Nov. 8, 2003). In its very title, Mendiola identifies the basis of his motion to dismiss as “violation of sixth amendment right to speedy trial.” *Id.* Further, the opening of his motion reads “COMES NOW Defendant Anthony P. Mendiola, through and by undersigned attorney, to file this his motion to dismiss the indictment against Anthony Mendiola for violating his Sixth Amendment Right to a Speedy Trial.” *Id.* These facts initially suggest that the sole basis of his motion was a violation of his constitutional speedy trial rights. However, his motion also states that he is seeking dismissal “pursuant to § 1.11 of 8 GCA; any other relevant sections; The Organic Act of Guam; and the Fifth and Six Amendments of the United States Constitution.” *Id.* As the central statutory instruction for a speedy trial motion, 8 GCA § 80.60 would thus be a relevant provision in that context. Further, the statutory basis of Mendiola’s claim was thoroughly discussed in the hearing on his motion to dismiss. *Id.* (citing RA, tab 65 (Mot. Hearing, Nov. 14, 2013 at 10:34:00-11:00:00)). Notwithstanding its title, the substance of and argument on Mendiola’s motion have sufficiently preserved his right to reach the merits of a statutory speedy trial claim.

2. Good cause for delay

[28] Under Guam law, a defendant must be brought to trial within 45 days of his arraignment if in custody or within 60 days if not in custody. 8 GCA § 80.60(a)(2). Failure to comply with

these proscribed time periods is grounds for dismissal. *Id.* However, a case will not be dismissed if good cause is shown for failure to commence trial within the stated time limits. 8 GCA § 80.60(b)(3).

[29] Here again, Mendiola argues the issue under an essential witness analysis. He asserts that any good cause for delay was extinguished because the victim's memory loss regarding her attack meant she was not an essential witness. Appellant's Br. at 14. As discussed above, the requirement that delay be excused only for an essential witness is found within the federal Speedy Trial Act. 18 U.S.C.A. § 3161(h)(3). However, by its very terms, this statute is applicable only to cases in which trial is commenced in federal court. *See* 18 U.S.C.A. § 3001; Fed. R. Crim. P. 1(a)(1), (3)(A). By contrast, Guam's applicable speedy trial statute imposes no such restriction on the definition of good cause for delay. 8 GCA § 80.60(b)(3). Indeed, "[w]hat constitutes good cause for the delay of a criminal trial is a matter that lies within the discretion of the trial court." *Flores*, 2009 Guam 22 ¶ 32 (citing *People v. Johnson*, 606 P.2d 738, 746 (Cal. 1980)). This discretion is abused only when an allowance of delay "exceeds the bounds of reason, all of the circumstances before it being considered." *People v. Palomo*, No. DCA 91-00061A, 1993 WL 129624, at *8 (D. Guam App. Div. Apr. 8, 1993), *aff'd sub nom.*, 35 F.3d 368 (9th Cir. 1994), *as amended* (July 19, 1994) (quoting *People v. Cavanaugh*, 70 Cal. Rptr. 444 P.2d 110, 116 (Cal. 1968)).

[30] As a basic principle, delay arising from "unforeseen circumstances, such as . . . illness or unavailability of . . . witnesses constitutes good cause to avoid dismissal." *Flores*, 2009 Guam 22 ¶ 32. This sentiment is echoed by California appellate case law interpreting a similar good cause requirement found in California Penal Code section 1382. *See, e.g., Johnson*, 606 P.2d at 746; *People v. Salcido*, 69 Cal. Rptr. 193 (Ct. App. 1968) (unavailability of witnesses); *People v.*

Bracamonte, 61 Cal. Rptr. 830, 832 (Ct. App. 1967) (illness of witness). This delay is especially justified where, as here, the unavailable witness is the victim of the crime. Due to the medical unavailability of this victim witness, we hold that the trial court did not err in deciding that good cause existed and the delay in trial was consistent with the requirements of 8 GCA § 80.60.

[31] Further, while this court declines to extend the essential witness test as a necessary element for delay under Guam's statute, the pertinent facts of this case would have satisfied even the more stringent federal requirement. The determination of whether a witness is essential is a factual inquiry. *United States v. Allen*, 235 F.3d 482, 491 (10th Cir. 2000). Therefore, resolution of this question is best left to the sound discretion of the trial judge, in deference to the judge's superior familiarity with the anticipated testimony and its importance. *Bourne*, 743 F.2d at 1031 (citing *United States v. Black*, 684 F.2d 481 (7th Cir. 1982)). An appellate court "will not, based upon hindsight . . . second-guess the [trial] court's determination, as long as it was reasonable . . . at the time [of] the decision . . ." *United States v. McNeil*, 911 F.2d 768, 773 (D.C. Cir. 1990). Indeed, the People need not even conclusively decide whether they intend to use the witness's testimony, so long as they have a good faith belief that they will. *Eagle Hawk*, 815 F.2d at 1218. Further, "[a] witness may be deemed essential . . . even though the government could obtain a conviction without his [or her] testimony." *United States v. Miles*, 290 F.3d 1341, 1350 (11th Cir. 2002); see also *United States v. Hamilton*, 46 F.3d 271, 277 (3d Cir. 1995); *United States v. Tedesco*, 726 F.2d 1216, 1222 (7th Cir. 1984).

[32] Under this standard, it is admittedly possible for a victim's testimony to fall short of the essential witness requirement. See, e.g., *McNeil*, 911 F.2d at 774 ("[T]he Government must show . . . why that witness's testimony would be not only useful, but essential. Merely stating that the witness is the victim of the crime does not satisfy this requirement."). However, the

court in *McNeil* found the victim's testimony "remarkable for its unimportance." *Id.* The witness testified only to the name of the cross-streets where he purchased drugs and the fact that he was shot in the back. *Id.* By contrast, Piper was able to provide detailed testimony regarding the magnitude of her injuries and extensive rehabilitation process in which she re-learned to walk and speak. *See* Transcripts ("Tr."), vol. 1 at 35-41, 53-61 (Jury Trial, Nov. 18, 2013). In doing so, she supplied a unique and comprehensive personal perspective of the extent of bodily harm caused from the attack, as well as the exhaustive therapy she required on Guam and off-island. *Id.* Further, the victim in *McNeil* did not provide any testimony identifying the defendants or in any way connect them to the crimes. 911 F.2d at 774. On the other hand, contrary to Mendiola's assertion that Piper's memory would not allow her to provide information of the night in question, she was able to verify her previous photo identification of Mendiola and provided testimony placing him at her home the night of the attack. Tr., vol. 1 at 48-53 (Jury Trial). Specifically, she was shown the photo lineup in which she had circled Mendiola's picture. *Id.* at 48. When asked why she had circled the photo, she replied "or because he is one of the people that broke into the house." *Id.* Asked again whether she had recognized him as a person who broke into the house, Piper replied, "Yeah. Yeah." *Id.* Further, when asked to identify the person present in the courtroom that she remembered being in the house on the night of the attack, she pointed out Mendiola. *Id.* at 51. When asked again whether the person she identified in the courtroom was one she remembered from the attack, she stated: "[h]e sure looks familiar, so I'd say -- I'd say yes, almost -- yes." *Id.* at 53. Thus, Piper's testimony is far more important than that provided by the victim in *McNeil*.

[33] As Mendiola points out, the victim's testimony indicates that her identification was somewhat vague and uncertain and her memory loss did make identification difficult. Tr., vol. 1

at 48-53, 65-70 (Jury Trial). However, a witness may be found essential so long as the nature of the testimony is unquestionably important, even if their “recollection [is] sketchy and not particularly trustworthy” *Eagle Hawk*, 815 F.2d at 1218. This is because determinations of witness credibility and reliability are factual issues left entirely to the jury. *Davis v. Alaska*, 415 U.S. 308, 317 (1974); *United States v. Hodge*, 594 F.3d 614, 618 (8th Cir. 2010); *United States v. Lopez-Hernandez*, 418 F.2d 1243, 1244 (9th Cir. 1969). Because her identification of Mendiola, as well as her testimony regarding the extent of her injuries and recovery process, was unquestionably important and substantially relevant, Piper was an essential witness whose unavailability justified delay of the trial.

3. Prejudice

[34] With respect to the statutory speedy trial right, the parties also disagreed over whether actual prejudice must be shown. Mendiola claims that, because his attempts to dismiss the case occurred pretrial, he is not required to show prejudice in order to obtain dismissal of his conviction. Appellant’s Br at 14. In support of this contention, Mendiola cites our decision in *Nicholson*, 2007 Guam 9 ¶ 24. Appellant’s Br at 14. By contrast, the People claim that the *Nicholson* standard applies only to appeals on a petition for a writ taken before trial occurs. Appellee’s Br at 13-15 (citing *People v. Wilson*, 383 P.2d 452 (Cal. 1963)). Because Mendiola has already been convicted by a jury, the People contend that Mendiola must show that any error below was prejudicial in order to obtain relief. *Id.* at 15-16 (citing *People v. Rasauo*, 2011 Guam 1 ¶¶ 55-58 (hereinafter “*Rasauo II*”)).

[35] The District Court of Guam, in a case where the substance of prejudice was not reached, nonetheless opined in a footnote that “[i]f a defendant makes a motion to dismiss the case on speedy trial grounds prior to trial, he [or she] need only show unjustified delay in bringing the

case [whereas if] the issue is raised post-trial, the defendant must also show prejudice resulting from the delay.” *People v. Munoz*, No. CR-94-00100A, 1995 WL 604346, at *4 n.1 (D. Guam App. Div. Sept. 28, 1995). Similarly, though not analyzing this issue in depth, this court has previously held that a defendant did not need to show the existence of prejudice even in a post-conviction appeal, so long as he had sought dismissal pretrial. *People v. Rasauo*, 2011 Guam 14 ¶ 15 (hereinafter “*Rasauo II*”). However, both of these cases are based on the rationale of the California Supreme Court case *People v. Wilson*, 383 P.2d 452 (Cal. 1963).² In *Wilson*, the court explained that, even if a pretrial motion is brought by the defendant, an appeal occurring after conviction must include a showing of prejudice. 383 P.2d at 460. Indeed, the holding in *Rasauo II* is consistent with this rule, since, unlike Mendiola, the defendant in that case had sought interlocutory appeal prior to his trial. 2011 Guam 14 ¶ 15.

[36] Nonetheless, definitively resolving whether or not a defendant is required to show prejudice is not necessary in this case, since good cause existed to delay the trial. Thus, we decline to rule on the issue of whether a showing of prejudice is required on direct appeal where trial is delayed without good cause. See *SST Global Tech., LLC v. Chapman*, 270 F. Supp. 2d 444, 457 (S.D.N.Y. 2003) (declining to address an argument because it “is not necessary to resolution of the . . . claim”); *In re Byker*, 64 B.R. 640, 642 (Bankr. N.D. Iowa 1986) (“Since the resolution of that issue is not necessary to the decision in this case, this [c]ourt declines to make any pronouncement on that issue . . .”).

² The District Court in *Munoz* cites directly to the *Wilson* case. See *Munoz*, No. CR-94-00100A, 1995 WL 604346, at *4 n.1. *Rasauo II* bases its conclusion upon this court’s earlier decision in *Nicolson*, which in turn cites the *Wilson* decision in support of its holding. See *Rasauo II*, 2011 Guam 14 ¶ 15; *Nicolson*, 2007 Guam 9 ¶ 24.

V. CONCLUSION

[37] In light of the facts and arguments presented, we hold that the Superior Court did not err in denying Mendiola's motion to dismiss on constitutional speedy trial grounds. Additionally, we find that Mendiola is not entitled to relief based on statutory speedy trial grounds.

[38] Accordingly, we **AFFIRM** the Judgment containing Mendiola's criminal convictions.

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing
is a full true and correct copy of the
original on file in the office of the
clerk of the Supreme Court of Guam.

AUG 20 2015

By: Charlene T. Santos
Deputy Clerk
Supreme Court of Guam