

CAUSE NO. F-18-59780

THE STATE OF TEXAS	§	IN THE CDC 6
	§	
V.	§	OF
	§	
KEILA SORTO	§	DALLAS COUNTY, TEXAS

**BENCH MEMORANDUM REGARDING NEWLY PRODUCED EVIDENCE**

The Defendant respectfully brings to the attention of the Court the following newly produced evidence and seeks leave to supplement the record in the hearing conducted on her *Motion to Dismiss for Denial of Constitutional Right to Speedy Trial* filed February 16, 2021.

**Procedural Context**

At the last setting herein, the Hon. Ernest White ordered the State to respond to the *Motion to Compel Discovery Under Michael Morton Act* filed herein January 6, 2020 [Motion] and granted by the Court's written *Order on Motion to Compel Discovery Under Michael Morton Act* filed herein January 22, 2020. [Order]. The Order was not fully complied with until after the hearing herein July 27, 2021 when Judge White ordered the State once again to comply with the Order.

New counsel for the State produced its response to Defendant's counsel [Counsel] July 29, 2021. **Exhibit A.** Seeking the identity of the specific officer[s] who conducted the two searches of the Defendant's person that – according to the evidence produced to date – directly yielded no controlled substances, Counsel filed another designation of specific discovery on July 29, 2021 narrowing the request *via* three [3] questions.

## **New Evidence**

Yesterday, August 2, 2021 the State responded to Defendant's July 29, 2021 new designations. **Exhibit B[3]**. The August 2, 2021 production formally identifies the jail DSO who offense reports describe as searching Defendant a *second* time – this time in the jail – *yet who came up empty-handed*. While the State's reports describe this search, the August 2, 2021 production now formally acknowledges the State's January 27, 2020 discovery that this witness cannot recall any of the events alleged in the State's allegation herein.

## **The Legal Consequences of this New Evidence**

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (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.**<sup>33</sup> **Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.**

[Barker v. Wingo, 407 U.S. 514, 532, 92 S. Ct. 2182, 2193, 33 L. Ed. 2d 101 \(1972\)](#) **Emphasis added.**

The August 2, 2021 production should have been formally disclosed promptly after its discovery by the state, and that it was not veers perilously close to the kind of bad-faith that federal speedy trial jurisprudence expressly eschews.

Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, neither is negligence automatically

tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him.

*Dogget v US*, 505 US 647 at 652, 112 Sup. Ct. 2686.

### **Conclusion**

The August 2, 2021 production formally reveals prejudice to the Defendant that was not demonstrable prior to August 2, 2021. The Defendant respectfully urges the Court supplement the record with **Exhibit B** for this purpose.

Exhibit A

**Keila Sorto**

**F1859780 – PCS (FS)**

**DOI: 12/8/2018**

**State's Response to Defendant's Requests for Discovery Pursuant to Order on Motion to Compel Granted on February 24, 2020 and Judge White's Order of 7/27/21.**

**1. The identity of all officers involved in or witnesses to the search and alleged recovery of drugs from Defendant at her bookin process at the Dallas County Jail.** Defendant, Keila Sorto, bookin number: 18061331

The following officers are all persons who may have been present or witnessed bookin and/or search and/or recovery and/or field testing of the controlled substance in this case:

DSO Antoinett Johnson #8915

DSO Ashley Coachman (now retired, phone 972-805-3798)

DSO Sundra Randle #8928 (assigned to Shakedown with DSO Johnson for this shift 12/8/2018)

DPD T. Black #9096 (field test of substance)

DPD G. Guerra-Villarreal #11305 (Sealed drug bag, wrote DPD report)

DPD M. Gronau #11033 (Secondary Officer for incident per DPD report)

DPD B. Kelton T289 (Received drugs)

**2. The reports authored by all the individuals responsive to the immediately foregoing request.**

It is not policy nor did any of the DSOs create a report regarding this incident. When an item is discovered during the bookin process, DSOs will report the discovery to the police department officer who is there, and that officer is responsible for including that information in the report.

The State directs attention to the offence report

**Additionally, the State notifies the defense that:**

On 12/12/2019, the State requested via email to Elizabeth Lutton w/ Sheriff's office for book-in video related to this incident, and received reply email from Richard Waters, Dallas Co Sheriff's Dept, stating, "the video requested is not available. We only have a 30-40 day recording memory."

Exhibit B

Keila Sorto  
F1859780 – PCS (FS)  
DOI: 12/8/2018

State’s Response to Defendant’s Specific Requests for Discovery filed 7/29/2021 at 11:40 PM.

**1. Identify the law enforcement officer who searched the Defendant at the scene of her arrest by complete name and DPD badge number.**

DPD Officer Anita Cruz Vallomparambil #11239

**2. Identify the DSO and/or law enforcement officer who searched the Defendant at the Dallas County Jail by name and badge number.**

DSO Antoinett Johnson #8915

**3. Dallas County Assistant District Attorney Scott Wells orally identified by name a Dallas County DSO who denied recollection of the events related to the search of the Defendant and alleged recovery of controlled substance at the Dallas County Jail at Defendant’s bookin herein – despite her involvement in the search of the Defendant at the jail. The State has not identified this witness in writing. Mr. Wells orally reported to the undersigned he had placed a phone call to this witness and received this denial from the witness during this call. Identify this witness now by complete name and badge number.**

1/27/2020 4:00:02 PM	WELLS, SCOTT	Phone Message	I today called DSO Johnson, I.D. 8915, to advise her not to come to court tomorrow because we will have a new date for the hearing (Telephone: (214) 875-2335). As I explained to her that I will notify her of the new date, she interjected and said, “Do you remember the date because I don’t remember what happened.” I did not answer her question.  I again told her I would advised her of the new date for the hearing, and to please report upon receipt of such a notification.
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DSO Antoinett Johnson #8915

Respectfully submitted,

      /s/ G. Donald Haslam, Jr.        
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Counsel for Defendant

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the August 4, 2021 a true and exact copy of the foregoing was served on the office of the Dallas County District Attorney according to the terms of Rule 3 of the *Statewide Rules Governing Electronic Filing in Criminal Cases*, as amended.

      /s/ G. Donald Haslam, Jr.        
G. Donald Haslam, Jr.