

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63699

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary, assault with a deadly weapon, and grand larceny. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant argues that the district court erred by denying his motion to dismiss on the grounds that his statutory and constitutional rights to a speedy trial were violated. Appellant was arraigned on February 27, 2013, and he invoked his speedy trial rights. Trial was scheduled to begin on April 22, 2013, but was subsequently rescheduled for April 29, 2013, due to a conflict in the prosecutor's schedule. The night before trial, appellant filed a motion to dismiss on the ground that his statutory and constitutional speedy trial rights were violated by commencing trial on the 61st day after his arraignment. The district court denied the motion, concluding that the prosecution had shown good cause for the delay in bringing appellant to trial under NRS 178.556 and that, considering the factors in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the brief delay did not prejudice appellant.

NRS 178.556(2) provides that a district court may dismiss a charging document if the defendant is not brought to trial within 60 days

after arraignment. “A dismissal is mandatory only if the State cannot show good cause for the delay.” *Meegan v. State*, 114 Nev. 1150, 1154, 968 P.2d 292, 294 (1998), *abrogated on other grounds by Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). We conclude that the district court did not err by determining that the State had shown good cause for a one-day delay to accommodate a conflict in the prosecutor’s schedule. *See generally Browning v. State*, 104 Nev. 269, 271, 757 P.2d 351, 352 (1988) (rejecting defendant’s claim of a violation of his statutory speedy trial right based on “the deputy district attorney’s honest, but negligent, mistake in transcribing the appropriate trial date and the professed inability to locate key prosecution witnesses prior to trial”); *Shelton v. Lamb*, 85 Nev. 618, 619, 460 P.2d 156, 157 (1969) (recognizing “the well-settled law of this state that the condition of the calendar, the pendency of other cases, the public expense, the health of the judge, and even the convenience of the court are good causes for a continuance”).

As to appellant’s constitutional challenge, several factors are considered in assessing a constitutional speedy trial claim: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) prejudice to the defendant. *See Barker*, 407 U.S. at 530. However, “to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay.” *Doggett v. United States*, 505 U.S. 647, 651-52 (1992) (quoting *Barker*, 407 U.S. at 530-31). Although there is no established length of delay that is automatically presumed to be prejudicial, courts have generally found post-accusation delays to be presumptively prejudicial as they approach the one-year mark. *Id.* at 652 n.1. Appellant has not alleged that the

delay in this case was presumptively prejudicial; therefore the delay did not trigger a constitutional speedy-trial analysis. Accordingly, the district court did not err by denying appellant's motion to dismiss on this basis.

Having considered appellant's arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.¹

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Scott W. Edwards
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Despite counsel's verification that the fast track statement complies with applicable formatting requirements, the fast track statement does not comply with NRAP 32(a)(4) because it does not have 1-inch margins on all four sides. We caution counsel that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. See NRAP 3C(n); NRAP 28.2(b).