

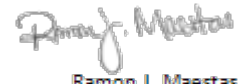
1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico

2 Filed 11/20/2024 10:07 AM

3 **STATE OF NEW MEXICO,**

4 Plaintiff-Appellant,



Ramon J. Maestas
Chief Clerk

5 v.

No. A-1-CA-41647

6 **DAWN CADMAN a/k/a DAWN K. CADMAN,**

7 Defendant-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

9 **R. David Pederson, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Michael J. Thomas, Assistant Solicitor General

13 Albuquerque, NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender

16 Santa Fe, NM

17 Steven J. Forsberg, Assistant Appellate Defender

18 Albuquerque, NM

19 for Appellee

20 **MEMORANDUM OPINION**

21 **HENDERSON, Judge.**

22 {1} This matter was submitted to this Court on the State's brief in chief pursuant

23 to the Administrative Order for Appeals in Criminal Cases from the Second,

24 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*

Appeals, No. 2022-002, effective November 1, 2022. Following consideration of the

1 brief in chief, this Court assigned this matter to Track 2 for additional briefing. Now
2 having considered the brief in chief, answer brief, and reply brief, we reverse for the
3 following reasons.

4 {2} The State appeals a dismissal for violation of Defendant’s right to a speedy
5 trial on a first offense of aggravated driving while under the influence (DWI). [RP
6 61, 60, 14-17] In refiled concurrent jurisdiction cases such as this, Rule 5-604(B)
7 NMRA provides five factors to be considered by the district court in connection with
8 a defendant’s right to a speedy trial. *State v. Radler*, 2019-NMCA-052, ¶¶ 7-10, 448
9 P.3d 613. On appeal, “we defer to the district court’s factual findings concerning
10 each factor as long as they are supported by substantial evidence,” and review the
11 district court’s application of law de novo. *Id.* ¶ 14 (internal quotation marks and
12 citation omitted).

13 {3} Here, the only factor in contention is the extent of prejudice to Defendant
14 resulting from delay, as the parties do not contest the district court’s findings on any
15 other factors. [BIC 7, 13-17; AB 8] Because, on balance, those other factors do not
16 weigh heavily in Defendant’s favor, she must “show particularized prejudice in order
17 to prove [her right to a] speedy trial was violated.” *State v. Wood*, 2022-NMCA-009,
18 ¶ 21, 504 P.3d 579. The State argues that Defendant failed to demonstrate the
19 requisite particularized prejudice, while Defendant contends that we should defer to
20 the district court’s findings to the contrary. [BIC 7, 13-17; AB 8] In determining

1 “whether [a d]efendant has suffered prejudice from the delay in bringing [their] case
2 to trial, we analyze three interests that are affected by the right to a speedy trial: (i)
3 to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of
4 the accused; and (iii) to limit the possibility that the defense will be impaired.” *State*
5 *v. Serros*, 2016-NMSC-008, ¶ 84, 366 P.3d 1121 (internal quotation marks and
6 citation omitted). Our analysis focuses on the second of these interests, as there is
7 no indication that Defendant’s incarceration on the day of her arrest could constitute
8 oppressive pretrial incarceration, [BIC 14] nor is there indication or argument by
9 Defendant that her defense was impaired in any relevant manner. *See id.* ¶ 85
10 (explaining that the third interest aims to protect “the defendant’s ability to assert an
11 adequate defense at trial from the prejudicial effect of the passage of time, such as
12 the death or disappearance of a witness or the loss of memory”). “Defendant bears
13 the burden of demonstrating and substantiating prejudice.” *State v. Parrish*, 2011-
14 NMCA-033, ¶ 32, 149 N.M. 506, 252 P.3d 730.

15 {4} In analyzing whether Defendant suffered prejudice due to anxiety or concern
16 resulting from delay, we seek to determine whether the anxiety suffered is undue.
17 *See State v. Spearman*, 2012-NMSC-023, ¶¶ 36-37, 283 P.3d 272 (observing that
18 pretrial incarceration and anxiety and concern are often intertwined, but that they
19 need not be, recognizing the disruption and restraints on liberty that simply being an
20 accused can entail); *see also State v. Ochoa*, 2017-NMSC-031, ¶ 51, 406 P.3d 505

1 (explaining that “some degree of oppression and anxiety is inherent,” and we
2 therefore “weigh this factor in the defendant’s favor only where the pretrial
3 incarceration or anxiety suffered is undue” (internal quotation marks and citation
4 omitted)). In its dismissal order, the district court found that the potential revocation
5 of Defendant’s driver’s license and the ramifications thereof constituted “uncertainty
6 . . . above the ordinary worries of any criminal defendant pending trial.” [RP 60]
7 This finding, however, was unsupported by any evidence or testimony as Defendant
8 did not offer affidavits, testimony, or documentation of her specific circumstances
9 to support a determination that she was prejudiced by the delay. [BIC 5, RB 5] *See*
10 *Spearman*, 2012-NMSC-023, ¶ 39. Further, in contrast to its ultimate ruling, the
11 district court stated that Defendant did not appear to have suffered particularized
12 prejudice as she had not been incarcerated during the pendency of proceedings and
13 she had not suffered the loss of her driving privileges, employment, or personal
14 relationships. [BIC 6-7]

15 {5} Although we may presume that Defendant suffered some degree of anxiety
16 and concern as a result of the charges against her, *id.* ¶¶ 36-37, under these
17 circumstances and without some form of affirmative proof supporting Defendant’s
18 assertions of anxiety and concern caused by the hypothetical future revocation of her
19 license, we decline to speculate as to whether any resulting prejudice was undue. *See*
20 *Radler*, 2019-NMCA-052, ¶ 23 (declining to speculate as to defendant’s “nebulous”

1 claim that his loss of a potential future employment opportunity constituted
2 prejudice). As to Defendant’s contention that we should defer to the district court’s
3 finding of particularized prejudice, we emphasize that the inquiry under a substantial
4 evidence standard is whether a reasonable mind might accept the relevant evidence
5 to support a given conclusion. *See State v. Salgado*, 1999-NMSC-008, ¶ 25, 126
6 N.M. 691, 974 P.2d 661, *overruled on other grounds by State v. Martinez*, 2021-
7 NMSC-002, 478 P.3d 880; *Radler*, 2019-NMCA-052, ¶ 23. In this case, we cannot
8 say that substantial evidence—or any evidence—of particularized prejudice
9 supports the district court’s dismissal order. For these reasons, we conclude that
10 Defendant failed to establish particularized prejudice resulting from delay and the
11 district court erred in finding otherwise and dismissing on such basis.

12 {6} We note that Defendant’s answer brief focuses on challenging the State’s
13 “policies” regarding the dismissal and refiling of cases originating in courts of
14 limited jurisdiction under Rule 5-604(B), claiming that the Rule gives the State
15 “carte blanche to file, dismiss, and refile cases for any reason,” presenting a
16 separation of powers issue and violating a defendant’s right to a jury trial. [AB 3-7]
17 Defendant further contends that appellate courts should examine the State’s refilings
18 pursuant to Rule 5-604 for bad faith. [AB 7] We are unpersuaded.

19 {7} Nothing in the briefing or record indicates that the State failed to comply with
20 the procedures set forth in Rule 5-604(B), and to the extent Defendant challenges

1 the propriety or constitutionality of the rule, itself, this Court is bound by the directly
2 controlling precedents of our Supreme Court. *State v. Mares*, 2024-NMSC-002,
3 ¶ 31, 543 P.3d 1198. The rule at issue here was explicitly promulgated to codify the
4 holding in *State v. Savedra*, 2010-NMSC-025, 148 N.M. 301, 236 P.3d 20. *See* Rule
5 5-604 comm. cmt. Further, although Defendant asserts that the dismissal of her case
6 in magistrate court and subsequent refile in district court effectively violated her
7 right to a jury trial, [AB 4-5] a jury trial is only constitutionally mandated when the
8 potential term of incarceration exceeds six months. *See State v. Sanchez*, 1990-
9 NMSC-012, ¶ 22, 109 N.M. 428, 786 P.2d 42 (Baca, J., dissenting). Conviction of a
10 first offense of aggravated DWI is punishable by “imprisonment for not more than
11 ninety days.” NMSA 1978, § 66-8-102(E) (2016). Lastly, New Mexico courts no
12 longer conduct “good faith-bad faith” analyses when the State dismisses and refiles
13 a case. *Savedra*, 2010-NMSC-025, ¶ 8 (internal quotation marks omitted). “Instead,
14 any inquiry into the [s]tate’s reasons for dismissing and refile in district court
15 should be done within the context of any speedy trial challenge the defendant may
16 raise after the case is refiled in district court.” *Id.* ¶ 8.

17 {8} Based on the foregoing, we reverse the ruling of the district court and remand
18 for reinstatement of the criminal charge against Defendant and for further
19 proceedings consistent with this opinion.

1 {9} IT IS SO ORDERED.

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SHAMMARA H. HENDERSON, Judge

4 WE CONCUR:

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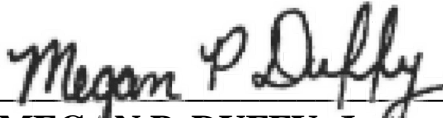
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KRISTINA BOGARDUS, Judge

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MEGAN P. DUFFY, Judge