MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

GREGORIO L. DAVIS

APPELLANT.

DOCKET NUMBER WD82331

DATE: September 15, 2020

Appeal From:

Platte County Circuit Court
The Honorable Dennis C. Eckold, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Thomas N. Chapman, Judge

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Attorneys:

Daniel N. McPherson, Jefferson City, MO, for respondent.

Jeffrey C. Esparza, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
GREGORIO L. DAVIS, APPELLANT.

WD82331 Platte County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge, and Thomas N. Chapman, Judge

Gregorio L. Davis ("Davis") appeals the judgment of the Circuit Court of Platte County, Missouri, ("trial court"), convicting him, after a bench trial, of one count of sodomy in the first degree, section 566.060, RSMo, and one count of domestic assault in the first fourth degree, section 565.076, RSMo. On appeal, Davis contends that the trial court erred in denying his motion to dismiss following the State's violation of Davis's right to a speedy trial.

AFFIRMED.

Division Three holds:

Davis was arrested on August 11, 2017. Davis remained in custody until his bench trial on July 2, 2018. Shortly after Davis's arrest, he either requested or acquiesced to several short continuances. Shortly before his trial was to start in April, the State received a continuance, over Davis's objection, until late June, on the grounds that the prosecutor handling Davis's case was being deployed as a soldier in the Army Reserves, and another prosecutor was taking over the case. The new prosecutor requested a change of judge (outside of the time allowed), and Davis objected and asserted his right to a speedy trial. The prosecutor *nolle prosequi* the case and immediately refiled it, allowing him to subsequently obtain the change of judge in the newly filed case. Davis again asserted his right to a speedy trial, and trial was set for, and occurred on, July 2, 2018.

Applying the four-factor test used to analyze Sixth Amendment speedy trial claims that was set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), we find that Davis has not shown that his constitutional right to a speedy trial was violated such that dismissal of his case was warranted. His trial occurred just shy of eleven months after his arrest; the early delays were either at his request or with his acquiescence; another delay was due to the prosecutor's being deployed in the Army Reserves, which does not weigh heavily against the State; and the delay by the prosecutor that was for the purpose of gaining a tactical advantage, which is weighted heavily against the State, was a delay of only a few days. Additionally, Davis first asserted his right to a speedy trial right after his first trial date was continued, but approximately eight months after his arrest; and there was no evidence of particularized prejudice to Davis stemming from the delay,

other than the change of judge procured after the time for such a change had expired. Considering and balancing all of these facts, we conclude that the trial court did not err in denying Davis's motion to dismiss on speedy trial grounds.

Opinion by: Gary D. Witt, Judge September 15, 2020

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