

<b>STATE V. J. PINTO</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
**v.**  
**JUNIOR PINTO,**  
Defendant-Appellant.

NO. 29,281

COURT OF APPEALS OF NEW MEXICO

July 29, 2009

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Thomas J. Hynes,  
District Judge

**COUNSEL**

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Hugh W. Dangler, Chief Public Defender, Karl Erich Martell, Assistant Appellate  
Defender, Santa Fe, NM, for Appellant

**JUDGES**

RODERICK T. KENNEDY, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,  
ROBERT E. ROBLES, Judge

**AUTHOR:** RODERICK T. KENNEDY

**MEMORANDUM OPINION**

**KENNEDY, Judge.**

Defendant appeals the denial of his motion to dismiss the charges against him on the basis that he was not timely arraigned pursuant to Rule 5-604(A) NMRA. In our second notice, we proposed to affirm the denial of Defendant's motion. Defendant has timely

responded. We have considered his arguments and finding them unpersuasive, we affirm.

In our notice, we proposed to conclude that the failure to arraign here for an extended period of time was a technical violation of the rule. [SCN 2] As a result, Defendant was required to show that he was prejudiced by the violation. *State v. Budau*, 86 N.M. 21, 23, 518 P.2d 1225, 1227 (Ct. App. 1973). Defendant acknowledges that he did not establish any particular prejudice, but he continues to assert that the violation of the rule was a violation of due process.

As we pointed out in our notice, due process is often satisfied by establishing procedures that are deemed fair and appropriate under the circumstances. Here, the procedures established for arraignment of a criminal defendant are meant to ensure the identity of the defendant, to inform him of the charges against him, and to give him an opportunity to plead to the charges. There is no question that all of that occurred when the charges were pending in magistrate court. Thus, we cannot say that Defendant's due process rights were violated under the circumstances of this case.

For the reasons stated herein and in the second calendar notice, we affirm the denial of Defendant's motion to dismiss.

**IT IS SO ORDERED.**

**RODERICK T. KENNEDY, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**ROBERT E. ROBLES, Judge**