

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRETT ALLEN PIZIALI,

Defendant-Appellant.

UNPUBLISHED
October 19, 1999

No. 208103
Antrim Circuit Court
LC No. 97-003080 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NEAL ANDREW PIZIALI,

Defendant-Appellant.

No. 208112
Antrim Circuit Court
LC No. 97-003079 FH

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

MEMORANDUM.

Defendants appeal as of right from their jury trial convictions of two counts each of receiving and concealing stolen property, MCL 750.535; MSA 28.803, and one count each of misdemeanor possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). We affirm.

The sole issue on appeal is whether the trial court erred in denying defendants' motion to dismiss the charges against them. Defendants argue they were denied their right to a fair trial by the nine-month delay that occurred between the offenses and their arrest. Defendants assert that they were prejudiced by a loss of evidence caused by the delay. We review the trial court's decision on a motion to dismiss for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44

(1998). Having reviewed the record, we conclude that the trial court did not abuse its discretion in denying defendants' motion.

When deciding whether a defendant's due process rights were violated by a prearrest or preindictment delay, a court must undertake a two-part inquiry: (1) whether defendant has demonstrated actual and substantial prejudice¹ as a result of the delay, and (2) whether the prosecution has shown that the reason for the delay justifies the resulting prejudice. *Id.* at 133-134. We conclude that defendants have failed to establish the requisite actual and substantial prejudice.

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

¹ In order to establish actual and substantial prejudice, "a defendant must show not only 'actual prejudice, as opposed to mere speculative prejudice . . . but also that [. . .] any actual prejudice was substantial—that he was meaningfully impaired of his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely affected.'" *Adams, supra* at 135, quoting *Jones v Angelone*, 94 F3d 900, 907 (CA 4, 1996).