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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. A-1-CA-37228

5 **ANGELICA M. LECHUGA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **James Waylon Counts, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Kathleen T. Baldridge, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VIGIL, Judge.**

18 {1} Defendant Angelica M. Lechuga has appealed following her convictions for
19 driving while intoxicated (DWI) (third offense), child abuse, contributing to the

1 delinquency of a minor, and driving on a revoked license. We issued a calendar notice
2 proposing to summarily affirm. Defendant has filed a memorandum in opposition.
3 After due consideration, we remain unpersuaded by the assertion of error. We
4 therefore affirm.

5 {2} Defendant has raised a single issue, challenging the denial of a motion for
6 continuance. We previously set forth the relevant background information and
7 principles. [CN 2-5] *See State v. Torres*, 1999-NMSC-010, ¶ 10, 127 N.M. 20, 976
8 P.2d 20 (identifying the relevant factors). To very briefly reiterate, numerous
9 considerations including the anticipated three-month delay, the request on the morning
10 of trial, the failure to identify any specific objective, and the apparent absence of
11 prejudice to the defense all support the district court's ruling. *See State v. Gonzales*,
12 2017-NMCA-080, ¶¶ 32, 34, 36, 39-40, 406 P.3d 534) (holding that the district court
13 did not abuse its discretion in denying a motion for continuance that was filed the day
14 of trial, given the anticipated three-months of additional delay, as well as the patent
15 inconvenience to the court and the State, and the failure to establish prejudice); *State*
16 *v. Archuleta*, 2012-NMCA-007, ¶¶ 3, 5, 269 P.3d 924 (upholding the denial of a
17 motion for continuance filed the day before trial, where the defendant asserted that he
18 was unprepared but provided insufficient reasons why, and did not explain how
19 additional preparation would have benefitted the defense).

1 {3} In her memorandum in opposition Defendant contends that the district court
2 should be said to have abused its discretion because it “fail[ed] to consider any of the
3 factors” and “did not give a reason for denying the continuance.” [MIO 6] However,
4 we are aware of no authority in this context requiring the courts to make specific
5 findings, and we decline to infer or presume the suggested error. *See State v. Lopez*,
6 2005-NMSC-018, ¶ 21, 138 N.M. 9, 116 P.3d 80 (indicating that where explicit
7 findings are not required, “the reviewing court indulges in all reasonable presumptions
8 in favor of the trial court’s ruling”); *State v. Greene*, 1978-NMSC-099, ¶ 7, 92 N.M.
9 347, 588 P.2d 548 (observing that “abuse of discretion will not be presumed; it must
10 be affirmatively established”). As previously described, the record supplies sufficient
11 information about relevant particulars; under the circumstances, findings are not
12 essential. *See Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 45, 143
13 N.M. 158, 173 P.3d 765 (“In the absence of findings, we look to the record for
14 explanation of the district court’s rationale and evidence to support its decision.”).

15 {4} Defendant also invites the Court to presume prejudice. [MIO 7] However, such
16 a presumption prejudice is justified in only “a very limited class of cases.” *State v.*
17 *Brazeal*, 1990-NMCA-010, ¶ 18, 109 N.M. 752, 790 P.2d 1033; *see also State v.*
18 *Salazar*, 2007-NMSC-004, ¶¶ 25, 27, 141 N.M. 148, 152 P.3d 135 (recognizing that
19 prejudice may be presumed only under exceptional circumstances, and explaining that

1 in this regard *Brazeal* offers guidance). The illustrations entail far less opportunity for
2 preparation than the four weeks involved here. [MIO 7] *See Brazeal*,
3 1990-NMCA-010, ¶¶ 17-18 (indicating that prejudice may be presumed only under
4 “egregious circumstances,” such as where counsel is not appointed in a highly
5 publicized capital case until the day of trial; and explaining that prejudice is not to be
6 presumed under less extreme circumstances, such as where counsel is appointed just
7 days before the trial). We therefore conclude that this case does not present the sort
8 of egregious circumstances capable of supporting a presumption of prejudice.

9 {5} Defendant further suggests that the denial of the requested continuance
10 effectively denied her a defense. [MIO 7, 10] However, she offers nothing concrete,
11 apart from the lost opportunity to refine her motion to suppress in unspecified ways,
12 and the failure to call a witness who was not mentioned at the time the continuance
13 was sought, and whose probable testimony was presumably known and not apparently
14 supportive of a viable defense. This is not persuasive. *Cf. Gonzales*, 2017-NMCA-
15 080, ¶¶ 39-40 (declining to consider an argument concerning the need for a
16 continuance in order to call an additional witness when that specific argument was not
17 preserved, and holding that the defendant failed to establish prejudice where the
18 probable testimony of other putative witnesses was known, but the defendant did not
19 claim they were essential and failed to procure their presence).

1 {6} Finally, Defendant suggests analogy to the situation presented in *State v.*
2 *Stefani*, 2006-NMCA-073, 139 N.M. 719, 137 P.3d 659. [MIO 7-9] In that case a
3 continuance was improperly denied where, on the morning of trial,

4 there were still eleven or twelve witnesses that needed to be interviewed,
5 . . . the defense still needed to obtain an expert[,] . . . [d]efense counsel
6 apprised the district court of some specifics regarding his lack of
7 preparedness in light of the complexity of the case, including that he had
8 not yet viewed any of the [s]tate's video or photographic evidence, and
9 had not interviewed any of the police officers[,] . . . defense counsel
10 pointed out that possible defenses would be left unexplored if he were
11 forced to go to trial immediately, including a possible search and seizure
12 suppression issue and the [s]tate's destruction of all evidence and failure
13 to obtain any fingerprints[, and f]inally, defense counsel argued that
14 because of the co-defendant's last minute plea the morning trial was set
15 to begin and subsequent agreement to testify for the prosecution, defense
16 counsel did not have adequate time to interview [that] witness.

17 *Id.* ¶ 13. Succinctly stated, the situation presented in this simple case is not remotely
18 analogous. For the reasons previously described, we deem *Gonzales* and *Archuleta*
19 far more applicable.

20 {7} In closing, we recognize that trial counsel's preparation does not appear to have
21 been ideal, [MIO 3, 7] and that a continuance could have been granted without doing
22 violence to Defendant's right to a speedy trial. [MIO 6-7] Under the circumstances,
23 the district court could have exercised its discretion differently. *See Gonzales*, 2017-
24 NMCA-080, ¶ 38 (holding that at least one factor weighed in favor of granting a
25 continuance, where the defendant had been assigned numerous public defenders and

1 where counsel present at the trial “may have had less than the typical amount of time
2 to prepare”); *cf. State v. Spearman*, 2012-NMSC-023, ¶ 47, 283 P.3d 272 (Daniels,
3 J., specially concurring) (recommending that the trial courts consider the question
4 whether a continuance will result in an “infringement of a defendant’s speedy trial
5 rights” before ruling). However, that is not the question before us. *See Boutz v.*
6 *Donaldson*, 1999-NMCA-131, ¶ 6, 128 N.M. 232, 991 P.2d 517 (“[W]e will not
7 disturb [a close decision] on appeal just because the [district] court could have
8 reached, but was not required to reach, a different result.”). Ultimately, “[w]ith
9 sympathetic concern for the rights of the accused, and mindful that the search for truth
10 deserves adequate time and opportunity, we . . . conclude that the [district] court did
11 not abuse its discretion.” *State v. Nieto*, 1967-NMSC-142, ¶ 6, 78 N.M. 155, 429 P.2d
12 353.

13 {8} Accordingly, for the reasons stated, we affirm.

14 {9} **IT IS SO ORDERED.**

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16

MICHAEL E. VIGIL, Judge

17 **WE CONCUR:**

18
19

M. MONICA ZAMORA, Judge

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2 **HENRY M. BOHNHOFF, Judge**