

Speedy Trial Rights

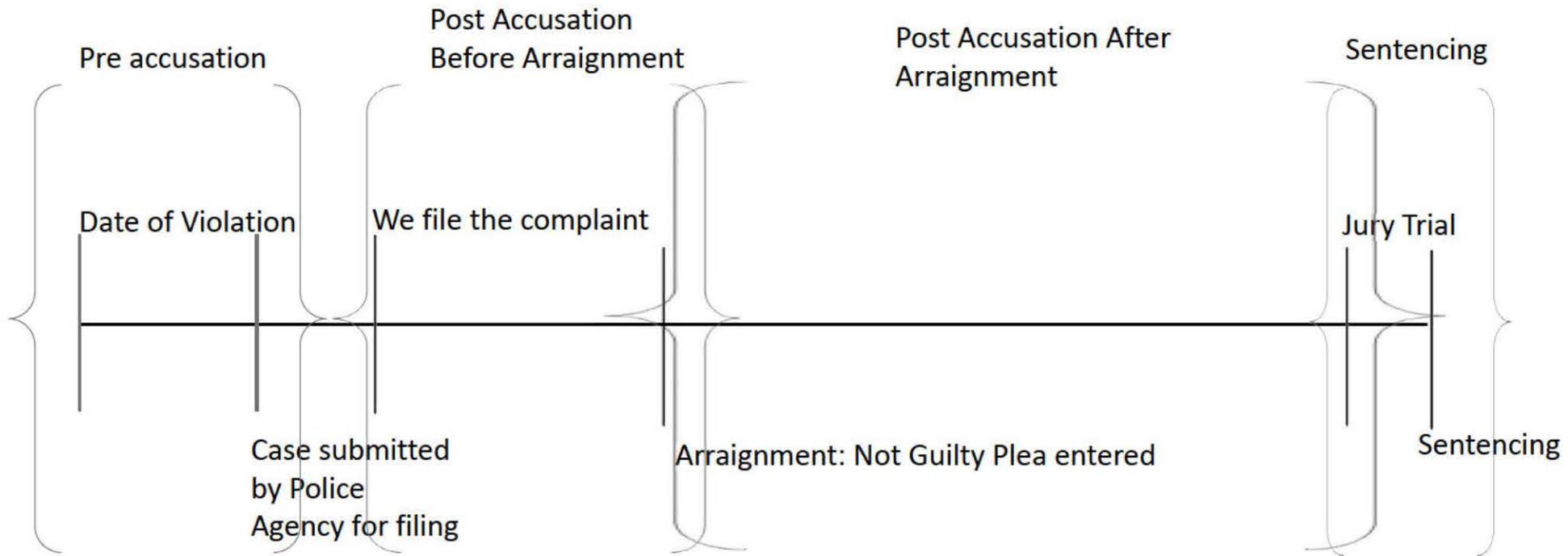


Deputy District Attorney



Fresno County District Attorney's Office

Timeline of Speedy Trial Rights



Pre Accusation Speedy Trial



Sentencing:

- [Redacted]

Post Accusation Speedy Trial: Before Arraignment



- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Post Accusation Speedy Trial: After Arraignment

Jury Trial

Arraignment: Plea entered

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Misdemeanors Speedy Trial Rights

- [REDACTED]
- A defendant charged with a misdemeanor who was **in custody** when arraigned (enters a not guilty plea) must be brought to trial within 30 calendar days after arraignment (Penal Code Section 1382(a)(3)).
- A defendant charged with a misdemeanor that is **not in custody** must be brought to trial within 45 calendar days after the date of arraignment (Penal Code Section 1382(a)(3)).
- But, the defendant can waive the deadline for trial to begin either by entering a general time waiver (Penal Code Section 1382(a)(2)(A)) or by requesting or consenting to a trial date beyond the statutory deadline (sometimes called “limited” or “specific” time waivers) (Penal Code Section 1382(a)(2)(B)).
- When a defendant has entered into a general waiver then, after notice and in open court, withdraws that waiver, the defendant must be brought into court within 30 days on a misdemeanor case. (Penal Code Section 1382(a)(2)(A)).

Misdemeanors Speedy Trial Rights Cont.

- [REDACTED]
- [REDACTED]

What is the remedy for Violation?

- Dismissal is required only if a defendant is not brought to trial within statutory time limits without good cause. (Penal Code Section 1382(a)). What constitutes good cause for delay depends on the circumstances of each case. (People v. Johnson (1980) 26 C3d 557, 570; Jensen v. Superior Court (2008) 160 CA4th 266, 274.)
- In considering a motion to dismiss based on lack of good cause for a continuance beyond the statutory time limits, the court may consider all relevant information that is timely presented by the parties. (Mendez v. Superior Court (2008) 162 CA4th 827, 836.)
- Good cause can be based on many reasons, the main reason we request it is witness unavailability

No Good Cause, but inside time out

- Penal Code 1050 does not authorize the court to dismiss an action **when the prosecution fails to show good cause for a continuance if the delay would not exceed statutory time limits.** (People v. Hernandez (2004) 115 CA4th 922, 934; Penal Code Section 1050(l) (“this section is directory only and does not mandate dismissal.”))
- In Henderson, the reviewing court upheld the trial court’s conclusion that the prosecutor had failed to establish good cause for the delay of the preliminary hearing under Penal Code 1050, but reversed the order of dismissal. It concluded that neither Penal Code 1050 nor 1050.5 (sanctions court may impose violation of 1050) authorized dismissal and that no other statutory provision authorized dismissal when the delay would not have continued the case beyond the time permitted under Penal Code Section 859b and the defendant had shown no detriment from the delay. (115 CA4th at 936.)
- **Thus, trial courts “must postpone the hearing to another date within the statutory period,” although not necessarily the date the prosecutor has requested (115 CA4th at 940.) See also People v Rubaum (1980) 110 CA3d 930 (court has no power to deny prosecution’s unjustified motion to continue trial unless delay would exceed Penal Code Section 1382 time limits**

Good Cause:

- **Unavailable witness**: Counsel requesting a continuance to secure a witness. (This is covered in depth in the next section because it is most applicable in our cases.)
 - **Penal Code Section 1050** provides guidelines for courts to use when ruling on motions to continue.
- Defense Counsel and Defendant: Delays attributed to the defendant or counsel, and that are not attributable to the state can constitute good cause. (People v. Lomax (2010) 49 C4th 530, 556)
- Peremptory Challenge against Judge (Bryant v. Superior Court (1986) 186 CA3d 483, 501.)
- Absence of Judge (Lewis v. Superior Court (1981) 122 CA3d 494.)
- Court Congestion (People v. Engream (2010) 50 C4th 1131.)
- Geographical Circumstances (People v. Hajjaj (2010) 50 C4th 1184.)

Penal Code Section 1050

- The law governing a request for a continuance is 1050, the law governing speedy trial rights with timeouts is 1382.
- If the court finds that a party has not shown good cause for a continuance, the court must deny the motion to continue (Penal Code Section 1050(e).)
- If the prosecution delays trial beyond statutory time limits without good cause and over defendant's objection, the court must grant a timely motion to dismiss. (Penal Code Section 1382.)

Remedy Available if 1382 Violation

- A violation of the deadlines of Penal Code Section 1382 entitles the defendant to a dismissal if the prosecution cannot show good cause for the delay. (Sykes v. Superior Court (1973) 9 C3d 83, 88.)
- To invoke the right to a dismissal under section 1382 the defendant must
 - (1) first object to a continuance beyond the applicable statutory period and
 - (2) thereafter must move to dismiss under 1382. Counsel should not move to dismiss until after statutory time limits have expired, but should do so as soon therefore as possible.
- A motion to dismiss made before expiration of the statutory time period, even if made on the day the statutory time limit expires, is premature, and the granting of the motion at that time could be reversed even if the case would have been delayed had the motion not been made. (People v Martinez (1956) 145 CA2d 361; People v Wilson (1963) 60 C2d 139, 146.)
- In misdemeanor cases, the only remedy following dismissal on statutory speedy trial grounds is **appeal** (Penal Code Section 1466(a)), because no recharging is allowed after one dismissal. (Penal Code Section 1387; Marler v. Municipal Court (1980) 110 CA3d 155, 162.)

What Must Be Shown For The Court to Continue Due to Unavailability Of A Witness?

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

1050 – Trying to establish Good Cause

- Penal Code section 1050 permits a continuance of a jury trial at the request of either the defense or prosecution upon a showing of “good cause.” (Cal.Pen. Code § 1050(e).)
- “When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers.” (Pen. Code, § 1050, subd. (g)(1).)
- Owens v. Superior Court (1980) 28 Cal.3d 238, set forth the legal criteria of good cause:
 1. “ That the movant has exercised **due diligence** in an attempt to secure the attendance of the witness at the trial by legal means;
 2. that the expected testimony is material;
 3. that it is not merely cumulative;
 4. that it can be obtained within a reasonable time; and
 5. that the facts to which the witness will testify cannot otherwise be proven.’ ” (Id. at p. 251.)

In Our Cases

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

APR 06 2016

FRESNO COUNTY SUPERIOR COURT
By _____ DEPT. 502

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IN THE APPELLATE DIVISION SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF FRESNO ←

PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
Plaintiff/Appellant,)
)
v.)
)
CHRISTOPHER PHILLIP COOKE,)
)
Defendant/Respondent.)

Sup. Ct. Appeal No. 2546
Misdemeanor Case No. M14930339
OPINION

Good Cause due to Witness Unavailability

- To establish good cause for a continuance because of the unavailability of a witness, a party must show, among other factors, that he or she "exercised due diligence to secure the witness's attendance" (Jensen v. Superior Court (2008) 160 Cal.App.4th 266, 270, internal citations omitted.)
- "Cases concerning continuances sought because a material witness is unavailable fall generally into two categories: cases in which the witness was subpoenaed and cases in which the witness was not subpoenaed.
- When a witness was served with a subpoena but fails to appear as commanded, there is usually good cause for a continuance.
- 'To penalize and dismiss the case of a litigant who has no advance knowledge of a witness' default is unreasonable and unwarranted. We think a subpoenaed material witness' failure to appear for trial may constitute good cause under section 1382 for the continuance of a trial beyond its statutory period.' When a witness is not under subpoena, his or her absence generally does not constitute good cause for the continuance of a trial. (Jensen, supra, 160 Cal.App. 4th at p. 271, internal citations omitted.)

- "This distinction between subpoenaed witnesses and unsubpoenaed witnesses rests on the question of due diligence. A prosecutor who issues subpoenas is exercising the requisite due diligence in securing the attendance of witnesses at trial, while a prosecutor who does not issue subpoenas has not made sufficient effort to ensure their presence." (Id. at pp. 271-272, internal citations omitted;
- see Baustert, supra, 129 Cal.App. 4th at pp. 1277- 1278 [no due diligence where prosecution withdrew subpoena a when she learned officer would be on vacation at time of trial and issued new subpoena for a date after the statutory time-out date]; Cunningham v. Municipal Court (1976) 62 Cal.App. 3d 153, 155-156 [no due diligence where prosecutor knew of officer 's planned vacation and failed to subpoena officer]; Pickett v. Municipal Court (1970) 12 Cal.App. 3d 1158, 1162 [no due diligence here prosecutor failed to subpoena witnesses with no showing that he would be unable to do so because witnesses would be out of state] .)

- In *Jensen*, supra, 160 Cal.App.4th 266, the Court of Appeal found that service of a subpoena on the officer's immediate superior or agent pursuant to Penal Code section 1328, subdivision (c) was sufficient to show due diligence to obtain the witness's appearance at trial. (Id. at p. 272.) This was true even though the superior or agent failed to deliver the subpoena to the officer and the officer never received the subpoena. (Id. at pp. 272-273.)
- "Indeed, to hold otherwise would prevent attorneys from relying on the subpoenas they issue, require them to supervise internal police department procedures over which they have no legal control, or 'demand that prosecutors [and other counsel] become clairvoyants.' In order to establish due diligence, attorneys would be required to personally contact every police officer served with a subpoena pursuant to section 1328, subdivision (c) and confirm his or her actual receipt of the served subpoena.
- The Court of Appeal has declined to impose additional due diligence requirements on counsel beyond serving subpoenas to compel witnesses' attendance at trial. Service of the subpoena is the responsibility of the attorney, and once service was effected, counsel is 'not required to employ any additional mode of process, either formal or informal' to ensure the witness's availability or attendance." (Id. at p. 273, internal citations omitted; see also *Mendez v. Superior Court*, supra, 162 Cal .App.4th 827, 836 [due diligence found where prosecutor had subpoenaed the officer, the officer had not been released from subpoena, but officer nonetheless took his vacation outside the court's jurisdiction] .)

- In the present case, the Fresno county prosecutor clarified at the dismissal hearing that the subpoena was served by his office by electronic delivery to the immediate supervisor of the officer, and that the subpoena was accepted. This type of service is allowed under Penal Code section 1328, subdivision (c).
- Also, Jensen expressly finds that such service is sufficient to demonstrate due diligence in procuring an officer 's appearance at trial. (Jensen, supra, at pp. 272-273.)
- The Judge in the present case (as your judges sometimes do) believed that the Baustert decision required a showing of something more than just the officer being on vacation in order to show unavailability of the witness.
- However, Baustert was decided in a situation where the prosecutor failed to keep the officer under subpoena after learning that he was going on vacation. (Baustert, supra, 129 Cal.App. 4th at pp. 1277-1278.) Under these circumstances, the court found it was also relevant to consider whether the officer was truly unavailable because he was out of the jurisdiction.

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

