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SUPREME COURT NO. 100140-1  
COURT OF APPEALS NO. 80660-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

SKYLER YZAGUIRRE,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SKAGIT COUNTY

The Honorable Laura M. Riquelme, Judge  
The Honorable David A. Svaren, Judge

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Skyler Yzaguirre asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the court of appeals decision in State v. Yzaguirre, COA No. 80660-2-I, filed July 26, 2021, attached as an appendix to this petition.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the court's continuance over Yzaguirre's objection violated Yzaguirre's right to a speedy trial?

2. Whether this case involves an issue of substantial public interest worthy of review where: (1) Yzaguirre's trial was continued due to the toxicology lab's failure to timely test blood evidence needed by the prosecutor in its case against Yzaguirre for driving under the influence; and (2) this is a systemic problem in all cases involving toxicology evidence as the lab is understaffed and overworked? RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

Based on his arraignment date and in-custody status, Yzaguirre's time for trial expired on December 31, 2018. CP 88. Yzaguirre's trial was scheduled within the expiration date for

December 17, 2018. CP 88. On December 13, 2018, however, the prosecutor moved to continue trial on grounds the state had not yet received the toxicology report from the crime laboratory for use in its prosecution against Yzaguirre for driving under the influence. Appendix at 3.

Yzaguirre objected and requested to go to trial on December 17<sup>th</sup> as scheduled, without the toxicology report. 1RP 32. The prosecutor argued that, procedurally, trial could not go forward on the 17<sup>th</sup> because the current hearing was set as an omnibus, not as a trial confirmation, hearing. 1RP 33. The trial court agreed and continued trial to January 7, 2018, based on the parties' next availability. CP 92-95; 1RP 33. The court conducted omnibus before adjourning.<sup>1</sup> CP 92-95.

On appeal, Yzaguirre argued this continuance violated his right to a speedy trial. Brief of Appellant (BOA) at 9-12; Reply brief (RB) at 1-5. Yzaguirre pointed out the failings of the toxicology lab to timely analyze evidence has been ongoing and widespread. Yzaguirre argued government inertia in fixing the problem should

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<sup>1</sup> Regardless, the state had been indicating to defense counsel since November it would be moving to continue the case because it was still awaiting the toxicology report; such was the reason Yzaguirre was not brought to the scheduled omnibus in the first place. Thus, it was clear the state's need for the toxicology report was steering the course of the proceedings. Also, it is unclear why the court could not

not be tolerated. RB at 4 (citing State v. Salgado-Mendoza, 189 Wn.2d 420, 445-446, 403 P.3d 45 (2017) (Madsen, J., dissenting) (“If we allow understaffing and congestion at the State’s toxicology lab to excuse fair trial rights, there will be no inducement for the State to remedy the problem.”).

The court of appeals disagreed, however, and rubber-stamped government inertia holding that the toxicology lab’s failure to timely analyze evidence is “good cause” for a continuance. Appendix at 2, 6.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE TOXICOLOGY LAB’S FAILURE TO TIMELY ANALYZE EVIDENCE HAS BEEN ONGOING AND WIDESPREAD FOR YEARS. RAP 13.4(b)(4).

The government’s failure to fix the understaffing and congestion at the toxicology laboratory should not constitute “good cause” for a continuance beyond a defendant’s speedy trial expiration date, over his or her objection. This is an issue of substantial public interest as the problem is one that affects countless criminal defendants. RAP 13.4(b)(4).

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confirm the trial date following entry of the omnibus order. There was nothing left outstanding. CP 92-95.

Criminal Rule 3.3(b) requires that a defendant detained in jail be brought to trial within 60 days of the commencement date. Since his arrest on October 19, 2018, Yzaguirre was at all relevant times in custody. Accordingly, he was entitled to be brought to trial within 60 days of his commencement date, which was arraignment on November 1, 2018. CrR 3.3(c). The state therefore was required to bring him to trial by December 31, 2018.

The purpose underlying CrR 3.3 is to protect a defendant's constitutional right to a speedy trial. State v. Mack, 89 Wn.2d 788, 791-92, 576 P.2d 44 (1978). ["P]ast experience has shown that unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved." State v. Striker, 87 Wn.2d 870, 877, 557 P.2d 847 (1976). If the speedy trial rule is violated, the remedy is reversal and dismissal with prejudice. Kenyon, 167 Wn.2d at 139.

This Court reviews an alleged violation of the right to a speedy trial de novo. State v. Kenyon, 167 Wn.2d 130, 135, 215 P.3d 1024 (2009) (citing State v. Carlyle, 84 Wn. App. 33, 35-36, 925 P.2d 635 (1996)). The decision to grant or deny motion for a continuance will not be disturbed unless it is manifestly

unreasonable or exercised on untenable grounds or for untenable reasons. Kenyon, 167 Wn.2d at 135; See also State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The question before this Court is whether the speedy trial rule, CrR 3.3, which allows exclusions for *unavoidable or unforeseen circumstances*, permits a trial court to continue a criminal trial past the speedy trial deadline because the Washington State Patrol's toxicology laboratory is backlogged and cannot timely produce lab results.

The answer should be a resounding no. This is a systemic problem that has been ongoing for some time. See e.g. State v. Salgado-Mendoza, 189 Wn.2d 420, 445-446, 403 P.3d 45 (2017) (Madsen, J., dissenting) ("If we allow underfunding and congestion at the State's toxicology lab to excuse fair trial rights, there will be no inducement for the State to remedy the problem."). Although the Salgado-Mendoza case involved a different failing of the toxicology lab, Justice Madsen's warning in dissent rings true here.

When the court asked the prosecutor here whether he or his association talked to the crime lab about "them dictating our speedy trial rules to us instead of the other way around," the prosecutor responded, "All the time, Your Honor." 1RP 34. Apparently, the



crime lab is notoriously understaffed. But that shortfall should not be suffered by the defendant. If the state cannot marshal its own evidence within the time required, it should be required to proceed without it. This Court should accept review and reject the Court of Appeals decision holding that the crime lab's failings constitute good cause to continue.

F. CONCLUSION

Because this case involves an issue of substantial public interest, this Court should accept review. RAP 13.4(b)(4).

Dated this 25<sup>TH</sup> day of August, 2021.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SKYLER G. YZAGUIRRE,

Appellant.

No. 80660-2-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, J. — Following an automobile accident, the State charged Skyler G. Yzaguirre with driving under the influence, among other crimes. The State took Yzaguirre into custody on November 1, 2018, and calculated the expiration of his speedy trial date as December 31, 2018. However, on December 13, 2018, the parties agreed to move trial to January 7, 2019, although Yzaguirre did not waive his speedy trial right. The court released Yzaguirre on January 10, 2019, but in February, Yzaguirre was taken back into custody after he failed to appear for a court hearing. Yzaguirre remained in custody until his trial in August 2019.

Yzaguirre appeals, asserting that we must reverse his judgment and sentence because the court violated his right to a speedy trial. He also contends that the trial court erred when it failed to strike from language imposing community custody supervision fees after it found him indigent.

We conclude that Yzaguirre's speedy trial right was not violated because the 10-day delay was not presumptively prejudicial and was necessary for the

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administration of justice. However, the trial court erred when it imposed supervision fees. We affirm but remand for the trial court to strike the supervision fees from Yzaguirre's judgment and sentence.

#### FACTS

On October 19, 2018, at around 4:50 p.m., Washington State Trooper Anthony Pasternak witnessed Yzaguirre rear-end another vehicle stopped at an intersection in Skagit County. After speaking with Yzaguirre, Trooper Pasternak arrested Yzaguirre for suspected drunk driving. Trooper Pasternak then sought and obtained a warrant for Yzaguirre's blood sample to determine his blood alcohol concentration (BAC) level. The sample was sent to a laboratory for analysis.

On October 22, 2018, the State charged Yzaguirre with felony DUI (driving under the influence), driving with a suspended license, and driving without an ignition interlock.

On November 1, 2018, the State arraigned Yzaguirre and held him in custody on \$100,000 bail. The court scheduled the trial's omnibus hearing for November 29, 2018, set trial for December 17, 2018, and indicated that speedy trial expired on December 31, 2018.

On November 29, 2018, at a status conference, the parties continued the matter, scheduling a status conference for December 6. They did not complete an omnibus order.

On December 6, the parties again continued the matter and scheduled a status conference for December 13.

On December 13, 2018, the State requested a continuance citing the laboratory's delay in providing the State with Yzaguirre's toxicology results. The State indicated that it would be available the following week for an omnibus hearing, but Yzaguirre's counsel stated that they were unavailable that week and that the earliest they could be present for trial was the first week of January. Yzaguirre objected to the continuance. The court granted the State's request and set trial to the next available trial date, January 7, 2019. The court did not amend the speedy trial expiration date, leaving it set for December 31, 2018. The record includes three documents from that day: (1) an omnibus request setting the CrR 3.5 hearing for January 2, 2019, (2) a motion hearing document, and (3) the clerk's minutes for that day reflecting that the parties set trial for January 7. The motion hearing document noted that Yzaguirre objected to the new trial date but that the parties agreed "to omnibus hearing."

On January 3, 2019, the State requested another continuance because it had not received the toxicology results and because the arresting officer was unavailable due to an injury. Yzaguirre again objected. The court granted the State's motion to continue and set a status conference for January 10 to determine whether trial could be finished before the end of January.

On January 10, 2019, the State indicated that the arresting officer would not be available for trial until the beginning of February. It moved to continue on that basis. The court granted the State's motion for a continuance and conditionally released Yzaguirre from custody.

When Yzaguirre failed to appear for a court hearing on January 31 and

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violated conditions of his release, the court issued a bench warrant. On February 8, 2019, the Skagit County Sheriff's Office arrested Yzaguirre. Thereafter, Yzaguirre remained in custody until his trial date on August 26, 2019. During this time, the court granted seven motions to continue filed by the State or Yzaguirre.

The jury convicted Yzaguirre as charged.

The court stated at sentencing that Yzaguirre "owes money" and "has no assets," and that it was "entering [a] finding of indigency." Later, the court found Yzaguirre indigent. However, the court failed to strike form language requiring Yzaguirre to pay community custody supervision fees as determined.

Yzaguirre appeals.

## ANALYSIS

### Right to a Speedy Trial

Yzaguirre contends that we must overturn his convictions because the trial court violated his right to a speedy trial. We disagree.

As an initial matter, the State asserts that Yzaguirre cannot raise this issue on appeal because he failed to object to the continuance and to move for dismissal of the charges below. Although Yzaguirre's counsel agreed to the omnibus order and to the order that continued the trial to January 7, 2019, and that set other hearing dates, they also objected to the continuance at the beginning of the motion hearing, and Yzaguirre did not sign the omnibus or hearing date documents. Furthermore, Yzaguirre did not check the box on the hearing dates order that indicated he was waiving his right to a speedy trial. Thus, Yzaguirre did not waive his right to raise this issue on appeal, and we

review the merits of his assertion.

“Under Washington’s speedy trial rule, [CrR 3.3(b),] a defendant who is detained in jail must be brought to trial within 60 days of arraignment.” State v. Hatt, 11 Wn. App. 2d 113, 150, 452 P.3d 577 (2019), review denied, 195 Wn.2d 1011 (2020), cert. denied, 141 S. Ct. 345 (2020). However, “[c]ontinuances appropriately granted by the court are excluded from the calculation of time to trial and extend the allowable trial date to 30 days after the end of the excluded period.” Hatt, 11 Wn. App. 2d at 150. “On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of [their] defense.” CrR 3.3(f)(2).

Even where we conclude that the trial court did not violate defendant’s rights under CrR 3.3, we still must determine whether a constitutional violation occurred. Hatt, 11 Wn. App. 2d at 152. “[T]he analysis for speedy trial rights under article I, section 22 [of the Washington Constitution] is substantially the same as the Sixth Amendment analysis.” Hatt, 11 Wn. App. 2d at 152 (alterations in original) (quoting State v. Ollivier, 178 Wn.2d 813, 826, 312 P.3d 1 (2013)). To determine whether a defendant’s constitutional right to a speedy trial was violated, we review the balancing test, which the United States Supreme Court adopted in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Hatt, 11 Wn. App. 2d at 152. “To trigger the balancing analysis, a defendant must first show that the delay ‘crossed a line from ordinary to presumptively prejudicial.’” Hatt, 11 Wn. App. 2d at 152 (quoting State v.

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Iniguez, 167 Wn.2d 273, 283, 217 P.3d 768 (2009)).

“We review de novo whether the trial court violated [either] CrR 3.3” or a defendant’s constitutional right to a speedy trial. Hatt, 11 Wn. App. 2d at 150.

Here, Yzaguirre challenges the continuance that created a 10-day delay from his speedy trial date to the continued trial date and his conditional release. Yzaguirre was arraigned on November 1, 2018, and his speedy trial date expired December 31, 2018. On December 13, the court granted the State’s motion to continue trial to January 7, and Yzaguirre was released on January 10, 2019. Under CrR 3.3, the trial court properly granted the State’s motion because the State needed the continuance in order to obtain the evidence necessary for trial and because Yzaguirre was not prejudiced. Furthermore, the 10-day delay was insufficient to trigger the balancing analysis under Barker because it did not cross the line from ordinary to presumptively prejudicial. Cf. Hatt, 11 Wn. App. 2d at 153 (concluding that an 18-month delay where the defendant remained in custody was presumptively prejudicial).

Although we recognize that there continues to be a problem with the State’s delay in obtaining toxicology reports, which results in the postponement of many defendants’ trials, we also note the importance of having those results, not only for the State, but also for any accused defendant. Nonetheless, these delays put defendants in a difficult position of waiving their speedy trial rights for potentially exculpatory evidence or missing out on such evidence. See State v. Salgado-Mendoza, 189 Wn.2d 420, 445, 403 P.3d 45 (2017) (Madsen, J., dissenting) (“If we allow underfunding and congestion at the State’s toxicology

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lab to excuse fair trial rights, there will be no inducement for the State to remedy the problem.”). Because the continuance resulted in only a 10-day delay before Yzaguirre was released and Yzaguirre was thereafter in custody because he failed to show at his hearing and violated conditions of his release, the delay did not prejudice Yzaguirre. Therefore, Yzaguirre cannot show a CrR 3.3 violation or a constitutional violation of his speedy trial rights in this case.

#### Community Custody Supervision Fees

Yzaguirre asserts that the trial court erred when it ordered him to pay community custody supervision fees in the judgment and sentence. We agree.

“Community custody supervision fees are discretionary legal financial obligations (LFOs) that are waivable by the trial court.” State v. Peña Salvador, \_\_\_ Wn. App. 2d \_\_\_, 487 P.3d 923, 935 (2021). Where the record indicates that the sentencing court intended to waive all discretionary LFOs, remand for the court to strike the form language imposing supervision fees from the judgment and sentence is appropriate. See State v. Dillon, 12 Wn. App. 2d 133, 152-53, 456 P.3d 1199 (remanding for the trial court to strike supervision fees where “[t]he record demonstrate[d] that the trial court intended to impose only mandatory LFOs”), review denied, 195 Wn.2d 1022 (2020). And the record in this case reflects that the trial court intended to waive discretionary LFOs when it acknowledged that Yzaguirre had no assets and no income. Accordingly, we remand to the trial court to strike the imposition of these fees.



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We affirm Yzaguirre's judgment and sentence but remand to the trial court to strike the imposition of the community custody supervision fees.

  
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WE CONCUR:

  
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**NIELSEN KOCH P.L.L.C.**

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