C.O.A No. 32559-8-III

Sup. Ct. No. 92797-9

SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

V.

MATTHEW SIMON GAROUTTE,

PETITIONER.

MOTION FOR DISCRETIONARY REVIEW

MATTHEW S. GAROUTTE #840189

COYOTE RIDGE CORRECTION CENTER

P.O. BOX 769

CONNELL, WA. 99326

- PRO SE -

A. IDENTITY OF PETITIONER

MATTHEW S. GAROUTTE, ASKS THIS COURT TO ACCEPT REVIEW OF THE DECISION OR PARTS OF THE DECISION DESIGNATED IN PART B OF THIS MOTION.

B. DECISION

REVIEW THE DECISION MADE BY THE COURT OF APPEALS, DIVISION 3, ENTERED ON JANUARY 26, 2016 BY CHIEF JUDGE, SIDDOWAY, IN AN UNPUBLISHED OPINION. (SEE ATTACHED OPINION)

C. ISSUES PRESENTED FOR REVIEW

ISSUE 1: MR. GAROUTTE'S RIGHT TO A SPEEDY TRIAL UNDER CrR 3.3 WAS VIOLATED WHEN THE TRIAL COURT FAILED TO HAVE HIS TRIAL BEFORE THE 60 DAY CLOCK EXPIRED PRIOR TO HIS RELEASE.

ISSUE 2: THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE STATE TO RELEASE MR. GAROUTTE ON UNTENABLE GROUNDS TO EXTEND THE SPEEDY TRIAL CLOCK TO (90) DAYS AFTER IT DENIED THE STATE'S MOTION TO CONTINUE, IN VIOLATION OF THE WASHINGTON CONSTITUTION ARTICLE 1 SECTION 10

ISSUE 3: MR. GAROUTTE'S INFORMATION IS INSUFFICIENT ON HIS BAIL JUMPING CHARGE BECAUSE IT FAILS TO CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE CRIME, IN VIOLATION OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO THE U.S. CONST. AND THE WASHINGTON CONST. ART. 1 SECTION 3 AND 22.

D. STATEMENT OF THE CASE

ON JULY 3, 2013 THE STATE FILED AN INFORMATION CHARGING, MATTHEW S. GAROUTTE, (HEREIN AFTER, MR. GAROUTTE) WITH ONE COUNT OF POSSESSION OF METHAMPHETAMINE. (SEE INFORMATION IN APPENDIX)

ON AUGUST 16, 2013 MR. GAROUTTE WAS ARRESTED AND MADE A PRELIMINARY APPEARANCE.

ON AUGUST 20, 2013 MR. GAROUTTE HAD HIS INITIAL ARRAIGNMENT AND A SCHEDULING ORDER WAS ENTERED. (SEE SCHEDULING ORDER DATED 8·20·13 IN APPENDIX)

ON AUGUST 23, 2013 THE COURT ENTERED AN ORDER ESTABLISHING CONDITIONS OF RELEASE.

ON JANUARY 18, 2014 MR. GAROUTTE WAS ARRESTED ON A WARRANT AND A NEW CHARGE OF POSSESSION WITH INTENT.

ON JANUARY 21, 2014 A MOTION TO RESET DATES WAS CONTINUED TILL THE FOLLOWING WEEK.

ON JANUARY 28, 2014 THE STATE FILED AN AMENDED INFORMATION CHARGING ONE ADDITIONAL COUNT OF BAIL JUMPING. (SEE AMENDED INFORMATION IN APPENDIX) THE COURT ALSO ENTERED A NEW SCHEDULING ORDER WITH NEW DATES OF:

COMMENCEMENT DATE: 1-21-14 OMNIBUS: 2-11-14 READINESS: 3-17-14

TRIAL: 3-19-14 TRIAL DEADLINE: 3-24-14

(SEE SCHEDULING ORDER DATED 1·28·14 IN APPENDIX)

ON FEBRUARY 11, 2014 DEFENSE COUNSEL REQUESTED THAT OMNIBUS BE SET OVER TO FEB. 24, 2014.

ON FEBRUARY 24, 2014 OMNIBUS WAS HAD AND 3.5, 3.6 HEARINGS WERE SET FOR MARCH 5, 2014. (SEE ATTACHED OMNIBUS ORDER IN APPENDIX)

ON MARCH 5, 2014 THE PRE-SCHEDULED KNAPSTAD AND 3.5, 3.6 HEARINGS WERE CONTINUED TO MARCH 12, 2014 BECAUSE THE STATE'S WITNESSES WERE NOT AVAILABLE. MR. GAROUTTE OBJECTS TO ANY CONTINUANCE.

ON MARCH 12, 2014 THE KNAPSTAD AND 3.5, 3.6 HEARINGS WERE HAD.

ON MARCH 17, 2014 DEFENSE COUNSEL FILED A MOTION TO DISMISS IN REGARDS TO COUNT TWO. (SEE MOTION TO DISMISS DATED 3·16·14 IN APPENDIX)

OVER THE OBJECTION OF MR. GAROUTTE, THE COURT ENTERED A NEW SCHEDULING

ORDER WITH NEW DATES OF:

READINESS: 3·24·14 TRIAL: 3·26·14 TRIAL DEADLINE: 4·23·14

(SEE SCHEDULING ORDER DATED 3·17·14 IN APPENDIX)

DEFENSE COUNSEL INITIALLY CALLED MATTER READY FOR TRIAL BUT THE STATE INFORMED THE COURT THAT ONE OF THEIR WITNESSES WAS OUT OF THE COUNTRY AND REQUESTED A CONTINUANCE TO THE 24TH. DEFENSE COUNSEL OBJECTED TO CONTINUANCE. THE COURT DENIED THE STATE'S MOTION BECAUSE IT WAS NOT A REASONABLE BASIS FOR A CONTINUANCE. STATE THEN REQUEST MR. GARCOTTE BE RELEASED ON (PR) BOND. TRIAL CONTINUED ONE WEEK TO 26TH AND OUTSIDE DATE SET TO APRIL 23, 2014.

ON MARCH 20, 2014 DEFENSE COUNSEL FILED A "MEMORIALIZATION OF DEFENSE OBJECTION" RE: DENIAL OF TIME FOR TRIAL. (SEE MEMORIALIZATION DATED 3.19.14 IN APPENDIX)

ON MARCH 24, 2014 A MOTION HEARING WAS HAD WHERE DEFENSE COUNSEL MOVED TO DISMISS FOR GOVERNMENT MISMANAGEMENT. TRIAL COURT DENIED MOTION AND ENTERED ORDER ON MARCH 25, 2014 (SEE MAR. 24, 2014 CRIMINAL MINUTE SHEET AND MAR. 25, 2014 ORDER IN APPENDIX) BOTH PARTIES DELARE READY FOR TRIAL.

ON MARCH 31, 2014 THE COURT ENTERED A NEW SCHEDULING ORDER WITH NEW DATES OF:

READINESS: 4·7·14 TRIAL: 4·9·14 TRIAL DEADLINE: 5·9·14

(SEE SCHEDULING ORDER DATED 3·31·14 IN APPENDIX)

THE COURT ALSO ENTERED AN ORDER AMENDING CONDITIONS OF RELEASE. (SEE ORDER DATED 3·31·14)

ON APRIL 3, 2014 DEFENSE COUNSEL FILED A MEMORIALIZATION OF OBJECTION TO TRIAL DATE. (SEE MEMORIALIZATION OF OBJECTION TO TRIAL DATE DATED 4·2·14 IN APPENDIX)

ON APRIL 7, 2014 THE COURT ENTERED AN ORDER FOR A BENCH WARRANT. (SEE ORDER DATED 4·7·14 IN APPENDIX)

ON APRIL 14, 2014 THE COURT ENTERED A NEW SCHEDULING ORDER WITH NEW DATES OF:

COMMENCEMENT DATE: 4·8·14 READINESS: 5·12·14 TRIAL: 5·14·14

TRIAL DEADLINE: 6·9·14 (SEE SCHEDULING ORDER DATED 4·14·14 IN APPENDIX)

ON MAY 13, 2014 DEFENSE COUNSEL FILED A MOTION TO DISMISS FOR VIOLATION OF TIME FOR TRIAL RULE. (SEE MOTION TO DISMISS FILED MAY 13, 2014 IN APPENDIX)

ON MAY 19, 2014 DEFENSE COUNSEL FILED A SUPPLEMENTAL MOTION TO DISMISS FOR VIOLATION OF TIME FOR TRIAL RULE. (SEE SUPPLEMENTAL MOTION TO DISMISS DATED 5·18·14 IN APPENDIX)

ON MAY 23, 2014 MR. GAROUTTE WAS FOUND GUILTY BY A JURY OF THE BAIL-JUMPING CHARGE AND FOUND GUILTY OF THE POSSESSION OF A CONTROLLED SUBSTANCE CHARGE DURING A UNITARY JURY TRIAL BY A JUDGE.

ON JUNE 10, 2014 DEFENSE COUNSEL FILED A MOTION FOR ARREST OF JUDGMENT AND STAY OF EXECUTION OF SENTENCE PENDING APPEAL. (SEE ARREST OF JUDGMENT DATED 6·9·14 IN APPENDIX)

ON JUNE 23, 2014 DEFENSE COUNSEL FILED A NOTICE OF APPEAL. (SEE NOTICE IN APPENDIX)

ON JANUARY 26, 2016 THE COURT OF APPEALS DIVISION THREE FILED AN UNPUBLISHED OPINION FINDING NO ERROR OR ABUSE OF DISCRETION. (SEE OPINION FILED JAN. 26, 2016 IN APPENDIX)

E. ARGUMENT

RAP 13.5 (b) CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW.

"DISCRETIONARY REVIEW OF AN INTERLOCUTORY DECISION OF THE COURT OF APPEALS WILL BE ACCEPTED BY THE SUPREME COURT ONLY:

(1) IF THE COURT OF APPEALS HAS COMMITTED AN OBVIOUS ERROR WHICH WOULD RENDER FURTHER PROCEEDINGS USELESS; OR

(3) IF THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS... AS TO CALL FOR THE EXERCISE OF REVISORY JURISDICTION BY THE SUPREME COURT. RAP 13.5 (b)(1)(3)

ISSUE 1: MR. GAROUTTE'S RIGHT TO A SPEEDY TRIAL UNDER CrR 3.3 WAS VIOLATED WHEN THE TRIAL COURT FAILED TO HAVE HIS TRIAL BEFORE THE 60 DAY CLOCK EXPIRED PRIOR TO HIS RELEASE.

THE TRIAL COURT IS RESPONSIBLE FOR ASSURING A SPEEDY TRIAL UNDER CrR 3.3. STATE V. CARSON, 128 WN. 2d 805 (1996). THE PURPOSE UNDERLYING CrR

3.3 IS TO PROTECT A DEFENDANT'S CONSTITUTIONAL RIGHT TO SPEEDY TRIAL. STATE V. MACK, 89 WN.2d 788, 791-92 (1978). ALSO, TO PROVIDE A "PROMPT TRIAL FOR THE DEFENDANT ONCE PROSECUTION IS INITIATED". STATE V. EDWARDS, 94 WN.2d 208, 216 (1980).

IN WASHINGTON, THE "TIME FOR TRIAL" RULES UNDER CrR 3.3 ESTABLISH STANDARD TIME LIMITS AND FINAL START DAYS FOR TRIAL AND REQUIRING DISMISSAL WITH PREJUDICE IF THE SPEEDY TRIAL PERIOD LAPSES WITHOUT A TRIAL. STATE V. SAUNDERS, 153 WN. APP. 209, 216-17 (2009). PAST 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 (1976).

COURT RULES, LIKE STATUTES, SHOULD BE CONSTRUED TO FOSTER THE PURPOSE FOR WHICH THEY WERE ENACTED. IN RE MCGLOTHLEN, 99 WN.2d 515, 522 (1983). WHEN INTERPRETING COURT RULES, THE COURT APPROACHES THE RULES AS THOUGH THEY HAD BEEN DRAFTED BY THE LEGISLATURE. STATE V. MCINTYRE, 92 WN.2d 620 622 (1979). INITIALLY, COURT'S LOOK TO THE PLAIN LANGUAGE OF THE RULE AND CONSTRUE THE RULE IN ACCORD WITH THE DRAFTING BODY'S INTENT. GOURLEY V. GOURLEY, 158 WN.2d 460, 466 (2006). IF THE RULE'S MEANING IS UNAMBIGUOUS COURTS NEED LOOK NO FURTHER. SPOKANE COUNTY V. SPECIALTY AUTO & TRUCK PAINTING, INC., 153 WN.2d 238, 249 (2004)

BECAUSE THE APPLICATION OF A COURT RULE TO A PARTICULAR SET OF FACTS IS A QUESTION OF LAW, THE COURT REVIEWS IT DE NOVO. STATE V. SILVA, 127 WN. APP. 148, 154 (2005); STATE V. BOBENHOUSE, 143 WN. APP. 315, 322 (2008)

CrR 3.3 TIME FOR TRIAL RULES ESTABLISH THE FRAMEWORK FOR COURTS TO FOLLOW TO ENSURE A DEFENDANT THATS AWAITING TRIAL IN "JAIL", HAS A TRIAL WITHIN THE ALLOTTED TIME OF 60 DAYS OR THE CHARGES ARE DISMISSED. CASELAW ALSO DICTATES THAT "THE TRIAL COURT IS RESPONSIBLE FOR ASSURING A SPEEDY TRIAL UNDER CrR 3.3." STATE V. CARSON, 128 WN.2d 805 (1996).

MR. GAROUTTE ASKS THIS COURT TO LOOK AT THE PLAIN LANGUAGE OF CrR 3.3 (b)(1)(i)(3).

(b) TIME FOR TRIAL.

(1) DEFENDANT DETAINED IN JAIL.

"A DEFENDANT WHO IS DETAINED IN JAIL SHALL BE BROUGHT TO TRIAL WITHIN THE LONGER OF

(i) 60 DAYS AFTER THE COMMENCEMENT DATE SPECIFIED IN THIS RULE"...

(3) RELEASE OF DEFENDANT.

"IF A DEFENDANT IS RELEASED FROM JAIL BEFORE THE 60 DAY TIME LIMIT HAS EXPIRED, THE LIMIT SHALL BE EXTENDED TO 90 DAYS."

MR. GAROUTTE ASKS THIS COURT TO REVIEW HIS TIME FOR TRIAL DATES FROM 1.21.14 COMMENCEMENT DATE TO 3.24.14 TRIAL DEADLINE DATE. HE CONTENDS THAT THIS TIMELINE SURPASSED THE 60 DAY MANDATE OF CrR 3.3 (b) BECAUSE HE WAS "DETAINED IN JAIL" AND NEVER PHYSICALLY "RELEASED FROM JAIL" <u>BEFORE</u> THE 60 DAY TIME LIMIT EXPIRED.

HE CONTENDS THAT "DETAINED IN JAIL" AND "RELEASED FROM JAIL" ARE AMBIGUOUS AS APPLIED TO CrR 3.3. THE DEFINITION OF RELEASED IN WEBSTER'S POCKET DICTIONARY 2007 EDITION PG. 238 STATES:

RELEASE V. LEASED - LEASING (1.) TO SET FREE; LIBERATE. N. (1) THE ACT OF RELEASING OR STATE OF BEING RELEASED.

PG. 79 DETAIN V. (1.) TO KEEP FROM PROCEEDING; DELAY. (2) TO CONFINE.

MR. GAROUTTE CONTENDS THAT HE WAS NEVER PHYSICALLY RELEASED FROM JAIL AND WAS PHYSICALLY DETAINED IN JAIL. HE ASSERTS THAT HIS SPEEDY TRIAL CLOCK SHOULD NOT HAVE BEEN CHANGED TO 90 DAYS BECAUSE HE WAS NEVER RELEASED FROM JAIL AND WAS STILL DETAINED IN JAIL. HIS 60 DAY TIME FOR TRIAL PERIOD EXPIRED ON MARCH 21, 2014 FROM THE COMMENCEMENT DATE AND WASN'T RELEASED TILL MARCH 31, 2014 WHICH PUT HIM 10 DAYS PAST HIS 60 DAY TIME-FRAME. THUS, IT DIDN'T ALLOW THE COURT TO EXTEND THE SPEEDY TRIAL CLOCK TO 90 DAYS ULTIMATELY VIOLATING CrR 3.3 REQUIRING DISMISSAL.

THE TRIAL COURT FURTHER ACKNOWLEDGED THAT IF BAIL WERE CHANGED TO SIGNATURE BOND, THAT WOULDN'T PRODUCE HIS RELEASE BECAUSE HE'S IN CUSTODY... (VRP. PG 50-51). MR. GAROUTTE ALSO AGREE'S WITH THE COURT'S ANALYSIS.

IN STATE V. MUNOZ, THE TRIAL COURT ALLOWED THE PROSECUTOR TO RELEASE THE DEFENDANT ON HIS OWN RECOGNIZANCE TO EXTEND THE SPEEDY TRIAL CLOCK DUE TO A KEY STATE WITNESS HAVING TO LEAVE. THE COURT WENT ON TO STATE:

> "WHEN A JUDGE RELEASES A DEFENDANT FROM CUSTODY, THE 90 DAY LIMIT BECOMES EFFECTIVE IRRESPECTIVE OF WHETHER HE IS RELEASED FROM CUSTODY ON THE 60TH DAY OR 60TH DAY... THERE IS NO VIOLATION OF CrR 3.3 SO LONG AS THE TRIAL IS WITHIN 90 DAYS OF ARRAIGNMENT WITH NO MORE THAN 60 OF THOSE DAYS IN CUSTODY". (EMPHASIS ADDED)

MUNOZ, 60 WN. APP. 921 (1991)

THE FACTS IN THE MUNOZ CASE ARE SOMEWHAT SIMILAR TO MR. GAROUTTE'S IN THAT THE STATE SOUGHT RELEASE OF THE DEFENDANT BECAUSE OF A KEY WITNESS NOT BEING AVAILABLE. IT WAS ALSO DONE TO EXTEND THE SPEEDY TRIAL CLOCK BUT ONE DIFFERENT FACTOR EXIST THAT THIS COURT NEED TAKE NOTICE OF.

1) THAT MR. GAROUTTE WAS NEVER RELEASED FROM JAIL BACK INTO THE COMMUNITY LIKE MUNOZ WAS PRIOR TO THE 60 DAY DEADLINE;

MR. GAROUTTE MADE CONTINUING OBJECTIONS TO ANY CONTINUANCES, MADE MULTIPLE MOTIONS TO DISMISS BASED ON VIOLATIONS OF HIS SPEEDY TRIAL RIGHT, AND OBJECTED TO HIS RELEASE TO EXTEND THE SPEEDY TRIAL CLOCK. THIS IN TURN, PREJUDICED MR. GAROUTTE IN THAT HE COULD NOT HAVE A SPEEDY TRIAL NOR RECEIVE THE PROPER RELIEF. HE ASKS THIS COURT TO GRANT REVIEW AND DISMISS BOTH COUNTS.

ISSUE 2: THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO RELEASE MR. GAROUTTE ON UNTENABLE GROUNDS TO EXTEND THE SPEEDY TRIAL CLOCK TO (90) DAYS AFTER IT DENIED THE STATE'S MOTION TO CONTINUE, IN VIOLATION OF THE WASHINGTON CONSTITUTION ARTICLE I SECTION 10.

PRETRIAL RELEASE DECISIONS ARE REVIEWED FOR AN ABUSE OF DISCRETION. STATE V. JOHNSON, 105 Wn.2d 92, 96 (1986). AN APPELLATE COURT WILL NOT DISTURB THE TRIAL COURTS DECISION UNLESS THE APPELLANT MAKE'S A CLEAR SHOWING- THAT THE TRIAL COURT'S DECISION IS MANIFESTLY UNREASONABLE, OR EXERCISED ON UNTENABLE GROUNDS, OR FOR UNTENABLE REASONS. STATE EX. REL. CARROLL V. JUNKER, 79 Wn.2d 12, 26 (1971); STATE V. ROHRICH, 149 Wn.2d 647, 654 (2003)

THE TIMELINE IS SET OUT IN THE STATEMENT OF THE CASE.

THE TRIAL COURT IN THIS CASE INDICATED THAT IT DENIED THE STATES MOTION TO CONTINUE DUE TO IT NOT BEING A REASONABLE BASIS TO CONTINUE. THE COURT THEN ACKNOWLEDGED THAT THE CASE WOULD HAVE TO BE CALLED THAT WEDNESDAY [THE 19TH]. THE COURT ALSO INDICATED IT CANT CONTINUE IT, BECAUSE THERE'S NO TIMELY TRIAL DATE TO CONTINUE IT TO AND THAT IT COULDN'T CONSIDER SETTING A CURE PERIOD BECAUSE IT COULDN'T BE DONE UNTIL THE SIXTY DAYS HAS EXPIRED. (VRP MOTION HEARING 3-17-14 pp. 48-53)

THE STATE SOUGHT A CONTINUANCE BECAUSE OF THE UNAVAILABILITY OF A WITNESS. (Id.) THE TRIAL COURT THEN SUGGESTED FOR THE STATE TO MOVE FOR DISMISSAL OR FOR RELEASE OF MR. GARCIA-TE. (Id.)

THE WASHINGTON CONSTITUTION PROVIDES IN ARTICLE I SECTION 10 THAT:

"JUSTICE IN ALL CASES SHALL BE ADMINISTERED OPENLY, AND <u>WITHOUT UNNECESSARY DELAY</u>". (EMPHASIS ADDED)

ADDITIONALLY, CrR 1.2 PROVIDES:

"THESE RULES ARE INTENDED TO PROVIDE FOR THE JUST DETERMINATION OF EVERY CRIMINAL PROCEEDING. THEY SHALL BE CONSTRUED TO SECURE SIMPLICITY IN PROCEDURE, FAIRNESS IN ADMINISTRATION, EFFECTIVE JUSTICE AND THE ELIMINATION OF UNJUSTIFIABLE EXPENSE AND <u>DELAY</u>."

HERE, THE TRIAL COURT DENIED THE STATE'S MOTION TO CONTINUE AND ACKNOWLEDGED THE IMPORTANCE OF A TIMELY TRIAL AND THAT MR. GARGUTTE'S SPEEDY TRIAL CLOCK WAS ALMOST UP. KNOWING THIS, THE COURT IMPROPERLY SUGGESTED THAT THE STATE MOVE FOR DISMISSAL OR RELEASE THE DEFENDANT. THIS CONTRAVENES ITS PRIOR DECISION TO DENY THE STATES MOTION TO CONTINUE. IT WAS THE TRIAL COURT'S DUTY TO ENSURE A SPEEDY TRIAL UNDER CrR 3.3.

HE ALSO ARGUES THAT THERE WAS NO GOOD CAUSE TO CONTINUE GIVEN BY THE COURT ON MARCH 17, 2014, WHICH IS ESSENTIALLY REQUIRED BY THE RULE BEFORE A CONTINUANCE CAN BE GRANTED. MR. GARGUTTE OBJECTED TO ALL CONTINUANCES AND MADE CLEAR TO THE COURT THAT HE INTENDED TO EXERCISE HIS SPEEDY TRIAL RIGHTS.

BECAUSE THE COURT ABUSED ITS DISCRETION IN CONTINUING THE CASE WITHOUT GOOD CAUSE AND IN VIOLATION OF THE WASH. CONST. ART. I SECTION 10 BY FURTHER DELAYING THE PROCEEDINGS THIS COURT SHOULD GRANT REVIEW OR DISMISS THE 2 COUNTS. THE COURT OF APPEALS ERRED.

ISSUE 3: MR. GARGUTTE'S INFORMATION IS INSUFFICIENT ON HIS BAIL JUMPING CHARGE BECAUSE IT FAILS TO CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE CRIME, IN VIOLATION OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO THE U.S. CONST. AND THE WASH. CONST. ART. I SECTION 3 AND 22.

AN INFORMATION MUST CONTAIN ALL ESSENTIAL ELEMENTS OF A CRIME. STATE V. GREEN, 101 WN. APP. 885 (2000) (QUOTING STATE V. KJORSVIK, 117 WN. 2d 93, 97 (1991). IN BAIL JUMPING, THE UNDERLYING OFFENSE IS AN ESSENTIAL ELEMENT OF THE CRIME. (Id.) THE RATIONALE BEHIND INCLUDING "ESSENTIAL ELEMENTS" RATHER THAN ONLY "STATUTORY ELEMENTS" IS TO GIVE THE ACCUSED PROPER NOTICE OF THE NATURE OF THE CRIME SO THAT THE ACCUSED CAN PREPARE AN ADEQUATE DEFENSE. KJORSVIK, 117 WN. 2d 93 AT 101.

WHEN SUFFICIENCY OF INFORMATION IS NOT CHALLENGED UNTIL AFTER CONVICTION,

THE INFORMATION IS LIBERALLY CONSTRUED IN FAVOR OF ITS VALIDITY. KJORSVIK, 117 WN.2d AT 103. AN INFORMATION WILL BE UPHELD ON APPEAL UNDER THE LIBERAL CONSTRUCTION RULE, IF AN APPARENTLY MISSING ELEMENT MAY BE FAIRLY IMPLIED FROM THE LANGUAGE OF THE CHARGING DOCUMENT. Id. AT 104. NEVERTHELESS, A LIBERAL READING CANNOT CURE AN INFORMATION THAT CANNOT BE CONSTRUED TO GIVE NOTICE OF OR TO CONTAIN IN SOME MANNER THE ESSENTIAL ELEMENTS OF A CRIME. STATE V. CAMPBELL, 125 WN.2d 797, 802 (1995)

UNDER WASHINGTON LAW, TO BE CONVICTED OF BAIL JUMPING, THE DEFENDANT MUST BE CHARGED WITH A PARTICULAR UNDERLYING CRIME. STATE V. POPE, 100 WN. APP. 624, 627 (2000). COURT'S REVIEW A CHALLENGE TO THE SUFFICIENCY OF THE CHARGING DOCUMENT DE NOVO. STATE V. CAMPBELL, 125 WN.2d 797, 801 (1995)

BAIL JUMPING IS DEFINED IN RCW 9A.76.170. THE ELEMENTS OF BAIL JUMPING ARE MET IF THE DEFENDANT: 1) WAS HELD FOR, CHARGED WITH, OR CONVICTED OF A PARTICULAR CRIME; 2) WAS RELEASED BY COURT ORDER OR ADMITTED TO BAIL WITH THE REQUIREMENT OF A SUBSEQUENT PERSONAL APPEARANCE; AND 3) KNOWINGLY FAILED TO APPEAR AS REQUIRED. STATE V. POPE, 100 WN.APP. 624, 627 (2000)

MR. GARCIOTTE ARGUES THAT THE AMENDED INFORMATION FILED ON JAN. 28, 2014 IS INSUFFICIENT BECAUSE IT DOES NOT CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING, VIOLATING HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION AND WASH. CONST. ART. I SECTION 3 AND 22.

IN THIS CASE, THE AMENDED INFORMATION IN COUNT 2 STATES:

> "ON OR ABOUT THE 8TH DAY OF OCTOBER, 2013, IN THE STATE OF WASHINGTON, THE ABOVE-NAMED DEFENDANT, HAVING BEEN RELEASED BY COURT ORDER OR ADMITTED TO BAIL WITH KNOWLEDGE OF THE REQUIREMENT OF A SUBSEQUENT PERSONAL APPEARANCE BEFORE A COURT OF THIS STATE OR OF THE REQUIREMENT TO REPORT TO A CORRECTIONAL FACILITY FOR SERVICE

OF SENTENCE, DID FAIL TO APPEAR OR DID FAIL TO SURRENDER FOR SERVICE OF SENTENCE IN WHICH A CLASS B OR C FELONY HAS BEEN FILED, TO WIT: GRANT COUNTY SUPERIOR COURT CAUSE NO. 13-1-00420-1; CONTRARY TO REVISED CODE OF WASHINGTON 9A.76.170".

THE AMENDED INFORMATION IS CONSTITUTIONALLY INSUFFICIENT BECAUSE IT FAILED TO IDENTIFY WHAT "PARTICULAR UNDERLYING CRIME" HE WAS CHARGED WITH AND INSTEAD, ONLY ALLEGED A GRANT COUNTY SUPERIOR COURT CAUSE NUMBER. (SEE AMENDED INFORMATION FILED JAN. 28, 2014 IN APPENDIX)

IN CITY OF AUBURN V. BROOKE, THE SUPREME COURT HELD THAT A CITATION THAT CHARGED ONLY BY REFERRING TO THE NUMBER OF A CITY ORDINANCE DID NOT SATISFY DUE PROCESS. RELYING UPON KJORSVIK, THE COURT REITERATED "[W]E HAVE REPEATEDLY SAID THAT DEFENDANTS SHOULD NOT HAVE TO SEARCH FOR THE RULES OR REGULATIONS THEY ARE ACCUSED OF VIOLATING." BROOKE, 119 WN.2d AT 631 (1992).

IN STATE V. GREEN, THE COURT OF APPEALS HELD THAT THE INFORMATION IN THAT CASE WAS INSUFFICIENT BECAUSE THE BAIL JUMPING COUNT CHARGED ONLY A CAUSE NUMBER RATHER THAN NAME THE PARTICULAR CRIME. GREEN, 101 WN.APP. 885, 888 (2000)

AS IN THIS CASE, THE STATE FAILED TO CHARGE THE NAME OF THE PARTICULAR CRIME, POSSESSION OF A CONTROLLED SUBSTANCE, (METHAMPHETAMINE) IN THE INFORMATION AS REQUIRED IN GREEN WHICH MAKES THE CHARGING DOCUMENT INSUFFICIENT. REMAND IS REQUIRED TO DISMISS COUNT 2.

CONCLUSION

FOR THE ABOVE REASONS, THIS COURT SHOULD GRANT REVIEW AND ENTER AN ORDER DISMISSING BOTH COUNTS IN CAUSE 13-1-00420-1 AND DISMISS COUNT 2.

DATE: 4-21-2016

MATTHEW S. CAROUTTE

CERTIFICATE OF SERVICE

I CERTIFY THAT ON THIS DATE I MAILED THE FOLLOWING DOCUMENT(S) TO WHICH ARE AFFIXED, BY U.S. MAIL, POSTAGE PRE PAID TO:

RONALD R. CARPENTER
SUPREME COURT CLERK
P.O. BOX 40929
OLYMPIA, WA. 98504-0929

AND TO:

RENEE S. TOWNSLEY
COURT OF APPEALS - CLERK
500 N. CEDAR ST.
SPOKANE, WA. 99201

DATED THIS 21ST DAY OF APRIL, 2016 AT CONNELL, WA.

MATTHEW S. GAROUTTE

APPENDIX

07-688572

RENEE CAMPBELL
FILED
AUG 20 2013
KIMBERLY A. ALLEN
Grant County Clerk

SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff,

vs.

Matthew Groutke
Defendant.

NO. 13-1-00420-1

CRIMINAL CASE SCHEDULING ORDER

PROS'R: K. Owen DEF'R: GURD - Cozer LANG.

CrR 3.3 COMMENC'MT DATE: 8-20-13 TRIAL DEADLINE: 11-18-13

OMNIBUS HRG. 10-8-13 READINESS 11-4-13 TRIAL 11-6-13

** *Defendant must attend Omnibus Hearing, Readiness Hearing, and Trial, each set at 9:00 a.m.* **

IT IS ORDERED AS FOLLOWS:

1. On or before the Omnibus Hearing date, **counsel for the State** shall disclose to counsel for Defendant all materials and information identified in CrR 4.7(a). On or before said date, **counsel for Defendant** shall disclose to counsel for the State all materials and information identified in CrR 4.7(b).

2. Motions requiring hearings in excess of ten minutes per side; or involving live testimony, including hearings under CrR 3.5 and CrR 3.6, shall be filed or made orally at the Omnibus Hearing. Hearings upon such matters will be docketed only when requested at the time the motion is filed or made orally.

3. At the Omnibus Hearing, the court may, upon its own motion or at the request of counsel, schedule additional status hearings or a Pretrial Conference pursuant to CrR 4.5(c)(v).

4. At the Omnibus Hearing, counsel shall certify to the court: (a) the status of discovery and compliance with disclosure obligations; (b) that counsel have conferred in good faith to consider resolution of the case without trial; and (c) that a plea agreement has or will be proposed, or will not be considered, and the withdrawal date of any outstanding settlement offer.

5. At the Readiness Hearing, each side will either confirm its readiness to proceed to Trial or move for Trial continuance. If Trial is continued, the court shall also schedule an additional readiness hearing accordingly.

6. ***Notice to Defendant:*** If Trial does not commence on the date scheduled, and a new trial date is not expressly ordered by the court, Readiness Hearing and Trial will be deemed continued to the following week. Defendant shall appear the following Monday (Tuesday if Monday is a holiday) for Readiness Hearing, and the following Wednesday (Thursday if Monday is a holiday) for Trial.

DONE IN OPEN COURT 8/20/2013 BY JUDGE

Receipt of copy acknowledged by Defendant: Matthew Groutke

Presented By: K. Owen 8-20-13

P3

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, vs. MATTHEW SIMON GAROUTTE, Defendant.	No. 13-1-00420-1 INFORMATION

D ANGUS LEE, Prosecuting Attorney for Grant County, State of Washington, by this Information accuses the above-named defendant of the crimes of:

Count 1: Possession of Methamphetamine, 69.50.4013

Committed as follows:

COUNT 1: **Possession of a Controlled Substance [Methamphetamine]**

On or about the 3rd day of April, 2013, in the County of Grant, State of Washington, the above-named Defendant did possess a controlled substance, to-wit: Methamphetamine, including its salts, isomers, and salts of isomers; contrary to the Revised Code of Washington 69.50.4013 and 69.50.206(d)(2).

(MAXIMUM PENALTY–Five (5) years imprisonment and/or a fine of not less than $1,000 nor more than $10,000 fine pursuant to RCW 69.50.4013(2) and RCW 69.50.430, plus restitution and assessments.)

(If the Defendant has a second or subsequent conviction under RCW 69.50.401, .4011, .4012, .4013, .4015, .402, .403, .406, .407, .410, or .415, the minimum fine shall be $2,000 pursuant to RCW 69.50.430.)

JIS Code: 69.50.4013 Cont Subs No Prescription-Felony

contrary to form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Ephrata, Washington, Tuesday, July 2, 2013.

D. ANGUS LEE
Grant County Prosecuting Attorney

By: _____
Edward A. Owens, WSBA #29387
Chief Deputy Prosecuting Attorney

DEFENDANT INFORMATION			
NAME: **MATTHEW SIMON GAROUTTE**		DOB: **03/25/1984**	
ADDRESS: **322 1ST AVE SE, SOAP LAKE, WA 989851**			
OIN: **13EP1267**	AGENCY: **EPD**	DRIV. LIC. NO. **GAROUMS167DS**	DL ST: **WA**
SID: **WA17684076**	FBI: **241796TB0**	PCN:	DOC:
SEX: **M**	RACE: **I**		

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, vs. **MATTHEW SIMON GAROUTTE,** EPD, 13EP1267 Defendant.	No. 13-1-00420-1 AMENDED INFORMATION

D. ANGUS LEE, Prosecuting Attorney for Grant County, State of Washington, by this Amended Information accuses:

MATTHEW SIMON GAROUTTE

of the crime(s) of

Count 1: Possession of Methamphetamine, 69.50.4013
Count 2: Bail Jumping (From Class B or C Felony), 9A.76.170(3)(c)

committed as follows:

COUNT 1: Possession of a Controlled Substance [Methamphetamine]

On or about the 3rd day of April, 2013, in the State of Washington, the above-named Defendant did possess a controlled substance, to-wit: Methamphetamine, including its salts, isomers, and salts of isomers; contrary to the Revised Code of Washington 69.50.4013 and 69.50.206(d)(2).
(MAXIMUM PENALTY–Five (5) years imprisonment and/or a fine of not less than $1,000 nor more than $10,000 fine pursuant to RCW 69.50.4013(2) and RCW 69.50.430, plus restitution and assessments.)

(If the Defendant has a second or subsequent conviction under RCW 69.50.401, .4011, .4012, .4013, .4015, .402, .403, .406, .407, .410, or .415, the minimum fine shall be $2,000 pursuant to RCW 69.50.430.)

JIS Code: 69.50.4013 Cont Subs No Prescription-Felony

COUNT 2: Bail Jumping

On or about the 8th day of October, 2013, in the State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Grant County Superior Court Cause No. 13-1-00420-1; contrary to Revised Code of Washington 9A.76.170.

(MAXIMUM PENALTY (Failure to appear in Class B or Class C felony case)–Five (5) years imprisonment and/or a $10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9A.76.170.3C Bail Jump B or C Felony

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Ephrata, Washington, 1/28/14

Edward A. Owens, WSBA #29387
Chief Deputy Prosecuting Attorney

SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff,

vs.

Matthew Groomer, Defendant.

NO. 13-1-00420-1

CRIMINAL CASE SCHEDULING ORDER

PROS'R: Ted Owens DEF'R: CrCPD - Kona LANG. Eng

CrR 3.3 COMMENC'MT DATE: ~~1-25-14~~ 1.21.14 TRIAL DEADLINE: ~~3-31-14~~ 3.24.14

OMNIBUS HRG. 2-11-14 READINESS 3-17-14 TRIAL 3-19-14

***** Defendant must attend Omnibus Hearing, Readiness Hearing, and Trial, each set at 9:00 a.m. *****

IT IS ORDERED AS FOLLOWS:

1. On or before the Omnibus Hearing date, **counsel for the State** shall disclose to counsel for Defendant all materials and information identified in CrR 4.7(a). On or before said date, **counsel for Defendant** shall disclose to counsel for the State all materials and information identified in CrR 4.7(b).

2. Motions requiring hearings in excess of ten minutes per side, or involving live testimony, including hearings under CrR 3.5 and CrR 3.6, shall be filed or made orally at the Omnibus Hearing. Hearings upon such matters will be docketed only when requested at the time the motion is filed or made orally.

3. At the Omnibus Hearing, the court may, upon its own motion or at the request of counsel, schedule additional status hearings or a Pretrial Conference pursuant to CrR 4.5(c)(v).

4. At the Omnibus Hearing, counsel shall certify to the court: (a) the status of discovery and compliance with disclosure obligations; (b) that counsel have conferred in good faith to consider resolution of the case without trial; and (c) that a plea agreement has or will be proposed, or will not be considered, and the withdrawal date of any outstanding settlement offer.

5. At the Readiness Hearing, each side will either confirm its readiness to proceed to Trial or move for Trial continuance. If Trial is continued, the court shall also schedule an additional readiness hearing accordingly.

6. ***Notice to Defendant:*** If Trial does not commence on the date scheduled, and a new trial date is not expressly ordered by the court, Readiness Hearing and Trial will be deemed continued to the following week. Defendant shall appear the following Monday (Tuesday if Monday is a holiday) for Readiness Hearing, and the following Wednesday (Thursday if Monday is a holiday) for Trial.

DONE IN OPEN COURT 1/28/14

Evan E. Sperline
JUDGE

Receipt of copy acknowledged by Defendant: [signature]

[signature] 1-28-14

THE SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff,	)	NO. 13-1-00420-1
vs.	)	**ORDER ON OMNIBUS HEARING**
Matthew Gracetta [illegible], Defendant.	)	Deadline: 3-24-14
	)	Trial Date: 3-19-14 Ready 3-17-14

An omnibus hearing was held on this date. It is noted and ordered as follows:

1. **CrR 3.5:**
   - ☐ No custodial statements will be offered in state's case-in-chief or in rebuttal.
   - ☐ Defendant's statements will be offered, if at all, only in rebuttal.
   - ☐ Statements referred to in state's discovery will be offered, and:
     - ☐ By stipulation of the parties, may be admitted without pretrial hearing.
     - ☒ A CrR 3.5 hearing shall be held: [illegible] (date/time)
2. **CrR 3.6:**
   - ☐ No motion to suppress physical evidence or identification shall be made.
   - ☒ Defendant will move to suppress evidence, and shall comply with CrR 3.6, CrR 8.1, and CR 6. A CrR 3.6 hearing shall be held: [illegible] (date/time)
3. **CrR 4.7:** Plaintiff: ☒ has provided the defense all discovery required by CrR 4.7(a).
   ☐ shall provide the defense with the following by ____________ (date):

   Defendant: ☒ has provided the plaintiff all discovery required by CrR 4.7(b).
   ☒ shall provide plaintiff with the following by ____________ (date):
   [illegible] by 3.11.14
4. **Defense:** Defendant has stated the general nature of the defense to be as follows: ☒ General denial; ☐ Alibi; ☐ Self-defense; ☐ Consent; ☐ Insanity; ☐ Diminished capacity; ☒ Other: [illegible]
5. **Other:**
   - ☐ A *Ryan* (child hearsay) hearing shall be set by the Court Administrator.
   - ☐ Other hearings to be set by Court Administrator: ____________
   - ☐ Plaintiff intends to move to amend the Information.
   - ☒ Other motions intended to be brought: [illegible]

   Motions, including those not specifically referenced herein, shall comply with CrR 8.1, CrR 8.2, CR 6, and CR 7(b) unless expressly agreed by the parties in writing.
6. **Other orders:**

DONE IN OPEN COURT: 2-24-14

[signature]
JUDGE

Approved as to form:
[signature]
Attorney for Plaintiff

Approved as to form:
[signature] 2-24-14
Attorney for Defendant

Copy received by Defendant: ____________

SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, vs. Matthew [illegible], Defendant.	NO. 13-1-00420-1 **CRIMINAL CASE SCHEDULING ORDER**

PROS'R: Ed Owens DEF'R: GCPD-[illegible] LANG. Eng

CrR 3.3 COMMENC'MT DATE: [illegible] TRIAL DEADLINE: 4-23-14

OMNIBUS HRG. ________ READINESS 3-24-14 TRIAL 3-26-14

***** Defendant must attend Omnibus Hearing, Readiness Hearing, and Trial, each set at 9:00 a.m. *****

IT IS ORDERED AS FOLLOWS:

1. On or before the Omnibus Hearing date, **counsel for the State** shall disclose to counsel for Defendant all materials and information identified in CrR 4.7(a). On or before said date, **counsel for Defendant** shall disclose to counsel for the State all materials and information identified in CrR 4.7(b).

2. Motions requiring hearings in excess of ten minutes per side, or involving live testimony, including hearings under CrR 3.5 and CrR 3.6, shall be filed or made orally at the Omnibus Hearing. Hearings upon such matters will be docketed only when requested at the time the motion is filed or made orally.

3. At the Omnibus Hearing, the court may, upon its own motion or at the request of counsel, schedule additional status hearings or a Pretrial Conference pursuant to CrR 4.5(c)(*v*).

4. At the Omnibus Hearing, counsel shall certify to the court: (a) the status of discovery and compliance with disclosure obligations; (b) that counsel have conferred in good faith to consider resolution of the case without trial; and (c) that a plea agreement has or will be proposed, or will not be considered, and the withdrawal date of any outstanding settlement offer.

5. At the Readiness Hearing, each side will either confirm its readiness to proceed to Trial or move for Trial continuance. If Trial is continued, the court shall also schedule an additional readiness hearing accordingly.

6. ***Notice to Defendant:*** If Trial does not commence on the date scheduled, and a new trial date is not expressly ordered by the court, Readiness Hearing and Trial will be deemed continued to the following week. Defendant shall appear the following Monday (Tuesday if Monday is a holiday) for Readiness Hearing, and the following Wednesday (Thursday if Monday is a holiday) for Trial.

DONE IN OPEN COURT 3-17-14

[signature]
JUDGE

Receipt of copy acknowledged by Defendant: (X) copy rec'd in court

3-17-14

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew s. Garoutte , Defendant,	Case No.: 13-1-00420-1 Motion to Dismiss Re : Count 2 Bail Jumping

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully moves this Court for an Order dismissing Count 2 Bail Jumping in the Amended Information pursuant to CrR 8.3 (b) .

Motion

The Defendant was charged with Bail Jumping in the Amended Information on or about January 28, 2014 .

This allegation was based upon the Defendant not appearing before the Court on October 8, 2013 .

The State waited to provide discovery on the Bail Jumping charge until March 13, 2014 . As of that date the State provided :

1) Several new witness lists , amended and second amended witness lists
2) A CD purportedly of the court hearing , but defense counsel cannot open it ;
3) Clerks Minutes;
4) Defendant's booking photo from January 2014 ;

5) Defendant's booking photo from August 2013 ;
6) Copy of the Information;
7) Copy of the Trial Scheduling Order ; (with defense counsel signature !, so is defense counsel now a witness ? The Defense would move to exclude such order) ;
8) Copy of Amended Information;
9) Order Setting Conditions of Release dated Aug 23, 2013 (2 different ones)
10) More Clerks Minutes;
11) Bench Warrant and Order for Bench Warrant

Certainly the Amended and Second Amended Witness list adds new witnesses (without a summary of the substance of their statements as required by CrR 4.7) and thus new information that the defense has to manage . Additionally , a copy of the CD that purports to be the hearing of August 20, 2013 is brand new to the defense also , and would likely change the strategy at trial .

All of this was supplied knowing that the case was going to be called ready for trial on March 17, 2014, the trial date is March 19 , 2014, and that the "Outside date " is March 24, 2014 ! Clearly the State , having Amended the Information had this material because the State has the obligation not to file a charge it knows it does not have probable cause for under RPC 3.8 Special Duties of the Prosecutor .

Defense counsel would acknowledge that we are using the trial set Order dated January 28, 2014 . However it was the State's motion to Amend the Information and go forward with these dates .

To wait till the eve of trial is unconscionable . At this point it places the defendant in the "Hobson's Choice " position of going to trial with ineffective assistance of counsel or waiving his right to speedy trial . The defendant is prejudiced in having to make this choice between the denial of a constitutional right and having a speedy

trial. The Defendant will not waive speedy trial and Defense counsel will not move for a continuance.

In St.v. Brooks , 149 Wn. App . 373 (2009) , the State provided a stack of discovery including a 60 page transcript of the victim's statement provided on the night of the incident the day before trial . The Defendant was in custody and up against the speedy trial clock. The trial court dismissed the case and was upheld on appeal. The Court of Appeals noted that the State did not ask the trial court to consider other alternatives besides a continuance and that the trial did not abuse it's discretion when dismissing the case with prejudice.

In Brooks , the State claimed it did not have control of the late discovery because it was in control of the police . The Court of Appeals scoffed at that notion. The Court of Appeals reasoned that this was governmental mismanagement and required dismissal for arbitrary action or governmental misconduct and noted that even though the sheriff's office had control of the missing or tardy discovery between the date of the incident and the date of transcription , and the additional writing of police reports , the prosecutor failed to work with the sheriff to resolve the time lag ! As the law holds governmental mismanagement does not have to be evil or dishonest , simple mismanagement is sufficient under CrR 8.3 (b) . St.v. Dailey , 93 Wn. 2d 454 , 457 (1980) cited with approval in St.v. Brooks, Id.

The Defense respectfully requests that the Count 2 of the Amended Information , Bail Jumping be dismissed with prejudice . There is no abuse of discretion when a trial court makes a decision on tenable grounds or tenable reasons. St.v.Blackwell , 120 Wn. 2d 822 (1993) . In the case at bar, all of the information was readily available to the State . All of it was located within the courthouse . There was no reason for such a lengthy delay in gathering it and forwarding it on to defense counsel . And as to the Possession of Methamphetamine charge in Count 1 ; there is no reason why the State has not complied with the rules of discovery by adding to the

witness list additional witnesses and providing a summary of the substance of their anticipated testimony . Nothing has been provided . No report from Officer Wentworth . No report from Officer Froeweiss, No report from CCO Adrade . No summary of any other witness on the Possession of Methamphetamine charge and certainly NO summary of anticipated testimony of any witness on the Bail Jumping charge.

Is the defense purposely and continually jammed up that it has to seek a continuance? As we have seen so often on the calendar this phenomenon of late discovery and the old excuse that the police have it and State has not received it yet.

The Defense respectfully moves for dismissal of the Bail Jumping charge under the principles stated in Brooks,Id

Dated : 3-16-14

Presented By:

Grant County Public Defense
Stephen Kozer, staff attorney #14413

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew Garoutte , Defendant.	Case No.: 13-1-00420-1 Memorialization of Defense Objection on March 17, 2014 Re : Denial of Time for Trial

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully memorializes the Defense Oral Objection on March 17, 2014 and / or the Defendant's Pro Se Oral Objection to the State and / or the Court allowing the State to release the In Custody defendant , so as to extend or otherwise push into the future the Defendant's time for trial deadline .

Background

The State had originally filed a Possession of Methamphetamine charged against the Defendant . The Defendant had missed a court hearing and a warrant for the Defendant's arrest was issued by the Court .

The Defendant was arrested on the warrant on or about January 28, 2014 and the State moved to amend the Information to include Bail Jumping on or about that date.

That the case as amended, was set for was set for Trial Readiness Hearing of March 17, 2014 , Trial on March 19, 2014 , and an outside or end of time for trial period of March 24, 2014.

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

On or about January 28, 2014 the State also argued for and had bail set on this case. The Defendant is without financial means to post bail.

The Defendant was also being held on a new charge of Possession with Intent to Deliver under another cause # in Grant County.

On March 13, 2014 the State finally provided after approximately 40 days discovery on the Bail Jumping case . The State also provided 3 amended witness lists on the above entitled case.

That the Defense worked all day Sunday March 16, 2014 to prepare for the new charge of Bail Jumping .

On March 17, 2014 the Defense called the case "ready for trial " (aside from the eye doctor appointment) . The State made some excuse about readiness for trial . That the Judge ruled that the case was going out to trial on March 19, 2014 .

On March 17, 2014 after the Defendant was taken down into the jail the State informed the Defense that (and this was new) the State key witness Officer Harvey would be out of country , the State's representative stating he just learned of this . **(Ironically the Officer had just testified in a 3.6 Hearing with the defense and the same State's representative the Wednesday before and made no mention of himself being out of country" on another case involving the defendant) .**

On March 17, 2014 , the State had the Defendant brought back up from the jail and had the case recalled before the Court . The State explained to the Court that it's witness would be out of country and just learned of this . It is unclear if the Court or the State suggested that the Defendant be released on the charge , but it was suggested and not by the defense . It was Objected to . the Defendant was released on the charge and the case was continued for trial .

TIME FOR TRIAL RULE

That the above procedure of releasing the defendant 1 week before the time for trial rule expired , was done to thwart the defendant's right to a timely trial while incarcerated. It is the "spirit " of the rule to have both sides prepared for trial in a timely manner or otherwise extend to the court the courtesy of a "heads up" that a continuance is needed.

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

The State was not prepared for trial . The State waited almost 40 days to give the Defense the discovery (most of which was located in the courthouse) on the Bail Jumping charge, most likely in the hopes (and we have seen from past practice of making it necessary for the defense to request a continuance . The defense was ready for trial having worked on the case a good part of the weekend . The defense was not asking for a continuance. The State had not asked for a continuance. It had been suggested the defendant be released on the charge.

The State had originally asked for bond when it suited there purposes and the State's purpose was to keep the defendant incarcerated , especially after the State had amended the Information to add the Bail Jumping charge. Now with the State not prepared for trial (it seems plausible that the State anticipated a defense motion for continuance after dumping all of the discovery on the Bail Jumping charge on the Defense March 13, 2014 , for a "Readiness" calendar March 17, 2014) , the State requested no bond in the matter. (The State also knowing full well that the defendant was held on another case number and thus would not be released.)

The State doing so only to not have the case dismissed for time of trial rule violation. This was not the intent of the rule .

Conclusion

The defendant position is that the case should have been dismissed . Thwarting to the time for trial rule when the State is not prepared within the 60 days as required of the defendant is not the "administration of justice"

Dated : 3-19-14

Respectfully Submitted,

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

3-14-14

Grant County Public Defense
Stephen J. Kozer #14413
Attorney for Defendant

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY
CRIMINAL MINUTE SHEET

DATE FILED: MARCH 24, 2014
JUDGE: EVAN E. SPERLINE

CAUSE NO: 13-1-00420-1
REPORTER: RECORDED
PLTF ATTY: ☐ R. VALAAS ☐ K. MCCRAE ☑ E. OWENS ☐ C. HIGHLAND ☐ E. ABRAMSON ☐ T. HILL ☐ P. SCHAFF ☐ _____

CLERK: M. WEBB
DEF ATTY: ☐ _____
☐ R. GONZALES ☑ S. KOZER ☐ A. CABRERA ☐ M. MORGAN
☐ B. GWINN ☐ D. BUSTAMANTE ☐ R. KENTNER ☐ S. OGLEBAY
☐ FINANCIAL COLLECTOR, SANDRA JONES

STATE OF WASHINGTON

VS

MATTHEW S. GAROUTTE
DEF PRESENT: ☑ YES ☐ NO

INTERPRETER: _____ RECORDED IN DEPT #2 START: 2:30 END: 2:46

PRELIMINARY HEARING/ARRAIGNMENT

_____ INFORMATION PROVIDED TO DEFENDANT
_____ READING WAIVED
_____ ADVISED OF RIGHTS
_____ READ IN OPEN COURT
_____ ADVISED OF CHARGES
_____ ADVISED OF VIOLATIONS

07-739738

COUNSEL:
_____ APPOINTED COUNSEL
_____ ORDER APPOINTING ATTORNEY SIGNED
_____ WAIVED COUNSEL
_____ RETAINED COUNSEL
_____ ADVICE OF RIGHTS FILED/SIGNED
_____ INDIGENCE REPORT FILED/SIGNED
_____ NOTICE OF APPEARANCE FILED

PROBABLE CAUSE:
_____ PREVIOUSLY ESTABLISHED
_____ PROBABLE CAUSE STATEMENT MADE BY _____ S&T
_____ ORDER FINDING PROBABLE CAUSE SIGNED
_____ BAIL SET $_____
_____ ORDER SETTING CONDITIONS OF RELEASE SIGNED
_____ RELEASED ON PERSONAL RECOGNIZANCE
_____ PR BOND $_____
_____ SIGNATURES REQUIRED OF _____
_____ BENCH WARRANT ORDERED
_____ ORDER FORFEITING BOND/BAIL ENTERED

PLEA ENTRY

_____ **NOT GUILTY** PLEA ENTERED
_____ PLEA ACCEPTED OF NOT GUILTY
_____ INITIAL ORDER SETTING SCHEDULE ENTERED
_____ **AMENDED** ORDER SETTING SCHEDULE ENTERED
_____ ORDER ON OMNIBUS HEARING
_____ DEFENDANT SIGNS STMT OF DEF ON PLEA OF GUILTY
_____ DEFENDANT ADVISED OF GUILTY PLEA RIGHTS
_____ **GUILTY** PLEA ENTERED
_____ GUILTY PLEA ACCEPTED
_____ COURT SIGNS STMT OF DEF ON PLEA OF GUILTY
_____ PLEA AGREEMENT APPROVED
_____ PROBABLE CAUSE STATEMENT ADOPTED BY PLTF/DEF
_____ ORDER AMENDING INFORMATION SIGNED
_____ AMENDED INFORMATION FILED
_____ PSI ORDER SIGNED
_____ SENTENCING DATE ORDER SIGNED
_____ DEFENDANT **ADMITS/DENIES** VIOLATION
_____ ORDER ON REVIEW OF COMPLIANCE
_____ ORDER ON COMMUNITY SUPERVISION VIOLATIONS SIGNED

SENTENCING

_____ JUDGMENT AND SENTENCE SIGNED
_____ ORDER EXONERATING BOND/BAIL ENTERED
_____ ORDER OF RESTITUTION ENTERED

SPECIAL MINUTES: Ms. Owens states trial ready. Ms Kozer states trial ready. Court notes matter ready for trial. Ms Kozer moves to dismiss for governmental mismanagement. States an amended witness list was filed 3 times in one day. Ms Owens explains what each

CONTINUED TO: _____ FOR: _____

CONTINUED TO: _____ FOR: _____

PLMHRG ARRAIGN (MTHRG) GPOH GPSH SNTHRG SCVHRG RVWHRG DSMHRG HSTKIC HSTKPA HSTKSTP

NCHRG ARGPSH ARGPOH OMNHRG PTMHRG FNRHRG NGPH OTHER: _____

PROCESSED BY: RENEE CAMPBELL

witness listed Will testify to. States Mr Kroger received witness list in plenty of time to prepare. States the matter probably not proceed to trial this week or next.
Court denies motion, states there may have been mismanagement but that mismanagement did not prejudice Def. States Mr Owens is to provide by end of Business tomorrow all witness contact info & what they will testify to.

3-1-004201
State
VS
Barnette
3-24-14
Pg 2

07-744932

FILED

MAR 25 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK
HOLLY HINTZ

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

State of Washington
Plaintiff(s),

vs.

Matthew S. Garcette
Defendant(s).

No. 13-1-00420-1

ORDER

Re: Motion to Dismiss Ct. 2. per CrR 8.3

I. BASIS

On 3-24-14 the Defendant moved the court for: an order of dismissal of Ct. 2 Bail Jumping per CrR 8.3(b) b/c of late discovery and late witness lists.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

Although it is arguable there was some government mismanagement the Defendant has not shown prejudice and the motion to dismiss will be denied However, the purpose and plain language of CrR 4.7 provides the State shall provide a witness list with a summary of the witnesses statements

III. ORDER

IT IS ORDERED that: the motion to dismiss Ct. 2 the Bail Jumping b/c the Defendant has not shown prejudice. The Court further orders the State to provide to the Defense a summary of all witness statements as to the 3rd Amended Witness List by the State of those witnesses who have not made a report or which the State has not provided a written report or summary of oral statement.

Dated: 3.25.14

Judge

Presented By /Cpl GCPD #14413 for D.

As To Form: [signature]

587

07-739890

RENEE CAMPBELL

FILED

MAR 3 1 2014

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff,

vs.

Matthew Garoutte
Defendant.

NO. 13-1-00420-1

3rd AMENDED
CRIMINAL CASE SCHEDULING ORDER

PROS'R: Owens DEF'R: Kozer LANG.

CrR 3.3 COMMENC'MT DATE: 8.20.13 TRIAL DEADLINE: 5/9/14

OMNIBUS HRG. _____ READINESS 4/7/14 TRIAL 4/9/14

***** Defendant must attend Omnibus Hearing, Readiness Hearing, and Trial, each set at 9:00 a.m. *****

IT IS ORDERED AS FOLLOWS:

1. On or before the Omnibus Hearing date, **counsel for the State** shall disclose to counsel for Defendant all materials and information identified in CrR 4.7(a). On or before said date, **counsel for Defendant** shall disclose to counsel for the State all materials and information identified in CrR 4.7(b).

2. Motions requiring hearings in excess of ten minutes per side, or involving live testimony, including hearings under CrR 3.5 and CrR 3.6, shall be filed or made orally at the Omnibus Hearing. Hearings upon such matters will be docketed only when requested at the time the motion is filed or made orally.

3. At the Omnibus Hearing, the court may, upon its own motion or at the request of counsel, schedule additional status hearings or a Pretrial Conference pursuant to CrR 4.5(c)(v).

4. At the Omnibus Hearing, counsel shall certify to the court: (a) the status of discovery and compliance with disclosure obligations; (b) that counsel have conferred in good faith to consider resolution of the case without trial; and (c) that a plea agreement has or will be proposed, or will not be considered, and the withdrawal date of any outstanding settlement offer.

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6. ***Notice to Defendant:*** If Trial does not commence on the date scheduled, and a new trial date is not expressly ordered by the court, Readiness Hearing and Trial will be deemed continued to the following week. Defendant shall appear the following Monday (Tuesday if Monday is a holiday) for Readiness Hearing, and the following Wednesday (Thursday if Monday is a holiday) for Trial.

DONE IN OPEN COURT 3.31.14

Evan E Sperline
JUDGE

Receipt of copy acknowledged by Defendant: Matthew Garoutte

07-739889

RENEE CAMPBELL
FILED
MAR 3 1 2014
KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

State of Washington
Plaintiff(s),

vs.

Matthew S. Garoutte
Defendant(s).

No. 13-1-00320-1

ORDER re: Amending Conditions of Release (Curfew Only)

I. BASIS

Defendant moved the court for: An order Amending Conditions of release re: curfew hours, on the basis that the Defendant has to catch a 5Am bus to get to court on time

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

Good Cause is Shown.

III. ORDER

IT IS ORDERED that: The Order Setting Conditions of release re: curfew from 8PM to 6Am to now read 8PM to 4:30Am, only to be able to board the bus.

Dated: 3.31.14

Judge

Gjail / Legal GCPD #1/4/13
3-31-14

#43087

07-749245

RENEE CAMPBELL
FILED
APR 14 2014
KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff,

vs.

Matthew S. Gerovette
Defendant.

NO. 13-1-00420-1

CRIMINAL CASE SCHEDULING ORDER

PROS'R: Ed Owens DEF'R: GCPD - Kozak LANG. Eng

CrR 3.3 COMMENC'MT DATE: 4-18-14 TRIAL DEADLINE: ~~6-2-14~~ 6.9.14

OMNIBUS HRG. 4-28-14 READINESS ~~6-2-14~~ 5.12.14 TRIAL ~~6-4-14~~ 5.14.14

**** Defendant must attend Omnibus Hearing, Readiness Hearing, and Trial, each set at 9:00 a.m. ****

IT IS ORDERED AS FOLLOWS:

1. On or before the Omnibus Hearing date, **counsel for the State** shall disclose to counsel for Defendant all materials and information identified in CrR 4.7(a). On or before said date, **counsel for Defendant** shall disclose to counsel for the State all materials and information identified in CrR 4.7(b).

2. Motions requiring hearings in excess of ten minutes per side, or involving live testimony, including hearings under CrR 3.5 and CrR 3.6, shall be filed or made orally at the Omnibus Hearing. Hearings upon such matters will be docketed only when requested at the time the motion is filed or made orally.

3. At the Omnibus Hearing, the court may, upon its own motion or at the request of counsel, schedule additional status hearings or a Pretrial Conference pursuant to CrR 4.5(c)(v).

4. At the Omnibus Hearing, counsel shall certify to the court: (a) the status of discovery and compliance with disclosure obligations; (b) that counsel have conferred in good faith to consider resolution of the case without trial; and (c) that a plea agreement has or will be proposed, or will not be considered, and the withdrawal date of any outstanding settlement offer.

5. At the Readiness Hearing, each side will either confirm its readiness to proceed to Trial or move for Trial continuance. If Trial is continued, the court shall also schedule an additional readiness hearing accordingly.

6. ***Notice to Defendant:*** If Trial does not commence on the date scheduled, and a new trial date is not expressly ordered by the court, Readiness Hearing and Trial will be deemed continued to the following week. Defendant shall appear the following Monday (Tuesday if Monday is a holiday) for Readiness Hearing, and the following Wednesday (Thursday if Monday is a holiday) for Trial.

DONE IN OPEN COURT 4.14.14

Evan E. Sperline
JUDGE

Receipt of copy acknowledged by Defendant: personal, in court

FILED
YESENIA HERRERA
2014 APR -3 A 8:36
KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON,	)	Case No.: 13-1-00420-1
	)	
Plaintiff,	)	Memorialization of Objection to Trial Date
	)	(Continued Objection Placed on Record
vs.	)	Wednesday April 2, 2014)
Matthew S. Garoutte ,	)	
	)	
Defendant,	)	

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully notes this memorialization of the Defense / Defendant's objection to the trial date placed on the record Wednesday April 2, 2014 on the Call for Trial Calendar.

Dated : 4.2.14

Presented By:

Grant County Public Defense
Stephen Kozer , staff attorney #14413

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew Garoutte Defendant,	Case No.: 13-1-00420-1 Motion to Dismiss for Violation of Time for Trial Rule

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully moves this Court for dismissal of the above entitled matter for violation of time for trial rule .

Background

On January 28,2014 a new trial schedule order was entered .This set the Readiness Hearing for March 17, 2014 .

February 11,2014 Defense counsel requested Omnibus be set over to February 24, 2014.

February 24, 2014 Omnibus was had and 3.5 and 3.6 hearings were set for March 5, 2014.

March 5, 2014 3.5 and 3.6 Motions were continued to March 12, 2014 because the State's witnesses were not available .

March 12, 2014 3.5 hearing is heard by Judge Knodell .

March 17 , 2014 Readiness Hearing , Defense called matter Ready for Trial . State represented to Court that one of the State's witnesses was out of the country. Defense objects to continuance

. Court continues case 1 week . The State requested the Defendant be released .This was because the time for trial clock was running out. (March 24, 2014) . Defendant is PR'd .

March 17, 2014 new Trial Schedule Order is entered . Readiness is now scheduled for March 24, 2014 and Trial deadline is April 23, 2014 .

March 20 , 2014 Defense files Memorialization of Objection to Time for Trial and Governmental Mismanagement.

March 24, 2014 Readiness . Both parties call ready for trial . Defense moves to dismiss for governmental mismanagement . Motion denied , Court states there may have been mismanagement but not to the level the Court can justify dismissal . Court does order State proper witness list by end of the day . Case is continued on trial run again .

March 31, 2014 - Mr. McCrae standing is not available and requests continuance . The Defendant objects . Conditions of Release re: Curfew are amended .

April 2nd , 2014 Trial Call – Defense Objects and files Memorialization of Objection

April 7 , 2014 , Trial Readiness – Defendant calls Clerk Office states he is on his way State requests bench warrant . Warrant is authorized .

April 8 , 2014 Defendant is in court and matter is continued to April 14, 2014 to reset dates.

April 14 , 2014 Defendant in court . Trial dates reset . Defendant did not sign order .

May 12, 2014 Readiness Hearing .

Mr. Garoutte has requested defense counsel to file this motion . The motion is based on St.v. Munoz, 60 Wn. App. 921 (1991) and St.v. Logan , 102 Wn. App. 907 (2000) . Both of these case stand for the proposition that where a defendant is released from custody and have been under the 60 time for trial rule , the defendant still has to be tried within 90 days.

(cases attached for convenience)

Dated : _____

Presented By:

_____
Grant County Public Defense
Stephen Kozer , staff attorney #14413

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew S. Garoutte Defendant,	Case No.: 13-1-00420-1 Supplemental to Defense Motion to Dismiss for Violation of Time for Trial Rule

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully files this Supplemental Memorandum to the Defense Motion to Dismiss for Violation of Time for Trial Rule filed May 13, 2014 .

Background

The defense hereby incorporates as if set out in full the motion to dismiss filed May 13, 2014. The Defense would note to the Court that the matter does get confusing with the "interplay" of St.v. Garoutte Grant County Superior Court # 14-1-00043-2 (Drug charge – Mot. To Suppress granted by J. Knodell)

March 17, 2013 Defendant is PR'd on this case .

Defendant is still held on 14-1-00043-2. Later the Defendant is released on 0043-2 because of State's witness unavailability . The Defendant feels this is a " related " charge because of how the State has argued the case in the past.

Defendant is back on FTA on April 7, 2014 .
He is set over and held in jail until April 14, 2014 . On April 14 , 2014 a new trial set order is entered . The Commencement date is noted as April 14,2014 .

Defendant calculates that from January 21, 2014 to March 17 , 2014 is 55 days .
Defendant calculates that from April 7, 2014 to April 14 , 2014 is 7 days , for a total of 62 days .
At all times for these calculations the defendant was held in jail on a 60day "clock".

Law

Defendant points to CrR 3.3 (b) (4) "Return to Custody Following Release."
"If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the **same or related charge** , the 90 day limit **shall** continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60 day limit **shall** apply .

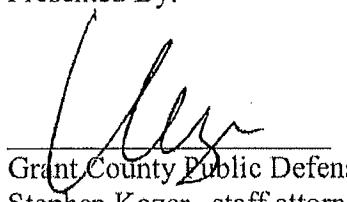
It is Mr. Garoutte's position that on being returned to the jail he should still be on the 60 day time for trial and that this time has elapsed .

Defense counsel would like to note for the Court that if the above computations are correct and that Mr. Garoutte was in custody on April 7, 2014 and not appeared for a new commencement date until April 14, 2014 , that those 7 missing days should be accounted for in computing the time for trial .

Wherefore the Defense respectfully moves for dismissal based on violation of time for trial rule .

Dated : 5-18-14

Presented By:



Grant County Public Defense
Stephen Kozer , staff attorney #14413

IN THE SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, vs. Matthew S. Garoutte, Defendant.	NO. 13-1-00420-1 NOTICE OF APPEAL TO THE COURT OF APPEALS – DIVISION III

Defendant/respondent in the above case does hereby seek review by the Court of Appeals of the State of Washington, Division III from each and every part of the pre trial, trial + Sentence entered herein on 6-10-14, 6-23-14. A copy of the decision is attached to this notice.

DATED this 11 day of June, 2014

/s/

Grant County Public Defense
Stephen Kozer, Staff attorney, WSBA#14413
Attorney for Defendant

Name and Address of Attorney for Plaintiff:
Mr. Edward Owens , Senior Deputy Prosecutor
POB 37
Grant County Prosecutor
Ephrata, Wa. 98823

Name and Address of Defendant:
Matthew S. Garoutte
Grant County Jail
POB 37
Ephrata, Wa. 98823

NOTICE OF APPEAL TO THE COURT
OF APPEALS – DIVISION III

HH

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew Garoutte, Defendant.	Case No.: 13-1-00420-1 Motion for Arrest of Judgment and Stay of Execution of Sentence Pending Appeal

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully submits the following:

BASIS

That the Defendant respectfully moves this Court pursuant to CrR 3.2 (h)- Release After Finding or Plea of Guilty , CrR7.4 (a) (2)- Arrest of Judgment , insufficiency of the proof of a material element of the crime(s) and further moves pursuant to RAP 7.2 (f) – Release of Defendant in Criminal Case , RAP 8.2 (a) Application to Criminal or Juvenile Cases , Release or Stay of Execution of Sentence Not Governed by These Rules and further notes to the Court :

1) That the Defendant was tried after the time for trial rule had expired and that the Defendant had previously objected both orally and in writing to prior continuances.
2) That the Defendant was denied the constitutional right of access to courts when the Defendant had noted for the calendar the motion to dismiss based on violation for the time for trial rule when the Clerk of the Court did not place the matter on the Court's calendar and that the jail staff did not bring the defendant to ;

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(509) 754-6027/Fax: (509)754-6027

3) That the Defendant was denied a fair trial by the Court not replacing the two jurors that one of the witnesses knew and the Court knew on the defense motion to do the same ;

4) That the Defendant was denied a fair trial when 2 of the State's witnesses violated the Court's motion in limine , by first eliciting testimony that the defendant was known to the one witness because he had him on DOC supervision and second by the deputy testifying that he had arrested the defendant 4 months later for possession with intent.

That pursuant to RCW 9.95 .062 (1) Stay of Judgment – When Prohibited – Credit for jail time pending appeal :

That the defendant does not flight in that all of his family and community contacts are here in Grant County. It is true that the Defendant has FTA's but it should be pointed out that this last FTA that was the Bail Jumping charge , the Defendant was late to court arriving at 2:30 pm and court oddly enough had finished for the day .The defendant is not a danger to the community .

The delay resulting from the stay will not unduly diminish the deterrent effect of the punishment

The stay will not cause unreasonable trauma to the victims because there are no victims as one would commonly think of the word , or in a legal sense;

Wherefore the Defendant respectfully moves this Court for an Order Arresting the Judgment and Staying the Execution of the Sentence and to set an appeal bond as the Court deems just and equitable

Dated : 6-9-14

Respectfully Submitted,

Grant County Public Defense

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

NO. 32559-8 III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

RESPONDENT,

V.

MATTHEW SIMON GAROUTTE,

APPELLANT.

STATEMENT OF ADDITIONAL GROUNDS

MATTHEW S. GAROUTTE #340189
COYOTE RIDGE CORR. CENTER
PO BOX 769
CONNELL, WA. 99326

GROUND 1

VIOLATION OF SPEEDY TRIAL

CrR 3.3

MR. GAROUTTE'S RIGHT TO SPEEDY TRIAL UNDER CrR 3.3 WAS VIOLATED BY THE TRIAL COURT AND IN VIOLATION OF WASH. CONST. ART. I SECTION 10.

THE TRIAL COURT IS RESPONSIBLE FOR ASSURING A SPEEDY TRIAL UNDER CrR 3.3. STATE V. CARSON, 128 Wn.2d 805 (1996). THE PURPOSE UNDERLYING CrR 3.3 IS TO PROTECT A DEFENDANT'S CONSTITUTIONAL RIGHT TO SPEEDY TRIAL. STATE V. MACK, 89 Wn.2d 788, 791-92 (1978) ALSO, TO PROVIDE "A PROMPT TRIAL FOR THE DEFENDANT ONCE PROSECUTION IS INITIATED." STATE V. EDWARDS, 94 Wn.2d 208, 216 (1980). IN WASHINGTON, THE "TIME FOR TRIAL" RULES UNDER CrR 3.3... ESTABLISH STANDARD TIME LIMITS AND FINAL START DAYS FOR TRIAL AND REQUIRING DISMISSAL WITH PREJUDICE IF THE SPEEDY TRIAL PERIOD LAPSES WITHOUT A TRIAL. STATE V. SAUNDERS, 153 Wn. App. 209, 216-17 (2009). PAST 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 (1976). COURT RULES, LIKE STATUTES, SHOULD BE CONSTRUED TO FOSTER THE PURPOSE FOR WHICH THEY WERE ENACTED. IN RE MCGLOTHLEN, 99 Wn.2d 515, 522 (1983) WHEN INTERPRETING COURT RULES, THE COURT APPROACHES THE RULES AS THOUGH THEY HAD BEEN DRAFTED BY THE LEGISLATURE. STATE V. MCINTYRE, 92 Wn.2d 620, 622 (1979). INITIALLY, COURTS LOOK TO THE PLAIN LANGUAGE OF THE RULE AND CONSTRUE THE RULE IN ACCORD WITH THE DRAFTING BODY'S INTENT. GOURLEY V. GOURLEY, 158 Wn.2d 460, 466 (2006) IF THE RULE'S MEANING IS UNAMBIGUOUS COURTS NEED LOOK NO FURTHER. SPOKANE COUNTY V. SPECIALTY AUTO & TRUCK PAINTING, INC., 153 Wn.2d 238, 249 (2004)

BECAUSE THE APPLICATION OF A COURT RULE TO A PARTICULAR SET OF FACTS IS A QUESTION OF LAW, THE COURT REVIEWS IT DENOVO. STATE V. SILVA, 127 WN.APP. 148, 154 (2005); STATE V. BOGENHAUSE, 143 WN. APP. 315, 322 (2008)

MR. GARCIOTTE ARGUES THAT THE COURT VIOLATED HIS RIGHT TO SPEEDY TRIAL UNDER THE "TIME FOR TRIAL" RULE OF CrR 3.3 WHEN THE COURT FAILED TO HAVE HIS TRIAL BEFORE THE 60 DAY CLOCK EXPIRED PRIOR TO HIS RELEASE.

ALSO, ABUSED ITS DISCRETION WHEN IT ALLOWED THE STATE TO RELEASE MR. GARCIOTTE ON UNTENABLE GROUNDS TO EXTEND HIS SPEEDY TRIAL CLOCK TO 90 DAYS AFTER IT DENIED THE STATES MOTION TO CONTINUE BECAUSE IT FOUND THAT THE STATES REASON WAS NOT A REASONABLE BASIS FOR A CONTINUANCE.

TIMELINE:

ON July 3, 2013 THE STATE FILED AN INFORMATION IN CAUSE 13-1-00420-1 CHARGING ONE COUNT OF POSSESSION OF METHAMPHETAMINE.

ON AUGUST 16, 2013 MR. GARCIOTTE WAS ARRESTED.

ON AUGUST 20, 2013 MR. GARCIOTTE HAD HIS INITIAL ARRAIGNMENT AND A SCHEDULING ORDER WAS ENTERED: COMMENCEMENT DATE: 8-20-13 OMNIBUS: 10-8-13 READINESS: 11-4-13 TRIAL: 11-6-13 TRIAL DEADLINE: 11-18-13

ON AUGUST 23, 2013 THE COURT ENTERED AN ORDER ESTABLISHING CONDITIONS OF RELEASE

ON JANUARY 18, 2014 MR. GARCIOTTE WAS ARRESTED ON A WARRANT AND FOR A NEW CHARGE OF POSSESSION WITH INTENT.

ON JANUARY 21, 2014 MOTION TO RESET DATES SCHEDULED FOR FOLLOWING WEEK.

ON JANUARY 28, 2014 COURT ENTERED NEW SCHEDULING ORDER: COMMENCEMENT DATE: 1-21-14 OMNIBUS: 2-11-14 READINESS: 3-17-14 TRIAL: ~~MONDAY~~ 3-19-14 TRIAL DEADLINE: 3-24-14

ON FEBRUARY 11, 2014 DEFENSE COUNSEL REQUESTED OMNIBUS BE SET OVER TO FEBRUARY 24, 2014.

ON FEBRUARY 24, 2014 OMNIBUS WAS HAD AND 3.5, 3.6 HEARINGS WERE SET FOR MARCH 5, 2014.

ON MARCH 5, 2014 3.5, 3.6 MOTIONS WERE CONTINUED TO MARCH 12, 2014 BECAUSE STATE'S WITNESSES WERE NOT AVAILABLE. MR. GAROUTTE OBJECTS TO ANY CONTINUANCE.

ON MARCH 12, 2014 3.5 HEARING IS HEARD BY JUDGE RANDELL.

ON MARCH 17, 2014 READINESS HEARING, DEFENSE CALLS MATTER READY FOR TRIAL, OBJECTS TO CONTINUANCE. STATE INFORMED COURT THAT ONE OF THE STATE'S WITNESSES WAS OUT OF THE COUNTRY AND REQUESTED CONTINUANCE TO 24TH. DEFENSE OBJECTS TO CONTINUANCE. COURT DENIES STATES MOTION BECAUSE ITS NOT REASONABLE BASIS FOR CONTINUANCE. STATE THEN REQUEST THAT MR. GAROUTTE BE RELEASED ON OR BOND. TRIAL CONTINUED ONE WEEK TO 26TH ENTERED ORDER EXTENDING OUTSIDE DATE TO APRIL 23RD.

ON MARCH 20, 2014 DEFENSE FILES MEMORIALIZATION OF OBJECTION TO TIME FOR TRIAL.

ON MARCH 24, 2014 READINESS. BOTH PARTIES CALL READY FOR TRIAL. DEFENSE MOVES TO DISMISS FOR GOVERNMENT MISMANAGEMENT. MOTION DENIED.

CrR 3.3 TIME FOR TRIAL RULES ESTABLISH THE FRAMEWORK FOR COURTS TO FOLLOW TO ENSURE A DEFENDANT THATS AWAITING TRIAL IN "JAIL", HAS A TRIAL WITHIN THE ALLOTTED TIME OF 60 DAYS OR THE CHARGES ARE DISMISSED.

CASELAW ALSO DICTATES THAT "THE TRIAL COURT IS RESPONSIBLE FOR ASSURING A SPEEDY TRIAL UNDER CrR 3.3." STATE V. CARLSON, 128 Wn.2d 805 (1996)

MR. GAROUTTE ASKS THIS COURT TO LOOK AT THE PLAIN LANGUAGE OF CrR 3.3 (b)(1)(i)(3)

(b) TIME FOR TRIAL.

(1) DEFENDANT DETAINED IN JAIL. A DEFENDANT WHO IS DETAINED IN JAIL SHALL BE BROUGHT TO TRIAL WITHIN THE LONGER OF

(i) 40 DAYS AFTER THE COMMENCEMENT DATE SPECIFIED IN THIS RULE... (EMPHASIS ADDED)

(3) RELEASE OF DEFENDANT. IF A DEFENDANT IS "RELEASED FROM JAIL" BEFORE THE 40-DAY TIME LIMIT HAS EXPIRED, THE LIMIT SHALL BE EXTENDED TO 90 DAYS.

MR. GARCIATTE ASSERTS THAT HIS TIME FOR TRIAL DATES FROM 1-21-14 COMMENCEMENT DATE TO 3-24-14 TRIAL DEADLINE SURPASSED THE 40 DAY MANDATE OF CrR 3.3(b) BECAUSE HE WAS "DETAINED IN JAIL" AND NEVER "RELEASED FROM JAIL" BEFORE THE 40-DAY TIME LIMIT EXPIRED.

THE TRIAL COURT IN THIS CASE INDICATED THAT IT DENIED THE STATES MOTION TO CONTINUE DO TO IT NOT BEING A REASONABLE BASIS TO CONTINUE. THE COURT THEN INDICATED THAT THE CASE WOULD HAVE TO BE CALLED THAT WEDNESDAY [THE 19TH]. THE COURT ALSO INDICATED IT CANT CONTINUE IT, BECAUSE THERE'S NO TIMELY TRIAL DATE TO CONTINUE IT TO AND THAT IT COULDNT CONSIDER A SETTING A CURE PERIOD BECAUSE IT COULDNT BE DONE UNTIL THE SIXTY DAYS HAS EXPIRED. (RP MOTION HEARING 3-17-14 PG 48-53)

THE TRIAL COURT THEN SUGGESTED FOR THE STATE TO MOVE FOR DISMISSAL OR FOR RELEASE OF MR. GARCIATTE. (Id PG.48) THE COURT FURTHER ACKNOWLEDGED THAT IF BAIL WERE CHANGED TO SIGNATURE BOND, THAT WOULDNT PRODUCE HIS RELEASE BECAUSE HE'S IN CUSTODY ON ANOTHER MATTER. (Id. PG 50-51)

ON MARCH 17, 2014 AN ORDER REDUCING BAIL WAS ENTERED. ON MARCH 31, 2014 AN ORDER WAS ENTERED IN REGARDS TO CONDITIONS OF RELEASE. AN MR. GARCIATTE'S JAIL TIME CERTIFICATION THE JAIL INDICATED AN END DATE FOR CAUSE 13-1-00420-1 OF MARCH 31, 2014 WHICH INDICATED HIS RELEASE FROM JAIL. (SEE JAIL TIME CERTIFICATION)

MR. GARCIATTE CONTENDS THAT "DETAINED IN JAIL" AND "RELEASED FROM JAIL" ARE NOT AMBIGUOUS. THE DEFINITION OF RELEASED IN WEBSTER'S POCKET DICTIONARY

2007 EDITION pg. 238 STATES! RELEASE V. LEASED - LEASING (1.) TO SET FREE; LIBERATE. n. (1) THE ACT OF RELEASING OR STATE OF BEING RELEASED. pg. 71 DETAIN V. (1.) TO KEEP FROM PROCEEDING; DELAY. (2) TO CONFINE.

GARDUITTE ARGUES THAT HE WAS NEVER PHYSICALLY RELEASED FROM JAIL AND WAS PHYSICALLY DETAINED IN JAIL. HIS 60 DAY PERIOD EXPIRED ON MARCH 21, 2014 FROM THE COMMENCEMENT DATE BUT FOR ARGUMENT; SHOULD THE COURT NOT AGREE WITH GARDUITTE'S APPLICATION HE STILL WASNT RELEASED TILL MARCH 31, 2014 WHICH PUT HIM 10 DAYS PAST HIS 60 DAY TIMELINE THAT ULTIMATELY DIDN'T ALLOW THE EXTENTION TO A 90 DAY TIME-LINE. THIS, IN TURN VIOLATED THE CrR 3.3 RULE REQUIRING DISMISSAL.

IN STATE V. MUNOZ, THE COURT THE TRIAL COURT ALLOWED THE PROSECUTOR TO RELEASE MR. MUNOZ ON HIS OWN RECOGNIZANCE TO EXTEND THE SPEEDY TRIAL CLOCK DUE TO A KEY STATE WITNESS HAVING TO LEAVE. THE COURT WENT ON TO STATE:

> "WHEN A JUDGE RELEASES A DEFENDANT FROM CUSTODY, THE 90 DAY LIMIT BECOMES EFFECTIVE IRRESPECTIVE OF WHETHER HE IS RELEASED FROM CUSTODY ON THE 60TH DAY OR 60TH DAY... THERE IS NO VIOLATION OF CrR 3.3 SO LONG AS THE TRIAL IS WITHIN 90 DAYS OF ARRAIGNMENT WITH NO MORE THAN 60 OF THOSE DAYS IN CUSTODY." (EMPHASIS ADDED)

MUNOZ, 60 Wn. App. 921 (1991)

ALSO, MR. GARDUITTE ARGUES THAT THE COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE STATE TO RELEASE HIM TO EXTEND THE SPEEDY TRIAL CLOCK AFTER IT DENIED THE STATES MOTION FOR CONTINUANCE BASING ITS DECISION ON UNTENABLE GROUNDS AND REASONS.

AN APPELLATE COURT WILL NOT DISTURB THE TRIAL COURT'S DECISION UNLESS THE APPELLANT MAKES A CLEAR SHOWING THAT THE TRIAL COURT'S DECISION IS MANIFESTLY UNREASONABLE, OR EXERCISED ON UNTENABLE

GROUNDS, OR FOR UNTENABLE REASONS. STATE EX REL. CARROLL V. JUNKER, 79 WN 2d 12, 26 (1971); STATE V. ROHRICH, 149 WN. 2d 647, 654 (2003)

HERE, THE TRIAL COURT DENIED THE STATES MOTION TO CONTINUE AND ACKNOWLEDGED THE IMPORTANCE OF A TIMELY TRIAL AND THAT MR. GARRITTE'S SPEEDY TRIAL CLOCK WAS ALMOST UP. KNOWING THIS, THE COURT IMPROPERLY SUGGESTED THAT THE STATE MOVE FOR DISMISSAL OR RELEASE OF THE DEFENDANT WHICH CONTRVENES ITS PRIOR DECISION TO DENY THE STATES MOTION TO CONTINUE. IT WAS THE TRIAL COURTS DUTY TO ENSURE A SPEEDY TRIAL UNDER CrR 3.3.

MR. GARRITTE ALSO OBJECTED TO ANY CONTINUANCES AND MADE CLEAR TO THE COURT THAT HE INTENDED TO EXERCISE HIS SPEEDY TRIAL RIGHTS. HE ALSO ARGUES THAT THERE WAS NO GOOD CAUSE TO CONTINUE GIVEN BY THE COURT ON MARCH 17, 2014, WHICH IS REQUIRED BY RULE BEFORE A CONTINUANCE CAN BE GRANTED.

WASH. CONST. ART. I SECTION 10 STATES:

"JUSTICE IN ALL CASES SHALL BE ADMINISTERED OPENLY, AND WITHOUT UNNECESSARY DELAY." (EMPHASIS ADDED)

MR. GARRITTE'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE COURT CREATED AN UNNECESSARY DELAY BY ALLOWING AND IMPROPERLY SUGGESTING TO THE STATE, TO EITHER DISMISS OR RELEASE THE DEFENDANT TO CIRCUMVENT THE SPEEDY TRIAL CLOCK CREATING FURTHER DELAY. TO ALLOW THAT WOULD DEMEAN THE PURPOSE OF THE CRIMINAL RULES AND NOT BE CONSISTANT WITH OUR WASH. CONSTITUTIONAL RIGHT OF ART. I SECTION 10.

BECAUSE THE COURT VIOLATED CrR 3.3 AND ART. I SECTION 10 OF THE WASH. CONST. DISMISSAL IS REQUIRED.

GROUND 2

INSUFFICIENT INFORMATION

BAIL JUMPING 9A.76.170(3)(c)

MR. GAROUTTE'S INFORMATION IS INSUFFICIENT ON HIS BAIL JUMPING CHARGE BECAUSE IT DOESN'T CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE CRIME, VIOLATING HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO THE U.S. CONSTITUTION AND WASH. CONST. ART I SECTION 3 AND 22.

AN INFORMATION MUST CONTAIN ALL ESSENTIAL ELEMENTS OF A CRIME. STATE V. GREEN, 101 WN. APP. 885 (2000). THE RATIONALE BEHIND INCLUDING "ESSENTIAL ELEMENTS" RATHER THAN ONLY "STATUTORY ELEMENTS" IS TO GIVE THE ACCUSED PROPER NOTICE OF THE NATURE OF THE CRIME SO THAT THE ACCUSED CAN PREPARE AN ADEQUATE DEFENSE. STATE V. KJORSVIK, 117 WN. 2d 93, 101 (1991). WHEN SUFFICIENCY OF INFORMATION IS NOT CHALLENGED UNTIL AFTER CONVICTION, THE INFORMATION IS LIBERALLY CONSTRUED IN FAVOR OF ITS VALIDITY. KJORSVIK, 117 WN. 2d AT 103. AN INFORMATION WILL BE UPHELD ON APPEAL UNDER THE LIBERAL CONSTRUCTION RULE, IF AN APPARENTLY MISSING ELEMENT MAY BE FAIRLY IMPLIED FROM THE LANGUAGE OF THE CHARGING DOCUMENT. KJORSVIK, 117 WN. 2d AT 104. NEVERTHELESS, A LIBERAL READING CANNOT CURE AN INFORMATION THAT CANNOT BE CONSTRUED TO GIVE NOTICE OF OR TO CONTAIN IN SOME MANNER THE ESSENTIAL ELEMENTS OF A CRIME. STATE V. CAMPBELL, 125 WN. 2d 797, 802 (1995) UNDER WASHINGTON LAW, TO BE CONVICTED OF BAIL JUMPING, THE DEFENDANT MUST BE CHARGED WITH 'A PARTICULAR UNDERLYING CRIME.' STATE V. ADAE, 100 WN. APP. 624, 627 (2000) COURTS REVIEW A CHALLENGE TO THE SUFFICIENCY OF THE CHARGING DOCUMENT DE NOVO. STATE V. CAMPBELL, 125 WN. 2d 797, 801 (1995)

MR. GARCIA ARGUES THAT THE AMENDED INFORMATION FILED ON JANUARY 28, 2014 IS INSUFFICIENT BECAUSE IT DOES NOT CONTAIN ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING, VIOLATING HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION AND WASH. CONST. ART. I SECTION 3 AND 22.

IN EVERY PROSECUTION, THE DEFENDANT MUST BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION. U.S. CONST. AMEND. VI; WASH. CONST. ART. I SECTION 22. THE INFORMATION SHALL BE PLAIN, CONCISE AND DEFINITE WRITTEN STATEMENT OF THE ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED. CrR 2.1 (a)(1) IT MUST ALLEGE FACTS SUPPORTING EVERY STATUTORY ELEMENT OF THE CRIME. STATE V. KJORSVIK, 117 WN. 2d 93, 101 (1991)

BAIL JUMPING IS DEFINED IN RCW 9A.76.170. THE ELEMENTS OF BAIL JUMPING ARE MET IF THE DEFENDANT: (1) WAS HELD FOR, CHARGED WITH, OR CONVICTED OF A PARTICULAR CRIME; (2) WAS RELEASED BY COURT ORDER OR ADMITTED TO BAIL WITH THE REQUIREMENT OF A SUBSEQUENT PERSONAL APPEARANCE; AND (3) KNOWINGLY FAILED TO APPEAR AS REQUIRED. STATE V. POPE, 100 WN APP. 624, 627 (2000)

HERE, THE AMENDED INFORMATION IN COUNT 2 STATED:

> "ON OR ABOUT THE 5TH DAY OF OCTOBER, 2013, IN THE STATE OF WASHINGTON, THE ABOVE-NAMED DEFENDANT, HAVING BEEN RELEASED BY COURT ORDER OR ADMITTED TO BAIL WITH KNOWLEDGE OF THE REQUIREMENT OF A SUBSEQUENT PERSONAL APPEARANCE BEFORE A COURT OF THIS STATE OR OF THE REQUIRMENT TO REPORT TO A CORRECTIONAL FACILITY FOR SERVICE OF SENTENCE, DID FAIL TO APPEAR OR DID FAIL TO SURRENDER FOR SERVICE OF SENTENCE IN WHICH A CLASS B OR C FELONY HAS BEEN FILED, TO WIT: GRANT COUNTY SUPERIOR COURT CAUSE NO. 13-1-00420-1; CONTRARY TO REVISED CODE OF WASHINGTON 9A.76.170."

MR. GARGUITTE CONTENDS THAT THE AMENDED INFORMATION IS CONSTITUTIONALLY INSUFFICIENT BECAUSE IT FAILED TO IDENTIFY WHAT "PARTICULAR UNDERLYING CRIME" HE WAS CHARGED WITH BUT INSTEAD ONLY ALLEGED A GRANT COUNTY SUPERIOR COURT CAUSE NUMBER. (SEE INFORMATION FILED JAN. 28, 2014)

IN City of AUBURN V. BROOKE, THE SUPREME COURT HELD THAT A CITATION THAT CHARGED ONLY BY REFERRING TO THE NUMBER OF A CITY ORDINANCE DID NOT SATISFY DUE PROCESS. RELYING UPON KJORSVIK, THE COURT REITERATED "[W]E HAVE REPEATEDLY SAID THAT DEFENDANTS SHOULD NOT HAVE TO SEARCH FOR THE RULES OR REGULATIONS THEY ARE ACCUSED OF VIOLATING." BROOKE, 119 Wn.2d AT 635 (1992) (EMPHASIS ADDED)

IN STATE V. GREEN THE COURT OF APPEALS HELD THAT THE INFORMATION IN THAT CASE WAS INSUFFICIENT BECAUSE THE BAIL JUMPING COUNT IN THAT CASE CHARGED ONLY A CAUSE NUMBER RATHER THAN NAME THE PARTICULAR CRIME. GREEN, 101 Wn. App 585, 588 (2000).

THE NECESSARY FACTS DO NOT APPEAR IN ANY FORM NOR BY FAIR CONSTRUCTION CAN THEY BE FOUND IN THE CHARGING DOCUMENT. BECAUSE OF THIS, THIS COURT NEED NOT REACH THE ISSUE OF WHETHER MR. GARGUITTE WAS ACTUALLY PREJUDICED. AS IN GREEN, GARGUITTE IS ENTITLED TO RELIEF BECAUSE OF THE STATE'S FAILURE TO PLACE ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING IN THE INFORMATION WHICH OMITTED THE "PARTICULAR UNDERLYING CRIME" THAT RESULTED FROM THE BAIL JUMPING CHARGE.

BECAUSE GARGUITTE'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE NATURE OF THE CHARGE WAS VIOLATED, AND HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION WAS VIOLATED UNDER BOTH CONSTITUTIONS, REMAND IS REQUIRED TO DISMISS COUNT 2; BAIL JUMPING.

CONCLUSION

FOR THE REASONS STATED ABOVE, THIS COURT SHOULD ENTER AN ORDER DISMISSING BOTH COUNTS IN CAUSE IS 1-00420-1 FOR VIOLATION OF SPEEDY TRIAL CrR 3.3 AND WASH CONST. ART. 1 SECTION 10 AND DISMISS COUNT 2 BAIL JUMPING FOR INSUFFICIENT INFORMATION.

DATE: 2-6-15

MATTHEW SIMON GARDUITE

CERTIFICATE OF SERVICE

I CERTIFY THAT ON THIS DATE, PURSUANT TO G.R 3.1, THAT I MAILED THE FOLLOWING DOCUMENTS, TO WHICH IS AFFIXED, BY U.S. MAIL POSTAGE PRE PAID TO:

RENEE S. TOWNSLEY
COURT OF APPEALS CLERK DIV III
500 N. CEDAR ST
SPOKANE, WA. 99201

DATED THIS 4TH DAY OF FEBRUARY 2015 AT COWLEL, WA.

MATTHEW SIMON GARGATTI

APPELLANTS SAC

APPENDIX

JAIL TIME CERTIFICATE

13-1-00420-1

Memorialization of Defense Objection
on March 17, 2014

13-1-0-00420-1

Amended Information
on Jan 28 2014

Grant County SHERIFF

Tom Jones, Sheriff

JAIL TIME CERTIFICATION

The following information is provided for the purpose of crediting time spent in confinement per RCW 9.92.151 prior to the transfer of the below listed subject:

NAME Garoutte, Matthew	DATE OF BIRTH 3-25-84
CAUSE#: 13-1-420-1	SID# WA17684076

Listed are all dates of arrest and release concerning the above subject up to the Date of Transfer.

START DATE	END DATE	TOTAL DAYS SERVED
8-17-13	8-21-13	4
1-30-14	3-31-14	60
4-10-14	6-26-14	77
	TOTAL DAYS SERVED	141

36 **Early Release Credits Lost or Not Earned**

NOTES: Held from 4-7 to 4-10-14 on DOC Confinement

Jason Prince
Signature of Jail Official

6-26-14
Date

SUPERIOR COURT FOR THE STATE OF WASHINGTON COUNTY OF GRANT

STATE OF WASHINGTON, Plaintiff, vs. Matthew Garoutte , Defendant.	) Case No.: 13-1-00420-1) Memorialization of Defense Objection on March 17, 2014) Re : Denial of Time for Trial

COMES NOW the defendant by and through their attorney the Grant County Public Defense , Stephen Kozer, staff attorney , and respectfully memorializes the Defense Oral Objection on March 17, 2014 and / or the Defendant's Pro Se Oral Objection to the State and / or the Court allowing the State to release the In Custody defendant , so as to extend or otherwise push into the future the Defendant's time for trial deadline .

Background

The State had originally filed a Possession of Methamphetamine charged against the Defendant . The Defendant had missed a court hearing and a warrant for the Defendant's arrest was issued by the Court .

The Defendant was arrested on the warrant on or about January 28, 2014 and the State moved to amend the Information to include Bail Jumping on or about that date.

That the case as amended, was set for was set for Trial Readiness Hearing of March 17, 2014 , Trial on March 19, 2014 , and an outside or end of time for trial period of March 24, 2014.

Grant County Public Defense
PO Box 37/238 W. Division St.
Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

On or about January 28, 2014 the State also argued for and had bail set on this case. The Defendant is without financial means to post bail.

The Defendant was also being held on a new charge of Possession with Intent to Deliver under another cause # in Grant County.

On March 13, 2014 the State finally provided after approximately 40 days discovery on the Bail Jumping case . The State also provided 3 amended witness lists on the above entitled case.

That the Defense worked all day Sunday March 16, 2014 to prepare for the new charge of Bail Jumping .

On March 17, 2014 the Defense called the case "ready for trial " (aside from the eye doctor appointment) . The State made some excuse about readiness for trial . That the Judge ruled that the case was going out to trial on March 19, 2014 .

On March 17, 2014 after the Defendant was taken down into the jail the State informed the Defense that (and this was new) the State key witness Officer Harvey would be out of country , the State's representative stating he just learned of this . **(Ironically the Officer had just testified in a 3.6 Hearing with the defense and the same State's representative the Wednesday before and made no mention of himself being out of country" on another case involving the defendant) .**

On March 17, 2014 , the State had the Defendant brought back up from the jail and had the case recalled before the Court . The State explained to the Court that it's witness would be out of country and just learned of this . It is unclear if the Court or the State suggested that the Defendant be released on the charge , but it was suggested and not by the defense . It was Objected to . the Defendant was released on the charge and the case was continued for trial .

TIME FOR TRIAL RULE

That the above procedure of releasing the defendant 1 week before the time for trial rule expired , was done to thwart the defendant's right to a timely trial while incarcerated. It is the "spirit " of the rule to have both sides prepared for trial in a timely manner or otherwise extend to the court the courtesy of a "heads up" that a continuance is needed.

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The State was not prepared for trial . The State waited almost 40 days to give the Defense the discovery (most of which was located in the courthouse) on the Bail Jumping charge, most likely in the hopes (and we have seen from past practice of making it necessary for the defense to request a continuance . The defense was ready for trial having worked on the case a good part of the weekend . The defense was not asking for a continuance. The State had not asked for a continuance. It had been suggested the defendant be released on the charge.

The State had originally asked for bond when it suited there purposes and the State's purpose was to keep the defendant incarcerated , especially after the State had amended the Information to add the Bail Jumping charge. Now with the State not prepared for trial (it seems plausible that the State anticipated a defense motion for continuance after dumping all of the discovery on the Bail Jumping charge on the Defense March 13, 2014 , for a "Readiness" calendar March 17, 2014) , the State requested no bond in the matter. (The State also knowing full well that the defendant was held on another case number and thus would not be released.)

The State doing so only to not have the case dismissed for time of trial rule violation. This was not the intent of the rule .

Conclusion

The defendant position is that the case should have been dismissed . Thwarting to the time for trial rule when the State is not prepared within the 60 days as required of the defendant is not the "administration of justice"

Dated : 3-19-14

Respectfully Submitted,

Grant County Public Defense
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Ephrata, WA 98823
(509) 754-6027/Fax: (509)754-6027

3-14-14

Grant County Public Defense
Stephen J. Kozer #14413
Attorney for Defendant

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SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON, Plaintiff, vs. **MATTHEW SIMON GAROUTTE,** EPD, 13EP1267 Defendant.	No. 13-1-00420-1 AMENDED INFORMATION

D. ANGUS LEE, Prosecuting Attorney for Grant County, State of Washington, by this Amended Information accuses:

MATTHEW SIMON GAROUTTE

of the crime(s) of

Count 1: Possession of Methamphetamine, 69.50.4013
Count 2: Bail Jumping (From Class B or C Felony), 9A.76.170(3)(c)

committed as follows:

COUNT 1: Possession of a Controlled Substance [Methamphetamine]

On or about the 3rd day of April, 2013, in the State of Washington, the above-named Defendant did possess a controlled substance, to-wit: Methamphetamine, including its salts, isomers, and salts of isomers; contrary to the Revised Code of Washington 69.50.4013 and 69.50.206(d)(2).
(MAXIMUM PENALTY--Five (5) years imprisonment and/or a fine of not less than $1,000 nor more than $10,000 fine pursuant to RCW 69.50.4013(2) and RCW 69.50.430, plus restitution and assessments.)

(If the Defendant has a second or subsequent conviction under RCW 69.50.401, .4011, .4012, .4013, .4015, .402, .403, .406, .407, .410, or .415, the minimum fine shall be $2,000 pursuant to RCW 69.50.430.)

JIS Code: 69.50.4013 Cont Subs No Prescription-Felony

COUNT 2: Bail Jumping

On or about the 8th day of October, 2013, in the State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Grant County Superior Court Cause No. 13-1-00420-1; contrary to Revised Code of Washington 9A.76.170.
(MAXIMUM PENALTY (Failure to appear in Class B or Class C felony case)–Five (5) years imprisonment and/or a $10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9A.76.170.3C Bail Jump B or C Felony

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Ephrata, Washington, _____

_____
Edward A. Owens, WSBA #29387
Chief Deputy Prosecuting Attorney

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

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January 26, 2016

E-mail
Garth Louis Dano
Edward Asa Owens
Grant County Prosecutor's Office
PO Box 37
Ephrata, WA 98823-0037

E-mail
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Nichols Law Firm, PLLC
PO Box 19203
Spokane, WA 99219-9203

CASE # 325598
State of Washington v. Matthew Simon Garoutte
GRANT COUNTY SUPERIOR COURT No. 131004201

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:jab
Enc.

c: **E-mail**—Hon. John D. Knodell

c: Matthew Simon Garoutte
#840189
P.O. Box 769
Connell, WA 99326

FILED
JANUARY 26, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	
	)	No. 32559-8-III
Respondent,	)	
	)	
v.	)	
	)	
MATTHEW S. GAROUTTE,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

SIDDOWAY, C.J. — Matthew Garoutte was convicted of possession of a controlled substance (methamphetamine) and bail jumping following a unitary trial in which he waived jury trial on the possession of a controlled substance count and tried only the bail jumping count to the jury.

He appeals his conviction for bail jumping, contending (1) his right to an impartial jury was violated when issues of alleged bias on the part of two jurors arose after voir dire and the court denied both a motion for mistrial and a request to substitute alternate jurors, and (2) irrelevant and unduly prejudicial evidence of his arrest for the bail

jumping charge was admitted in error. In a pro se statement of additional grounds, he complains of a violation of his right to a speedy trial and that the amended information omitted an essential element of bail jumping. We find no error or abuse of discretion and affirm.

FACTS AND PROCEDURAL BACKGROUND

Matthew Garoutte was arrested on April 3, 2013, on an outstanding Department of Corrections warrant. At the time of his arrest, Mr. Garoutte was sitting in a friend's pickup truck. A backpack was in the bed of the truck.

After Mr. Garoutte's arrest, the owner of the pickup truck contacted police and told them the backpack did not belong to him. Officers logged the backpack into evidence and inventoried its contents, which were found to include a glass smoking pipe containing residue that proved to be methamphetamine.

A few days later, Mr. Garoutte traveled to the police department to retrieve the backpack, which he claimed belonged to him. The police returned everything but the pipe. In light of Mr. Garoutte's self-proclaimed ownership of the backpack, the State charged him with one count of possession of a controlled substance (methamphetamine).

On August 20, 2013, Mr. Garoutte was arraigned and the court set release conditions and scheduled the omnibus hearing in his case for October 8. Mr. Garoutte failed to appear for the omnibus hearing. A bench warrant was issued, and the State

amended the information to add a count of bail jumping. A Grant County deputy sheriff arrested Mr. Garoutte on January 18, 2014, on a failure to appear warrant.

Mr. Garoutte waived a jury trial on the possession of a controlled substance count but not on the bail jumping count. The case proceeded to a unitary jury trial where evidence was presented on both counts. The court informed the jury it was to consider only the bail jumping count.

After voir dire, and during the parties' exercise of their peremptory challenges, the trial judge told the lawyers that juror 9 lived across the street from him. Juror 9 was not stricken by either party.

After jury selection was completed, Mr. Garoutte moved for a mistrial based on the disclosed relationship between juror 9 and the trial judge, arguing that he had been denied effective assistance of counsel because he had been unable to explore the relationship in voir dire. In denying the motion, the judge elaborated a bit more on his relationship with juror 9, stating that he and juror 9 and their respective daughters had been friends for many years, but emphasizing that he and juror 9 had never discussed Mr. Garoutte's case. He also stated, "I don't know of any reason why my acquaintance with [juror 9] would disqualify him, and I don't know of any reason why counsel could not, frankly, ask the entire panel whether they knew me or were acquainted with me." Report of Proceedings (RP) at 61.

On the morning after the jury was selected, Mr. Garoutte's lawyer reiterated his concern about juror 9 and suggested that the trial court replace juror 9 with one of the alternate jurors. The trial court responded that it would take the suggestion under advisement.

The court then informed the lawyers that, on a related note, the county's deputy clerk, Marla Webb, who the State planned to call as a witness on the bail jumping charge, had informed the court that morning that she and juror 8, who had also been seated on the jury, were next-door neighbors. Although prospective jurors had been read the names of witnesses including Ms. Webb, juror 8 had not disclosed that she knew Ms. Webb. The trial court told the parties, "[W]e don't need to take care of that now. But I'll let you stew on that a little bit. We'll talk about that later." RP at 71.

The State called Ms. Webb to testify in its case-in-chief. She testified that Mr. Garoutte was present in court on August 20, 2013, the day on which the October 8 omnibus hearing was scheduled. It called Douglas Mitchell, a former Grant County deputy prosecutor who handled Mr. Garoutte's arraignment on August 20. He testified that Mr. Garoutte was present in court that day and that the court had read aloud the release conditions included in its August 20 order. The State also called Deputy Jacob Fisher, who had arrested Mr. Garoutte in January 2014 on the failure to appear warrant. Over Mr. Garoutte's objection that the testimony was irrelevant and prejudicial, the State elicited the deputy's testimony about the fact and the timing of that arrest.

The State offered and the court admitted certified copies of the criminal minute sheet from August 20, 2013, indicating the omnibus hearing was set for October 8, 2013; a criminal case scheduling order requiring Mr. Garoutte to be in court on October 8, 2013; an order setting conditions for release, unsigned by Mr. Garoutte, requiring Mr. Garoutte to appear in court on October 8, 2013; and a bench warrant commanding Mr. Garoutte's arrest.

Before jury deliberations, Mr. Garoutte renewed his request that the trial court replace juror 9 with an alternate juror and added a request that juror 8 be replaced with an alternate juror as well. The trial court offered to question juror 8 regarding her relationship with Ms. Webb, but Mr. Garoutte declined the offer. The court then refused the request for substitution, stating, "I don't think there's a legal basis in either case at this point to substitute the jurors in." RP at 273.

The trial court found Mr. Garoutte guilty of possession of a controlled substance (methamphetamine) and the jury found Mr. Garoutte guilty of bail jumping. Mr. Garoutte appeals.[1]

[1] Among Mr. Garoutte's assignments of error in his opening brief was the trial court's failure to enter findings of fact and conclusions of law on the possession of a controlled substance count. Before scheduling the appeal for hearing, this court directed the State to procure the entry of written findings of fact and conclusions of law and supplement the clerk's papers, which was done.

ANALYSIS

I. Impartial jury

Mr. Garoutte's first assignment of error is to the trial court's denial of both his motion for a mistrial and his subsequent request that the court replace juror 8 and juror 9 with alternate jurors before submitting the case to the jury for deliberation. Mr. Garoutte contends that the relationships of juror 8 and juror 9 to individuals involved in the trial indicate "bias" that he was unable to explore. Br. of Appellant at 11.

Both the United States and Washington State Constitutions provide a right to trial by an impartial jury, which "requires a trial by an unbiased and unprejudiced jury, free of disqualifying jury misconduct." *State v. Boiko*, 138 Wn. App. 256, 260, 156 P.3d 934 (2007); U.S. CONST. amend. VI; CONST. art. I, § 21. RCW 2.36.110 provides:

> It shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

CrR 6.5 states, "If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged." RCW 2.36.110 and CrR 6.5 impose on the trial court a continuing obligation to excuse any juror who is unfit to serve on the jury. *State v. Jorden*, 103 Wn. App. 221, 227, 11 P.3d 866 (2000).

A juror must be excused for either actual or implied bias. *Kuhn v. Schnall*, 155 Wn. App. 560, 574, 228 P.3d 828 (2010). Actual bias requires "the existence of a state of

mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2). Implied bias requires "'the existence of the facts [that] in judgment of law disqualifies the juror.'" *Kuhn*, 155 Wn. App. at 574 (alteration in original) (quoting RCW 4.44.170(1)). RCW 4.44.180 provides four bases for a challenge for implied bias: consanguinity to a party, certain relationships to a party such as landlord and tenant, having served as a juror in a case with substantially the same facts, and interest in the event of the action or the principal question.

When Mr. Garoutte moved the trial court for a mistrial on account of its relationship with juror 9, the court and the lawyers discussed the fact that the court's disclosure of the relationship had been made while the parties were exercising their peremptory challenges. The record does not indicate precisely *when* in the course of that process the disclosure was made. "A party accepting a juror without exercising its available challenges cannot later challenge that juror's inclusion." *State v. Reid*, 40 Wn. App. 319, 322, 698 P.2d 588 (1985) (citing *State v. Jahns*, 61 Wash. 636, 112 P. 747 (1911). If the disclosure was made when Mr. Garoutte had not exhausted his peremptory challenges, he should not be heard to complain at all about juror 9's service. Not knowing whether that was the case, we analyze his challenge to juror 9 further.

None of the four statutory bases for implied bias exist in the case of juror 8 or juror 9. Turning to Mr. Garoutte's charge of actual bias on the part of the jurors, a party challenging a juror for actual bias must show such bias by a preponderance of the evidence. *Ottis v. Stevenson-Carson Sch. Dist. No. 303*, 61 Wn. App. 747, 754, 812 P.2d 133 (1991). To show bias, the party "'must show more than a mere possibility that the juror was prejudiced.'" *State v. Noltie*, 116 Wn.2d 831, 840, 809 P.2d 190 (1991) (emphasis omitted) (quoting 14 LEWIS H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: TRIAL PRACTICE CIVIL § 202 (4th ed. 1986)).

Mr. Garoutte does not point to any evidence of actual bias on the part of the two jurors. He merely speculates that, because juror 8 lived next door to Ms. Webb, the juror was biased. *See State v. Tingdale*, 117 Wn.2d 595, 601, 817 P.2d 850 (1991) ("A juror's acquaintance with a party, by itself, is not grounds for a challenge for cause."). The same is true with juror 9. Mr. Garoutte's real complaint appears to be his view that he was deprived of an opportunity to explore the possibility of bias through voir dire. A trial court's abuse of its discretion over the scope and content of voir dire that substantially prejudices the rights of an accused implicates the constitutional right to fair trial and can be addressed on appeal. *State v. Davis*, 141 Wn.2d 798, 826, 10 P.3d 977 (2000).

Here, however, the trial court is not accused of limiting the scope and content of voir dire. As the trial court noted, if the defense thought that a prospective juror's acquaintance with the trial judge could give rise to bias, it could have explored that

during voir dire. But ordinarily, a juror's acquaintance with the judge should not cut in favor of one party or the other. As the State points out, a trial judge is not a party to the case, does not provide testimony, strives for neutrality, and even instructs the jury, as the trial court did here:

> Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

RP at 277.

Appellate courts review a trial court's decision whether to remove a juror for an abuse of discretion. *State v. Elmore*, 155 Wn.2d 758, 768, 123 P.3d 72 (2005). Because no bias is demonstrated, the trial court did not abuse its discretion. Since a motion for a mistrial should be granted "only when the defendant has been so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly," Mr. Garoutte's motion for mistrial was properly denied as well. *State v. Lewis*, 130 Wn.2d 700, 707, 927 P.2d 235 (1996) (noting a trial court is in the best position to discern prejudice).

The trial court was also in no way responsible for the delayed revelation that juror 8 was a neighbor of Ms. Webb. In the case of juror 8, not only was Mr. Garoutte free to explore potential jurors' relationships with witnesses, but jurors were actually provided with Ms. Webb's name and asked to indicate if they knew her—juror 8 either didn't

know Ms. Webb, didn't know her by name, or misled the court as well as the lawyers. Misconduct can arise where a juror fails to speak during voir dire regarding a material fact. *Kuhn*, 155 Wn. App. at 573. But to complain of juror misconduct, "a party must show the juror failed to answer honestly where a correct response would have provided a valid basis for a challenge for cause." *Id.* Mr. Garoutte does not allege misconduct nor show that a correct response would have supported a challenge for cause. In any event, the trial court afforded Mr. Garoutte the opportunity to examine juror 8 and he declined. Any challenge was waived. *See State v. Clark*, 34 Wash. 485, 492, 76 P. 98 (1904) (finding no error where the appellant had the opportunity to examine jurors but failed or refused to do so).

II. Evidentiary error

Mr. Garoutte next argues that the trial court erred in admitting evidence of Mr. Garoutte's January 18, 2014 arrest. He contends the evidence was irrelevant and that any limited relevance it might have had was outweighed by its unduly prejudicial character. He argues that admission of the evidence was not harmless because the evidence that Mr. Garoutte was aware of his obligation to appear at an omnibus hearing on October 8 was not strong, since his signature did not appear on the August 20 order setting conditions for release.

Appellate courts review a trial court's decision regarding evidence admissibility for an abuse of discretion. *State v. Aguilar*, 153 Wn. App. 265, 273, 223 P.3d 1158

(2009). Only relevant evidence is admissible at trial. ER 402. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. "The threshold to admit relevant evidence is very low[;] [e]ven minimally relevant evidence is admissible." *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." ER 403.

To prove the crime of bail jumping, the State had to prove that Mr. Garoutte had knowledge of the requirement that he appear at the omnibus hearing on October 8 and failed to appear as required. RCW 9A.76.170(1).

The relevance of Mr. Garoutte's arrest in January 2014 advanced by the State was that Mr. Garoutte's last appearance on the possession of a controlled substance charge had been on August 20—five months earlier—and a reasonable person charged with such a crime would have realized well before January 18 that he must have missed a court appearance. As the trial court noted:

> Well, it seems to me if he's gone for four months and he makes no attempt to get back in front of the court, which I think is a rational inference from what happened here, I think that supports the notion that his failure to appear back before the court is not simply because he didn't know what date, because a reasonable person under the circumstances would have made some inquiry within four months, and after the trial date passes, I think that supports that notion.

RP at 236. We agree with the State and the trial court that the evidence was relevant.

Mr. Garoutte also argues that any relevance of the arrest was outweighed by unfair prejudice, but without identifying the unfair prejudice. The event occurring during the arrest that principally concerned Mr. Garoutte in objecting was that he gave police a false name at the time of his arrest—evidence that *was* excluded by the trial court. Given the charge of bail jumping, evidence that a warrant issued and that Mr. Garoutte was arrested is unsurprising and is not unduly prejudicial. And given that the August 20 order setting conditions of release was unsigned by Mr. Garoutte, the probative value of evidence that the State arrested him to obtain his seriously belated appearance on the controlled substance charge outweighed whatever small stigma might be associated with arrest.

STATEMENT OF ADDITIONAL GROUNDS

In a pro se statement of additional grounds (SAG), Mr. Garoutte raises two. He argues that his right to a speedy trial under CrR 3.3 and the Washington Constitution was violated where the 60-day speedy trial period expired on March 21, 2014, without trial. He argues that while the trial court allowed the State to release him in order to extend his speedy trial period, it did so too late, and alternatively abused its discretion in doing so because there was no good cause to continue the trial.

He also argues that the information filed on the bail jumping charge is insufficient where it identifies only the cause number of the case in which he had failed to appear without identifying the crime charged in that criminal case. We address the issues in turn.

Speedy trial. The Sixth Amendment of the United States Constitution and article I, section 22 of the Washington State Constitution guarantee a defendant the right to a speedy trial. *State v. Saunders*, 153 Wn. App. 209, 216, 220 P.3d 1238 (2009). But CrR 3.3(b)(1)(i)'s requirement of trial within 60 days when the defendant is in custody "'is not a constitutional mandate.'" *Id.* at 216-17 (quoting *State v. Carson*, 128 Wn.2d 805, 821, 912 P.2d 1016 (1996)). Pretrial release decisions are reviewed for an abuse of discretion. *State v. Johnson*, 105 Wn.2d 92, 96, 711 P.2d 1017 (1986).

We are unable to address Mr. Garoutte's contention that he was in custody for longer than 60 days without trial because the record on appeal does not contain any of the records necessary to evaluate a speedy trial issue. Mr. Garoutte attached a jail time certification to his SAG, but under RAP 10.3(a)(8) this court does not review appendix material not contained in the record. The appropriate means of raising matters requiring evidence not included in the record on appeal is through the filing of a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Turning to Mr. Garoutte's complaint about his release, *State v. Kelly*, 60 Wn. App. 921, 925, 808 P.2d 1150 (1991) addressed the issue being raised by Mr. Garoutte: "whether the trial court may release an in-custody defendant before the expiration of the 60-day speedy trial period in order to extend the time during which trial must be held." The *Kelly* court held (1) a release from custody properly extends the time for trial and (2) a judge can consider such circumstances as the trial calendar and the availability of

witnesses when deciding pretrial release. *Id.* at 926, 928. Given the decision in *Kelly*, the trial judge did not abuse his discretion by releasing Mr. Garoutte to extend the time for trial.

Insufficient information. "An information must contain [a]ll essential elements of a crime." *State v. Green*, 101 Wn. App. 885, 889, 6 P.3d 53 (2000) (alteration in original) (internal quotation marks omitted) (quoting *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d (1991)). In bail jumping, the underlying offense is an essential element of the crime. *Id.*

When a charging document is challenged for the first time on appeal, as is the case here, it must be construed liberally; we need only determine if the necessary facts appear in any form in the charging document. *State v. Williams*, 162 Wn.2d 177, 185, 170 P.3d 30 (2007). In this case, the State's amended information, filed in Grant County Superior Court Cause No. 13-1-00420-1, charged the underlying crime, possession of methamphetamine, as count one. It charged bail jumping as count two, stating that the charge was based on his "fail[ure] to appear . . . in which a Class B or Class C felony has been filed, to-wit: Grant County Superior Court [c]ause [n]o. 13-1-00420-1; contrary to Revised Code of Washington 9A.76.170." Clerk's Papers at 22. Here, the charging document is sufficient because, within the single amended information, the State both identified the crime of unlawful possession of a controlled substance (methamphetamine) and alleged a corresponding felony bail jumping violation. This is not a case in which

Mr. Garoutte was required to search for rules, regulations, or a case file in order to discover the underlying charge. It is plain from page two of the amended information that the underlying offense appears on page one.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, C.J.

WE CONCUR:

Brown, J.P.T.
Brown, J.*

Lawrence-Berrey, J.
Lawrence-Berrey, J.

* Judge Stephen M. Brown was a member of the Court of Appeals at the time argument was heard on this matter. He is now serving as a judge pro tempore of the court pursuant to RCW 2.06.150.

C

Court of Appeals of Washington,
Division 1.
STATE of Washington, Appellant,
v.
Christopher LOGAN, Respondent.

No. 44529-4-I.
Oct. 16, 2000.

State appealed from order of the Superior Court, King County, Joan DuBuque, J., dismissing assault charges against defendant on speedy trial grounds. The Court of Appeals, Webster, J., held that speedy trial rule's "revocation of release" provision did not apply to extend speedy trial period from 60 to 90 days.

Affirmed.

West Headnotes

[1] Criminal Law 110 ⚿577.11(1)

110 Criminal Law
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.11 Status of Persons Affecting Trial Time
110k577.11(1) k. In General; Confinement. Most Cited Cases

Speedy trial rule's "revocation of release" provision did not apply to extend speedy trial period from 60 to 90 days, where defendant remained in custody from the date of his arraignment in superior court on second and third degree assault charges, was never released, and no court order revoking his release was entered, although defendant had previously been arraigned in municipal court on fourth degree assault charges arising from same incident, then released on his own recognizance. CrR 3.3(d)(1).

[2] Criminal Law 110 ⚿1139

110 Criminal Law
110XXIV Review
110XXIV(L) Scope of Review in General
110XXIV(L)13 Review De Novo
110k1139 k. In General. Most Cited Cases

The application of a court rule to particular facts is a question of law reviewable de novo.

[3] Criminal Law 110 ⚿577.11(1)

110 Criminal Law
110XVIII Time of Trial
110XVIII(B) Decisions Subsequent to 1966
110k577.11 Status of Persons Affecting Trial Time
110k577.11(1) k. In General; Confinement. Most Cited Cases

Speedy trial rule's 60-day speedy trial period for defendants not released from jail pending trial applies to municipal courts. CrR 3.3(d)(1).

[4] Criminal Law 110 ⚿1130(5)

110 Criminal Law
110XXIV Review
110XXIV(I) Briefs
110k1130 In General
110k1130(5) k. Points and Authorities. Most Cited Cases

Where no authorities are cited in support of a propo-

sition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.

**504 *908 James M. Whisman, King County Dep. Prosecutor, Seattle, for Appellant.

Michael Danko, Seattle, for Respondent.

WEBSTER, J.

The State appeals the trial court's dismissal of the charges against Christopher Logan for a violation of his right to a speedy trial. Because the speedy trial period had expired, we affirm.

FACTS

In the early morning of January 1, 1999, Christopher Logan struck Forrest DeWitt several times in the face. DeWitt's injury required reconstructive surgery; two titanium plates were placed in his face to repair the damage.

On January 1, 1999, the City of Seattle charged Logan with two counts of fourth degree assault. On January 4, 1999, he was arraigned and entered pleas of not guilty. He was released on his personal recognizance.

A pretrial hearing was scheduled for January 26, 1999. On that date, Logan obtained a **505 continuance of the pretrial hearing to February 8, 1999 and entered a 14 day waiver of speedy trial.

After the seriousness of DeWitt's injuries became clear, on March 3, 1999, the fourth degree assault charges were dismissed and the King County Prosecuting Attorney *909 charged Logan with one count of second degree assault and one count of third degree assault. On March 9, 1999, Logan was arrested and arraigned on the new felony charges.

On March 24, 1999, Logan, still in custody, filed a motion to dismiss for violation of speedy trial.

The chronology of events relevant to the speedy trial issue is as follows:

January 1, 1999	Complaint filed in Seattle Municipal court; Logan in custody
January 4, 1999	Logan arraigned and released
January 26 to February 8, 1999	14 day speedy trial waiver
March 3, 1999	Municipal case dismissed without prejudice; information filed in King County Superior Court
March 8, 1999	Logan Arrested
March 11, 1999	Logan Arraigned-remains in custody
March 23, 1999	Case Scheduling Hearing
March 25, 1999	Dismissal Granted

Logan's motion to dismiss for failure to bring him to trial within the speedy trial period was heard by Judge DuBuque on March 25, 1999. The trial court indicated that the defendant's speedy trial time expired before the case ever got to case setting. The court then entered an order dismissing the charges with prejudice.

The State appeals, contending that Judge DuBuque's dismissal should be reversed.

*910 DISCUSSION

[1] The State argues that the trial court erred in failing to apply the "revocation of release" provisions of CrR

3.3(d)(1) to extend the speedy trial period from 60 to 90 days. CrR 3.3(d)(1) applies to defendants who have been released from custody pending trial, but whose release is revoked by order of the court. Because Logan remained in custody from the date of his arraignment in Superior Court, and was never released, CrR 3.3(d)(1) does not apply to this case.

[2] The application of a court rule to particular facts is a question of law reviewable de novo. *State v. Carlyle,* 84 Wash.App. 33, 35, 925 P.2d 635 (1996). CrR 3.3(c)(2) reads in pertinent part as follows:

> A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment, less time elapsed in district court. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment, less time elapsed in district court.
>
> ...
>
> [3] 'Time elapsed in district court' means ... if at the time a complaint is filed with the district court a defendant is detained in jail or subjected to conditions of release, time elapsed in district court commences on the date the complaint is filed.

CrR 3.3(c)(2)(i) and (ii). The rule applies to municipal courts. *State v. Duffy,* 86 Wash.App. 334, 343, 936 P.2d 444 (1997). Failure to bring a criminal charge to trial within the applicable time period will result in the charge being dismissed with prejudice. CrR 3.3(i).

Logan was detained in jail following the filing of charges in Superior Court. Thus, his trial should have been scheduled within 60 days of his arraignment in Superior Court, less time elapsed in Municipal Court. Logan was in jail when the complaint was filed in the Municipal Court, so ***911** time elapsed in Municipal Court commenced on January 1, 1999. Logan was charged on January 1, 1999 and the charges were dismissed March 3, 1999, a total of 62 days. Application of the 14-day waiver results in 48 days of speedy trial time having elapsed in municipal court. Thus, applying the 60-day rule, the State had until March 23 (12 days from arraignment) to bring Logan to trial.

****506** [4] Both parties concede that Logan was not brought to trial within the 60-day time period. Nevertheless, the State argues that the "revocation of release" provisions of CrR 3.3(d)(1) operate to extend the speedy trial period from 60 to 90 days where, as here, a defendant is in and out of custody. The State's argument, while creative, is meritless and not supported by decisional or statutory law.[FN1] CrR 3.3(d)(1) applies to defendants who have been released from custody pending trial, but whose release is revoked by order of the court. This situation is not present here. Logan remained in custody from the date of his arraignment in Superior Court. He was never released, nor was a court order entered revoking his release. Therefore, CrR 3.3(d)(1) does not apply to this case.

> FN1. The State cites no authority to support its argument. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer,* 60 Wash.2d 122, 126, 372 P.2d 193 (1962). While the State cites *State v. Kelly,* 60 Wash.App. 921, 808 P.2d 1150 (1991) and *State v. Hyatt,* 78 Wash.App. 679, 898 P.2d 362 (1995), neither case supports the State's argument. Both cases involved defendants who were released pending trial, a crucial fact which is not present in this case.

The State would have this Court believe that there is a provision in CrR 3.3 which provides that, so long as a defendant spends less than 60 days in custody, he may be tried within 90 days of arraignment. A thorough and exhaustive search of the rule reveals no such provision. While the State urges this court to "harmonize" the speedy

trial rules, no harmonization is necessary. The application of the plain language of the rule mandates dismissal in this case.

The Supreme Court held over two decades ago, "unless a ***912** 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 Wash.2d 870, 877, 557 P.2d 847 (1976). The State argues against this strict application of the speedy trial rules, contending that complying with them is a constant struggle. But as one California court observed, "We long ago learned, from our Anglo Saxon jurisprudential history, that the crown does not win or lose a case, it merely sees that justice is done. The primary function of the office of prosecutor is to diligently and vigilantly pursue those who are believed to have violated the criminal codes of the state." *People v. Hartman*, 170 Cal.App.3d 572, 216 Cal.Rptr. 641, 648-49 (1985). The remedy of dismissal exists to ensure that justice is done and that the State is diligent in prosecuting defendants. The trial court did not err in dismissing the charges based on its conclusion that the speedy trial period had expired.

We affirm.

Wash.App. Div. 1,2000.
State v. Logan
102 Wash.App. 907, 10 P.3d 504

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