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. BOBENHOUSE, 143 WN. APP. 315, 322 (2008)

MR. GARCUTTE 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. GARCUTTE 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. GARCUTTE WAS ARRESTED.

ON AUGUST 20, 2013 MR. GARCUTTE 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. GARCUTTE 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: ~~[illegible]~~ 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. GARCUTTE OBJECTS TO ANY CONTINUANCE.

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

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. GARCUTTE 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. CARSON, 128 Wn.2d 805 (1996)

MR. GARCUTTE 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... (EMPHASIS ADDED)

(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. GARCIATTE ASSERTS THAT HIS TIME FOR TRIAL DATES FROM 1-21-14 COMMENCEMENT DATE TO 3-24-14 TRIAL DEADLINE SURPASSED THE 60 DAY MANDATE OF CrR 3.3(b) BECAUSE HE WAS "DETAINED IN JAIL" AND NEVER "RELEASED FROM JAIL" BEFORE THE 60-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. ON 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.

GARDUTTE 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 GARDUTTE'S APPLICATION HE STILL WASNT RELEASED TILL MARCH 31, 2014 WHICH PUT HIM 10 DAYS PAST HIS 60 DAY TIMELINE THAT ULTIMATELY DIDNT 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 [redacted] 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 6TH 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. GARDUTTE 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 COURTS 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. GARDUTTE'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. GARDUTTE 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. GARDUTTE'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 UNERLYING CRIME.' STATE V. POPE, 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. 1 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. 1 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 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."

MR. GARRITTE 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. 885, 888 (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. GARRITTE WAS ACTUALLY PREJUDICED. AS IN Green, GARRITTE 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 GARRITTE'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 13-1-00420-1 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 GARRITTE

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 CONNELL, WA.

MATTHEW SIMON GARRETTE

APPELLANTS SAG

APPENDIX

JAIL TIME CERTIFICATE

13-1-00420-1

Memorialization of Defense Objection on March 17, 2014

13-1-00420-1

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

Aaron 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,

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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