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~~NO. 92385-0~~

SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY SHERIFF'S OFFICE,

Respondent,

v.

$6,510.00 in U.S. CURRENCY, DEFENDANT *IN REM*
RICHARD MENDALL,

Claimant/Appellant.

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Mendall's asset forfeiture hearing was continued for approximately two months for the Sheriff's attorney's family medical emergency and the hearing examiner's prescheduled vacation. Mendall has never alleged nor demonstrated that he was prejudiced by the delay. Should the hearing examiner's decision be affirmed?[1]

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

King County Sheriff's deputies seized $6,510.00 from Mendall, pursuant to RCW 69.50.505. AR 24.[2] Mendall timely contested the seizure. AR 25. At the administrative hearing, the hearing examiner denied Mendall's motions to suppress and to dismiss for violation of due process, and ruled that the currency was properly seized and forfeited to the King County Sheriff's Office (KCSO). AR 101-07. Mendall petitioned for judicial review and the

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[1] The Sheriff's Office maintains its previous Answer, asking that Mendall's petition for direct review to the Supreme Court be denied, pursuant to RAP 4.2(a), (e), which would result in the case being transferred to the Court of Appeals. RAP 4.2(e)(1).

[2] The Administrative Record and Clerk's Papers are cited as AR and CP, respectively.

superior court affirmed the hearing examiner's ruling. CP 1-5, 59-61. Mendall now seeks direct review in the Supreme Court.

2. SUBSTANTIVE FACTS

On May 31, 2014, King County Sheriff's deputies seized $6,510.00 in cash from Mendall following a traffic stop, during which cocaine, marijuana, and two firearms were observed in Mendall's vehicle. AR 10-11, 15-23, 103-04. A search warrant served on the vehicle yielded a scale, and text messages on Mendall's cell phone showed that Mendall was selling cocaine. AR 104 (Findings of Fact 12 and 15).

Mendall was served with notice of the seizure on June 9, 2014, within 15 days of the seizure as required. AR 24. He made a timely claim through his attorney on July 3, 2014. AR 25. On September 22, 2014, the paralegal for KCSO's Asset Forfeiture Unit sent Mendall's lawyer a notice of hearing for September 30, 2014. AR 53-54. KCSO's attorney was on emergency medical leave the week of September 22 with her father in the hospital, where he would be diagnosed with cancer and have surgery. AR 81-82. On September 25 and 26, 2014, KCSO's attorney emailed Mendall's attorney and the hearing examiner about her family medical emergency. AR 58-65. The hearing examiner

advised the parties of her availability (October 2, 7, and 8, and December 2, 8-11 and 16-18)[3] and expressed her assumption that counsel would be able to work out the scheduling issues. AR 60.

KCSO's attorney moved to continue to December via email on September 26 after receiving more information about her father's condition and being advised by counsel that Mendall would not agree to a continuance. AR 62, 64. The hearing examiner granted KCSO's motion to continue to "the first week of December," citing KCSO's attorney's "unique and unforeseeable situation, and the lack of any specific factual evidence being provided to support claimant's allegation that a continuance will deny him due process." AR 65. KCSO's attorney returned from family medical leave in late October. AR 82. On November 17, 2014, KCSO's paralegal emailed Mendall's lawyer and advised that the hearing examiner was not available until the second week of December and asked whether counsel was available on December 9. AR 69-70. Counsel inquired whether this was another continuance and objected if it was, but stated that she was available on the 9th. AR 69.

[3] The hearing examiner had an extended pre-scheduled vacation for most of October and November, 2014, about which she had advised KCSO long before Mendall's seizure. AR 82.

Mendall's hearing was held as scheduled on December 9. He did not appear; his attorney appeared by phone. AR 101. The hearing examiner denied Mendall's two motions to suppress evidence and found that the cash was properly seized and forfeited to the Sheriff's Office. AR 106-07. The hearing examiner also denied Mendall's motion to dismiss based on due process, finding that the delay from September 30, 2014 to the first week in December was unforeseeable and unavoidable, and reasonable under the circumstances, as was the examiner's brief, two-day unavailability from the first week of December until December 9. The hearing examiner also found that the continuances were "for good cause, and resulted in no prejudice to the claimant or his case. His position remains unaffected by the continuances." AR 102.

C. ARGUMENT

1. STANDARD OF REVIEW

The Administrative Procedure Act (APA) governs judicial review of agency decisions. Ch. 34.05 RCW. The burden of demonstrating that an agency action is invalid is on the party challenging the action. RCW 34.05.570(1)(a). The appellate

court's review of administrative decisions is based on the record of the administrative tribunal itself, not of the superior court. Franklin Cty. Sheriff's Office v. Sellers, 97 Wn.2d 317, 323-24, 646 P.2d 113 (1982).

A decision to grant a continuance will not be disturbed absent a showing of a manifest abuse of discretion. State v. Heredia-Juarez, 119 Wn. App. 150, 153, 79 P.3d 987 (2003). Accordingly, the appellant must show that the decision granting the continuance was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Relief for persons aggrieved by the performance of an agency action, including an exercise of discretion, can be granted only if the court determines that the action is:

> (i) Unconstitutional;
> (ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;
> (iii) Arbitrary or capricious; or
> (iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

RCW 34.05.570.

2. ARGUMENT

Mendall claims that his due process right to a full adversarial hearing of his forfeiture within 90 days was violated by the hearing examiner's decision to continue the hearing from September 30, 2014 to "the first week of December," and then ultimately to December 9, 2014[4] because of KCSO's attorney's family medical emergency followed by the hearing examiner's own unavailability. The hearing examiner should be affirmed because the setting of the initial hearing complied with RCW 69.50.505 and the APA, the continuance was for good cause and was not an abuse of discretion, and Mendall has never shown that he was prejudiced by the relatively brief delay.

a. Mendall Received Due Process Under Washington's Drug Forfeiture Statute And The Administrative Procedure Act.

The seizure and adjudicative proceedings in Mendall's case comported fully with Washington's drug forfeiture statute and the APA. However, because Mendall's argument is largely dependent upon his conflation of the commencement of the proceedings for forfeiture and commencement of an adjudicative proceeding, a brief

[4] The business days in the first week of December 2014 were December 1-5. December 9 was a Tuesday. See Kelliher v. Inv. & Sec. Co., 177 Wash. 82, 85, 30 P.2d 985 (1934) (Court may take judicial notice of a calendar); ER 201(b)(2), (c), (f).

overview of Washington's drug forfeiture statute and the APA is necessary.

Washington's drug forfeiture statute, RCW 69.50.505, provides that law enforcement may seize property without process when probable cause exists to believe the property is being used for illegal drug activity, or represents proceeds of illegal drug sales. In the event of seizure pursuant to subsection (2), *proceedings* for forfeiture shall be deemed commenced by the seizure. RCW 69.50.505(3). The law enforcement agency under whose authority the seizure was made shall cause notice of seizure and intended forfeiture to be served on the property owner within 15 days after the seizure. Id.

A person claiming an interest in personal property seized must notify the seizing agency within 45 days. RCW 69.50.505(5). The statute provides that a person filing a timely notice "shall be afforded a reasonable opportunity to be heard as to the claim or right," but does not provide for the time within which this hearing must be commenced. Id.; see also Escamilla v. Tri-City Metro Drug Task Force, 100 Wn. App. 742, 747, 999 P.2d 625 (2000), abrogated on other grounds by In re Forfeiture of One 1970 Chevrolet Chevelle, 166 Wn.2d 834, 215 P.3d 166 (2009).

Unless removed to district or superior court, forfeitures of personal property are governed by the APA. RCW 69.50.505(5). The APA provides the procedural time requirements for adjudicating the forfeiture. An "adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. RCW 34.05.010(1). When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding. RCW 34.05.413(2).

An adjudicative proceeding must be commenced within 90 days of the date a claimant notifies the seizing agency of ownership of the seized property. RCW 34.05.419(1)(b). The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee. RCW 69.50.505(5).

Washington courts interpret RCW 34.05.419 as meaning that a timely claim is an application that causes the agency to commence an adjudicative proceeding. See Tellevik v. Real Prop. Known as 31641 W. Rutherford St., 120 Wn.2d 68, 87, 838 P.2d 111 (1992) (Tellevik I), as modified by 125 Wn.2d 364, 370, 884 P.2d 1319 (1994) (Tellevik II); In re Forfeiture of One 1988 Black

Chevrolet Corvette, 91 Wn. App. 320, 322, 963 P.2d 187 (1997). "An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted." RCW 34.05.413(5); see also Escamilla, 100 Wn. App. at 748-49 and Black Corvette, 91 Wn. App. at 323. Thus, the agency complies with the APA if it sets a hearing within 90 days of a claim; the hearing itself need not be held within 90 days.

Nonetheless, Mendall conflates the commencement of the forfeiture proceedings and the adjudicative proceedings, apparently claiming that the seizure commences the 90 days for the adjudicative proceeding. This is patently wrong under RCW 69.50.505(3)[5] and the APA. See RCW 34.05.419(1)(b). Indeed, Mendall makes the same argument rejected by the court in Escamilla. 100 Wn. App. at 750.[6]

The seizure commences the *forfeiture* proceeding by triggering the 15 days in which the law enforcement agency must

[5] "In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure." RCW 69.50.505(3) (in relevant part). Nowhere does "adjudicative" appear in this statute.

[6] Mendall argues that the date by which a hearing must be held, not the commencement of the action is at issue (Br. of Appellant at 24), but Mendall is mistaken, because it is the commencement of the forfeiture proceedings that trigger the agency's duties to give notice and commence adjudicative proceedings upon the claimant's application.

serve notice of the seizure. Service of the notice of seizure triggers the claimant's 45 days to make a claim, which then triggers the 90 days for the agency to give notice of a hearing or other proceeding. RCW 34.05.419(1).[7]

Despite the reference to RCW 34.05.419 in Tellevik I and II and Black Corvette, *supra*, Mendall claims that statute does not apply to forfeiture actions. Mendall relies on Hutmacher v. State, Bd. of Nursing, 81 Wn. App. 768, 915 P.2d 1178 (1996), but that case is inapposite as it involves an agency commencing an action (nursing license revocation) under RCW 34.05.413(1), rather than a seizure under RCW 69.50.505 and an application for hearing under RCW 34.05.413(2) and 34.05.419(1)(b). 81 Wn. App. at 772. Asset forfeitures are fundamentally different from agency actions like the one in Hutmacher because the seizing agency is obligated to initiate an adjudicative proceeding only when the claimant requests a hearing. RCW 34.05.419(1).

Mendall's conflation of the commencement of forfeiture proceedings and adjudicative proceedings is even more confusing, given that he concedes that the 90 days to commence a hearing

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[7] If no claim is made, no adjudicative proceeding occurs and a default order is entered. See RCW 34.05.440; RCW 69.50.505(4).

ran from the date of his claim. Br. of Appellant at 7. Nonetheless, the record is clear that Mendall received the process he was due under the APA: he received notice of the seizure within 15 days, he made a claim within 45 days, and received notice of a hearing date within 90 days of his claim. The hearing was continued after its initial setting for good cause, but Mendall received the process he was due and his arguments to the contrary should be rejected.

b. Mendall's Arguments Regarding The Hearing Examiner's Unavailability Must Be Rejected.

Departing from his theory below, Mendall apparently now concedes that the continuance for KCSO's attorney's family medical leave was good cause. Br. of Appellant at 18. Mendall now focuses his argument on the hearing examiner's unavailability from mid-October until December, claiming that her unavailability was not supported by good cause. Mendall failed to raise this argument below and it is waived. Also, even if not waived, the argument is irrelevant under the APA and the APA Model Rules (WAC 10-08) and should be rejected.

i. Mendall waived any arguments regarding the hearing examiner's unavailability.

Pursuant to RAP 2.5, a party cannot raise a new theory on appeal when that theory was not advanced below. The purpose for requiring a party to raise a particular theory below is to afford the trial court an opportunity to correct any error when it arises, avoiding preventable appeals and preserving judicial resources. State v. Scott, 110 Wn.2d 682, 685-86, 757 P.2d 492 (1988). Therefore, with very limited exceptions, before the appellate court may consider a theory on appeal, the party must raise it below. Id.

When KCSO advised that it would need a continuance for counsel's family medical emergency, the hearing examiner provided a list of dates that she was available in early October and in the beginning of December. AR 60. Mendall objected to the continuance; however, despite the volume of email traffic on the subject, he did not ask why the hearing examiner was unavailable for most of October and November, nor did he ask whether the Sheriff had another designee who could hear the case after KCSO's attorney returned from her leave. Instead, he suggested that the case be reassigned to another prosecutor. AR 45.

Mendall now argues that the record is undeveloped because he did not have an opportunity to ask about the reasons for the examiner's unavailability. But Mendall *did* have an opportunity to ask those questions. He simply failed to do so because the information was irrelevant to his theory below.[8] He cannot now complain that the hearing examiner failed to provide information he never sought.[9] Mendall waived any argument that the hearing examiner's vacation and subsequent brief unavailability was not good cause; the Court should decline to consider his theory on appeal.

ii. Due process under the APA would have been satisfied if the Sheriff's Office had initially set the hearing for December 9.

Whether there was good cause for the continuance to December 9 for the hearing examiner's unavailability is immaterial because the Sheriff could have considered the hearing examiner's

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[8] Whether Mendall argued to the superior court that the hearing examiner's unavailability was not good cause is irrelevant because this Court's review of administrative decisions is on the record of the administrative tribunal itself, not of the superior court. Franklin Cty. Sheriff's Office v. Sellers, 97 Wn.2d 317, 323-24, 646 P.2d 113 (1982).

[9] Mendall implicitly argues, citing no authority, that the hearing examiner was obligated to inform him of her personal vacation plans. Where an argument is unsupported by any authority, appellate courts assume that there is none and rule accordingly. See State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990); Smith v. King, 106 Wn.2d 443, 722 P.2d 796 (1986); State v. Wood, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977).

schedule and set Mendall's hearing for December 9 at the outset, so long as it gave notice within 90 days of Mendall's claim because an adjudicative proceeding commences when the agency notifies a party that a hearing will be conducted. RCW 34.05.413(5); Black Corvette, 91 Wn. App. at 323. Thus, Mendall cannot show his rights were violated by continuing the hearing to December 9 because the due process under the APA would have been satisfied even if KCSO had set the hearing for that date initially and given timely notice.

iii. The portion of the continuance necessitated by the hearing examiner's unavailability does not require good cause under the APA Model Rules.

Mendall argues that the hearing examiner's unavailability lacked good cause required by the APA Model Rules. Assuming that the Model Rules apply to the Sheriff's Office, they do not support Mendall's argument. "Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the *party* shows good cause." WAC 10-08-090 (emphasis added). The hearing examiner is not a party; thus, although her unavailability due to a

prescheduled vacation *does* constitute good cause under a due process analysis, good cause is unnecessary because the hearing examiner may order continuances on her own motion.

Mendall has conceded that counsel's family medical leave was good cause; the APA Model Rules authorized the hearing examiner to continue the hearing on her own motion to accommodate her own prescheduled vacation, which overlapped with counsel's family medical leave, and her subsequent brief unavailability until December 9. The hearing examiner's order should be affirmed.

c. Mendall's Due Process Rights Were Not Violated By The Continuance.

Mendall's petition for review must be denied because the setting of the initial hearing complied with RCW 69.50.505 and the APA and the continuance comports with due process because it was – to the extent required – supported by good cause, was relatively brief, and did not prejudice Mendall.

The APA Model Rules aside, Mendall cannot meet his burden to show that the hearing examiner abused her discretion in continuing the hearing to December 9, 2014. The length of time between a seizure and the initiation of the forfeiture hearing has

been analogized to the question of undue delay encompassed in the right to a speedy trial. The factors to be considered in such an inquiry are: (1) The length of the delay; (2) the reason for the delay; (3) the claimant's assertions of his right to a hearing; and (4) whether the claimant suffered any prejudice. Black Corvette, 91 Wn. App. at 324, citing United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in United States Currency, 461 U.S. 555, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983). In $8,850, the Supreme Court upheld the forfeiture of personal property in a case where the hearing was held over 18 months after the seizure. The court adopted the four-part balancing test and held that "there is no obvious bright line dictating when a postseizure hearing must occur." 461 U.S. at 562.

Here, the length of delay (with the full hearing held on December 9, 2014) is 153 days after notice of claim, approximately the same as the court approved in Black Corvette (148 days between notice of claim and full hearing). The reasons for the delay constituted good cause to continue the hearing: plaintiff's counsel was on leave for the serious medical condition of an immediate family member, which overlapped the hearing examiner's lengthy, prescheduled vacation out of the country.

Although Mendall concedes that hearings can be continued for good cause, and also concedes that KCSO's attorney's leave for her father's medical condition was appropriate, he claims that the record lacks support for good cause for the hearing examiner's unavailability. Mendall's argument should be rejected for the reasons set forth above. Moreover, to the extent good cause was required, the hearing examiner's prescheduled vacation was sufficient good cause such that she did not abuse her discretion continuing the hearing to the first week of December and then two additional days. Even in a criminal case, the unavailability of an assigned trial judge may constitute an "unavoidable circumstance" under CrR 3.3(d)(8). State v. Carson, 128 Wn.2d 805, 815, 912 P.2d 1016 (1996); see also State v. Flinn, 154 Wn.2d 193, 201, 110 P.3d 748 (2005) (When scheduling a hearing after finding good cause for a continuance, the trial judge can consider known competing conflicts on the calendar).

While Mendall certainly asserted his right to a hearing, as discussed further below, he failed to articulate any prejudice to his case and the delay did not hamper his defense in any way. Black Corvette, 91 Wn. App. at 325. Neither the forfeiture statute, the APA, nor Mendall's due process rights were violated.

Nonetheless, Mendall claims that Black Corvette was wrongly decided, in part because the Court of Appeals adopted a test from a federal case and because he claims that Black Corvette ignores Tellevik I and II.[10] On the contrary, the court in Black Corvette expressly adopted the test in United States v. $8,850 because "[i]t is both appropriate and consistent with the recent decisions of our state Supreme Court regarding real property forfeitures," citing Tellevik I and II. 91 Wn. App. at 324, n.13. Moreover, the test adopted in Black Corvette is the same test that Washington courts have adopted for Sixth Amendment time for trial rights from Barker v. Wingo, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). The hearing examiner's and superior court's reliance on Black Corvette was not error.

Nonetheless, Mendall claims that the Court rejected federal precedent in Tellevik II when it distinguished Good,[11] in which the federal government assumed control over the seized real property without a predeprivation hearing. Tellevik II, 125 Wn.2d at 369.

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[10] Tellevik v. Real Prop. Known as 31641 W. Rutherford St., 120 Wn.2d 68, 86, 838 P.2d 111 (1992) (Tellevik I), as modified by 125 Wn.2d 364, 370, 884 P.2d 1319 (1994) (Tellevik II).

[11] United States v. James Daniel Good Real Property, 510 U.S. 43, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993).

Mendall oversimplifies the analysis. The Washington Supreme Court held that the seizure at issue in Tellevik was consistent with those means permitted under Good. Id. The Court did distinguish the internal timing requirements in federal seizures in Good, from the 90-day requirement in a state forfeiture proceeding;[12] however, Mendall overreads the distinction as a rejection of all federal law in state forfeiture proceedings. In fact, Washington courts routinely rely on federal precedent for guidance in due process analysis, even in forfeitures, because "[t]he language of the federal and state due process clauses is exactly the same." Rozner v. City of Bellevue, 116 Wn.2d 342, 352, 804 P.2d 24 (1991).

Tellevik is distinguishable in myriad ways, including that the delay in returning the case to the trial calendar after the mandate issued in Tellevik I was six months, following the protracted litigation in the trial and appellate courts. In contrast, KCSO reset Mendall's hearing at the earliest date possible and he received a full hearing 153 days after his claim.

Nonetheless, Mendall erroneously interprets Tellevik as providing a bright-line 90-day rule. This ignores the fact that all three divisions of the Court of Appeals are in accord regarding the

[12] Tellevik II, 125 Wn.2d at 374.

due process analysis in Black Corvette; Division Two adopted Division One's rationale in Black Corvette and applied the $8,850 balancing test in Valerio v. Lacey Police Dep't., 110 Wn. App. 163, 174, 39 P.3d 332 (2002) and Division Three adopted the Black Corvette analysis in Escamilla, 100 Wn. App. at 749. Even when forfeiture proceedings are removed to superior court, no such bright-line rule exists. See Des Moines v. $81,231, 87 Wn. App. 689, 698-99, 943 P.2d 669 (1997).

Finally, Mendall's due process argument fails because in addition to ignoring the well-settled Court of Appeals precedent, Mendall completely fails to address the issue of prejudice.[13] Therefore, the hearing examiner's order must be affirmed because Mendall cannot meet his burden to show that he was prejudiced by the delay.

The aforementioned four-factor due process analysis is the same for bringing a defendant to trial in a criminal case and for an asset forfeiture proceeding. See Barker, 407 U.S. at 530; Black Corvette, *supra*. Prejudice is unquestionably required to find a violation: "The length of the delay is to some extent a triggering

[13] The Sheriff's Office asks the Court to strike or disregard Mendall's definition of a full adversarial hearing and its components (Br. of Appellant at 31), as he cites no authority.

mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors." Barker, 407 U.S. at 530. Washington courts have applied the Barker analysis to cases involving delays much longer than this one. See, e.g., State v. Burton, 165 Wn. App. 866, 877, 269 P.3d 337 (2012) (three-year delay in completing transcript for appeal was not a due process violation because no prejudice was shown); State v. Iniguez, 167 Wn.2d 273, 296, 217 P.3d 768 (2009) (eight-month pretrial delay did not violate due process; Escamilla, *supra* (initial hearing set comported with RCW 34.05.413(5); two-year delay in completing the hearing did not violate due process).

In the context of an administrative action, a showing of prejudice is based on the claimant's inability to prepare or present a defense. Lang v. Dept. of Health, 138 Wn. App. 235, 253, 516 P.3d 919 (2007). Mendall must show prejudice and cannot. In fact, one of the chief reasons the hearing examiner granted the motion to continue and denied Mendall's motion to dismiss on due process grounds was that Mendall was unable to articulate any prejudice from the delay. AR 65, 101-02. To date, Mendall has never articulated how he was prejudiced; instead, Mendall appears to claim that he does not need to articulate prejudice. This is fatal to

his claim under Barker and Black Corvette. The delay did not hamper Mendall's defense in any way. Indeed, it is difficult to imagine how Mendall might have been prejudiced because Mendall does not challenge the hearing examiner's rulings on the merits of the seizure and forfeiture. See Black Corvette, 91 Wn. App. at 325 (noting in analysis of prejudice that forfeiture was not challenged).

Mendall has never articulated prejudice of any kind from the continuance of his hearing. He simply cannot show that he was prejudiced under the four-part test endorsed in Black Corvette and myriad cases analyzing due process in delays in criminal trials, where the burden of proof and potential degree of deprivation is significantly greater than in a forfeiture hearing. The hearing examiner's order must be affirmed.

D. CONCLUSION

In sum, the setting of Mendall's hearing complied with the APA, the hearing examiner did not abuse her discretion in granting a continuance to December 9, 2014, and Mendall cannot show the prejudice required to obtain the relief he seeks. Based on the foregoing, the King County Sheriff's Office respectfully requests that the hearing examiner's order be affirmed.

DATED this 28th day of December, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
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Declaration of Service

I, Heidi Jacobsen-Watts, declare that on this date, I provided a copy of the above document to opposing counsel in this matter by emailing a copy to: billie@lawyerforthelittleguy.com, pursuant to the parties' mutual consent to receive service of documents in this case via email.

Declared under penalty of perjury of the laws of the State of Washington this 28th day of December, 2015 in Seattle, Washington.

Heidi Jacobsen-Watts, WSBA 35549

OFFICE RECEPTIONIST, CLERK

To: Jacobsen-Watts, Heidi
Cc: 'billie@lawyerforthelittleguy.com'
Subject: RE: Attachment for filing - KCSO v. $6510, Mendall 92385-0

Rec'd 12/28/15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jacobsen-Watts, Heidi [mailto:Heidi.Jacobsen-Watts@kingcounty.gov]
Sent: Monday, December 28, 2015 1:32 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'billie@lawyerforthelittleguy.com' <billie@lawyerforthelittleguy.com>
Subject: Attachment for filing - KCSO v. $6510, Mendall 92385-0

Attached for filing, please find Respondent King County Sheriff's Office Brief of Respondent (with Declaration of Service attached) in King County Sheriff's Office v. $6510 Defendant in rem and Richard Mendall, Claimant, Cause No. 92385-0. Counsel for Mr. Mendall is copied and is hereby served pursuant to the parties' mutual consent to service via email.

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