101233-1

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

Appeal No. 821491

STATE OF WASHINGTON,
Respondent,
vs
AARON MICHEAL LANCASTER,
Appellant.

PETITION TO REVIEW DECISION OF COURT OF APPEALS FOR DIVISION ONE

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A. IDENTITY OF PETITIONER

Aaron Lancaster asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

A copy of the decision is in the appendix at pages 1-9.

C. ISSUE PRESENTED FOR REVIEW

> Whether the failure to disclose the results of a blood test until five (5) days before trial (disclosed the Wednesday before the following Monday trial) and the filing of a list of witnesses seven days before trial (the Monday before the trial on the following Monday) listing 11 witnesses, which was not received by defense counsel until the Friday before the Monday trial date constitutes mismanagement under State v. Dailey 93 Wn2d 454 (1980) entitling defendant to a dismissal of charges.

D. STATEMENT OF THE CASE AND PROCEDURE

Petitioner accepts as accurate the statement of the facts made by the Court of Appeals with one significant addition. It is true that the state filed this list of witnesses on Monday, September 21 before the Monday, September 28 trial date but defense counsel did not receive a copy of the list of witnesses until Friday before the Monday trial.

E. ARGUMENT

Petitioner bases his argument by his contention that the precedent of State v. Dailey 93 Wn2d 454 (1980) controls disposition of this case. The facts of disclosure of witnesses in this case are the equivalent to those in Dailey. Daily was a vehicle homicide case, a more serious case, and in Dailey, the prosecutor filed and served a list of witnesses naming 5 witnesses upon defense attorney almost three months before trial. The state filed an amended witness list adding eleven (11) new witnesses on the Friday before the Monday trial date. Like Dailey's attorney, Lancaster's defense counsel became aware of the state list of witnesses on the Friday before the Monday trial. Another similarity between Dailey and Lancaster's circumstance is that the blood test results in Dailey were received 8 days before trial as compared to 5 days before trial in the instant case.

In Lancaster, defense counsel became aware of the witnesses on the Friday before the Monday trial. There was no time left to attempt to interview each witness. A careful review of the Dailey case shows that the Superior Court dismissed the vehicle homicide charge based upon mismanagement. The case was appealed by the prosecutor to the Court of Appeals which reversed the dismissal, State v. Dailey 23 Wash. App. 233 (1979) and in so doing adopted the same rationale as the Court of Appeals and Superior Court did in the instant case in excusing the late filing of the witness list. The Court of Appeals in Dailey reversed the Superior Court order of dismissal for mismanagement because the prosecutor disclosed 11 new witnesses on the Friday before the Monday trial and stated in its opinion;

> The morning trial, defense counsel again moved to dismiss for failure of due process, emphasizing the late witness list. Upon

> request for an explanation by the trial court, the state noted that virtually all the witnesses not named in the information were identifies in the police reports and known to the defense, the exception being one expert witness. The trial court responded "Well I think the states conduct is reprehensible here, and has been all the way through but I won't change my ruling (denying dismissal); 23 Wash. App. at 236.

The rationale of the Superior Court in this case and the Court of Appeals in Dailey, whose opinion was reversed by the state Supreme Court, was that the defense counsel had adequate notice because the names and addresses of the witnesses to be called were contained somewhere in the police reports.

Petitioner argues that the Superior Court abused its discretion and the Court of Appeals erred by not following the holding in Dailey which is that it is not sufficient if the list of witnesses is filed the Friday before the Monday trial date because the names of the witnesses are contained in police reports.

This court should be advised that there is another Whatcom County Superior Court criminal appeal which is very similar to the facts of the Lancaster case. That case is State of Washington v. Mora Lopez, Court of Appeals Cause No. 83054-6-I, Whatcom County Superior Court Cause No. 21-1-00360-37. In the Mora Lopez case, the Superior Court ordered the prosecutor to file its list of witnesses by June 3, 2021. Trial was scheduled to start on June 28, 2021. The prosecutor filed its witness list on June 21. Superior Court Judge Evan Jones found mismanagement and dismissed the criminal prosecution. Attached in the Appendix is a copy of the Findings entered by Superior Court Judge Evan Jones dismissing the Mora-Lopez prosecution. The state appealed that dismissal and the case is pending before the Court of Appeals.

Petitioner suspects that the argument made in Mora-Lopez but rejected by Superior Court Judge Evan Jones was that adequate notice of witnesses was provided by delivery of the police reports.

Petitioner relies on the argument that Daily controls disposition of this case and he is entitled to an order reversing the Superior Court and the Court of Appeals and dismissing the case. However, petitioner Lancaster requests that this court stay consideration of his petition for review until the Washington Court of Appeals renders an opinion in the Mora Lopez case. If the Court of Appeals affirms Judge Evan Jones' dismissal in Mora- Lopez, petitioner expects the prosecutors' office would petition for review to this court.

It is relevant in petitioner counsel's view that the Mora Lopez case has a similarity to this case in that the prosecutor is the same. Benjamin Pratt was the trial attorney in Lancaster as well as Mora-Lopez.

Granting review in this case and reversing the Court of Appeals would have a salutary affect upon criminal judicial process in Whatcom County because it would put pressure on a prosecutor's office to be more diligent in the timely providing of discovery. Affirming the decision in this case would enable and endorse the dilatory discovery actions of Whatcom County Prosecutor's Office, specifically deputy prosecutor Benjamin Pratt.

F. CONCLUSION

While the decision to dismiss or not for mismanagement is a discretionary one, this case and its companion case, State v. Mora-Lopez, involve two very similar Whatcom County cases involving last minute

filing of witness lists. Whatcom County Superior Court Judge Freeman used his discretion and allowed the state to proceed to trial in Lancaster. Whatcom County Superior Court Evan Jones evaluating similar facts in Mora Lopez and exercised his discretion and dismissed the criminal prosecution.

Respectfully, petitioner requests this court stay consideration of whether it will review this case until the Court of Appeals decides the Mora-Lopez case. Petitioner's counsel will provide the court with a copy of the Court of Appeals decision in Mora-Lopez as soon as it is filed. Staying consideration of the decision to grant review will allow this court to decide whether to review this case in the context of two very similar cases in Whatcom County involving the same deputy prosecutor and will provide more information on whether the Superior Court properly exercised its discretion in both cases.

This brief contains 1305 words.

DATED this _____ day of August 2022

/s/ William Johnston

_____

WILLIAM JOHNSTON WSBA 6113
Attorney for Petitioner Aaron Lancaster

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August 31, 2022 - 3:36 PM

Transmittal Information

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

Appeal No. 821491

STATE OF WASHINGTON,
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APPENDIX

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Opinion in State v. Lancaster, Court of Appeal Division I, Case NO. 821491

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Opinion in State v. Martin-Lopze, Whatcom County Superior Court No. 21-1-00360-37

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8/1/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. AARON MICHAEL LANCASTER, Appellant.	)	No. 82149-1-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — Aaron Lancaster appeals his conviction for attempting to elude, driving while under the influence (DUI), resisting arrest, and hit and run unattended. Lancaster argues that the trial court abused its discretion when denying his CrR 8.3(b) motion to dismiss for government misconduct, and violated CrR 3.3 time-for-trial rules. We affirm.

FACTS

On January 7, 2020, the State charged Lancaster with attempting to elude a pursuing police vehicle, DUI, resisting arrest, and hit and run unattended. Following arraignment on January 17, 2020, the trial court set Lancaster's trial date for Monday, March 30, 2020. Lancaster remained out of custody following arraignment.

On March 12, 2020,[1] the State requested, and the trial court granted, a continuance resulting in a new trial date of April 6, 2020. The court granted the continuance over Lancaster's objection because the State was waiting for a blood test analysis from the crime lab.[2] On March 18, 2020, the court continued the trial from April 6, 2020, to May 18, 2020, because of the COVID-19 pandemic.

On March 20, 2020, the Washington Supreme Court issued an order stating, "the time between the date of this order and the date of the next scheduled trial date are EXCLUDED when calculating time for trial." Am. Order, No. 25700-B-607, In re Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency (Wash. Mar. 20, 2020). On April 13, 2020, the Washington Supreme Court issued a revised emergency order further suspending jury trials after May 4, 2020, and explained that the period between April 13, 2020, and July 3, 2020, "shall be excluded when calculating time for trial." Revised & Extended Order, No. 25700-B-615, In re Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency (Wash. Apr. 13, 2020). On April 29, the Washington Supreme Court issued a second revised order explaining that the time period between April 29, 2020, and September 1, 2020, "shall be excluded when calculating time for trial." Second Revised & Extended Order, No. 25700-B-618, In re Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency (Wash. Apr. 29, 2020).

[1] The court rescheduled the status hearing twice to allow Lancaster to appear and respond to the State's motion to continue.

[2] Additionally, Whatcom County Superior Court administered an order suspending and rescheduling jury trials pending between March 11 and March 31, 2020, to April 6, 2020, because of the COVID-19 pandemic. Admin. Order No. 20-2-001-37, In re Response to Public Health Risk (Whatcom County Super. Ct., Wash. Mar. 11, 2020).

On April 30, 2020, the parties continued trial from May 18, 2020, to July 20, 2020, based on the COVID-19 pandemic and the Washington Supreme Court emergency order. On July 8, 2020, the trial court continued Lancaster's trial from July 20, 2020, to August 17, 2020, again based on the pandemic. On July 20, 2020, Lancaster filed a written objection to the new trial date based on a speedy trial violation. On July 22, 2020, the trial court continued Lancaster's trial from July 20, 2020, to August 31, 2020, again based on the pandemic, as well as trial priority issues. On August 12, 2020, the court continued the trial date from August 31, 2020, to September 28, 2020, again based on the pandemic.

On September 10, 2020, Lancaster waived his right to a jury trial and elected for a bench trial. On September 21, 2020, the State filed its witness list. On September 24, 2020, Lancaster moved to dismiss the charges against him under CrR 8.3(b) predicated on the State's mismanagement in the late disclosure of a toxicology report showing that Lancaster's blood results revealed a blood alcohol level in excess of the legal limit and the State's failure to serve the defense with a list of trial witnesses. On September 25, 2020, the State disclosed an expert witness to testify on Lancaster's blood alcohol analysis.

On the day of trial, September 28, 2020, the State responded to Lancaster's motion to dismiss and orally moved to dismiss the malicious mischief charge and to amend the DUI charge to include the alternative charge under the "per se" prong of the DUI statute.[3]

[3] The State charged Lancaster with DUI under RCW 46.61.502(1)(c) (making it a crime to drive "under the influence of or affected by intoxicating liquor, cannabis, or any drug"). While the proposed amended complaint is not in the record, it appears the State sought to add the alternative charge of driving under the influence under RCW 46.61.502(a) ("within two hours after driving, an alcohol

Lancaster argued that the late disclosure of the State's expert to testify about the blood alcohol testing and the late disclosure of any trial witnesses warranted dismissal under CrR 8.3(b). The court determined that there was mismanagement in the State's failure to disclose the blood evidence less than a week before trial and in adding witnesses at that late date. But it concluded dismissal was not the appropriate remedy but suppression of the blood test results was the more appropriate route to ameliorate any prejudice to Lancaster. With regard to the late disclosure of the lay trial witnesses, the trial court determined that it technically complied with the local rules of the court but did not comply with the "spirit of the court rule." The court declined to exclude lay witnesses listed in the police reports because their identity came as no surprise to Lancaster. But it excluded the toxicologist who performed the blood analysis and evidence of Lancaster's blood alcohol level. The exclusion of the blood test report and toxicologist effectively precluded the State from amending the information to add the alternative DUI charge.

Following the bench trial, the court found Lancaster guilty of eluding a pursuing police vehicle, DUI, resisting arrest, and hit and run unattended.

Lancaster appeals.

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concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506").

ANALYSIS

A. Motion to Dismiss

Lancaster argues that the trial court erred by denying his CrR 8.3(b)[4] motion to dismiss for the State's mismanagement. We disagree.

We review a trial court's decision pursuant to a CrR 8.3(b) motion to dismiss for abuse of discretion. State v. Salgado-Mendoza, 189 Wn.2d 420, 427, 403 P.3d 45 (2017). A trial court abuses its discretion when the decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons. State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A decision is manifestly unreasonable if, despite applying the correct legal standard to the supported facts, a court adopts a view "that no reasonable person would take." State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990).

A trial court may dismiss criminal charges "due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial." CrR 8.3(b). The prosecution need not act in bad faith to commit misconduct— "simple mismanagement is sufficient." State v. Dailey, 93 Wn.2d 454, 457, 610 P.2d 357 (1980). To dismiss criminal charges, the governmental misconduct must cause actual prejudice. State v. Martinez, 121 Wn. App. 21, 29-30, 86 P.3d 1210 (2004). Dismissal is an extraordinary remedy that trial courts should only resort to in "egregious cases of mismanagement or misconduct." State v. Wilson, 149 Wn.2d 1, 10, 65 P.3d 657 (2003).

[4] In addition to CrR 8.3(b), the State briefs standards for dismissal under CrR 4.7(h)(7)(i). Lancaster did not raise this argument at trial or on appeal.

The trial court did not abuse its discretion by denying Lancaster's CrR 8.3(b) motion to dismiss. Lancaster asserts that the State's September 21, 2020 disclosure of a trial witness list, and the September 23, 2020, disclosure of the blood test lab report, were misconduct and resulted in prejudice. But even if the State's late disclosure of witnesses and the lab report was government misconduct, the trial court had the discretion to fashion the appropriate remedy and chose exclusion of the blood test results and the toxicologist's testimony as the most appropriate way of eliminating prejudice.

The trial court's finding that the late lay witness disclosure did not actually prejudice Lancaster is supported by the record. The State identified the following witnesses in its disclosure: a representative of BNSF Railroad, Deputies Streubel, York, Vanderveen, and Slyter, Sgt. Crisp, Aurora Berberich, Simona Nicolau, Chad Dwyer, and Washington State Patrol Officer Dawn Sklerov. On the day of trial, the State indicated no intention to call any witness from BNSF. And the trial court excluded any testimony from Sklerov.

As for the disclosure of police officer witnesses, defense counsel was aware the State intended to call Deputy Slyter because he was scheduled to be on military leave and the State wanted to continue trial because of his unavailability. When Lancaster stipulated that Styler could testify telephonically, the State withdrew a motion to continue trial. The police reports also identified the responding officers as including Streubel, York, Crisp, Vanderveen, and Slyter. Only Slyter, Streubel, and Vanderveen testified at Lancaster's trial. The identities of these three officers were not a surprise to Lancaster or his attorney.

The State's disclosure also identified Berberich, the nurse who drew Lancaster's blood at the hospital, and Dwyer, as other fact witnesses. The State, however, did not call either of these two witnesses to testify at trial. Thus, the untimely disclosure of their identities could not have prejudiced Lancaster at trial.

Finally, the final lay witness identified by the State, Nicolau, was called to testify at trial but she indicated she had been in a relationship with Lancaster for over seven years. Lancaster's attorney acknowledged that one of the listed witnesses was his client's girlfriend. The trial court had a tenable basis for determining that neither her identity as a trial witness nor her personal observations of Lancaster on the night in question could have prejudiced Lancaster because of his relationship with her.

Lancaster asserts that this case is analogous to Dailey. Lancaster's assertion is incorrect. In Dailey, the court affirmed dismissal of Dailey's case due to numerous discovery violations throughout the life of the case, as well as violations of court rules and orders. Dailey, 93 Wn.2d at 459. Unlike Dailey, here the State did not violate any court rules, yet the trial court still suppressed the blood test evidence and denied the State's motion to amend its information for trial fairness.

Lancaster also relies on Salgado-Mendoza, for the premise that the trial court should have granted his CrR 8.3(b) motion to dismiss. The case is inapposite. In Salgado-Mendoza, the court concluded that the trial court properly denied Salgado-Mendoza's CrR 8.3(b) motion to dismiss based on the State's late disclosure of a toxicologist witness. Salgado-Mendoza, 189 Wn.2d at 439. The court also noted that the witness's testimony need not have been suppressed. Salgado-Mendoza, 189 Wn.2d at 439. Like Salgado-Mendoza, the State's mismanagement of Lancaster's case

did not result in prejudice warranting the extraordinary remedy of dismissal; the trial court did not abuse its discretion in ruling as such.

B. Time for Trial

Lancaster argues that the trial court erred in not dismissing his case for a violation of the CrR 3.3 time for trial rule. We disagree.

"Just as the construction of a statute is a matter of law requiring de novo review, so is the interpretation of a court rule." Nevers v. Fireside, Inc., 133 Wn.2d 804, 809, 947 P.2d 721 (1997). When interpreting a statute, we must give effect to the plain meaning of the statutory language. Dep't of Licensing v. Lax, 125 Wn.2d 818, 822, 888 P.2d 1190 (1995).

Lancaster was not detained before trial. Thus, under CrR 3.3(b)(2), his time for trial was 90 days after his arraignment, "or the time specified under [CrR 3.3(b)(5)]." CrR 3.3(b)(5) allows for an extension of time during "excluded" periods: "if any period of time is excluded pursuant to [CrR 3.5(e)], the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period." Excluded periods under CrR 3.3(e) include continuances granted by the court under CrR 3.3(f). CrR 3.3(e)(3). Under CrR 3.3(f)(2), "the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense."

The trial court did not violate CrR 3.3. Lancaster's arraignment was on January 17, 2020, making his original time for trial date April 16, 2020. The original trial was scheduled for March 30. The trial court continued his trial on March 12, and again on March 18, resulting in rescheduled trial dates of April 6 and May 18, as well as new time

for trial dates of May 6 and June 17, respectively, under CrR 3.3(b)(5).[5] Following these continuances, the Washington Supreme Court issued emergency orders excluding time periods for purposes of CrR 3.3 on March 20, April 13, and April 29 between the date of the order and the defendant's next trial date. The trial court then continued Lancaster's trial on April 30, July 8, July 22, and August 12, resulting in rescheduled trial dates of July 20, August 17, August 31, and September 28, as well as new time for trial dates of August 18, September 16, September 20, and October 28, respectively, under CrR 3.3(b)(5). While we respect that the delay in Lancaster's trial may have been frustrating, the extraordinary circumstances of COVID-19 required it. Taking into account the trial court's continuances as well as the Washington Supreme Court's emergency orders, we conclude that there was no violation of CrR 3.3.

Affirmed.

Mann, J.

WE CONCUR:

Coburn, J.

Andrus, C.J.

[5] Under CrR 3.5(b)(5), "the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period."

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Findings of Fact and Conclusions of Law
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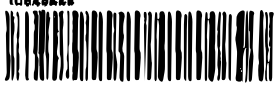

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WHATCOM COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

STATE OF WASHINGTON, Plaintiff, vs. MARTIN MORA-LOPEZ DOB: 8/29/89 Defendant.	)	No. 21-1-00360-37 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER having come before the above-entitled Court on Defense Motion to Dismiss under CrR 8.3(b), with the State of Washington being represented by Deputy Prosecutor Benjamin Pratt, and the Defendant being represented by attorney, Mamie Lackie, of the Whatcom County Public Defender, and the Court having reviewed the relevant court filings and heard the argument of counsel, now enters the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT:

1. On April 10, 2021, Mr. Mora-Lopez was arrested and thereafter held in the Whatcom County Jail in lieu of bail in the amount of $30,000. He remained in jail throughout the pendency of the case.

2. On April 12, 2021, Mr. Mora-Lopez was charged by information with one count of Assault in the Second Degree with a Deadly Weapon and one count of Felony Harassment.

3. On April 16, 2021 the Whatcom County Public Defender's Office filed a Notice of Appearance and a Demand for Discovery, including a request for the "names and addresses of persons Plaintiff intends to call as witnesses at hearing or trial, any written or recorded statements...and the substance of any oral statements of such witnesses."

4. On April 21, 2021 the State's Demand for Discovery was filed and served on the defense, including a statement that the "State's Witness List will include all those named or referenced in Discovery provided to the defendant, including any necessary custodian of records required for proof of chain of custody, certification or authentication."

5. On April 23, 2021, Mr. Mora-Lopez was arraigned and entered a plea of not guilty to both counts. A Status/Omnibus hearing was scheduled for May 19, 2021, with a Trial date of June 14, 2021.

6. On May 19, 2021 a continuance order was entered by agreement of the parties and signed by the court, resetting the Status/Omnibus hearing to May 26, 2021 and the Trial date to June 21, 2021.

7. On May 26, 2021, the scheduled Status/Omnibus hearing was set over one day so that the defendant could be present in court.

8. On May 27, 2021, Defense counsel made a 1-week continuance request and the State did not object. A new Status/Omnibus hearing was scheduled for June 3, 2021, with a trial date of June 28, 2021.

9. On June 3, 2021, both parties confirmed for Trial scheduled to begin on June 28, 2021. Per WCCrR 6.18(b)(3), a proposed Omnibus Order was required to be entered by the end of that day along with the parties' witness lists. The text of WCCrR 6.18(b)(3) is as follows:

> The parties must file a witness list by the end of the day on which the Omnibus Order is entered. Both parties must immediately contact their witnesses to confirm availability for trial. If a witness is not available, the party shall immediately notify the opposing party and file a motion to continue the trial date or make any other arrangement the Court may order, noting the motion for hearing on the next regular motion calendar, or as a special set with leave of the court. The Court will waive the 5-day notice requirement for a motion based on unavailability of a witness.

WCCrR 6.18(b)(3). In addition, Judge Olson specifically directed the parties to submit witness lists by the end of the day June 3, 2021. During the hearing, defense counsel stated that the defense would not be calling any witnesses, other than defendant, and therefore did not anticipate filing a witness list.

10. An Omnibus Order prepared and signed by both the State and the Defense was filed with the court by the end of the day on June 3, 2021. The proposed Omnibus Order contained conflicting information regarding witnesses, directing the parties to file a witness list "2 weeks prior to trial."

11. The State did not file a witness list on June 3, 2021, as specifically ordered by Judge Olson and required by the local rule.

12. On June 18, 2021, having not received a witness list, defense counsel sent the assigned deputy prosecutor an email requesting an interview with the alleged victim, explaining that defense counsel had been unable to locate him, and also requesting interviews with all of the police officers included in the discovery. Defense counsel never received a reply to that email and no witness interviews were scheduled.

13. On June 21, 2021, the State filed its witness list. The witness list was served on Whatcom County Public Defender's Office the following day, and Mr. Mora-Lopez's assigned attorney received a copy of the Witness list on the morning of June 23, 2021. The witness list included 8 identified state witnesses.

14. On June 23, 2021, Defense counsel filed and served an CrR 8.3(b) Motion, requesting that the case be dismissed for prosecutorial mismanagement based on the late filing of the witness list and the inability to interview these witnesses.

15. On June 24, 2021, the court agreed to hear defense counsel's 8.3(b) Motion to Dismiss. During argument, the State admitted that it had not communicated with the alleged victim, and an interview between that person and defense counsel had not yet been arranged. After hearing argument of counsel, the Court found by a preponderance of the evidence that the State's late filing of its witness list constituted mismanagement under *State v. Michielli* and resulted in actual prejudice to the Defense in their ability to prepare the case for trial. The Court dismissed the case with prejudice. See Conclusions below.

16. On July 7, 2021, the Court heard argument from both parties on State's motion for Reconsideration. At that time, the State indicated that it had now contacted the alleged victim, and that witness was willing to be interviewed by the Defense. The Court upheld its previous Ruling.

Based upon the foregoing Findings of Fact the Court makes the following Conclusions of Law:

II. CONCLUSIONS OF LAW:

1. Governmental misconduct need not be of an evil or dishonest nature; simple mismanagement is enough. Here, the State mismanaged its case by falling to file and serve a witness list in a timely manner as required by CrR 4.7, CrR 4.5, Whatcom County Local Court Rule WCCrR 6.18(b)(3), and the oral ruling of the court; failing to communicate with its witnesses regarding trial availability in a timely manner; and failing to attempt to make its witnesses available for defense interviews.

2. This mismanagement resulted in actual prejudice to the defendant. A defendant is prejudiced when delayed disclosure shortly before litigation, forces him to choose between his trial date and to be represented by an adequately prepared attorney. Here, the State's mismanagement communicated an inaccurate intended witness presentation by the State. The State's failure to provide a specific witness list, or even respond to a defense request for interviews, communicated an intent to not call those witnesses at trial. Based on this, the Defense did not conduct any witness interviews or otherwise prepare a defense. This communication changed four-business days before Trial with the service of the long-delayed witness list. At that late hour, the defense had insufficient time to prepare.

3. In addition, once eventually contacted by the State, the victim-witness reportedly made himself available to be interviewed rather quickly. Had the State simply contacted this intended witness three weeks earlier on June 3, 2021, as required, the defense would have had sufficient time to prepare for Trial on June 28, 2021. If was the State's unexplained failure to do so, that directly resulted in the defense's inability to prepare.

4. The failure of the State to file and serve a witness list in this case is analogous to the Washington Supreme Court Case of *State v. Salgado-Medoza*, 189 Wn.2d 420 (2017), where the court found prosecutorial mismanagement when the State failed to narrow its witness list to the actual presentation at trial, therefore not providing meaningful notice to the defense of the State's witnesses.

5. The court has considered lesser remedies to dismissal and find them inadequate in this case. While a continuance would have arguably allowed time for the defense attorney to prepare, it would have come at the expense of Mr. Mora-Lopez's right to a speedy trial and thus inadequate under *State v. Michielli*. With a Commencement Date of April 23, 2021, and accounting for excluded periods (written agreed continuance between May 19, 2021 and June 3, 2021), time for trial under CrR 3.3(b)(1)(i) would have run no

later than July 7, 2021. Given the significant change in defense required preparation that occurred with the late filing of the witness list on June 22, 2021, the defense would have had insufficient time to prepare its case prior to the expiration of time for trial. In addition, the Court was not requested too, nor does it find, that release from custody is an adequate response to the State's mismanagement. The Court is required under CrR 3.2 to set conditions of release in light of community safety and the likelihood of future appearance, which it did in this case -setting bail at $30,000. There is no provision in CrR 3.2 which allows for the consideration of "State mismanagement" as a factor to alter previously set conditions of release.

6. The Court finds by a preponderance of the evidence that the State's inaction in this case constituted mismanagement and resulted in actual prejudice sufficient to satisfy 8.3(b). No lesser remedies to dismissal are adequate.

Based on the foregoing Findings of Fact and Conclusions of Law, the Defense Motion to Dismiss pursuant to CrR 8.3(b) is GRANTED. The State's Motion to Reconsider the Court's Order Dismissing the defendant's case under 8.3(b) is DENIED.

ENTERED this 10TH day of August 2021.

Honorable Judge Evan Jones
Whatcom County Superior Court

Presented by:

Mamie Lackie WSBA #91001
Attorney for Respondent

Received and Reviewed:

Benjamin Pratt, WSBA# 43349
Deputy Prosecutor

JAMES STURDEVANT ATTORNEY AT LAW

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Appellate Court Case Title:	State of Washington, Respondent v. Aaron Michael Lancaster, Appellant
Superior Court Case Number:	20-1-00029-1

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