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STATE OF WASHINGTON
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No. 1027605
COA 38350-4-III

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

FELIPE LUIS, JR., Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

B. COURT OF APPEALS DECISIONS

At issue is the unpublished court of appeals decision filed on December 28, 2023 in Division Three of the Court of Appeals, limited to the Court of Appeals' ruling on the April 10, 2019 trial continuance, at pages 15-18 of the slip opinion.

C. ISSUE PRESENTED FOR REVIEW

1. Does the unpublished Court of Appeals decision regarding the trial court's April 10, 2019 trial continuance meet the criteria for review under RAP 13.4(b)(2)?

D. STATEMENT OF THE CASE

On December 9, 2018, Felipe Luis, Jr., Deryk Donato, Julian Gonzales, and Jacob Ozuna were housed together in the F unit of the Yakima County Jail. (RP¹ 1692-94, 1737-39).

¹ The Report of Proceedings consists of the following: (1) one volume containing three pretrial hearings, transcribed by Tina M. Steinmetz (referred to herein as "Steinmetz RP"); (2) five consecutively paginated volumes containing numerous pretrial hearings and the jury trial, reported by Jori L. Moore

The F unit had two surveillance cameras, showing the unit from two angles. (RP 1176, 1262, 1702, 1791-99; Pl's Ex. 1). The surveillance cameras showed that for almost 12 minutes between 11:30 p.m. and midnight, Luis, Donato, and Gonzales attacked Mr. Ozuna. (RP 1698-1705, 1735, 1791-1799; Pl's Ex. 1). The three inmates punched and kicked Mr. Ozuna repeatedly. (Pl's Ex. 1).

The attack continued on and on, even though Mr. Ozuna was not fighting back. (Pl's Ex. 1). At times, the attackers used a railing to steady themselves as they kicked Mr. Ozuna. (Pl's Ex. 1). To end the attack, the three inmates dragged an unresponsive Mr. Ozuna down the floor, and down a flight of concrete steps, with his head hitting each step on the way down. (Pl's Ex. 1). Gonzales repeatedly kicked and hit Mr. Ozuna in the head as he lay unresponsive on the floor. (Pl.'s Ex. 1). The three inmates left Mr. Ozuna lying unconscious on the floor and

(referred to herein as "RP"); and (3) one volume containing the sentencing hearing, reported by Joan E. Anderson.

walked away. (Pl's Ex. 1; Def.'s Ex. 91). Mr. Ozuna died because of his injuries sustained in this attack. (RP 1620-30, 1632-33, 1635-39, 1645).

The State charged Luis with one count of aggravated premeditated first degree murder and one count of premeditated first degree murder. (CP 5, 328-331; RP 1976-92, 2159-60).

Luis was arraigned on these charges on January 2, 2019. (Steinmetz RP 16-18). The trial court scheduled an omnibus hearing for January 31, 2019, and stated a trial date would be set at that hearing. (Steinmetz RP 17-18).

On January 31, 2019, Luis appeared in-custody and signed a waiver of speedy trial with a new commencement date of April 10, 2019. (CP 6). The trial court scheduled a readiness hearing for April 10, 2019, and a trial date of May 6, 2019. (CP 6).

At the April 10, 2019 readiness hearing, defense counsel did not state Luis was ready to go to trial, but he objected to a continuance of the case, stating:

What I'm saying is that we object to any continuance for the reason and purpose of, number one, obtaining the DNA in the first place, which we already objected to and made our record with regard to that. And we can -- we -- they can continue to object to the facts that the prosecuting attorney, he hasn't identified any reasons or any efforts that he's made in order to obtain the DNA in a timely manner.

. . . .

We're not asking for [a continuance] at this time. We're asking for the DNA. And we're asking for what efforts they've made to get the DNA done in a timely manner.

(RP 7, 9-10) (emphasis added).

The State informed the trial court:

At this point my understanding is the crime lab's not done with their testing yet. This is an aggravated murder. Basically, the sentence on aggravated murder is basically life without the possibility of parole. So that's what he's looking at. *I mean, if he wants to go to trial, so as long as [defense counsel] puts on the record he's ready to go to trial.* And we can go to trial on this case so long as there's not an appellate issue later on that Mr. Luis will say, well, I didn't have effective assistance of counsel because no interviews were done yet, crime lab's not done with testing. Nothing's really been done yet, Your Honor, so . . .

(RP 9) (emphasis added).

The trial court then engaged in the following discussion with the parties and granted a continuance of the trial date:

[Trial court]: Well, now I'm getting confused because he doesn't want a continuance and you're saying --

[The State]: I'm okay with a continuance. I have no objection to a continuance. I think a continuance is proper.

[Trial court]: Is anyone asking for one?

[The State]: I mean --

[Defense counsel]: *We're not asking for one at this time. We're asking for the DNA.* And we're asking for what efforts they've made to get the DNA done in a timely manner.

[Trial court]: Well, this isn't something we have not done before. Are you asking for a continuance?

[The State]: I can ask for a continuance. I think the Court should also grant a continuance considering this is only the second setting on an aggravated murder one.

[Trial court]: I just don't know enough about the case that I would feel comfortable. It seems like you're trying to put your case together.

[The State]: That's correct.

[Trial court]: And if you don't have certain information, are you looking for some DNA evidence?

[The State]: Yes, Your Honor.

[Trial court]: And that's been submitted to the crime lab?

[The State]: That's been submitted to the crime lab. They're still working on it. They're not done

yet with testing.

[Trial court]: Any forecast as to when it would be complete?

[The State]: I think somewhere -- we're probably looking at probably about June.

[Trial court]: Have you had a chance to talk to them yet?

[The State]: I have previously talked to them by e-mail about having it ready for June.

[Trial court]: All right. And is the DNA critical to your case?

[The State]: Yes, Your Honor.

[Trial court]: I find there's good cause for a continuance.

Is there any prejudice to Mr. Luis in the presentation of his defense by this continuance?

[Defense counsel]: No, Your Honor.

[Trial court]: The motion is granted.

(RP 9-11) (emphasis added).

The trial court signed a written order of continuance.

(CP 23). The trial court set a trial date of August 12, 2019, and a readiness hearing on June 19, 2019. (CP 23). The DNA test results were received by the time of the readiness hearing on June 19, 2019. (RP 10-11, 16).

The case proceeded to a jury trial. (RP 629-2279). The State showed the jury the portions of each video depicting the attack. (RP 1791-99; Pl.'s Ex. 1). The defense showed the jury

the remaining portions of the first video. (RP 1436, 1748-50, 2005-14, 2024-26, 2035-36; Pl.'s Ex. 1).

Luis proposed lesser-included offense instructions for second degree murder and first degree manslaughter. (CP 180-86, 192-93, 245, 249-54, 268, 271; RP 2088-95). The trial court granted the request and instructed the jury on these offenses, over an objection by the State. (CP 332-37, 347-48; RP 2088-95).

Luis was convicted of first degree manslaughter. (CP 348; RP 2272). He appealed, raising five issues. The Court of Appeals rejected all five issues and affirmed his judgment and sentence. Luis filed a petition for review, limited to one issue: whether the trial court properly exercised its discretion under CrR 3.3(f)(2) by granting a continuance of the trial date on April 10, 2019.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. The unpublished Court of Appeals decision regarding the trial court’s April 10, 2019 trial continuance does meet the criteria for review under RAP 13.4(b)(2).

CrR 3.3(e) sets forth excluded nine enumerated periods that “shall be excluded in computing the time for trial[.]” CrR 3.3(e). One of the enumerated periods is “[c]ontinuances[.]” defined as “[d]elay granted by the court pursuant to section (f).” CrR 3.3(e)(3). Relevant here, a continuance may be granted on a motion by the court or a party, as follows:

On motion of the court or a party, the court may continue the trial date to a specified date *when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense*. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

CrR 3.3(f)(2) (emphasis added).

“A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice.”

CrR 3.3(h). “[T]he rule terminates litigation automatically upon a violation without regard to prejudice” *State v. Denton*, 23 Wn. App. 2d 437, 449, 516 P.3d 422 (2022).

“A trial court's decision to grant or deny a motion for a continuance is within the discretion of the trial court and will not be disturbed absent an abuse of discretion.” *State v. Ollivier*, 178 Wn. 2d 813, 822–23, 312 P.3d 1 (2013).

In *Denton*, this Court considered under what circumstances crime lab delay justifies a continuance of the trial date pursuant to CrR 3.3(f)(2). *Denton*, 23 Wn. App. at 448-58. There, the in-custody defendant was arraigned on November 7, 2018, but the commencement date under CrR 3.3 was subsequently reset to January 3, 2019. *Id.* at 441-43, 448. The trial court granted continuances of the trial date over defense objection, on January 29, 2019, and on May 21, 2019. *Id.* at 443-46. These continuances were based on delays in receiving the results of DNA analysis from the state crime lab. *Id.*

On appeal, the Court of Appeals considered “whether the trial court abused its discretion in granting continuances over [the defendant]’s objection as ‘required in the administration of justice.’” *Id.* at 449.

The Court of Appeals acknowledged:

Many published decisions under evolving versions of CrR 3.3 have held that congestion or backlog in the courts or the state crime lab are rarely a rule-authorized basis for delaying trial. In the exceptional case where they are, it has been based on a detailed showing of the nature of the congestion or backlog, the steps the prosecution has taken to get around the congestion or backlog, and a reasonable time frame within which the case can be brought to trial.

Id. at 450.

The Court of Appeals held the trial court abused its discretion in granting the continuances in January and May 2019. *Id.* at 458. The court reasoned the crime lab delays were characterized as “expected and routine,” and “[n]o detailed, admissible evidence of the reasons for the back-up, efforts taken to get around it, or a reasonably short time frame within

which trial could be held was offered by the prosecutor or demanded by the court.” *Id.* at 457-58.

Here, at the April 10, 2019 readiness hearing, defense initially objected to a continuance, but then stated the defense wanted the DNA, and did not request a continuance. (RP 7, 9-10).

The Court of Appeals’ decision upholding the trial court’s decision regarding the April 10, 2019 trial continuance does not meet the criteria in RAP 13.4(b)(2). Contrary to Luis’ assertion, the Court of Appeals decision does not conflict with *Denton*. See *Denton*, 23 Wn. App. 2d at 437. *Denton* is factually distinguishable, because there, the defendant objected to the State’s continuance and wanted to go to trial *without* the DNA evidence that was the basis for the State’s continuance request. See *Denton*, 23 Wn. App. 2d at 444 (stating “[d]efense counsel told the court, ‘Mr. Denton would like to get this case over with and therefore he is objecting to continuance,’ and ‘I can certainly try this case without the DNA.’”).

Luis' statement of the case in his Petition for Review to this Court omits a key fact: on April 10, 2019, the State offered to proceed to trial on the date set, May 6, 2019. (RP 9); *see also* Petition for Review, pgs. 2-6. Defense counsel did not take the State up on this offer, but instead *stated the defense wanted the DNA*. (RP 9-10). Based on this key fact, the trial court did not abuse its discretion in granting a continuance of the trial date; the State offered to proceed to trial without the DNA, and the defense declined. The trial court appropriately found good cause for the continuance under these circumstances. The continuance was required in the administrative of justice to obtain DNA test results, which were specifically requested by defense counsel, and Luis was not prejudiced in the presentation of his defense, as acknowledged by defense counsel. (RP 9-11); *see* CrR 3.3(f)(2).

Contrary to Luis' assertion, the unpublished Court of Appeals decision regarding the trial court's April 10, 2019 trial

continuance does meet the criteria for review under RAP 13.4(b)(2).

F. CONCLUSION

For the reasons stated above, the Court of Appeals' ruling on Luis' rule-based speedy trial claim does not meet the criteria in RAP 13.4(b)(2). *Denton* is factually distinguishable. As such, Luis' petition for review should be denied.

WORD COUNT CERTIFICATION

This document contains 2,254 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 20th day of February, 2024.

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DECLARATION OF SERVICE

I, Jill S. Reuter, state that on February 20, 2024, having received prior permission, I emailed the State's Answer to Petition for Review to Andrea Burkhart at andrea@2arrows.net, via the Washington State Appellate Courts' Portal.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 20th day of February, 2024 at Spokane, Washington.

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YAKIMA COUNTY PROSECUTING ATTORNEY'S OFFICE

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