

NO. 43415-6-II

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

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STATE OF WASHINGTON,

Appellant,

v.

HELEN SHALE,

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Craddock D. Verser, Judge

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BRIEF OF APPELLANT

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A. STATEMENT OF THE ISSUE ON APPEAL

Respondent was arraigned in District Court on a DUI charge, and she remained in custody from that time. The State subsequently filed a felony DUI charge based on the same conduct and dismissed the District Court charge. Where the State failed to bring Respondent to trial within 60 days of her arraignment in District Court, did the Superior Court properly dismiss the charge for violation of the speedy trial rule?

B. STATEMENT OF THE CASE

Respondent Helen Shale was charged in Jefferson County District Court with driving under the influence of intoxicants, and she was arraigned on February 16, 2012. RP (DC)<sup>1</sup> 3. At a pretrial hearing on March 16, 2012, trial counsel informed the court that Ms. Shale would not be going to trial, but she was still waiting for information from a treatment center. RP (DC) 11. Counsel asked the court to set another pretrial hearing, and a hearing was set for April 4, 2012. RP (DC) 12.

At the April 4 hearing, defense counsel advised the court that Ms. Shale wanted to enter a guilty plea. RP (DC) 15-16. The State objected to the plea, stating it was trying to determine if Ms. Shale should be charged with a felony DUI instead of a misdemeanor. RP (DC) 15-16. The court

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<sup>1</sup> The verbatim report of proceedings from the hearings in district court on 2/16/12, 3/16/12, 4/4/12, 4/11/12, and 4/16/12 is referred to as RP (DC). The verbatim report of proceedings from the superior court hearing on 4/27/12 is referred to as RP (SC).

granted a one week continuance of the pretrial hearing, over defense objection, so that the State could determine whether the current charge was appropriate. RP (DC) 17-18.

On April 11, defense counsel again informed the court that Ms. Shale wanted to plead guilty, and the State again asked for more time to gather information. RP (DC) 21-22. Over defense objection, the court continued the pretrial hearing another week. RP (DC) 24,

On April 13, 2012, the State charged Ms. Shale in Jefferson County Superior Court with one count of felony driving under the influence, based on the February 15, 2012, incident. CP 1-2. She was arraigned in Superior Court on April 16, and later that day, the District Court dismissed the misdemeanor charge. RP (DC) 31-33.

Ms. Shale moved to dismiss the felony charge for violation of the speedy trial provisions of CrR 3.3. CP 15-17. Following a hearing on April 27, 2012, Judge Craddock D. Verser granted the motion to dismiss. CP 18-21. In its memorandum opinion, the court noted that “the charge in Superior Court is a ‘related’ charge to the original charge filed in District Court and thus CrR 3.3(a)(5) applies.” CP 19. The court rejected the State’s contention that the continuances granted in District Court were excluded from the speedy trial period, noting that the speedy trial rule provides for exclusion of periods related to continuance of the trial date

but not for continuances of other pretrial hearings. CP 19. Because Ms. Shale was not brought to trial within the time required by the rule, the court dismissed the charge. CP 20. The court denied the State's motion for reconsideration in a further memorandum opinion. CP 28-30.

C. ARGUMENT

MS. SHALE WAS NOT BROUGHT TO TRIAL WITHIN THE SPEEDY TRIAL PERIOD SET FORTH IN CRR 3.3, AND THE COURT PROPERLY DISMISSED THE CHARGE.

Under the speedy trial rule, a defendant held in custody must be brought to trial within 60 days of the arraignment date. CrR 3.3(b)(1)(i); CrR 3.3(c)(1). This 60 day period applies to the pending charge and all related charges. CrR 3.3(a)(5). A related charge is "a charge based on the same conduct as the pending charge that is ultimately filed in the Superior Court." CrR 3.3(a)(3)(ii).

Washington Courts have recognized that the time within which a trial must be held begins running from the time the defendant is held to answer any charge with respect to that same conduct or criminal episode. See e.g., State v. Harris, 130 Wn.2d 35, 44, 921 P.2d 1052 (1996). "When multiple charges stem from the same criminal conduct or criminal episode, the State must prosecute all related charges within the speedy trial time limits." Id.

Here, the District Court DUI charge is related to the felony charge ultimately filed in Superior Court. That fact was never challenged below, nor could it be. Ms. Shale was charged in Superior Court based on the same conduct supporting the District Court charge. CP 1-5; RP (D) 3. Under CrR 3.3(a)(5), the time for trial for all charges related to the alleged DUI incident began running when Shale was arraigned in District Court.

In its brief the State argues that the speedy trial clock started over when the State filed the felony charge in Superior Court. The State offers no legal support for this argument, and it is clearly contrary to CrR 3.3(a)(5).

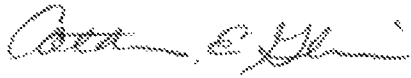
Ms. Shale was arraigned in District Court on the related charge on February 16, 2012. She was held in jail continuously from the time of her arraignment. Thus, the State was required to bring her to trial within 60 days, by April 16, 2012. That did not happen, and the charge against her was properly dismissed.

D. CONCLUSION

The trial court properly dismissed the charge against Ms. Shale for violation of the speedy trial provisions of CrR 3.3. The order of dismissal must be affirmed.

DATED this 2<sup>nd</sup> day of November, 2012.

Respectfully submitted,



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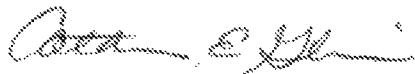
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Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope containing a copy of this Brief of Respondent directed to:

Helen Shale  
HC 80 Box 1405  
Forks, WA 98331

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



Catherine E. Glinski  
Done in Port Orchard, WA  
November 2, 2012



# GLINSKI LAW OFFICE

**November 02, 2012 - 2:29 PM**

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