

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

THE STATE OF WASHINGTON,
Respondant,
vs.
RODNEY STEVEN MITUNIEWICZ,
Appellant.

Case No. 43110-6-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

I. STATEMENT OF FACTS

Clark County Superior Case No. 11-1-01530-1 Summary of Clerk's Papers Record attached at Appendix "A" and September 1, 2003 amended CrR 3.3 attached at Appendix "B" and incorporated by reference as if fully set forth herein.

Mituniewicz disagrees with Appellate Counsel's statement subject to November 10, 2011, readiness continue of the trial date, and, January 5, 2012, readiness where the Indigent Defense Counsel (hereinafter IDC) again asked to have the trial date continued.

II. ARGUMENT

Assignment of Additional Grounds No. 1: The trial court erred in denial of Mituniewicz's rights to a timely trial within these established case law standards pursuant to CrR 3.3.

A) FIRST PART STANDARD OF REVIEW

Application of the time-for-trial rules to a particular set of facts is a question of law, subject to de novo review. State v. Kindsvogel, 149 Wn.2d 477, 480, 69 P.3d 870 (2003).

1 1) Does Mituniewicz's in custody rights to trial within
2 60-days when Honorable Collier set it under CrR
3 3.3(b)(1)(i)?

4 Honorable Collier: "to both counts in the information,
5 the possession of a controlled substance with intent to
6 deliver heroin, ... and unlawful possession of a firearm in
7 the second degree ... To these charges, how do you plead?"

8 Mituniewicz: "Not guilty, Your Honor."
9 (VRP at 1-2, 9/29/11).

10 (a) Does Mituniewicz have a right to omnibus hearing
11 set under CrR 4.5(a) within 60-days trial period
12 pursuant to CrR 3.3(b)(1)(i)?

13 The information included a charge of Persistent
14 Offender Accountability Act, to a sentence of life without
15 the possibility of release under RCW 9.94A.570. (CP at 4,
16 lines 24-25). Requiring arraignment judge to set omnibus
17 hearing under CrR 4.5(a) states:

18 **"When Required.** When a plea of not guilty is
19 entered, the court shall set a time for an omnibus
hearing."

20 "CrR 4.5(a) was amended in 1995 to make an omnibus
21 hearing mandatory, rather than discretionary with the
22 court." Washington Practice Rules, Vol. 4A at p. 355 (7th
23 Ed. 2008). "CrR 4.5 and 4.7 are procedural and not
24 substantive as they merely allow for accelerated disclosure
25 of information which ultimately must be revealed at trial
26 and their purpose is to prevent last-minute surprise, trial

1 disruption and continuances and to encourage the early
2 disposition of the cases through settlement." State v.
3 Wilson, 29 Wn.App. 895, 901, 626 P.2d 998 (Div. 1, 1981)(CP
4 at 20, p. 6-8).

5 Honorable Collier: "So we'll set an in-custody date, a
6 PV plan to track with the" (VRP at 2, lines 6-7, 2/29/11).

7 IDC Lavallee: "The probation violation is a 1992 case,
8 it's based on a failure to pay LFO." (VRP at 3, lines 4-6,
9 9/29/11).

10 DPA Dodds: contend that Mituniewicz "has been very non-
11 compliant with requirements of the sentences that have done
12 violated in regards to his supervision by the Department of
13 Corrections." (VRP at 4, lines 13-17, 9/29/11).

14 Clear, cogent, and convincing evidence of DPA Dodds'
15 open Pandora's Box releasing the evil of Mituniewicz's DOC
16 sanction being serve as for non-compliant with requirements
17 of Cause No. 10-1-00077-1 felony and misdemeanor sentences
18 Judge Johnson imposed March 19, 2010, and now before Judge
19 Collier's discretion not to use CrR 3.3(a)(3)(v) appropriate
20 in State v. Bobanhouse, held that:

21 "Speedy Trial. A defendant detained in jail must be
22 brought to trial within 60 days after arraignment. CrR
23 3.3(b)(1)(i),(c)(1). But 'detained in jail' means in
24 custody 'pursuant to the pending charge.' CrR
25 3.3(a)(3)(v) (emphasis added). Any period of time when
26 the defendant is held in custody on an unrelated charge
or is serving another sentence is excluded. CrR
3.3(a)(3)(v). Mr. Bobanhouse was not detained in jail
pursuant to the pending charges at any time within the
means of the speedy trial rule. He was serving a
sentence on unrelated charges. Consequently, the court

1 had 90 days to bring him to trial. CrR 3.3(b)(2)(i)."
2 143 Wn.App. 315, 329, 177 P.3d 209 (Div III, 2008).

3 Mituniewicz: "[T]he newest case which is in Division
4 Two is State v. Johnson," held that:

5 "Because the burglary occurred on September 16, 2003,
6 and the State filed charges on January 13, 2004, the
7 new version of CrR 3.3, the speedy trial rule
8 (effective September 1, 2003), governs this case. The
9 court arraigned Johnson on January 27, 2004. Although
10 the trial court was holding Johnson in jail on \$30,000
11 bail for the burglary charge, because he was serving a
12 sentence for another cause, apparently until sometime
13 in June 2004, he was not 'detained in jail' on the
14 burglary charge as that term is defined at CrR
15 3.3(a)(3)(v0. Therefore, the court had 90 days to bring
16 Johnson to trial. CrR 3.3(b)(2)(i)."

17 (VRP at 828, lines 3-16, 2/13/12). 132 Wn.App. 400, 411-12,
18 132 P.3d 727 (Div. II, 2006). "CrR 1.1 is also relevant for
19 our analysis of CrR 3.3. CrR 1.1 proves the criminal rules
20 'shall be interpreted and supplemented in light of ... the
21 decision law of this state." State v. Greenwood, 120 Wn.2d
22 585, 596, 845 P.2d 971 (1993).

23 Honorable Collier: "Alright. Department 1 case,
24 November 14th, trial date. Forty-six days elapsed. November
25 10, readiness 1:30."

26 (Defense Counsel confers with Defendant)

IDC Lavallee: "So you need to sign for your dates."

(Clerk and parties sign paperwork)

DPA Dodds: "The trial attorney is going to be St.
Clair."

IDC Lavallee: "Okay. Could you just sign right there?"

1 (Defendant signs document.)
2 (VRP at 6, lines 12-23, 9/29/11) CP at 6 attached at
3 Appendix "C" and incorporated by reference as if fully set
4 forth herein.

5 Although, Honorable Collier under CrR 3.3(b)(1)(i)
6 which requires trial within 60 days when Mituniewicz is in
7 custody, this requirement "'is not a constitutional
8 mandate.'" State v. Carson, 128 Wn.2d 805, 821, 912 P.2d
9 1016 (1996)(quoting State v. Terrovone, 105 Wn.2d 632, 651,
10 716 P.2d 295 (1995)). "[P]ast experience has shown that
11 unless a strict rule is applied the right to a speedy trial
12 as well as the integrity of the judicial process, cannot be
13 effectively preserved." State v. Striker, 87 Wn.2d 870, 877,
14 557 P.2d 847 (1976). Years prior to the September 1, 2003,
15 amended CrR 3.3, the Supreme Court Task Force "continue to
16 revise the rule from time to time in a continuing effort to
17 achieve early trial in all cases and no dismissal with
18 prejudice in any case." State v. White, 94 Wn.2d 498, 502,
19 617 P.2d 998 (1980).

20 2) Does Mituniewicz's rights to timely trial within 60
21 days in custody as set under CrR 3.3(b)(1)(i),(c)(1), and
22 not under CrR 3.3(a)(3)(v),(b)(2)(i),(c)(1), when DPA Dodds,
23 nor IDC Lavallee object within 10 days pursuant to CrR
24 3.3(d)(3)?

25 Mituniewicz: "[O]ne thing I really want to point out is
26 that the procedure of when the fine for DOC sanction should

1 be addressed to the court, and that's at arraignment." (VRP
2 at 827, lines 20-23, 2/13/12). "The Court didn't take it
3 into consideration. Counsel didn't object; therefore, it's
4 procedurally time barred. It's time barred because she
5 didn't object in ten-days bringing it up in November, you
6 know, from September to November is way ove ten-days." (VRP
7 at 828-829, 2/13/12).

8 IDC Lavallee: "[T]hat the deputy prosecutor at the time
9 of arraignment, Dodds, knew about the independent sanction
10 form under the DOC sanction, and so because it was not
11 raised by either Dodds nor Defense Counsel, that that time
12 would be excluded from his speedy trial period on this new
13 charge." (VRP at 832, lines 2-7, 2/13/12).

14 "Objections to a trial date on speedy trial grounds
15 must be made within 10 days after notice of the trial date
16 is given. CrR 3.3(d)(3). And any party who fails, for any
17 reason, to move for a trial date within the time limits of
18 CrR 3.3 loses the right to object. CrR 3.3(d)(3)."

19 Bobanhouse, 143 Wn.App. at 325. "The superior court speedy
20 trial rules were promulgated to give the defendant a prompt
21 trial once prosecution is initiated. [They] were not
22 designed to be a trap for the unwary." Carson, 128 Wn.2d at
23 815. (omitted citation).

24 B) SECOND PART STANDARD OF REVIEW

25 "[T]he decision to grant or deny a motion for a
26 continuance rests within the sound discretion of the trial

1 court." State v. Downing, 151 Wn.2d 265, 272, 87 P.2d 1169
2 (2004). An appellate court "will not disturb the trial
3 court's decision unless the appellant or petitioner makes 'a
4 clear showing [that the trial court's] discretion [is]
5 manifestly unreasonable, or exercised on untenable grounds,
6 or for untenable reasons." Downing, 151 Wn.2d at 272
7 (alteration in original)(quoting State ex rel. Carrol v.
8 Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). "Trial courts
9 should tread carefully and provide adequate explanation
10 before granting a continuance when defense counsel moves for
11 a continuance for [frivolous discovery] and the defendant
12 objects to a continuance that will delay trial-that the
13 State agrees to such a continuance does not relieve the
14 trial court of its burden. CrR 3.3(f)(2)" State v. Saunders,
15 153 Wn.App. 209, 237, fn. 9, 220 P.3d 1239 (Div. II,
16 2009)(emphasis added, and ethics omitted).

17 3) Does DPA Carmena, DPA St. Clair, and IDC Lavallee
18 under RPC 8.4(d) engage in conduct that is prejudice to the
19 administration of justice and prejudice to Mituniewicz's
20 defense against the presentation of the case-in-chief
21 pursuant to CrR 3.3(f)(2)?

22 DPA Carmena: "It's my understanding the assigned
23 prosecutor is still in trial and anticipates being in trial
24 through the 14th or 15th of November. At this time the State
25 is making a motion for 28th or a request for a continuance
26 of the trial date." (VRP at 8, lines 17-22, 11/10/11).

1 "[B]oth defense counsel and the State moved for a
2 continuance" Saunders, 153 Wn.App. at 218.

3 IDC Lavallee: "I, too, am asking the Court for a
4 continuance. I have prepared a written motion outlining the
5 reasons." (VRP at 9, lines 4-5, 11/10/11). As Follows:

6 "COMES NOW, counsel for the accused, Therese
7 Lavallee, and moves the Court for an Order continuing
8 the trial date from Monday, November 14, 2011 to a date
9 in January 2012.

10 "This motion is based upon the declaration of
11 counsel attached and incorporated herein."

12 DECLARATION OF COUNSEL

13 "I, Therese Lavallee, as an officer of the court
14 hereby declare:"

15 "1. I am the attorney of record for the accused
16 Rodney Mituniewicz. I was appointed by the Clark County
17 Superior Court to provide representation for Mr.
18 Mituniewicz on September 15, 2011, at his First
19 Appearance in court. Mr. Mituniewicz was arraigned on
20 September 29, 2011 and trial was scheduled for November
21 14, 2011 with forty-six elapsed days."

22 "2. Mr. Mituniewicz was arrested for the pending
23 offense on September 14, 2011. He was also arrested for
24 an outstanding warrant based on the accusation that he
25 had violated the terms of his community custody in
26 Clark County Cause No. 10-1-00077-1."

"3. On September 22, 2011 a sentence of 60 days
was imposed by the Department of Corrections for the
violations of community custody in Clark County Cause
No. 10-1-00077-1. CrR 3.3(a)(v) excludes from the
speedy trial period pursuant to court rule, any
custodial period where the accused is detained for an
unrelated charge or is serving an unrelated sentence."

"4. Defense counsel is not prepared to proceed to
trial on November 14, 2011 on the current allegations.
The accused is alleged to have committed a 'most
serious offense' of Possession of a Controlled
Substance With Intent to Deliver-Heroin and Unlawful
Possession of a Firearm in the Second Degree. The
government has plead the sentencing enhancements of
committing the offense while armed with a firearm and
within a school zone. The penalties, should the
government be successful in proving both underlying
offenses and the sentence enhancements, will expose the
accused to several years in prison."

"5. Additional time is necessary for the defense
to complete the investigation, to adequately advise the

1 defendant and to provide him with effective assistance
of counsel, and to prepare the matter for trial."

2 "6. Discovery is not complete in this matter.
3 Demands for discovery are ongoing, including necessary
4 and material information regarding the named informant
5 used by law enforcement in developing what the
6 government asserts is probable cause to justify the
7 arrest and search of Mr. Mituniewicz. Resolution of the
8 discovery matters is imperative to complete both the
9 investigation and preparation of the matter for trial.
10 Furthermore, on November 6, 2011 counsel received
11 copies of several handwritten motions filed by Mr.
12 Mituniewicz regarding issues he would like the court to
13 address before trial commences. To proceed to trial
14 without the court addressing the filed motions would
15 prejudice the accused."

16 "8. Deputy Prosecuting Attorney Randy J. St.
17 Claire is the government's trial attorney in this case,
18 including discovery matters. He has been unavailable to
19 defense counsel to discuss this case for the past
20 several weeks because he is in trial. It is my
21 understanding that he will still be in trial in another
22 matter the week of November 14, 2011."

23 "7. I anticipate that Mr. Mituniewicz will not
24 waive his speedy trial rights conferred on him by CrR
25 3.3. However, his due process rights require that he be
26 afforded the right to effective assistance of counsel.
I declare that that additional time is necessary for me
to effectively represent Mr. Mituniewicz in this
matter. "It is not an abuse of discretion to grant
(multiple) continuances to ensure that defense counsel
is adequately prepared for trial, even though the
defendant objects to the continuance.: State v. Oliver,
63559-0-I (Wash. App. 04-19-2011)."

CP at 11 attached at Appendix "D" and incorporated by
reference.

First prong: On November 10, 2011, "[i]t is
professional misconduct for" DPA Carmena and IDC Lavallee to
"engage in conduct that is prejudicial to the administration
of justice."

"Defense counsel should not intentionally misrepresent
facts or otherwise mislead the court in order to obtain a

1 continuance." ABA Standards for Criminal Justice, Defense
2 Counsel Delays Std. 4-1.3(c), at p. 121 (3d Ed. 1993).

3 "[T]he trial court granted the continuance without
4 acknowledging counsel's duty under RPC 1.2(a) and its own
5 duty to see that [the defendant] received a timely trial
6 [CrR 3.3(f)(2)]." Saunders, 153 Wn. App. at 237.

7 Under CrR 3.3(f)(2), the trial court has the option of
8 imposing a continuance. But initially it is an appropriate
9 mechanism by RPC 1.2(a), states in relevant part:

10 "... a lawyer shall abide by a client's decisions
11 concerning the objectives of representation and, as
12 required by rule 1.4, shall consult with the client as
to the means by which they are to be pursued."

13 RPC 1.2(a). Saunders, 153 Wn. App. at 237 fn. 9.

14 Mituniewicz in an attorney-client consultation at Clark
15 County Jail on September 28, 2011, Mituniewicz requested IDC
16 Lavallee to "promptly comply with reasonable requests for
17 information." RPC 1.4(a)(4), to get the informant's search
18 warrant to file her motion to suppress and gave her the DOC
19 Order of Confinement (Defense Exhibit #1, 1/5/12) form to
20 give to the arraignment court on September 29, 2011, so
21 that, would be no need to waive his rights to a timely
22 trial. (CP at 20, p. 9-10, mailed on 11/15/11).

23 IDC Lavallee: "Well, I would, just for purposes, Your
24 Honor, of clarification of the future proceedings. I think
25 we should probably address that motion simply because he is
26 raising a claim against me. So I think that there should be

1 some colloquy about Mituniewicz and his satisfaction with
2 "(VRP at 20, lines 18-24, 1/5/12)" an ineffective assistance
3 of counsel claim because ... attorney requested a
4 continuance ... over [the defendant's] express objection
5 [and] his goal is to go to trial rather than pursue
6 [frivolous discovery]." Saunders, 153 Wn.App. at _____. Quinn-
7 Brintnall, J. concurring in the result)(emphasis added).

8 Mituniewicz, in an attorney-client consultation at
9 Clark County Court holding room on November 10, 2011, was
10 consulted by IDC Lavallee prior to readiness hearing. "Keep
11 the client reasonably informed about the status of the
12 matter." RPC 1.4(a)(3). IDC Lavallee did not have any Clark
13 County Sherrif's Officers Incident Reports of September 14,
14 2011, events at 11412 NE 49th Street, Apt. #G-15, Vancouver;
15 nor WSP Lab. Report on Heroin tests; nor WSP Lab Report on
16 P.380 pistol latent-prints and DNA, (CP at 3, page 4,
17 09/15/12). Mituniewicz wanted to go to trial on November 28,
18 2011, 60 days under CrR 3.3(b)(1)(i) or dismissal with
19 prejudice under CrR 3.3(h). See RPC 1.2(a)("a lawyer shall
20 abide by a client's decisions concerning the objectives of
21 representation"). See RPC 3.4(d)("In pretrial procedure,
22 make a frivolous discovery request") as follows:

23 "Defense counsel should act with reasonable
24 diligence and promptness in representing a client."
25 ABA Standards for Criminal Justice, Defense Counsel
26 Delays Std. 4-1.3(a) and RPC 1.3.

IDC Lavallee: "As I stated, I don't believe, my client

1 is wanting a continuance of the trial date. I don't believe
2 he certainly will not waive his right to a speedy trial
3 under the court rule. And so I will let the Court address
4 him with regard to that, if you would like." (VRP at 11,
5 lines 4-9, 11/10/11). "A lawyer shall make reasonable
6 efforts to expedite litigation consistent with the interests
7 of the client." RPC 3.2.

8 Honorable Johnson: "I understand. Alright, and
9 Mituniewicz, is there anything you'd like to add?"

10 Mituniewicz: "It's just that I'd like to object, Your
11 Honor, to the continuance." (VRP at 11, lines 21-24,
12 11/10/11).

13 "Defense counsel should not intentionally misrepresent
14 matters of fact or law to the court." ABA Standards for
15 Criminal Justice the Function of Defense Counsel Std. 4-
16 1.2(f), at Page 121. Likewise RPC 3.3(a)(1) ("A lawyer shall
17 not knowingly ... make a false statement of fact or law to a
18 tribunal.").

19 IDC Lavallee: "So it is my position under the court
20 rule that not only could you continue this based on motion
21 of either party, but also that that 60 days would be
22 excluded from any speedy-trial time." (VRP at 10, lines 18-
23 20, 11/10/11).

24 "In the course of representing a client a lawyer shall
25 not knowingly ... make a false statement of material fact or
26 law to a third person." RPC 4.1(a).

1 IDC Lavallee: "[T]hat the deputy prosecutor at the time
2 of arraignment, Dodds, knew about the independent sanction
3 form under the DOC sanction, and so because it was not
4 raised by either Dodds nor Defense Counsel, that that time
5 would be excluded from his speedy trial period on this new
6 charge." (VRP at 832, lines 2-7, 02/13/12). "Objections to a
7 trial date on speedy trial grounds must be made within 10
8 days after notice of the trial date is given. CrR 3.3(d)(3).
9 And any party who fails, for any reason, to move for a trial
10 date within the time limits of CrR 3.3 loses the right to
11 object. CrR 3.3(d)(3)." Bobanhouse, supra. "The superior
12 court speedy trial rules were promulgated to give the
13 defendant a prompt trial once prosecution is initiated.
14 [They] were not designed to be a trap for the unwary."
15 Carson, supra.

16 "A lawyer shall not knowingly ... offer evidence that
17 the lawyer knows to be false." RPC 3.3(a)(4). "[A] sentence
18 of 60 days was imposed by the Department of Corrections for
19 the violations of community custody in Clark County Cause
20 No. 10-1-00077-1. CrR 3.3(a)(v) excludes from the speedy
21 trial period pursuant to court rule, any custodial period
22 where the accused is detained for an unrelated charge or is
23 serving an unrelated sentence." (CP at 11, Page 2, lines 10-
24 13, 11/10/11). "A lawyer shall not ... falsify evidence,
25 counsel" RPC 3.4(b).

26 IDC Lavallee: "The reason why that's an important

1 argument for Mituniewicz is because at the readiness hearing
2 on November 10th, Judge Johnson granted the motion to
3 continue. She excluded the DOC time... Under the court rule
4 and the case law." (VRP at 25, line 6-14, 1/5/12). "The
5 legal representation plan shall require that defense
6 services be provided to all clients in a professional,
7 skilled manner consistent with minimum standards set forth
8 by the American Bar Association, applicable state bar
9 association standards, the Rules of Professional Conduct,
10 case law and applicable court rules defining the duties of
11 counsel and the rights of defendants in criminal cases.
12 Counsel's primary and most fundamental responsibility is to
13 promote and protect the interests of the client." Washington
14 State Bar Association, Standard for Indigent Defense
15 Service, Std. Two (June 3, 2011). "[A]nd certainly the bar
16 association's standards, may be considered with other
17 evidence concerning the effective assistance of counsel."
18 State v. A.N.J., 168 Wn.2d 91, 111, 225 P.2d 956 (2010).

19 "The basic duty defense counsel owes to the
20 administration of justice and as an officer of the court is
21 to serve as the accused's counselor and advocate with
22 courage and devotion and to render effective, quality
23 representation." ABA Standards for Criminal Justice, the
24 Function of Defense Counsel Std. 4-1.2(b), at P. 120 (3d Ed.
25 1993). IDC Lavalley "is an officer of the court. As such,
26 [s]he owes it a duty of frankness and honesty." White, 94

1 Wn.2d at 502. "It is professional misconduct for a lawyer to
2 ... engage in conduct involving dishonesty, fraud, deceit or
3 misrepresentation." RPC 8.4(c). IDC Lavallee takes out her
4 bag the DOC order of confinement form (Defense Exhibit #1)
5 to the prosecutor and brings the document to the bench. (VRP
6 at 45-47, 1/5/12) "Misrepresentation to Obtain a
7 Continuance, Paragraph (c) recognizes that '[d]efense
8 counsel should not intentionally misrepresent facts or
9 otherwise mislead the court in order to obtain a
10 continuance. As in Standard 4-1.2(f), this rule reflects
11 recognition of the fact that defense counsel must be
12 scrupulously candid and truthful in representations of any
13 sort before the court." ABA Standards for Criminal Justice,
14 Defense Counsel Delays Commentary Std. 4-1.3(c) at Page 128
15 (3d Ed. 1993). "In this case, defense counsel was aware of
16 the speedy trial expiration date." Carson, 128 Wn.2d at 819.

17 "A prosecutor should not intentionally misrepresents
18 facts or otherwise mislead the court in order to obtain a
19 continuance." ABA Standards for Criminal Justice,
20 Prosecutorial Prompt Disposition of Criminal Charges Std. 3-
21 2.9(d), at page 40 (3d Ed. 1993). An appellate court "are
22 required to make [its] own independent examination of the
23 record to determine whether such rights have been denied."
24 State v. Breaux, 20 Wn.App. 41, 44, 578 P.2d 888 (Div. I,
25 1978)("The trial court held that the State had discharged
26 its burden to provide a speedy trial.").

1 DPA Carmena: "Your Honor, it looks like this case is on
2 for readiness with trial scheduled for the 14th. It's my
3 understanding that assigned prosecutor is still in trial and
4 anticipates being in trial through the 14th or 15th of
5 November. At this time the State is making a motion for 28th
6 or a request for a continuance of the trial date." (VRP at
7 8, lines 15-21, 11/10/11). That DPA St. Clair had open 60
8 day timely trial for Mituniewicz during third and fourth
9 week of November 2011, and a 2011 calendar is attached at
10 Appendix "E" and incorporated by reference as if fully set
11 forth herein.

12 "A prosecutor should not fail to disclose to the
13 tribunal legal authority in the controlling jurisdiction
14 known to the prosecutor to be directly adverse to the
15 prosecutor's position and not disclosed by defense counsel."
16 ABA Standards for Criminal Justice Prosecutorial Relations
17 With the Courts and Bar Std. 3-2.8(d) at page 35 (3d Ed.
18 1993). Likewise RPC 3.3(a)(3) ("A lawyer shall not knowingly
19 ... fail to disclose to the tribunal legal authority in the
20 controlling jurisdiction known to the lawyer to be directly
21 adverse to the position of the [State] and not disclosed by
22 opposing counsel.")(emphasis added). DPA Carmena did not
23 have in the case file any Clark County Sherrif's Officers
24 Incident Reports of September 14, 2011, events at 11412 NE
25 49th Street, Apt. #G-15, Vancouver; nor WSP Lab. Report on
26 Heroin tests; nor WSP Lab Report on P.380 pistol latent-

1 | prints and DNA. (CP at 3, page 4, 9/15/11). "The right to a
2 | prompt inquiry into criminal charges is fundamental and the
3 | duty of the charging authorities is to provide a prompt
4 | trial." Breaux, 20 Wn. App. at 44.

5 | "A prosecutor should not fail to make a reasonably
6 | diligent effort to comply with a legally proper discovery
7 | request." ABA Standards for Criminal Justice, Disclosure of
8 | Evidence by the Prosecutor Std. 3-3.11(b), at page 81 (3d
9 | Ed. 1993).

10 | IDC Lavallee: "Your Honor, what is spelled out in my
11 | written motion is that there is additional discovery that
12 | needs to be provided to the Defense regarding a key and
13 | necessary witness in this case with regard to Count 1, which
14 | is a Class A Felony." (VRP at 9-10, 11/10/11). "A lawyer
15 | shall not ... fail to make reasonably diligent effort to
16 | comply with a legally proper discovery request by an
17 | opposing party." RPC 3.4(d).

18 | "A prosecutor should not intentionally misrepresent
19 | matters of fact or law to the court." ABA Standards for
20 | Criminal Justice, Prosecutorial Relations With the Courts and
21 | Bar Std. 3-2.8(a) at page 35 (3d Ed. 1993). "A lawyer shall
22 | not knowingly ... make a false statement of fact or law to a
23 | tribunal or fail to correct a false statement of material
24 | fact or law previously made to the tribunal by the lawyer."
25 | RPC 3.3(a)(1).

26 | DPA Carmena: "The 60 days starts from September 14th."

1 (VRP at 13, lines 2-3, 11/10/11).

2 Mituniewicz: "That's actually 40 days because I get
3 good time." (VRP at 13, lines 8-9, 11/10/11).

4 Honorable Johnson: "Well, September 14th. Forty days
5 would take it to October 24th." (VRP at 13, lines 14-15,
6 11/10/11).

7 In 2003, the Supreme Court created the Time-for-Trial
8 Task Force to clarify and simplify the time for trial rule.
9 State v. George, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007).

10 One concern of the Task Force was that the appellate court's
11 interpretation of CrR 3.3 expanded the rule by imposing a
12 due diligence standard on the State, and led to
13 unpredictable decisions. George, 160 Wn.2d at 737-38; TIME-
14 FOR-TRIAL TASK FORCE, WASHINGTON COURTS, FINAL REPORT §
15 II.B, at 21 (Oct. 2002)(on file with Admin. Office of
16 Courts, available at
17 http://www.wa.gov/programs_orgs/pos_tft.reporthome). In
18 response, the task force decided against including a
19 specific minimum due diligence standard and, instead,
20 fashioned the new rules to incorporate a standard of due
21 diligence within different provisions of the rule. TASK
22 FORCE, FINAL REPORT § II.C. (1), at 23-24. The rules were
23 intended "to cover all the reasons why a case should be
24 dismissed under the rule" and no reasons should be read into
25 the rule beyond those that are expressly stated. TASK FORCE,
26 FINAL REPORT § I.B.1 at 6. State v. Chavez-Romero, 285 P.3d

1 195, 200 (Div. III, 2012).

2 "In the course of representing [the State] a lawyer
3 shall not knowingly ... make a false statement of material
4 fact or law to a third person." RPC 4.1(a).

5 DPA Carmena: "Do we give him credit for good time when
6 we don't know if he's actually earned it?"

7 IDC Lavallee: "That's his position."

8 Honorable Johnson "I don't know if"
9 (VRP at 13, lines 19-22, 11/10/11).

10 In the electronic age of instant information, where the
11 taxpayers provide computers to the Court and the State
12 abused their duties under CrR 3.3, the trial court is
13 responsible for ensuring that the trial is held in
14 accordance with the rules. CrR 3.3(a)(1)(2); see also TASK
15 FORCE, FINAL REPORT § II.B at 12. But, as between the State
16 and a criminal defendant, the State is responsible for
17 bringing the defendant to trial within the speedy trial
18 period. State v. Wilks, 85 Wn. App. 303, 308, 932 P.2d 687
19 (Div. III, 1997).

20 "The prosecutor is an administrator of justice, an
21 advocate, and an officer of the court; the prosecutor must
22 exercise sound discretion in the performance of his or her
23 function." ABA Standard for Criminal Justice, the Function
24 of the Prosecutor Std. 3-1.2(b), at page 4 (3d Ed. 1993).

25 DPA Carmena "is an officer of the court. As such, [s]he owes
26 it a duty of frankness and honesty." White, supra. "It is

1 professional misconduct for a lawyer to ... engage in
2 conduct involving dishonesty, fraud, deceit or
3 misrepresentation." RPC 8.4(c). DPA Carmena abused a duty
4 under CrR 3.3(b)(1)(i) which provides that Mituniewicz shall
5 be brought to trial within 60-days of September 29, 2011,
6 arraignment under CrR 3.3(a)(1) invoking on November
7 10, 2011, precluded CrR 3.3(a)(3)(v) provisions opposed DOC
8 order of Confinement 60 days sanction with 1/3 good time
9 credit (Defense Exhibit #1, 1/5/12). Because, October
10 24, 2011, DOC release thereafter, not "serving a sentence of
11 confinement." CrR 3.3(a)(3)(v). "Delay for Tactical
12 Advantage, paragraph (d) recognizes that '[a] prosecutor
13 should not intentionally misrepresent facts or otherwise
14 mislead the court in order to obtain a continuance.' As in
15 Standard 3-2.8(a), this rule reflects recognition of the
16 fact that prosecutors must be scrupulously candid and
17 truthful in representations of any sort before the court."
18 ABA Standard for Criminal Justice, Prosecutorial Disposition
19 of Criminal Charges, Commentary Std. 3-2.9(d), at page 43
20 (3d Ed. 1993).

21 Second prong: DPA St. Clair and IDC Lavallee prejudiced
22 Mituniewicz's Time-for-Trial rights to a speedy defense
23 under CrR 3.3(f)(2).

24 In addition to the oral objection, (VRP at 11, lines
25 21-24, 11/10/11), Mituniewicz complied with CrR 3.3(d)(3) by
26 filing his motion to dismiss (CP at 15, postage stamped

1 11/15/11), within 10 days of Honorable Johnson's decision to
2 "exclude 60 days of DOC sanction and finds good cause for
3 continuance" scheduled trial date January 9, 2012, elapsed
4 days 46 attached at Appendix "F" and incorporated by
5 reference as if fully set forth herein (CP at 12). While
6 Mituniewicz did not specifically titled as an "objection",
7 Mituniewicz's initial motion to dismiss served as a written
8 objection. See Chavez-Romero, 285 P.2d at 203.

9 "The prosecution function should be so organized and
10 supported with staff and facilities as to enable it to
11 dispose of all criminal charges promptly." ABA Standards for
12 Criminal Justice, Prosecutorial Prompt Disposition of
13 Criminal Charges Std. 3-2.9(c), at page 40 (3d Ed. 1993).
14 "It is the State's burden to bring defendants to trial in a
15 timely manner. That burden is heightened when the defendant
16 is incarcerated and asserts his rights, and the delay
17 extends. Although the remedy for such violations is harsh."
18 State v. Iniguez, 167 Wn.2d 273, 299-300, 217 P.3d 768
19 (2009)(Chambers, J. dissent).

20 "A prosecutor should not discourage or obstruct
21 communications between prospective witnesses and defense
22 counsel." ABA Standards for Criminal Justice, Investigation
23 for Prosecution Decision, Std. 3-3.1(d), at page 47 (3d Ed.
24 1993). Informants Jennifer C. Coleman, Justin P. Landers,
25 and Shannon R. Cole, "[w]itnesses became unavailable,
26 memories dimmed, [and] evidence disappeared" White, 94 Wn.2d

1 at 502.

2 "A prosecutor should not intentionally avoid pursuit of
3 evidence because he or she believes it will damage the
4 prosecution's case or aid the accused." ABA Standards for
5 Criminal Justice, Disclosure of Evidence by the Prosecutor
6 Std. 3-3.11(c), at page 81 (3d Ed. 1993). Detective Yoder
7 declaration that Mituniewicz had two golf-size balls of
8 Heroin wrapped in an aluminum foil leaking grease 4266-002
9 no nexus discoloring grease spot on Mituniewicz's white
10 shorts left pocket, nor nexus discoloring grease spot on
11 Mituniewicz's money found inside left white short's pocket
12 as photographed by Detective Yoder, nor nexus tarnished by
13 grease spot on keys, (CP at 3, page 2, lines 7-9, 21,23,
14 9/15/11), nor nexus latent-prints nor DNA of Mituniewicz on
15 P.380 pistol 4266-003-A; nor mexus latent-prints or DNA of
16 Mituniewicz on Black Sentry Brand Lock Box, Folding knives,
17 keys, lighter, 4266-003; (CP at 3, page 3, lines 15-26,
18 9/15/11), nor nexus latent-prints or DNA of Mituniewicz on
19 the Round Metal Container 4266-003-C; nor nexus latent-
20 prints or DNA of Mituniewicz on Digital Scale and two Metal
21 Spoons 4266-003-D (CP at 3, page 4, lines 1-5, 9/15/11).

22 "[I]mpairment of one's defense is the most difficult form of
23 speedy trial prejudice to prove because time's erosion of
24 exculpatory evidence and testimony can rarely be shown."

25 Inquez, 167 Wn.2d at 299 (quotation and citations omitted).

26 "Defense counsel should conduct a prompt investigation

1 of the circumstances of the case and explore all avenues
2 leading to facts relevant to the merits of the case and the
3 penalty in the event of conviction. The investigation should
4 include efforts to secure information in the possession of
5 the prosecution and law enforcement authorities." ABA
6 Standards for Criminal Justice, Defense Counsel's Duty to
7 Investigate and Preparation Std. 4-4.1(a), at page 181 (3d
8 Ed. 1993). Detective Yoder's declaration that Mituniewicz
9 had two golf-ball-size of Heroin wrapped in aluminum foil
10 leaking grease 4266-002 no nexus discoloring grease spot on
11 Mituniewicz's white short's left pocket, nor nexus
12 discoloring grease spot on Mituniewicz's money found inside
13 his left white shorts pocket as photographed by Detective
14 Yoder, nor nexus tarnish by grease spot on keys, (CP at 3,
15 page 2, lines 7-9, 21-23, 9/15/11), nor nexus latent-prints
16 or DNA of Mituniewicz on P.380 pistol 4266-003-A; nor nexus
17 latent-prints or DNA of Mituniewicz on black sentry brand
18 lock box, folding knives, keys, lighter, 4266-003; (cp at 3,
19 page 3, lines 15-26, 9/15/11), nor nexus latent-prints or
20 DNA of Mituniewicz on the round metal container 4266-003-C;
21 nor nexus latent-prints or DNA of Mituniewicz on digital
22 scale and two metal spoons 4266-003-D; (CP at 3, page 4,
23 lines 1-5, 9/15/11). "The degree and extent of investigation
24 required will vary depending upon the issues and facts of
25 each case, but [the court] hold that at the very least,
26 counsel must reasonably evaluate the evidence against the

1 accused and the likelihood of a conviction if the case
2 proceeded to trial." A.N.J., 168 Wn.2d at 112.

3 "Intentional Ignorance of Facts. Just as it is
4 unprofesional for defense counsel to adopt the tactic of
5 remaining intentionally ignorant of relevant facts known to
6 the accused in order to provide a 'free hand' in the
7 client's defense. It is similarly unprofessional for the
8 prosecutor to engage in a comparable tactic. A prosecutor
9 may not properly refrain from investigation in order to
10 avoid coming into possession of evidence that may weaken the
11 prosecution's case, independent of whether disclosure to the
12 defense may be required. The duty of the prosecutor is to
13 acquire all relevant evidence without regard to its impact
14 on the success of the prosecution." ABA Standards for
15 Criminal Justice, Disclosure of Evidence by the Prosecutor,
16 Commentary Std 3-3.11(c), at page 83 (3d Ed. 1993). "By
17 failing to act, the State also thwarted the trial court's
18 ability to meet its ultimate duty to see that the matter was
19 tried within the speedy trial period." State v. Jenkins, 76
20 Wn. App. 378, 383, 884 P.2d 1356 (Div. III, 1994). The
21 Striker Rule "furthers the goal behind CrR 1.2. This rule
22 provides the criminal rules 'shall be construed to secure
23 ... the elimination of unjustifiable expense and delay' CrR
24 1.2. Our construction of CrR 3.3 would conflict with this
25 important principle if we construe the rule as allowing for
26 unnecessary delays in ... bringing a defendant before the

1 court. The court adheres: to the basic principle underlying
2 [CrR 3.3], that it is in the best interest of all concerned
3 that criminal matters be tried while they are fresh."

4 Greenwood, 120 Wn.2d at 594-95.

5 On Christmas Day 2011, Mituniewicz wrote an amended
6 motion for dismissal with prejudice (CP at 20). But, the
7 December 28, 2011, motions scheduled hearing was transferred
8 to the readiness schedule hearing date.

9 On January 5, 2012, 98-days after arraignment,
10 Honorable Stahnke: "And we're here on various motions." (VRP
11 at 18, line 5, 1/5/12). Mituniewicz "was not brought before
12 the court until after time for trial period elapsed, he
13 cannot be deemed to have waived his objection[s]" Greenwood,
14 120 Wn.2d at 608.

15 Honorable Stahnke: "So let me think this thing through
16 just a little bit too and what we probably are doing is
17 creating quite a record here, which is good. Good time is
18 just a release date. That's all it means. If he can't be
19 released, is it a fiction? Is good time just a fiction? Why
20 not?"

21 Mituniewicz: "Because I start this time."

22 IDC Lavallee: "Starts the speedy-trial clock."

23 Mituniewicz: "I start my speedy trial at 60 days in
24 custody." [pursuant to CrR 3.3(b)(1)(i)].

25 Honorable Stahnke: "When you're no longer held."

26 Mituniewicz: "When I'm no longer held. According to the

1 rules." [preclude CrR 3.3(a)(3)(v)]
2 (VRP at 36, lines 11-24, 1/5/12)(emphasis added for
3 clarification).

4 "The criminal rules which is to secure simple and fair
5 as well as inexpensive and effective justice. CrR 1.1, 1.2"
6 State v. Mack, 89 Wn.2d 788, 792, 576 P.2d 44 (1978).

7 Honorable Stahnke: "Other than for good cause."

8 Mituniewicz: "Yes, So by the rules, now I start the 60
9 days on October 23rd and struck the commencement date into
10 there. Now I think that's a very important factor here in
11 whether she had good cause to continue the thing. You know?
12 I think that's one of several issues that I'd like to
13 argue." (VRP at 37, lines 1-7, 1/5/12).

14 Defense Exhibit #1 for the purposes of the motion
15 hearing. (VRP at 47, lines 4-5, 1/5/12).

16 Defense Exhibit #1 for the purposes of the motion
17 hearing. (VRP @ 47, lines 4-5, 1/5/12). DOC Order of
18 Confinement 60 days sanction start 9/14/11 1/3 good time 20
19 days off sanction total 40 days ended on 10/24/11 and on
20 November 10, 2011, precluded CrR 3.3(a)(3)(v) any period in
21 which a defendant is serving a sentence of confinement "must
22 give effect to the plain meaning of a rule's language. If a
23 rule is ambiguous, the rule of lenity requires us to
24 construe it in favor of the accused." State v. Farnsworth,
25 133 Wn. App. 1, 5-6, 151 P.3d 976 (Div. II, 2007). Honorable
26 Johnson's excludes 60 days of DOC sanction and finds good

1 cause for continuance (CP at 12) DOC 60 days sanction" was
2 not 'good cause' to warrant setting appellant's trial beyond
3 the mandated 60 days. Absent 'good cause' for the delay,
4 dismissal is required." Mack, 89 Wn.2d at 793.

5 Honorable Stahnke: "But once good cause is found,
6 Mituniewicz doesn't that trump the dates? Once good cause is
7 found, then whatever is outside a 30-day trial set, I
8 thought?"

9 DPA St. Clair: "What Your Honor?"

10 Mituniewicz: "Based on that, it trigger a 30 day, it
11 doesn't trigger a 60?"

12 Honorable Stahnke: "Just a minute. Just a minute."
13 (VRP at 37, lines 12-21, 1/5/12). "When any period of time
14 is excluded from the speedy trial period under CrR 3.3(e),
15 the speedy trial period extends to at least '30 days after
16 the end of that excluded period.' CrR 3.3(b)(5). Excluded
17 periods under CrR 3.3(e) include delays 'granted by the
18 court pursuant to section (f)' CrR 3.3(e)(3)." Saunders,
19 supra.

20 DPA St. Clair, "interferes with the rendering of
21 quality representation, endangers the interest of justice in
22 the speedy disposition of charges, or may lead to the breach
23 of professional obligation." ABA Standards for Criminal
24 Justice, Prosecutorial Prompt Disposition of Criminal
25 Charges Std. 3-2.9(e), at page 40 (3d Ed. 1993). "A lawyer
26 shall act with reasonable diligence and promptness in

1 representing [the State]." RPC 1.3. "A lawyer shall make
2 reasonable efforts to expedite litigation consistent with
3 the interests of the [State]." RPC 3.2. Mituniewicz "argues
4 only that because our State has a 'long existing requirement
5 that criminal defendants be tried in 60 days" Inquez, 167
6 Wn.2d at 298.

7 IDC Lavallee: "[N]umber one, having the Prosecutor
8 available throughout the course of this trial has been
9 difficult because he has been in trial most of October and
10 three weeks in November, is my understanding. So it's been
11 frustrating for the Defense. And for Mituniewicz." (VRP at
12 53, lines 10-16, 1/5/12)

13 As such, that's known, from DPA Carmena of DPA St.
14 Clair is going to be in another matter trial until November
15 14th or 15th (VRP at 8, 11/10/11). The third week is open by
16 November 16th for an omnibus hearing, so why a delay?
17 Mituniewicz "must prove that it is more probably true than
18 not that (1) the prosecution failed to act with due
19 diligence" Farnsworth, 133 Wn. App. at 6-7. The Task Force
20 decided against including a specific minimum due diligence
21 standard and, instead, fashioned the new rules to
22 incorporate a standard of due diligence within the different
23 provisions of the rule. TASK FORCE, FINAL REPORT § II.C.(1),
24 at 23-24. Moreover, why not November 21st, the fourth week
25 for a speedy trial or November 28th, the fifth week to start
26 60 day in custody trial? (Also see calendar of 2011 at

1 Appendix "D"). "[T]hat this made any clearer his objection
2 to the pretrial delay and his wish to assert his speedy
3 trial rights." Ingues, 167 Wn.2d at 299. The rules were
4 intended "to cover all the reasons why a case should be
5 dismissed under the rule" and no reasons should be read into
6 the rule beyond those that are expressly stated. TASK FORCE,
7 FINAL REPORT § I.B 1, at 6. "CrR 3.3 provides 'flexibility
8 in avoiding the harsh remedy of dismissal with prejudice,'
9 including a '30-day buffer period' for excluded periods and
10 a 'one-time "cure period" ... that allows the court to bring
11 a case to trial after expiration of the time for trial
12 period.' ... see CrR 3.3(b)(5),(9). But under CrR 3.3 once
13 the 60 or 90 day time for trial expires without a stated
14 lawful basis for further continuances, the rule requires
15 dismissal and the trial court loses authority to try the
16 case CrR 3.3(b), (f)(2), (g)-(h). The rule's importance is
17 underscored by the responsibility it places on the trial
18 court itself to ensure that the defendant receives a timely
19 trial and its requirement that criminal trials take
20 precedence over civil trials. CrR 3.3(a)(1)-(2)." Saunders,
21 supra.

22 IDC Lavallee: "But second of all, when these interviews
23 with these TDU detectives" (VRP at 53, lines 17-18, 1/5/12)
24 "While the need to interview witnesses or the unavailability
25 of a key witness for trial may sometimes be valid reasons
26 for a continuance, in this case had the State acted more

1 diligently, the delays could easily have been avoided."

2 Inquez, supra.

3 IDC Lavallee: "And although, Mituniewicz, I understand
4 his desire to exercise a speedy trial, this puts me in a
5 very awkward position because I would like to provide that
6 to him but I also want to provide him effective assistance
7 of counsel." (VRP at 55, lines 1-6, 1/5/12)(Also see CP at
8 20, Page 9, citing RPC 1.2(a), Saunders, 153 Wn. App. at 237
9 Fn. 9).

10 Honorable Stahnke: "So I understand all of those
11 factors, but I don't want to run the risk of going much
12 beyond another week. I just think it looks, I mean, we've
13 got an order from Judge Johnson that 60 days is excluded,
14 we're pushing up against the window no matter what we're
15 doing here." (VRP at 55, lines 15-21, 1/5/12).

16 DPA St. Clair: "It's now 3.3 follows the U.S.
17 Constitutional version of speedy trial." (VRP at 56, lines
18 3-4, 1/5/12). "Rather, ..., the rules are designed to
19 protect but not guarantee the right. For example, a
20 violation of [CrR 3.3] is not necessarily a violation of the
21 Constitutional right, just as a violation of that
22 Constitutional right may not be a violation of [CrR 3.3]."
23 Mack, 89 Wn.2d at 794; Inquez, 167 Wn.2d at 288.

24 IDC Lavallee: "Yes, and Your Honor, I had also filed a
25 formal citation that was served on [DPA] St. Clair to come
26 prepared to do a written omnibus."

1 DPA St. Clair" "That's not your fault, when did you
2 serve that to our office?"

3 IDC Lavallee: "A week ago."
4 (VRP at 69, lines 2-7, 1/5/12). 54-days after written motion
5 to continue the trial date. (CP at 11, 11/10/11). "Defense
6 counsel should not intentionally use procedural devices for
7 delay for which there is no legitimate basis." ABA Standards
8 for Criminal Justice, Defense Counsel Delays Std. 4-1.3(d),
9 at page 126 (3d Ed. 1993). It is still 18-days from 1/5/12
10 to 1/23/12. Same 18-days from 11/10/11 to 11/28/11. "Perhaps
11 no professional shortcoming is more widely resented than
12 procrastination. See e.g., In re Vandercook, 474 P.2d 106,
13 108 (Wash. 1970). A client's interest often can be adversely
14 affected by the passage of time or the change of condition;
15 in extreme instances, as when an exculpating eye-witness
16 disappears, the viability of a client's defense may be
17 compromised or destroyed." ABA Standard for Criminal
18 Justice, Commentary Std. 4-1.3(d), at page 127 (3d Ed.
19 1993).

20 Honorable Stahnke: "And compliance date?"
21 (VRP at 78, line 2, 1/5/12).

22 IDC Lavallee: "I ask that it be no later than Monday
23 morning."

24 DPA St. Clair: "We'll comply with 4.7. If any new
25 discovery occurs we will of course get it to Defense as soon
26 as possible."

1 Honorable Stahnke: "Okay, so by the 9th."
2 (VRP at 78, lines 7-12, 1/5/12).

3 On January 9, 2012, 102-day after arraignment on
4 9/29/11, the court held suppression hearing 3.6 and
5 afternoon held discovery hearing 4.7.

6 IDC Lavallee: "I would note that last Thursday when we
7 were in court today was put as the cut-off date for the
8 State on the omnibus."

9 (VRP at 201 lines 5-12, 1/9/12).

10 DPA St. Clair: "We gave her police reports; for
11 Jennifer Coleman and I think that was it."

12 (VRP at 205, lines 11-13, 1/9/12).

13 Honorable Stahnke: "[T]oday is the deadline."

14 (VRP at 206, line 11, 1/9/12).

15 On January 11, 2012, 104-days after arraignment on
16 9/29/11; and before trial on 1/23/12. IDC Lavallee received
17 WSP-Laboratory Report dated 1/10/12 (Clerk's Minutes Exhibit
18 List).

19 Forensic Scientist Dunn: "I received those from Linda
20 Edwards on November 10, 2011, the Heroin for the two tests
21 on the 21st, I returned it to our evidence vault, again to
22 Linda Edwards on the 28th of November."

23 (VRP at 479-491, 1/24/12).

24 DPA St. Clair: "[C]ouldn't find the gun meaning it's
25 not in evidence, it had been sent to the lab and we
26 requested latent-print testing and DNA testing back in

1 September of 2011." (VRP at 210, lines 16-19, 1/11/12).

2 IDC Lavallee: "If you will ensure the authorization for
3 the expert." (VRP at 213, lines 3-4, 1/11/12).

4 IDC Lavallee: "See. here's the deal, Your Honor. This
5 is Mituniewicz's position on all this. It's not the
6 Defendant's concern to manage the State's case." (VRP at
7 213, lines 10-15, 1/11/12). "[P]rosecutorial mismanagement"
8 Saunders, supra.

9 IDC Lavallee: "The fact that the State doesn't have
10 their act together is not Mituniewicz's fault. And that's
11 exactly what, the reason why I asked for cutoffs to
12 discovery is so that I would have time before the next trial
13 date to respond in time for trial." (VRP at 214, lines 4-
14 10, 1/11/12). Twelve days before trial "that did not provide
15 a reasonable time for investigation and preparation."
16 A.N.J., 168 Wn.2d at 122.

17 DPA St. Clair: "I do want the record to be clear,
18 because I know that Mituniewicz has made motions related to
19 speedy trial, the case came in, arrest on 9/14/2011. It was
20 on 9/15, one day later that the Sheriff's Office began the
21 request process for DNA and latent-print testing, and drug
22 testing. Drug testing was completed on November 28th 2011."
23 (VRP at 215, lines 7-20, 1/11/12).

24 "[M]aterial facts were withheld from the defendant
25 until shortly before a crucial stage in the litigation
26 process." Farnsworth, supra.

1 DPA St. Clair: "November 28th is when they completed
2 that drug testing. That means that we're literally getting
3 our lab reports way too close to the 60-day trial setting on
4 our 60-day in-custody defendant. [IDC] Lavallee is correct
5 that it is a State's job to manage it." (VRP at 216, lines
6 5-12, 1/11/12).

7 Honorable Stahnke: "If it means you have to exonerate
8 or dismiss for later testing, I mean, that changes speedy-
9 trial rules certainly. In a lot of different ways as well."
10 (VRP at 218, lines 16-19, 1/11/12).

11 Finally, the trial court's failing to justify the
12 delaying of Mituniewicz's rights to a timely trial on an
13 adequate basis appearing in the record.

14 "Simply reciting 'abuse of discretion' as a standard of
15 review is not helpful. At some point the judge makes a
16 decision outside the range of acceptable discretionary
17 choices and thereby abuses his or her discretion. The range
18 of those discretionary choices is, therefore, a question of
19 law. For example, on one end, the judge abuses his or her
20 discretion when findings of fact supporting the
21 discretionary decision are not supported by the evidence.
22 And on the other end, the judge abuses his or her discretion
23 if the discretionary decision is contrary to law." State v.
24 Williamson, 100 Wn. App. 248, 257, 996 P.2d 1097 (Div. III,
25 2000).

26 Honorable Johnson: "Well September 14th. Forty days

1 would take it to October 24th. From October 24th it wouldn't
2 take us to January 9th, the better way to approach it would
3 be to grant the motion to continue, set January 9th as the
4 new trial date with the same amount of elapsed days as we
5 had on the previous trial date here, that was 46 days
6 elapsed, so I'll make it 46 days elapsed again. Excluding
7 the period of time for the continuance." (VRP at 13-14,
8 9/29/11). "The court must state on the record" CrR
9 3.3(f)(2). "Delay granted by the court pursuant to section
10 (f)." CrR 3.3(e)(3). "If any period of time is excluded
11 pursuant to section (e), the allowable time for trial shall
12 not expire earlier than 30 days after the end of that
13 excluded period." CrR 3.3(b)(5).

14 Honorable Johnson: "Alright. I don't think he's
15 eligible for release here yet. Is that what we know he is
16 from his sanction." (VRP at 15, lines 12-15, 11/10/11), "is
17 serving a sentence of confinement[?]" CrR 3.3(a)(3)(v)?
18 Brought to trial within 60 days CrR 3.3(b)(1)(iv).

19 Mituniewicz "claims the trial court abused its
20 discretion because it failed to enforce the requirements of
21 the rule. Failure to enforce the requirement of rules can
22 constitute an abuse of discretion." State v. Rivers, 129
23 Wn.2d 697, 706, 921 P.2d 492 (1996).

24 Honorable Johnson "in writing the reasons for the
25 continuance." CrR 3.3(f)(2), "the court excludes 60 days of
26 DOC sanction and finds good cause for continuance" (CP at

1 12) "a period of exclusion pursuant to section (e), the
2 court shall set a new date for trial which is within the
3 time limits prescribed" CrR 3.3(d)(2) "in the manner
4 required by law, an error may be claimed without showing
5 prejudice which will be presumed. But it will only be
6 presumed when there has been a material departure from the
7 law." W.E. Roche Fruit Co. v. Norther P. Ry., 18 Wn.2d 484,
8 488, 139 P.2d 714 (1943).

9 Honorable Stahnke: "She excluded 60 days from speedy
10 trial. So the original speedy trial was from September 29,
11 2011. Sixty days from there, 11/14 is 46. So fourteen more
12 days from the 14th, so 11/28 would be when 60 days would
13 have run the new commencement date 11/28." (VRP at 28, lines
14 5-22, 1/5/12). "So Judge Johnson, whether she's right or
15 she's wrong, will have to be determined by the Court of
16 Appeals, I'm not reversing, modifying, or altering Judge
17 Johnson's ruling from November 10, 2011. What that means is
18 that speedy trial for this case run until January 27, 2012."
19 (VRP at 48, lines 12-19, 1/5/12). "Monday the 23rd. That's
20 still within that speedy trial of the 27th," (VRP at 60,
21 lines 5-6, 1/5/12), "that's 56 day elapsed." (VRP at 61,
22 lines 21-22, 1/5/12)(CP at 24). "When the court determines
23 that the trial date should be reset for any reason,
24 including but not limited to the applicability of a new
25 commencement date pursuant to subsection (c)(2)" CrR
26 3.3(d)(2). "On occurrence of one of the following events, a

1 new commencement date shall be established and the elapsed
2 time shall be reset to zero." CrR 3.3(c)(2), (i) Waiver;
3 (ii) Failure to appear; (iii) New Trial; (iv) Appellate
4 review or stay; (v) collateral proceeding; (vi) change of
5 venue; or (vi) Disqualification of counsel. The Washington
6 State Supreme Court has described the abuse of discretion
7 standards in State v. Dixon as follows:

8 "The reviewing court will find an abuse of
9 discretion when the trial court's decision is
10 manifestly unreasonable, or is exercised on untenable
11 grounds, or for untenable reasons. A decision is based
12 'on untenable grounds' or made 'for untenable reasons'
13 if it rests on facts unsupported in the record or was
14 reached by applying the wrong legal standard. A
15 decision is 'manifestly unreasonable' if the court
16 despite applying the correct legal standard to the
17 supported facts, adopts a view 'that no reasonable
18 person would take,' and arrives at a decision 'outside
19 the range of acceptable choices.'"

20 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006)(quoting State v.
21 Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

22 III. CONCLUSION

23 CrR 3.3 makes no allowance for the natures and
24 complexities of the cases. Whether an incarcerated defendant
25 is charged with Count 1: Possession with the Intent to
26 Deliver, School Zone Enhancement and Firearm Enhancement,
Count #2: Unlawfull Possession of a Firearm in the Second
Degree; or "charged with failing to register as a sex
offender or charged with one count of aggravated murder with
more bodies being disentombed daily from his backyard, the
rule requires that trial commence within 60 days." Saunders,

1 supra. at fn. 11.

2 Thank you for your consideration in this matter.

3 Respectfully submitted.

4 DATED on this 11 day of April, 2013 at Connell, Wa.

5
6
7 

8 Rodney Steven Mituniewicz
9 DOC# 912672
10 Coyote Ridge Corrections Center
11 P.O. Box 769/ 1301 N. Ephrata Ave.
12 Connell, WA 99326
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FILED
COURT OF APPEALS
DIVISION II
2013 APR 15 PM 1:12
STATE OF WASHINGTON
BY _____
DEPUTY

State of Washington vs. Rodney Steven Mituniewicz

Court of Appeals Case No. 43110-6-II

DECLARATION OF MAILING

I, Rodney Steven Mituniewicz, declare that on April 11, 2013, I, placed into the Legal Mail system with Custody Officer's signed and dated on the back of this envelope addressed to the parties as follows:

DPA Anne Mowry Cruser
Deputy Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666-5000

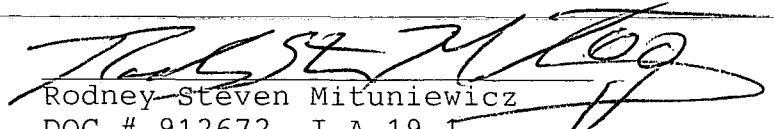
Lisa Elizabeth Tabbut
Attorney at Law
P.O. Box 1396
Longview, WA 98632-7822

Honorable David C. Ponzoha
Appellate Court Clerk
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

I, deposited into this envelope the foregoing document of:
Statement of Additional Grounds.

I, declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my personal knowledge:

Respectfully submitted this 11th day of February 2013


Rodney Steven Mituniewicz
DOC # 912672, I-A-19-1
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

State of Washington vs. Rodney Steven Mituniewicz

Court of Appeals Case No. 43110-6-II

Appendix

"A"

Clark County Superior Court Summary No. 11-1-01530-1

"B"

Superior Court Criminal Time-For-Trial Rules

"C"

Honorable Collier's original trial scheduling order

"D"

IDC Lavallee's motion to continue the trial date

"E"

Calendar of 2011

"F"

Declaration of Probable Cause

"G"

Honorable Johnson's resetting trial schedule order

"I"

Honorable Stahnke's resetting trial schedule order

Appendix "A"

Clark County Superior Court Summary No. 11-1-01530-1



Courts Home | Search Case Records

Search | Site Map | eService Center

Home | Summary Data & Reports | Resources & Links | Get Help

Superior Court Case Summary

About Dockets

Court: Clark Superior

Case Number: 11-1-01530-1

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Clark Superior
Location: 1200 Franklin St
Vancouver, WA 98660-2812

Map & Directions
360-397-2150

[Phone]
360-397-6078[Fax]

Visit Website

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1M	09-15-2011	PRELIMINARY APPEARANCE ACTION	Preliminary Appearance #1 Arraignment 9:00 Release Denied/bail \$100,000+cond	09-29-2011C
1	09-15-2011	ROR INTERVIEW SHEET	Ror Interview Sheet	
2	09-15-2011	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
	09-15-2011	ORDER APPOINTING ATTORNEY ATD0001	Order Appointing Attorney Lavallee, Therese Marie	
3	09-16-2011	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
4	09-19-2011	INFORMATION	Information	
5	09-20-2011	NOTICE	Notice Of Special Punishmnt Prvsn	
	09-20-2011		Most Serious Offense	
6M	09-29-2011	INITIAL ARRAIGNMENT ACTION	Initial Arraignment #1 Readiness 1:30 Pm	11-10-2011RS
	09-29-2011	MOTION HEARING	Motion Hearing	
6	09-29-2011	ASSIGNMENT OF TRIAL DATE	Assignment Of Trial Date	11-14-2011T1
7	09-29-2011	MEMORANDUM	Memorandum Of Disposition	
8	11-07-2011	PETITION	Petition To Return Property For Payment Of Lfo - Defendant	
9	11-07-2011	PETITION	Petition To Report Misconduct-deft	
10	11-07-2011	PETITION	Petition For Suppression-defendant *forwarded To Dept	

			1*		
11M	11-10-2011	MOTION HEARING ACTION	Motion Hearing #1 Readiness 1:30 Pm	01-05-2012	
	11-10-2011	NOTICE ACTION	Notice Of Hearing #1 Motions 9:00 Am	12-28-2011T1	
11	11-10-2011	MOTION TO CONTINUE	Motion To Continue		
12	11-10-2011	ASSIGNMENT OF TRIAL DATE	Assignment Of Trial Date	01-09-2012T1	
13	11-23-2011	AFFIDAVIT	Affidavit Of Mailing By Deft		
14	11-23-2011	NOTICE	Notice Motion Docket By Deft Received After 11/21		
15	11-23-2011	REQUEST	Request To Dismiss W/prej By Deft		
16	12-22-2011	PETITION	Petition For Temp Restrning Order *forwarded To Dept 1*		
17M	12-28-2011	MOTION HEARING ACTION	Motion Hearing #1 Readiness 1:30 Pm	01-05-2012T1	
17	12-29-2011	MOTION	Motion To Suppress		
18	12-29-2011	CITATION ACTION	Citation #1 Motion To Suppress 1:30	01-05-2012T1	
19	12-29-2011	CITATION ACTION	Citation #1 Omnibus 1:30	01-05-2012T1	
20	12-30-2011	MOTION TO DISMISS	Motion To Dismiss W/p By Deft-amnd *forwarded To Dept 1*		
21	12-30-2011	RESPONSE	Response F/dept 1 To #20		
22	01-05-2012	MOTION HEARING ACTION	Motion Hearing #1 3.6 Hearing Clerks In Court Record	01-09-2012T1	
	01-05-2012	EXHIBIT LIST	Exhibit List (1)		
23	01-05-2012	LOG SHEET	Log Sheet		
24	01-05-2012	ASSIGNMENT OF TRIAL DATE	Assignment Of Trial Date	01-23-2012T1	
25	01-05-2012	OMNIBUS APPLICATION BY DEFENDANT	Omnibus Application By Defendant		
26	01-05-2012	ORDER	Order Re: Transport/medical		
27	01-06-2012	REQUEST	Request For Investigator And Transcriptionist At Public Expense		

Disclaimer

What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the complete court record? You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court? Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website? No. You must consult the local or appeals court record.

How do I verify the information contained in the index? You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record? No. The Washington State Patrol (WSP) maintains state

28	01-06-2012	AUTHORIZATION FOR APPOINTMENT	Authorization For Appointment Of Investigator And Transcriptionist		criminal history record information. Click here to order criminal history information.
29	01-06-2012	STATE'S LIST OF WITNESSES	State's List Of Witnesses -suppress		<p>Where does the information in the index come from? Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.</p>
30	01-06-2012	STATE'S LIST OF WITNESSES	State's List Of Witnesses		
31	01-06-2012	SUBPOENA	Subpoena - M. Deitemeyer		
32	01-06-2012	SUBPOENA	Subpoena - K. Bleth		
33	01-06-2012	SUBPOENA	Subpoena - J. Dunn		<p>Do the government agencies that provide the information for this site and maintain this site:</p> <ul style="list-style-type: none"> ▸ Guarantee that the information is accurate or complete? NO ▸ Guarantee that the information is in its most current form? NO ▸ Guarantee the identity of any person whose name appears on these pages? NO ▸ Assume any liability resulting from the release or use of the information? NO
34	01-09-2012	EVIDENTIARY HEARING JDG0001	Evidentiary Hearing Clerk's In Court Record Judge Daniel Stahnke		
35	01-09-2012	LOG SHEET	Log Sheet		
36M	01-11-2012	MOTION HEARING	Motion Hearing		
36	01-11-2012	STATE'S LIST OF WITNESSES	State's List Of Witnesses Amended		
37	01-19-2012	CITATION ACTION	Citation #1 Mt To Review Trial Date 9:00	01-20-2012FA	
38M	01-20-2012	MOTION HEARING	Motion Hearing		
38	01-20-2012	MEMORANDUM	Memorandum Of Disposition		
39	01-20-2012	ORDER AUTHORIZING	Order Authorizing Review Of Jury Book And Jury List		
40	01-23-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration - Def		
41	01-23-2012	MOTION TO DISMISS	Motion To Dismiss - Second Amended		
42	01-23-2012	MOTION IN LIMINE	Motion In Limine - Defendant's		
43	01-23-2012	JURY PANEL	Jury Panel		
44	01-23-2012	AMENDED INFORMATION	Amended Information		
45	01-23-2012	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions		
46	01-24-2012	DEFENDANT'S PROPOSED INSTRUCTIONS	Defendant's Proposed Instructions		
47	01-25-2012	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury		
48	01-25-2012	VERDICT	Verdict -- Count 1, Guilty		
49	01-25-2012	SPECIAL VERDICT	Special Verdict - A		

			To Ct 1, Yes	
50	01-25-2012	SPECIAL VERDICT	Special Verdict - B To Ct 1, Yes	
51	01-25-2012	SPECIAL VERDICT	Special Verdict - C, Blank	
52	01-25-2012	VERDICT	Verdict - Count 2, Guilty	
53	01-25-2012	MEMORANDUM ACTION	Memorandum Of Disposition #1 Sentencing 1:30pm	02-08- 2012
54	01-25-2012	JURY TRIAL JDG0001	Jury Trial Clerk's In Court Record Judge Daniel Stahnke	
-	01-25-2012	EXHIBIT LIST	Exhibit List (34)	
55	01-25-2012	LOG SHEET	Log Sheet	
56	01-25-2012	RECEIPT FOR EXHIBIT/UNOPENED DEPOS	Receipt For Exhibit/unopened Depos	
57	01-25-2012	ORDER AUTHORIZING	Order Authorizing Clerk To Exhibits Substitute Photos For Specific	
58	01-27-2012	REQUEST	Request For Investigator & Transcription Svcs - Second	
59	01-27-2012	AUTHORIZATION FOR APPOINTMENT	Authorization For Appointment Of Investigator And Transcriber	
60	01-30-2012	RECEIPT FOR EXHIBIT/UNOPENED DEPOS	Receipt For Exhibit/unopened Depos Exh# 2,4-9 To Ccso	
	02-06-2012	COMMENT-ENTRY ACTION	Schedule Sentencing Per Dept 1 #1 Special Set Sentencing 9:45 Am	02-13- 2012T1
61	02-07-2012	MOTION	Motion F/order Arrest Of Judgment	
62	02-07-2012	MOTION	Motion To Extend Time To File	
63	02-07-2012	NOTICE OF HEARING	Notice Of Hearing /not Docketed	
64M	02-08-2012	CONTINUED: PLAINTIFF/PROS REQUESTED	Continued: Plaintiff/pros Requested	02-13- 2012T1

		ACTION	#1 Sentencing Spec Set 9:45am
64M.1	02-13-2012	SENTENCING HEARING	Sentencing Hearing
65	02-13-2012	ADVICE OF RIGHTS	Advice Of Rights On Appeal
66	02-13-2012	MEMORANDUM	Memorandum Of Disposition
67	02-13-2012	JDGMT & SENT & WARRANT OF COMMITMT	Jdgmt & Sent & Warrant Of Commitmt
68	02-13-2012	ORDER REQ BLOOD TESTS	Order Req Blood Tests Hiv
69	02-13-2012	NOTICE INELIGIBLE POSSESS FIREARM	Notice Ineligible Possess Firearm
70	02-15-2012	ABSTRACT OF COURT RECORD TO DOL	Abstract Of Court Record To Dol
71	02-22-2012	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal
72	02-22-2012	ORDER OF INDIGENCY JDG0001	Order Of Indigency Judge Daniel Stahnke
73	02-28-2012	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed Naca/orind E-filed Coa
74	03-20-2012	OTHER WTD0001	Email To Atty Re Opd Appt Lavallee, Therese Marie
		ATD0002	Tabbut, Lisa Elizabeth
75	03-20-2012	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
76	03-23-2012	INVOICE VOUCHER	Invoice Voucher
	03-23-2012	CLERK'S PAPERS - FEE ASSESSED	Clerk's Papers - Fee 119.00 Assessed
	03-28-2012	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee 119.00 Received
77	04-24-2012	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
78	04-30-2012	INDEX	Index - Clerk's Papers
79	04-30-2012	LETTER	Letter To Atty Re Appeal
80	05-01-2012	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed
	05-01-2012	CLERK'S PAPERS SENT	Clerk's Papers E-filed To Coa
81	07-09-2012	INVOICE VOUCHER	Invoice Voucher
	07-09-2012	CLERK'S PAPERS - FEE ASSESSED	Clerk's Papers - Fee 31.00 Assessed

"B"

Superior Court Criminal Time-For-Trial Rules

Rule 3.3. Time for trial.

(a) *General provisions.*

(1) *Responsibility of court.* It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) *Precedence over civil cases.* Criminal trials shall take precedence over civil trials.

(3) *Definitions.* For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arrestment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) *Construction.* The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) *Related charges.* The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) *Reporting of dismissals and untimely trials.* The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(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, or

(ii) the time specified under subsection (b)(5).

(2) *Defendant not detained in jail.* A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(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.

(4) *Return to custody following release.* If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is

reset following a new commencement date, the 60-day limit shall apply.

(5) *Allowable time after excluded period.* If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) *Commencement date.*

(1) *Initial commencement date.* The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) *Resetting of commencement date.* On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) *Waiver.* The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) *Failure to appear.* The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) *New trial.* The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) *Appellate review or stay.* The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) *Collateral proceeding.* The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) *Change of venue.* The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) *Disqualification of counsel.* The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) *Trial settings and notice - Objections - Loss of right to object.*

(1) *Initial setting of trial date.* The court shall, within 15 days of the defendant's actual arraignment in superior court, or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule, and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) *Resetting of trial date.* When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement

date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(3) *Objection to trial setting.* A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) *Loss of right to object.* If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) *Excluded periods.* The following periods shall be excluded in computing the time for trial:

(1) *Competency proceedings.* All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) *Proceedings on unrelated charges.* Arraignment, pre-trial proceedings, trial and sentencing on an unrelated charge.

(3) *Continuances.* Delay granted by the court pursuant to section (f).

(4) *Period between dismissal and refileing.* The time between the dismissal of a charge and the refileing of the same or related charge.

(5) *Disposition of related charge.* The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) *Defendant subject to foreign or federal custody or conditions.* The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) *Juvenile proceedings.* All proceedings in juvenile court.

(8) *Unavoidable or unforeseen circumstances.* Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) *Disqualification of judge.* A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) *Continuances.* Continuances or other delays may be granted as follows:

(1) *Written agreement.* Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) *Motion by the court or a party.* 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.

(g) *Cure period.* The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) *Dismissal with prejudice.* A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

"C"

Honorable Collier's original trial scheduling order

FILED

SEP 29 2011 3:29

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.

SCHEDULING ORDER

Mituniewicz, Rodney
Defendant.

No. 11-1-01530-1

IT IS HEREBY ORDERED THAT:

- 1. The assigned Judge is: Stahnke, Dept. 1 Wulle, Dept. 2 Nichols, Dept. 3
 Poyfair, Dept 4 Melnick, Dept. 5 Johnson, Dept. 6
 Rulli, Dept 7 Woolard, Dept. 8 Lewis, Dept. 9
 Collier, Dept. 10

2. The Date of Commencement: 9-29-2011

3. The Defendant shall personally appear for the following:

Readiness hearing: 11-10-2011 at 1:30 pm.

Trial scheduled: 11-14-2011 at 9:00 am (Elapsed days 46).

Omnibus hearing: _____ at _____ am/pm.

Sentencing hearing: _____ at _____ am/pm.

4. Defendant shall personally appear in court for each of the dates set forth above. Failure to appear may result in the issuance of a warrant and may constitute the crime of Bail Jumping, pursuant to RCW 9A.76.170.

DATED this 29 day of Sept, 2011

[Signature]
JUDGE OF THE SUPERIOR COURT

[Signature]
Defendant

[Signature]
Deputy Prosecuting Attorney, WSBA # _____

[Signature]
Attorney for Defendant, WSBA # 16350

The Trial Prosecutor is ST Clam

[Signature]
Print Name of Defense Attorney)

"D"

IDC Lavallee's motion to continue the trial date

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FILED

NOV 10 2011

3:08
Scott G. Weber, Clerk, Clark Co

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 RODNEY STEVEN MITUNIEWICZ,)
)
 Defendant.)

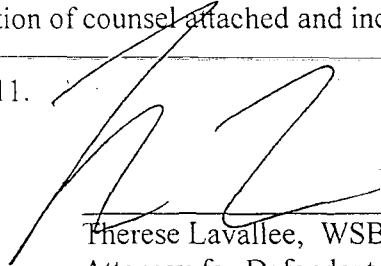
Cause No.11-1-01530-1

MOTION TO CONTINUE
THE TRIAL DATE

COMES NOW, counsel for the accused, Therese Lavallee, and moves the Court for an
Order continuing the trial date from Monday, November 14, 2011 to a date in January 2012.

This motion is based upon the declaration of counsel attached and incorporated herein.

DATED this 8th day of November, 2011.



Therese Lavallee, WSB #16350
Attorney for Defendant MITUNIEWICZ

11
SV

DECLARATION OF COUNSEL

I, Therese Lavallee, as an officer of the court hereby declare:

1. I am the attorney of record for the accused, Rodney Mituniewicz. I was appointed by the Clark County Superior Court to provide representation for Mr. Mituniewicz on September 15, 2011 at his First Appearance in court. Mr. Mituniewicz was arraigned on September 29, 2011 and trial was scheduled for November 14, 2011 with forty-six elapsed days.

2. Mr. Mituniewicz was arrested for the pending offense on September 14, 2011. He was also arrested for an outstanding warrant based on an the accusation that he had violated the terms of his community custody in an unrelated case in Clark County Cause No. 10-1-00077-1.

3. On September 22, 2011 a sentence of 60 days was imposed by the Department of Corrections for the violations of community custody in Clark County Cause No. 10-1-00077-1. CrR 3.3(a)(v) excludes from the speedy trial period pursuant to court rule, any custodial period where the accused is detained for an unrelated charge or is serving an unrelated sentence.

4. Defense counsel is not prepared to proceed to trial on November 14, 2011 on the current allegations. The accused is alleged to have committed a "most serious offense" of Possession of a Controlled Substance With Intent to Deliver-Heroin and Unlawful Possession of a Firearm in the Second Degree. The government has plead the sentencing enhancements of committing the offense while armed with a firearm and within a school zone. The penalties, should the government be successful in proving the both the underlying offense and the sentencing enhancement, will expose the accused to several years in prison.

5. Additional time is necessary for the defense to complete the investigation, to adequately advise the defendant and to provide him with effective assistance of counsel, and to prepare the matter for trial.

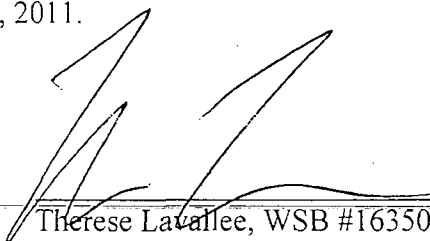
6. Discovery is not complete in this matter. Demands for discovery are ongoing, including necessary and material information regarding the named informant used by law

1 enforcement in developing what the government asserts is probable cause to justify the arrest and
2 search of Mr. Mituniewicz. Resolution of the discovery matters is imperative to complete both
3 the investigation and preparation of this matter for trial. Furthermore, on November 6, 2011
4 counsel received copies of several handwritten motions filed by Mr. Mituniewicz regarding
5 issues he would like the court to address before trial commences. To proceed to trial without the
6 court addressing the filed motions would prejudice the accused.

7 8. Deputy Prosecuting Attorney Randy St. Claire is the government's trial attorney
8 in this case, including discovery matters. He has been unavailable to defense counsel to discuss
9 this case for the past several weeks because his is in trial. It is my understanding that he will still
10 be in trial in another matter the week of November 14, 2011.

11 7. I anticipate that Mr. Mituniewicz will not waive his speedy trial rights conferred
12 on him by CrR 3.3. However, his due process rights require that he be afforded the right to an
13 effective assistance of counsel. I declare that additional time is necessary for me to effectively
14 represent Mr. Mituniewicz in this matter. "It is not an abuse of discretion to grant (multiple)
15 continuances to ensure that defense counsel is adequately prepared for trial, even though the
16 defendant objects to the continuance." State v. Olliver, 63559-0-1 (Wash. App. 04-19-2011).

17 DATED this 8th day of November, 2011.

18
19
20 

Therese Lavalley, WSB #16350
Attorney for Defendant Mituniewicz

"E"

Calendar of 2011

2011

About the 2011 Calendar Website

2011 Calendar Website Description

**Holiday Photo
Calendars**
50% Off Holiday Photo
Calendars Start
Customizing Yours
Here!
www.Vistaprint.com

The 2011 Calendar website features a printable calendar for the year 2011 A.D., as well as a list of United States federal holidays and other widely observed 2011 holidays.

2011			
January	February	March	April
S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
1	1 2 3 4 5	1 2 3 4 5	1 2
2 3 4 5 6 7 8	6 7 8 9 10 11 12	6 7 8 9 10 11 12	3 4 5 6 7 8 9
9 10 11 12 13 14 15	13 14 15 16 17 18 19	13 14 15 16 17 18 19	10 11 12 13 14 15 16
16 17 18 19 20 21 22	20 21 22 23 24 25 26	20 21 22 23 24 25 26	17 18 19 20 21 22 23
23 24 25 26 27 28 29	27 28	27 28 29 30 31	24 25 26 27 28 29 30
30 31			
May	June	July	August
S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
1 2 3 4 5 6 7	1 2 3 4	1 2	1 2 3 4 5 6
8 9 10 11 12 13 14	5 6 7 8 9 10 11	3 4 5 6 7 8 9	7 8 9 10 11 12 13
15 16 17 18 19 20 21	12 13 14 15 16 17 18	10 11 12 13 14 15 16	14 15 16 17 18 19 20
22 23 24 25 26 27 28	19 20 21 22 23 24 25	17 18 19 20 21 22 23	21 22 23 24 25 26 27
29 30 31	26 27 28 29 30	24 25 26 27 28 29 30 31	28 29 30 31
September	October	November	December
S M T W T F S	S M T W T F S	S M T W T F S	S M T W T F S
1 2 3	1	1 2 3 4 5	1 2 3
4 5 6 7 8 9 10	2 3 4 5 6 7 8	6 7 8 9 10 11 12	4 5 6 7 8 9 10
11 12 13 14 15 16 17	9 10 11 12 13 14 15	13 14 15 16 17 18 19	11 12 13 14 15 16 17
18 19 20 21 22 23 24	16 17 18 19 20 21 22	20 21 22 23 24 25 26	18 19 20 21 22 23 24
25 26 27 28 29 30	23 24 25 26 27 28 29 30 31	27 28 29 30	25 26 27 28 29 30 31

"F"

Declaration of Probable Cause

1 substances, specifically Heroin. Evidence related to that crime was located during
2 the search warrant. The defendant in that case (S11-12608) was cooperating with
3 the investigation and agreed to call her Heroin dealer, MITUNIEWICZ. The
4 cooperating person called MITUNIEWICZ over the phone and was able to order
5 up an amount of Heroin from him.

6 At approximately 2055 hours MITUNIEWICZ arrived at her apartment complex. I
7 have come to know what MITUNIEWICZ looks like from previous investigations,
8 and was aware that he had an outstanding warrant for his arrest. MITUNIEWICZ
9 knocked on the door and was greeted by Detectives. (He was carrying a black
10 metal lock box in his left hand.) MITUNIEWICZ was handcuffed, which were
11 double locked and gauged for fit/tightness. Inside MITUNIEWICZ's left front
12 short's pocket were two round objects, about the size of golf balls, wrapped in
13 aluminum foil. Additionally, there was an amount of cash wrapped with rubber
14 bands in the same pocket. (The lock box that he had been carrying was locked.

15 MITUNIEWICZ was escorted outside to a patrol vehicle. I contacted our dispatch
16 center via the radio to complete a persons check of MITUNIEWICZ. Dispatched
17 advised that he had two outstanding felony warrants for his arrest and that he is
18 currently on Department of Corrections (DOC) supervision. DOC Officer Jennifer
19 Thomas was assisting us with the investigation and is familiar with MITUNIEWICZ.
20 Due to MITUNIEWICZ being on active DOC supervision, Thomas advised that she
21 would be able to search the lock box he had in his possession for any illegal
22 contraband that would place him in violation of his supervision status.

23 Thomas located a key attached to key ring that was in MITUNIEWICZ's
24 possession. The key opened the lock box. Inside the box was a black semi-
25 automatic 380 caliber pistol. Furthermore, there was a digital scale with suspected
26 Heroin residue, metal spoons with suspected Heroin residue, and suspected
27 Heroin in plastic wrapping. The contents in the box were digitally photographed.
28 Using nitrile gloves I removed the pistol from the box to clear it of any ammunition.
29 The pistol was not loaded and did not contain any ammunition in the magazine.
The pistol is not reported stolen per a records check through dispatch.

Next, I removed the aluminum foil from one of the balls found in MITUNIEWICZ's
pocket. It appeared that there was a layer of grease between layers of the
aluminum foil. Once the foil was removed it revealed a hard ball of chalky brown
substance that I suspected to be Heroin through my training and experience. I
completed a **field test** of the substance by placing a small piece of the substance
into a test kit for Heroin (kit #924). The kit provided a positive result for the
presence of Heroin.

At approximately 2110 hours I read MITUNIEWICZ his Miranda Rights from my
department issued card. I asked him if he understood his rights, he replied, "Yes."
I asked him if he would be willing to speak with me, he replied, "No," while shaking
his head from side to side. I advised MITUNIEWICZ that he was under arrest for
the warrants, Delivery of a Controlled Substance, and being a Felon in Possession
of a Firearm.

1 It was determined that MITUNIEWICZ had arrived in a dark blue colored Nissan
2 Pathfinder (WA/374ZGM). The vehicle was located a few parking spaces to the
3 north of unit G15. A female was identified as a passenger inside his vehicle and
4 was contacted by Det. Eric Zimmerman. She later told me that MITUNIEWICZ
5 had recently purchased the vehicle. The female was ultimately released from the
6 scene on foot. Refer to Zimmerman's supplemental report.

7 I assisted Det. Brian Kessel with the Drug Task Force in counting the money that
8 MITUNIEWICZ had on his person. MITUNIEWICZ had \$2,180 in his left hand
9 short's pocket and \$133 contained in his wallet. Kessel completed a seizure form
10 for the cash, which MITUNIEWICZ signed and was provided with a copy. The
11 vehicle was transported to the Drug Task Force's secure facility pending
12 application for a search warrant by Kessel. MITUNIEWICZ had a key to the
13 vehicle in his possession. Sgt. Duncan Hoss later advised me that he spoke with
14 the previous owner of the Pathfinder who told Hoss that he sold the vehicle to
15 MITUNIEWICZ for cash.

16 MITUNIEWICZ was transported to the Clark County Jail by Det. Wayne Phillips.
17 Phillips completed a booking sheet and probable cause statement, which he
18 included with his supplemental report.

19 The evidence recovered from MITUNIEWICZ was transported back to the Sheriff's
20 Office West Precinct where I logged it into the CCSO Evidence system. The
21 following is a list of evidence items.

22 **Evidence**

23 - **4266-001: EVIDENCE - IPHONE CELLULAR PHONE**

24 Officer Notes: FOUND IN MITUNIEWICZ'S RIGHT FRONT SHORT'S POCKET,
25 WITH BLACK CASE

26 - **4266-002: EVIDENCE - GOLF BALL SIZED BALLS OF A COMPACTED
27 BROWN CHALKY SUBSTANCE, SUSPECTED HEROIN**

28 Officer Notes: ORIGINALLY WRAPPED IN ALUMINUM FOIL, WEIGHT DOESN'T
29 INCLUDE THE FOIL, FIELD TEST POSITIVE BY YODER FOR PRESENCE OF
HEROIN

30 - **4266-003: EVIDENCE - BLACK SENTRY BRAND LOCK BOX WITH HANDLE
31 CONTAINS FOLDING KNIVES, KEYS, LIGHTER**

32 Officer Notes: CARRIED INTO APARTMENT BY MITUNIEWICZ

33 - **4266-003-A: EVIDENCE - DAVIS INDUSTRIES P-380 SEMI-AUTOMATIC
34 PISTOL**

35 Officer Notes: FOUND INSIDE ITEM #003

36 - **4266-003-B: EVIDENCE - BROWN CHALKY SUBSTANCE INDIVIDUALLY
37 WRAPPED IN PLASTIC, SUSPECTED HEROIN**

38 Officer Notes: FOUND INSIDE ITEM #003

1 - 4266-003-C: EVIDENCE - RND METAL CASE CONTAINING SMALL PLASTIC
2 WRAP PIECES OF BROWN TAR LIKE SUSBTANCE
3 Officer Notes: FOUND IN ITEM #003, SUSPECTED HEROIN, PIECES WERE
CONTAINED INSIDE THE ROUND METAL CONTAINER

4 - 4266-003-D: EVIDENCE - FUNCTIONAL DIGITAL SCALE AND TWO METAL
5 SPOONS WITH SUSPECTED HEROIN RESIDUE
6 Officer Notes: FOUND INSIDE ITEM #003

7 - 4266-004: EVIDENCE - SEVEN KEYS
8 Officer Notes: FOUND ON MITUNIEWICZ'S PERSON, KEY TO ITEM #003

9 Item #001 was given to Det. Scott Holmes with the Drug Task Force. Holmes will
10 download the digital data contained on the phone after application for a search
11 warrant.

12 The suspected Heroin, items #002, 003-B, and 003-C, weighed a total of 75.1
13 grams. Requesting these items be sent to the Washington State Patrol (WSP)
14 laboratory for controlled substances analysis.

15 A plastic zip-tie was placed through the open breach in the pistol to make it
16 secure. The pistol was placed into a brown paper bag and then placed into a
17 cardboard box. Request this item be sent to the WSP lab for latent print
18 processing and DNA.

19 Item #003-D is a functioning digital scale and two metal spoons. All of these items
20 have a brown tar like residue on them, which I suspect to be Heroin. Request
21 these items be sent to WSP lab for controlled substances analysis.

22 The above mentioned items, with the exception of item #001, were secured in the
23 Sheriff's Office West Precinct evidence room pending pick-up by evidence
24 technicians.

25 The syringes found inside item #003 were placed into a "sharps container" at the
26 precinct to be properly destroyed.

27 Laboratory request forms were completed for the mentioned items.

28 The digital photographs taken of the evidence were uploaded to the EPR system.

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3 DECLARATION: I declare and certify under penalty of perjury under the laws of the State of
Washington that the preceding is true and correct to the best of my knowledge.

4 Executed at Vancouver, Washington, this 15th day of September, 2011.

5
6 Randolph J. St. Clair
7 Randolph J. St. Clair, WSBA #35235
Deputy Prosecuting Attorney

8 CERTIFICATION OF PROBABLE CAUSE TO ARREST

9 The undersigned Judge/Magistrate hereby certifies that I have read or had read to me
10 the above statement of probable cause to arrest and that I find probable cause to arrest is
established is not established (release defendant).

11 Date:

9/15/11

[Signature]
JUDGE/MAGISTRATE

13 Time:

Defendant

15 cc:

Defense Attorney

16 Dept:

#1

"G"

Honorable Johnson's resetting trial scheduling order

FILED
NOV 10 2011
3:09
Scott G. Weber, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.

SCHEDULING ORDER

Rodney S. Mituniewicz
Defendant.

No. 11-1-01530-1

IT IS HEREBY ORDERED THAT:

- 1. The assigned Judge is: Stahnke, Dept. 1 Wulle, Dept. 2 Nichols, Dept. 3
 Poyfair, Dept 4 Melnick, Dept. 5 Johnson, Dept. 6
 Rulli, Dept 7 Woolard, Dept. 8 Lewis, Dept. 9
 Collier, Dept. 10

*court excludes
60 days of DOC
SANCTION + finds
good cause for
continuance

2. The Date of Commencement: _____

3. The Defendant shall personally appear for the following:

Readiness hearing Jan 5, 2012 at 1:30 pm.

Trial scheduled: Jan 9, 2012 at 9:00 am (Elapsed days 46).

~~Oral~~ ^{Motion} hearings Dec 28, 2011 at 9:00 am

Sentencing hearing: _____ at _____ am/pm.

4. Defendant shall personally appear in court for each of the dates set forth above. Failure to appear may result in the issuance of a warrant and may constitute the crime of Bail Jumping, pursuant to RCW 9A.76.170.

DATED this 10 day of Nov, 2011.

[Signature]
JUDGE OF THE SUPERIOR COURT

[Signature]
Defendant
[Signature]
Attorney for Defendant, WSBA # 16356

[Signature]
Deputy Prosecuting Attorney, WSBA # 25790

The Trial Prosecutor is St. Clair

[Signature]
Print Name of Defense Attorney)

12/5/11

"I"

Honorable Stahnke's resetting trial scheduling order

FILED

JAN 05 2012

Scott G. Weber, Clerk, Clark Co.

3:28 pm

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.

SCHEDULING ORDER

Mituniewicz, Rodney Steven
Defendant.

No. 11-1-01530-1

IT IS HEREBY ORDERED THAT:

1. The assigned Judge is: Stahnke, Dept. 1 Wulle, Dept. 2 Nichols, Dept. 3
 Poyfair, Dept 4 Melnick, Dept. 5 Johnson, Dept. 6
 Rulli, Dept 7 Woolard, Dept. 8 Lewis, Dept. 9
 Collier, Dept. 10

2. The Date of Commencement: 11/28/2011

3. The Defendant shall personally appear for the following:
~~3.6 hearing~~ 1/9/2012 @ 9:00 a.m.
~~Readiness hearing:~~ 1/9/2012 at 1:30 pm.
Trial scheduled: 1/23/2012 at 9:00 am (Elapsed days 56).
 Omnibus hearing: _____ at _____ am/pm.
 Sentencing hearing: _____ at _____ am/pm.

4. Defendant shall personally appear in court for each of the dates set forth above. Failure to appear may result in the issuance of a warrant and may constitute the crime of Bail Jumping, pursuant to RCW 9A.76.170.

DATED this 5 day of Jan, 2012

[Signature]
JUDGE OF THE SUPERIOR COURT

[Signature]
Defendant

[Signature]
Deputy Prosecuting Attorney, WSBA # 35235

Attorney for Defendant, WSBA # 16350

The Trial Prosecutor is ST. CLAIR

Therese Lavallee
Print Name of Defense Attorney)

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