

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

NO. 38133-8-II

STATE OF WASHINGTON,

Respondent,

vs.

JACOB YADEN, JR.,

Appellant.

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

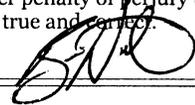
ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY
CAUSE NO. 04-1-00348-1

BRIEF OF RESPONDENT

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SERVICE	Jodi Backlund/Manek Mistry Backlund & Mistry 203 Fourth Ave. East, Suite 404 Olympia, WA 98501	This brief was served via U.S. Mail or the recognized system of interoffice communications as follows: original + one copy to Court of Appeals, 950 Broadway, Suite 300, Tacoma, WA 98402, and one copy to counsel listed at left. I CERTIFY (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED: May 21, 2009, at Port Angeles, WA 
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Yaden

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I. COUNTER-STATEMENT OF THE ISSUES

1. Whether the delay to trial violated the Defendant's right to speedy trial under CrR 3.3.
2. Whether the delay to trial violated the Defendant's constitutional right to a speedy trial.
3. Whether the Defendant received ineffective assistance of counsel when his attorney proposed a jury instruction of unwitting possession.

II. STATEMENT OF THE CASE

Incident

On August 16, 2004, around 11:00 p.m., Mr. Jean Craig Fjellman (Fjellman), a night manager at the Quality Food Centers (QFC) in Sequim, Washington, observed two men enter the store and purchase cold medicine – non-drowsy Sudafed. RAP 199, 208-09 (07/01/08). Three hours later, Fjellman witnessed the same two men return to the store. 2 RP 200. On the second visit, the two men headed to the battery aisle and looked at lithium batteries. 2 RP 201-02, 209. Because Fjellman knew that cold medication and lithium batteries were ingredients associated with the manufacture methamphetamine, he monitored the two patrons closely. 2 RP 202-205. Fjellman overheard one of the men ask “if these batteries are the kind used to make the [expletive].” 2 RP 202. Fjellman then watched the two men leave the battery aisle

and purchase rock salt, another ingredient used in the manufacture of methamphetamine. 2 RP 206, 210-11.

When the two men left the store, Fjellman called 911 to report his observations. 2 RP 202-03, 206-07, 213. Fjellman provided the police with a description of the two men, identified their vehicle as a white Ford Fiesta, and gave the vehicle's license plate number. 2 RP 207. The 911 dispatch officer radioed the report to all on-duty officers.

Deputies Don Reidel (Reidel) and John Keegan (Keegan) were on duty and received the report from the 911 dispatch officer – that a witness at the local QFC reported that two individuals, in a white Ford Fiesta, had just purchased items commonly associated with the manufacture of methamphetamine. 2 RP 215-16, 218, 237-38. Reidel located the suspects' vehicle and signaled for it to pull over. 2 RP 216. Reidel made contact with the two occupants, JACOB YADEN, JR. (Yaden) and JASON WAHL (Wahl). 2 RP 218. Reidel observed that neither occupant exhibited flu symptoms. 2 RP 218. Keegan soon joined Reidel at the scene and the two officers proceeded to interview the vehicle's occupants.

While Reidel and Keegan interviewed the occupants, Officer Kori Malone (Malone) arrived at the scene to assess the situation. 2 RP 253. Malone observed through the vehicle's windows a large bag

of ammonia based fertilizer. 2 RP 254. Through her police officer training, Malone knew that ammonia based fertilizer was also associated with the manufacture of methamphetamine. 2 RP 254-55, 305. Malone immediately applied for a search warrant. 2 RP 255-57, 291. After she obtained a warrant, Malone discovered the following methamphetamine ingredients: a 20 lbs bag of ammonia-based fertilizer, two cans of lye, a two-pound box of rock salt, one can of acetone, one can of xylene, 20 feet of clear tubing, and 329 tablets of pseudo-ephedrine based cold medication. 2 RP 255-57, 291. Malone discovered the cold medication under both occupants' seats. 2 RP 267-68, 302.

Pretrial History

The State originally charged the Defendant with (1) Possession of a Controlled Substance – Methamphetamine,¹ and (2) Possession of a Controlled Substance with Intent to Manufacture Methamphetamine.^{2,3} RP 5 (8/17/2004); CP 97.

On August 17, 2004, the trial court advised the Defendant of his constitutional rights, including his right to a speedy trial. RP 5-6

¹ A Class C felony which carries a punishment of 5 years in prison and \$10,000 fine.

² A Class B felony which carries a punishment of 10 years in prison and \$25,000 fine.

(8/17/2004); CP TBD (See State's Supplemental Designation of Clerk's Papers (State's Supp), filed 8/17/2004 – Appendix A). The trial court also appointed a public defender, Mr. Ralph Anderson, to represent the Defendant. RP 6 (8/17/2004); RP 3 (8/27/2004).

On August 27, 2004, the trial court entered an order setting schedule and directing pretrial procedure. 1 RP 5 (8/27/2004); CP TBD (State's Supp., filed 8/27/2004 – Appendix B). The trial court set the trial date for October 13, 2004. *Id.* After the hearing, the Defendant posted a \$15,000 surety bond and was released from confinement on September 8, 2004. CP TBD (State's Supp., filed 9/09/2004 – Appendix C).

On September 17, 2004, the parties attended a status hearing. RP (9/17/2004) – Clerk's Minutes. Upon agreement of the parties, the trial court issued an ordered continuing the trial date. CP TBD (State's Supp., filed 9/17/2004, 9/20/2004 – Appendix D). The order set the trial date for December 13, 2004. CP TBD (State's Supp., filed 9/17/2004, 9/20/2004 – Appendix D).

On December 13, 2004, defense counsel filed a motion to continue the date of trial. RP 5-6 (12/13/2004). The trial court

³ The State subsequently amended the charges to one count of Possession of Pseudoephedrine with Intent to Manufacture Methamphetamine. CP 5; CP 17.

confirmed that the Defendant wanted the continuance:

Mr. Anderson: Your Honor, we're going to ask to reset this [matter] into February or March.

Court: Mr. Yaden that would be beyond your current expiration of what is called speedy trial. Is that going to be acceptable to you?

Defendant: Yes.

RP 5 (12/13/2004). The trial court subsequently issued an order continuing the date of trial. CP TBD (State's Supp., filed 12/13/2004 – Appendix E). The order set the new date for trial as February 14, 2005. RP 6 (12/13/2004); CP TBD (State's Supp., filed 12/13/2004 – Appendix E).

On February 14, 2005, the trial court, again, addressed the need to reset the trial date. RP 5 (2/14/2005). The trial court asked the Defendant if he agreed with the need to reset trial:

Court: Mr. Yaden, right now there's a requirement that your case be tried not later than March 16. You have a right to insist upon that or you could waive that right and I'll set a trial on May 16 which means it could start as late as June 16th under the rules.

Discuss that with your attorney – have you done that?

Defendant: Yes.

Court: Is that acceptable to you?

Defendant: Yes, it is.

RP 8 (2/14/2005). The trial court subsequently issued an order that

continued trial until May 16, 2005. CP TBD (State's Supp., filed 02/14/2005 - Appendix F). When defense counsel informed the trial court that he would file a suppression motion, the trial court set the first status hearing for April 14, 2005. RP 5-6, 9 (2/14/2005).

On April 14, 2005, defense counsel requested a continuance. 1 RP 10 (4/14/2005). Defense counsel stated a continuance was necessary due to "some late breaking developments." 1 RP 13 (4/28/2005). As a result, the trial court set the status hearing for May 5, 2005.

On May 5, 2005, the trial court reset the date of trial after defense counsel stated that he still intended to file a suppression motion due to his concern that the initial traffic stop was pretextual. 1 RP 16 (5/5/2005). The trial court accommodated the needs of the Defendant and set the new date for trial as July 25, 2005. 1 RP 16 (5/5/2005); CP TBD (State's Supp., filed 5/05/2005 - Appendix G). The Defendant did not object to the new trial dates and agreed to attend a status hearing on June 2, 2005. 1 P 18 (5/5/2005).

On June 2, 2005, the Defendant and his attorney were still trying to collect information regarding the search warrant and requested a two week continuance. 1 RP 21 (6/2/2005). The trial court granted the continuance and set the next hearing for June 16, 2005. 1 RP 21 (6/2/2005). However, the Defendant and his attorney requested two

additional continuances in June 2005. RP 2 (06/16/2005); CP 96.

On July 7, 2005, the Defendant and his attorney again informed the court that they intended to file a motion to suppress. RP (7/7/2005) – Clerk’s Minutes. As a result, the parties agreed to strike the intended trial date of July 25, 2005. RP (7/8/2005) – Clerk’s Minutes.

On July 28, 2005, the trial court again continued the status hearing date due to defense counsel’s illness. RP 2-3 (7/28/2005). At this hearing the trial court had the following discussion:

- Court:** Okay, on this one we’ve already gone past the trial date here.
- Mr. Mulligan:** That’s what I was looking at, couldn’t find a trial date. If I could have just a moment?
- State:** We have, Your Honor, we’ve been waiting for a – I think we set it for today to have a brief in.
- Mr. Mulligan:** My understanding is, Your Honor, that this matter will likely go to trial, so if we could just set a trial date and we’ll (inaudible).
- State:** Does that mean he’s waiving the 3.6 issue?
- Defendant:** No, I don’t waive anything.
- Court:** It says here that, “the defendant will file a suppression motion” and that’s why we set it for today, but Mr. Anderson’s not here.
- Mr. Mulligan:** I can see that there was a court order signed for him to get the affidavits and exhibits . . .
- State:** And, he did get all that.

Mr. Mulligan: Okay and I do see – there certainly tape print outs and stuff related to that issue that hasn't been file[d] yet.

State: I have no objection if the Court wants to reset this status hearing one week. I assume Mr. Anderson will be back and then we can set the dates.

Mr. Mulligan: That's probably...

Court: Well, it sounds like he's planning on doing it. Since he's ill today, I think probably the best thing to do would be to reset the status for the fourth of August and on that date hopefully we'll have the motion filed.

Okay, Mr. Yaden, we'll see you next Thursday at 1:00.

Defendant: Okay.

RP 2-3 (07/28/2005). The following Thursday, August 4, 2005, the Defendant and his attorney requested additional time to prepare the motion to suppress. RP (08/04/2005) – Clerk's Minutes. As a result, the trial court reset trial for November 28, 2005. CP TBD (State's Supp., filed 8/04/2005 - Appendix H).

In September 2005, the Defendant and his attorney requested two continuances and informed the court that they would file a suppression motion. CP 96, CP 94.

On November 28, 2005, on the scheduled trial date, the Defendant appeared late due to "car troubles." CP 93. The trial court then issued an order setting a new trial schedule and pretrial procedure. CP

93; CP TBD (State's Supp., filed 11/28/2005 - Appendix I). The trial court set a new trial date for February 6, 2006. CP 93; CP 93; CP TBD (State's Supp., filed 11/28/2005 - Appendix I).

On February 6, 2006, the Defendant attended his trial date via telephone. CP 92. However, due to an agreement between the parties, the trial court issued an order continuing trial until April 19, 2006. CP 93; CP TBD (State's Supp., filed 02/06/2006 - Appendix J).

On April 19, 2006, the trial court again issued an order setting a trial schedule and directing pretrial procedure. CP 91; CP TBD (State's Supp., filed 4/19/2006 - Appendix K). The trial court ordered trial to begin on July 17, 2006. CP TBD (State's Supp., filed 4/19/2006 - Appendix K).

On May 4, 2006, defense counsel informed the court that he still planned to file a suppression motion. CP 90. After a subsequent continuance, neither the Defendant nor his attorney attended a hearing on May 18, 2006. CP TBD (State's Supp., 5/18/2006 - Appendix L). A colleague of defense counsel did attend the hearing and provided the case⁴ that the Defendant would use to support his suppression motion. 1 RP 244 (5/18/2006). The trial court did not change the date for trial

⁴ *State v. Carlson*, 130 Wn.App. 589, 123 P.3d 891, 130 Wn.App. 589 (Div. 3 2005).

and agreed to review the case. 1 RP 25 (5/18/2006).

On May 23, 2006, the trial court instructed the State to respond to the Defendant's oral suppression motion. CP TBD (State's Supp., filed 5/23/2006 - Appendix M). The State filed a response three days later on May 26, 2006. CP TBD (State's Supp., filed 5/26/2006 - Appendix N). The trial court then noted a CrR 3.6 hearing for June 15, 2006. CP TBD (State's Supp., filed 6/20/2006 - Appendix O). However, neither the Defendant nor his attorney attended the scheduled CrR. 3.6 hearing. CP 89. The trial court, thereby, was forced to reset the hearing for June 22, 2006. CP 89. The parties subsequently agreed to reset the suppression hearing for July 13, 2006. CP 88.

On July 12, 2006, defense counsel asked the trial court to continue the suppression hearing because he had just received the State's brief and certain 911 recordings. CP 87. The trial court reset the suppression hearing for August 13, 2006, and the trial date for September 18, 2006. CP 87; CP TBD (State's Supp., filed 7/12/2006 - Appendix P). However, the trial court subsequently rescheduled the suppression hearing two additional times: September 14, 2006, and October 12, 2006. CP 86; CP 85.

On October 12, 2006, the trial court issued an order continuing trial. CP 84, CP TBD (State's Supp., filed 10/12/2006- Appendix Q).

Based upon the parties' agreement and the interests of justice, the trial court set a new trial date for December 11, 2006. CP 84; CP TBD (State's Supp., filed 10/12/2006- Appendix Q). The trial court also set a suppression hearing for November 9, 2006. CP 84. However, the trial court subsequently struck the hearing and allowed defense counsel to note it for a later date. CP 83.

On December 11, 2006, and upon the agreement of the parties, the trial court reset the trial date for February 20, 2007. CP 82; CP TBD (State's Supp., filed 12/11/2006 - Appendix R). However, on February 20, 2007, and upon agreement of the parties, the trial court again reset the trial date to begin May 2, 2007. CP 81; CP TBD (State's Supp., filed 02/20/2007 - Appendix S). At that hearing a colleague of defense counsel informed the court that the Defendant may still require a suppression hearing. CP 81. The trial court set a suppression hearing for April 19, 2007. CP 80.

On April 19, 2007, the Defendant and his attorney requested additional time to prepare for the CrR 3.6 hearing. CP 79. The trial court scheduled the suppression hearing for the same date as trial, May 2, 2007. CP 79.

On May 2, 2007, the Defendant and his attorney asked the trial court to reset the hearing and trial dates. CP 78. All parties agreed to the

reset. CP 78. The judge ordered the defendant to provide the cases upon which it would rely to the State and the trial court.⁵ CP 78.

On May 25, 2007, the trial court filed an order setting a new trial schedule and directing pretrial procedure. CP 74; CP TBD (State's Supp., filed 05/25/2007 - Appendix T). The trial court set June 28, 2007, for the suppression hearing, and July 11, 2007, as the new trial date. CP 74; CP TBD (State's Supp., filed 05/25/2007 - Appendix T).

On June 28, 2007, and upon the agreement of the parties, the trial court issued an order that continued the trial date. CP 73; CP TBD (State's Supp., filed 6/28/2007 - Appendix U). The trial court set September 13, 2007, for the suppression hearing, and September 25, 2007, for the new trial date. CP 73; CP TBD (State's Supp., filed 6/28/2007 - Appendix U).

On September 13, 2007, the Defendant was in the custody of Kitsap County authorities and could not attend the scheduled suppression hearing. CP 72, CP 71. Defense counsel asked the trial court to reset the date of the CrR 3.6 hearing. CP 72. The trial court reset the hearing for

⁵ The superior court file includes an opinion titled "Memorandum Opinion re: Motion to Suppress." The opinion has a date stamp of May 17, 2007 and includes a declaration of service. The opinion states a CrR 3.6 hearing was argued May 10, 2007, and it finds that there was sufficient cause to permit the officers to make a Terry Stop. The opinion requires additional argument as to the scope and duration of the Terry Stop and noted May 25, 2007 as the date for the subsequent CrR 3.6 hearing. See CP 75.

September 25, 2007, striking the previously scheduled trial date. CP 72. When the Defendant failed to attend the scheduled hearing, the trial court issued a bench warrant for his arrest. CP 71; CP TBD (State's Supp., filed 9/25/2007 - Appendix V). Thus, the trial court issued a new order setting trial schedules and directing pretrial procedure. CP TBD (State's Supp., filed 10/04/2007 - Appendix W). The new order set trial for November 20, 2007. CP 70; CP TBD (State's Supp., filed 10/04/2007 - Appendix W).

On November 20, 2007, a new attorney, Mr. Jonathan Feste, appeared on behalf of the Defendant. CP 68. Due to the substitution of counsel, the trial court reset the dates for the suppression hearing and trial. CP 68. The trial court issued a formal order resetting the trial schedule and directing pretrial procedure on November 30, 2007. CP TBD (State's Supp., filed 11/20/2007 - Appendix X). The trial court set January 17, 2008, for the suppression hearing, February 12, 2008, as the new trial date, and March 13, 2008, as the new outside date. CP 67; CP TBD (State's Supp., filed 11/20/2007 - Appendix X).

On January 17, 2008, a new attorney, Mr. Loren Oakley, appeared on behalf of the Defendant. CP 66. The trial court reset the suppression hearing for February 7, 2008. CP 66.

On February 7, 2008, the parties appeared for the CrR 3.6 hear-

ing. 1 RP 29 (2/7/2008). At the hearing, Mr. Oakley, again, appeared on behalf of the Defendant. 1 RP 29 (2/7/2008). The Defendant asked that the matter be postponed to allow him additional time to meet with his attorney. 1 RP 29 (2/7/2008). The State opposed the request:

State: I pulled in three officers here for the purpose of testifying at this hearing and we would have got to (inaudible) at this point.

Defendant: I postponed for three years for Ralph [Anderson] over and over again. This is the first time I've asked.

Court: Well...

Defendant: And this is a real important case.

Court: What I'm inclined to do is bifurcate it, so that we can hear the officers' testimony and give [the new attorney] a chance to prepare your response to it.

State: Well, the problem with that is I probably would have to bring the officers back without knowing what the (inaudible) are necessary to bring rebuttal testimony.

Court: Well, I'm, I – we've had this dilemma many times because of Mr. Anderson's departure, and Mr. Oakley having to take over a whole pile of cases, and get up to speed on those. I'm trying to be sensitive to that problem.

1 RP 31-32 (2/7/2008). Toward the end of the first day of the suppression hearing, the trial court had the following discussion with counsel:

Court: I had, uh, indicated this morning that we would bifurcate it to give you an opportunity to get better prepared.

Mr. Oakley: Thank you, Your Honor.

Court: Uh, and now it appears that there is reasons from both sides for that. Uh, how much time are we looking at? Put it together in a week or two?

State: Uh, unless [the witness] has a conflict (inaudible) at least (inaudible).

Mr. Oakley: I think we're set for trial on the 12th, which is obviously not realistic.

Court: Yeah, we, we've got a problem here with the trial date. Uh....

State: Your Honor, if I may suggest that the trial date be stricken and we schedule the remainder of this hearing for next Thursday.

Court: Will that give you enough time?

State: And at that time we could reset the trial date.

Mr. Oakley: Um, yeah.

Court: Because I'm, I'm happy to do it next Thursday, if that'll give you enough time.

Mr. Oakley: Okay, that actually sounds like a plan. We can do a trial setting, as well, next Thursday [February 14, 2008].

1 RP 83-84 (2/7/2008).

On February 14, 2008, the trial court reset the remainder of the suppression hearing for February 21, 2008. CP 65. When the suppression hearing concluded on February 21, 2008, the trial court took the matter under advisement. RP 19 (2/21/2008). The trial court did not issue an order resetting the trial dates. The trial court filed a memorandum opinion regarding the suppression issue on April 2, 2008. CP 59.

Upon the State's motion, the parties convened to discuss appli-

cable trial dates on May 2, 2008. Defense counsel opposed the State's and trial court's effort to reset the trial date, arguing that speedy trial had lapsed:

Mr. Oakley: Well, Your Honor, um, this is a case I did inherit from Mr. Anderson, so maybe (inaudible) everything that there is involved in this case. But, the last Notice of Case Setting I have looks like it was from November of 2007, with a trial date of February 12th, and an expiration date of March 13th. Um, we had this hearing on – we're well past March 13th. We had this hearing, I believe, on February 21st which would put the expiration date out to March 22nd.

Judge Taylor issued his opinion on April 2nd, and 0 days from then I guess would put the expiration date out to May 2nd. It seems to me my client's rights to speedy trial (inaudible) run and accordingly, I ask that the case be dismissed.

Court: Well, today's May 2nd right?

Mr. Oakley: Yes, but...

Court: Okay. Do you want to have some pretrial motions then and just go ahead and start the trial?

Mr. Oakley: I'm not (inaudible) pretrial motions, Your Honor. But, uh, even at that, I think we're well past, we're well past the expiration date of March 13th and March 22nd.

Court: Well, I mean, you just told me May 2nd, so are you going (inaudible)?

Mr. Oakley: Well, I'm just, I'm throwing out possible dates. Um, we're well past March 13th and we did have this hearing.

Court: Okay, it's going to have to be brief[ed] then.

1 RP 88-89 (5/2/2008). The trial court instructed the parties to submit briefs and set a tentative new trial date for May 27, 2008. 1 RP 95-96 (5/2/2008); CP TBD (State's Supp., filed 5/02/2008 - Appendix Y). In order to preserve the issues for trial, the trial court accepted motions in limine from both the State and the Defense. 1 RP 94 (5/2/2008).

On May 22, 2008, the State moved to continue the trial date because one of its key witnesses was unavailable. CP 43. The trial court reset the date of trial for June 30, 2008, subject to the Defendant's motion to dismiss for want of speedy trial. CP 43, CP TBD (State's Supp., filed 5/22/2008 - Appendix Z).

On June 12, 2008, the trial court denied the Defendant's motion to dismiss for want of speedy trial. 1 RP 105 (6/12/2008). The trial court reasoned as follows:

I guess what's troubling about the matter is that the defendant allowed his case to languish for over three years by repeated, if you go through the file, by repeated requests for continuance, and, repeated promises of an attending motion under [3].6.

On February 14, 2005, the defendant, for the first time, indicated his intent to file a [3].6 motion. The Court waited patiently for his oft- promised motion, which was finally filed orally on May 16, 2006, over 15 months after his initial indication he was going to file it.

The State filed promptly a written response on May 26, 2006, so a [3].6 hearing was set for June 15, 2006, and

neither the defendant nor his counsel appeared at that hearing.

On September 14, 2006, March 29, 2007, and May 11, 2007, the [3].6 hearing was set and defendant did not appear. On other occasions he asked for more time. And, so it went.

So, in light of the tortured history of this case, the Court cannot help but question the genuineness of the defendant's current motion. The time limit set by CrR [3].3 are not constitutionally mandated, and that's *State v. Campbell*, 103 Wn.2d 1, page 15, a 1984 case.

So, if there has been a violation of CrR [3].3 the defendant must show that his constitutional right to waive "speedy trial" has been violated. And, this is confirmed also in the present rule, Rule [3].3(a)(4) which says that the trial is timely and to 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.

Here the trial was delayed for reasons not addressed in the rule, and I'm talking about the most recent trial continuance, the one that's at issue.

The long-awaited hearing on the defendant's [3].6 motion was finally completed on February 21, 2008, nine days after the defendant's trial date, which was scheduled for February 12, 2008. The record reflects no objection by the defendant on February 7, 2008, when the [3].6 hearing was continued to February 14, 2008, which was actually two days after his trial date. Nor, was there any objection by the defendant on 2/14/2008 when the matter was continued to February 21, 2008. His trial date of February 12th was passed without a whimper from the defendant.

On 2/21/2008, the suppression hearing was concluded and Judge Taylor took the matter under advisement. The defendant did not raise the issue of the speedy trial or his outside date being on [3]/13/2008. It wasn't until after

the Court issued its memorandum opinion on 4/2/08 that the defendant argued a violation of speedy trial.

Both CrR [3].3(d)(3) and case law place some responsibility upon the defendant to assure the compliance with his right to a speedy trial. The Washington Court in *State v. Carson*, 128 Wn.2d 805, a 1996 case, stated as follows, at page 815: “The Court is ultimately responsible for insuring a speedy trial for the defendant under CrR [3].3.

The counsel for defendant bears some responsibility for asserting CrR [3].3 rights of a client and assuring compliance with the rule before the speedy trial period expired. The Superior Court speedy trial rules were promulgated to give the defendant a prompt trial once prosecution is initiated, ‘[t]hey were not signed to be a trap for the unwary.’”

In *Carson*, the defense counsel in that case knowingly allowed speedy trial to expire without raising an issue to the Court. In the present case, the defendant did not alert Judge Taylor to the pending outside date, he allowed his schedule trial date of February 12, 2008, to be stricken without insisting that a new trial date be set by the outside date of March 13, 2008. He made no objection to Judge Taylor taking the matter under advisement, and merely sat on his rights while the Court was considering the merits of his own motion.

Based upon these facts, the Court finds the defendant waived his right to assert a violation of CrR [3].3. Furthermore, the defendant’s constitutional right to a speedy trial was not violated considering the tortured history of this case, and the fact that the agonizing delays in bringing this matter to trial, a period of over three years, can be placed primarily upon the defendant, the Court can find no prejudice to the defendant.

The length of the delay and the present delay was short, the reason for the delay was because of the defendant’s own motion, and the defendant never demanded his speedy trial rights.

1 RP 101-05 (6/12/2008). After the trial court dismissed the Defendant's motion, the matter proceeded to trial.

Trial

The first day of trial commenced on June 30, 2008. 1 RP 109 (6/30/08). On July 1, 2008, the parties presented opening arguments to the jury. 2 RP 189-196 (7/1/2008). The parties presented testimony and various exhibits over the course of two days. 2 RP 196-382 (7/1/2008); 3 RP 386-460 (7/2/2008). The Defendant's proffered defense was that he unwittingly possessed the methamphetamine ingredients.⁶ Thus, defense counsel requested that the trial court instruct the jury on "unwitting possession." 3 RP 467-69 (7/2/2008). Defense counsel never objected to the final form of the requested instruction. See 3 RP 471-74 (7/2/2008).

The trial court instructed the jury that the State has the burden to prove each element of the crime beyond a reasonable doubt.⁷ 3 RP 480

⁶ The Defendant testified that his friend and passenger, Wahl, had purchased the suspected items, and that Wahl never showed the Defendant the items he had purchased. 2 RP 399-401, 414-17, 422, 425, 427-29.

⁷ It is a crime for any person to possess pseudoephedrine with the intent to manufacture methamphetamine. To convict the defendant of the crime of Possession of Pseudoephedrine With Intent To Manufacture Methamphetamine, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) that on or about the 17th day of August 2004, the defendant possessed pseudoephedrine; (2) that the defendant possessed pseudoephedrine with the intent to manufacture methamphetamine;

(7/2/2008). The trial court also instructed the jury that the burden was on the defendant to prove the affirmative defense of unwitting possession by a preponderance of the evidence.⁸ 3 RP 483 (7/2/2008). In closing arguments, both the State and the Defendant reminded the jury that the State had the burden to prove each element of the crime beyond a reasonable doubt, but that the Defense had the burden to prove the affirmative defense by a preponderance of the evidence. 3 RP 509, 517 (7/2/2008).

The jury found the Defendant guilty of Possessing Pseudoephedrine with Intent to Manufacture Methamphetamine. 3 RP 528 (7/3/2008). The trial court subsequently sentenced the Defendant to 78 months confinement based on the nature of the crime and his offender score. RP 8 (7/31/2008). The Defendant filed the instant appeal.

III. ARGUMENT

A. **THE DELAY DID NOT VIOLATE CrR 3.3 BECAUSE THE DEFENDANT WAIVED OBJECTION TO TRIAL BEYOND FEBRUARY 12, 2008.**

The Defendant appeals the trial court's decision to deny his

and (3) that the acts occurred in the State of Washington. 3 RP 481; CP 24, No. 7.

⁸ A person is not guilty of possession of a substance if the possession is unwitting. Possession of a substance is unwitting if a person did not know that the substance was in his possession. The burden is on the defendant to prove by a preponderance of the evidence that the substance was possessed unwittingly. A preponderance of the evidence means that you must be

motion to dismiss for want of “speedy trial.” Appellant’s Brief at 13. The constitutional right to a speedy trial, which cannot be quantified into a specified number of days or months,⁹ is not the issue in the Defendant’s first argument. The basis for the Defendant’s challenge is his right to a trial within 90 days as provided by CrR 3.3(b)(2)(i). Appellant’s Brief at 13-14. While a violation of that right may result in dismissal with prejudice under CrR 3.3(h), this Court should find that the Defendant waived his right to a trial within the time prescribed by the criminal rule.

This Court reviews the application of the “time for trial rule” *de novo*. *State v. Kenyon*, 143 Wn.App. 304, 312, 177 P.3d 196 (Div. 2 2008). The trial court is ultimately responsible for ensuring compliance with the speedy trial period. CrR 3.3(a). However, both the State and the Defendant bear some of the responsibility to make sure that trial proceeds in a timely fashion. *See Kenyon*, 143 Wn.App. at 312; *State v. Carson*, 128 Wn.2d 805, 818-19, 912 P.2d 1016 (1996). Criminal defendants have a responsibility to raise CrR 3.3 issues when the trial court can still take action to avoid violation of the rule. *Carson*, 128 Wn.2d at

persuaded, considering all of the evidence in the case, that it is more probably true than not true. 3 RP 483; CP 24, No. 13.

⁹ *State v. Thomas*, 95 Wn.App. 730, 735, 976 P.2d 1264 (1999); *Barker v. Wingo*, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

819.¹⁰

A potential speedy trial problem is “a primary theory of defense.” *State v. Chenoweth*, 115 Wn.App. 726, 737, 63 P.3d 834 (2003). When defense counsel makes an untimely CrR 3.3 objection, the Defendant waives any “speedy trial” objection. *Id.* See also *State v. Malone*, 72 Wn.App. 429, 435, 864 P.2d 990 (1994); *State v. Becerra*, 66 Wn.App. 202, 206, 831 P.2d 781 (1992). Such a waiver binds the Defendant because the right to a trial within a specific time as the court rules prescribe is not a fundamental constitutional right. *State v. Thomas*, 95 Wn.App. 730, 735, 976 P.2d 1264 (1999); *State v. Franulovich*, 18 Wn.App. 290, 293, 567 P.2d 264 (1977); *Barker v. Wingo*, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

In *State v. Malone*, 72 Wn.App. 429, 864 P.2d 990 (1994), the Court of Appeals – Division I affirmed the trial court’s decision to deny a criminal defendant’s motion to dismiss based on an alleged CrR 3.3

¹⁰ See also *State v. Malone*, 72 Wn.App. 429, 434-35, 86 P.2d 990 (1990) (Defense counsel has an affirmative duty to investigate those easily ascertainable facts that are relevant to setting the trial date within the speedy trial period. If an untimely speedy trial objection is made because of the failure to discover such easily ascertainable facts, it will be deemed waived); *State v. Becerra*, 66 Wn.App. 202, 206, 831 P.2d 781 (1992) (A criminal defendant waives a speedy trial objection by not raising the issue at a time when the trial court could take action to avoid violation of the speedy trial rule); *State v. Austin*, 59 Wn.App. 186, 200, 796 P.2d 746 (1990) (A criminal defendant waives his right to speedy trial by not raising the issue until after it was too late to commence the trial within the speedy trial period); *State v.*

violation. In *Malone*, the State filed an information that charged the Defendant with felony possession of cocaine on September 21, 1990. 72 Wn.App. at 431. The Defendant remained free of confinement and the superior court held his arraignment on October 17, 1990. *Id.* Upon the agreement of the parties, the superior court set the trial date for January 25, 1991. *Id.* at 432. However, Division I noted that the “speedy trial” period elapsed on January 4, 1991. *Id.* On February 7, 1991, the Defendant moved for the first time, under CrR 3.3, to dismiss based on a violation of the speedy trial rules. *Id.* The trial court dismissed the defendant’s motion, finding that he had waived his right to object under CrR 3.3. *Id.* Division I affirmed, noting that defense counsel had a duty to raise the CrR 3.3 issue before the “speedy trial” period expired to avoid waiver. *Id.* at 434, 437.

In *State v. Carson*, 128 Wn.2d 805, 912 P.2d 1016 (1996), the Supreme Court also affirmed the trial court’s decision that denied a criminal defendant’s motion to dismiss under CrR 3.3. In *Carson*, the trial court declared an earlier mistrial on May 22, 1992. 128 Wn.2d at 808. The trial court signed an order setting a new trial date for July 20, 1992; however, the case was not brought to trial on that date. *Id.* at 809. Neither party sought a continuance and none was granted. *Id.* Defense

Raper, 47 Wn.App. 530, 538, 736 P.2d 680 (1987) (Defense counsel has some

counsel, the prosecuting attorney, and the trial judge began trial in an unrelated case on July 21, 1992. *Id.* The unrelated case was not completed until August 3, 1992. *Id.* On August 3, 1992, the prosecuting attorney set the original matter for a hearing that afternoon. *Id.* At the hearing, defense counsel moved to dismiss because the State had not brought the case to trial within sixty days of the date of the mistrial. *Id.* The trial court dismissed the Defendant’s motion and granted a retroactive five-day continuance to August 5, 1992 – the start of trial. *Id.* at 810. The Supreme Court held that there were unavoidable circumstances beyond the control of the court or the parties that justified the time extension, due in large part to the fact that defense counsel did not advise the court or State of his intent to rely on speedy trial rule before the speedy trial period expired. *Id.* at 816.

In the present case, as in the two cases cited above, the Defendant’s attorney failed to raise a CrR 3.3 issue before the “speedy trial” period expired. On November 30, 2007, the trial court issued an order setting the trial date for February 12, 2008. CP 67. Pursuant to CrR 3.3, the time for trial expired on February 28, 2008 (90 days after

responsibility to timely assert his client’s CrR 3.3 rights).

November 30, 2007).¹¹ On February 7, 2008, Mr. Oakley knew, or should have known due to easily ascertainable facts that are relevant to setting the trial date, that the “speedy trial” period was about to expire when he sought a continuance for the CrR 3.6 suppression hearing. 1 RP 31-32, 83-84 (2/07/2008). In fact, Mr. Oakley noted that the scheduled trial date, February 12, was not “realistic” given his need for a continuance. 1 RP 83 (2/7/2008).

After the trial court continued the CrR 3.6 hearing, Mr. Oakley, like the defense counsels in *Malone* and *Carson*, never asserted his client’s CrR 3.3 rights while the trial court was still in a position to take action to avoid a violation of the criminal rule. Defense counsel never apprised the trial court that the 90 days was set to expire at the end of February, despite appearing three times before the court within the 90-day window: February 7, February 14, and February 21, 2008. See 1 RP 83-84 (2/7/2008); CP 65; RP 19 (2/21/2008). Most notably, at the conclusion of the 3.6 hearing on February 21, 2008, Mr. Oakley allowed the trial judge to take the CrR 3.6 matter under advisement without alerting him to the pending expiration dates or that he would assert his client’s CrR 3.3 rights. RP 19 (2/21/2008). While the November 2007

¹¹ The State notes that the order set an outside date for March 13, 2008. This date appears to be an error because it is beyond the 90 days allowed by the

order¹² did state that the outside date for speedy trial expired on March 13, 2008, the record does not show that Mr. Oakley communicated an intent to assert his client's CrR 3.3 rights on that date, or when the trial court issued its memorandum opinion¹³ that denied the Defendant's motion to suppress on April 2, 2008 – indicating a necessity for trial.

Mr. Oakley asserted his client's rights under CrR 3.3 for the first time on May 2, 2008, seven days after the State noted a trial setting hearing. 1 RP 88-89 (5/2/2008). This Court should hold that the Defendant waived his right to object to trial beyond the 90-day period prescribed by CrR 3.3, and find that the trial court acted within its authority under CrR 3.3(d)(2)¹⁴ when it reset the trial date for May 27, 2008.

B. THE DELAY DID NOT VIOLATE THE DEFENDANT'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

The Defendant argues that his constitutional right to a speedy

rule.

¹² CP 67; CP TBD (State's Supp., filed 11/20/2007 - Appendix X).

¹³ CP 59

¹⁴ CrR 3.3(d)(2) provides:

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

trial was violated. Appellant's Brief at 15-18. The thrust of the Defendant's argument appears to be that the government presented him with a "Hobson's choice" between the right to a speedy trial and the right to effective assistance of counsel. Appellant's Brief at 15-18. In light of the record, the Court should find the Defendant's argument unpersuasive.

A criminal defendant's right to a speedy trial is guaranteed by both the federal and state constitutions. U.S. amend IV; Wash. Const. Art. I, Section 22. However, the "the constitutional right to speedy trial is not violated at the expiration of a fixed time, but at the expiration of a reasonable time." *State v. Iniguez*, 143 Wn.App. 845, 855-856, 180 P.3d 855, 860-861 (Div. 3, 2008).

When appellate courts determine whether the challenged delay is unconstitutional, the courts consider (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted the constitutional right, (4) the prejudice to the defendant, and (5) such other circumstances that may be relevant. *Iniguez*, 143 Wn.App. at 855-56. *See also Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed. 2d. 101 (1972); *State v. Fladebo*, 113 Wn.2d 388, 393, 779 P.2d 707 (1989).

In the present case, law enforcement arrested the Defendant on

date for trial which is within the time limits prescribed and notify each

August 17, 2004. While the actual trial did not begin until June 30, 2008, almost four years later, this Court should hold that the resulting delay did not violate the Defendant's constitutional right because he was not in custody pending trial, he was primarily responsible for the resulting delay, he never asserted his right to speedy trial until May 2008, he had plenty of time to locate witnesses, and the delay actually prejudiced the State's case in chief.

1.) This Court must view the delay in context.

The State concedes that a delay of almost four years is presumptively prejudicial. *See State v. Price*, 94 Wn.2d 810, 813-14, 620 P.2d 994 (1980) (speedy trial period generally begins on date of arraignment); *State v. Corrado*, 94 Wn.App. 228, 233-34, 972 P.2d 515 (1999) (a delay longer than 11 months was held to be "presumptively prejudicial."). "However, this presumption is just one factor to be weighed in determining whether [the Defendant's] speedy trial rights have been violated." *State v. Johnson*, 147 Wn.App. 276, 289, 194 P.3d 1009 (quoting *Corrado*, 94 Wn.App. at 234). In the present case, the Defendant remained free from custody throughout the four years. Furthermore, the remaining factors surrounding the four years lead to the conclusion that there was no constitutional violation.

counsel or party of the date set.

2.) Defendant was primarily responsible for the long delay.

When appellate courts examine the reasons for the delay, appellate courts must be cognizant that “different weights should be assigned to different reasons.” *Iniguez*, 143 Wn.App. at 856 (quoting *Barker*, 407 U.S. at 531). When the reason for the delay is neutral, rather than improper, “the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” *Id.* This Court should hold that the four-year delay in the present case was forced primarily by the conduct of the defense.

In *State v. Iniguez*, the Court of Appeals – Division III held that a delay of 9 months violated the defendant’s constitutional right to a speedy trial. 143 Wn.App. at 860. In *Iniguez*, law enforcement arrested the defendant on May 25, 2005. *Id.* at 856. The defendant’s trial began on the 260th day of his *incarceration* – nearly nine months after his arrest. *Id.* Division III noted that the defendant had “no hand in the [nine month] delay.” *Id.* (emphasis added). Rather, the co-defendant’s or the co-defendant’s counsel unavailability, and the State’s need to interview witnesses and ensure their availability forced the resulting delay. *Id.* In light of the Defendant’s numerous demands for severance and a speedy trial, Division III held that the proffered reasons did not justify the delay because the defendant’s (1) invocation of speedy trial

rights trumps the policy to join the trials of defendants who are indicted together, (2) the State failed to inform witnesses of the trial date until one week before trial. *Id.* at 856-57.

In the present case, unlike *Iniguez*, the Defendant did not assert his speedy trial rights and personally assented to every continuance requested by his attorneys. *See e.g.* RP 5 (12/13/2004); RP 8 (02/14/2005); RP 2-3 (07/28/2005); 1 RP 31-32 (02/07/2008). The speedy trial right is crafted to protect the defendant's ability to prepare an adequate defense. *State v. Johnson*, 147 Wn.App. 276, 289, 194 P.3d 1009 (2008) (citing *Iniguez*, 143 Wn.App. at 858). Because the trial court granted these continuances to ensure that Defendant's attorneys could adequately prepare the promised suppression hearings and a trial defense, this factor weighs strongly in favor of the conclusion that the Defendant's speedy trial right was not violated.

Furthermore, unlike *Iniguez*, the delay was due in part to the Defendant's and/or his attorney's failure to attend certain hearings: e.g. November 28, 2005; May 18, 2006; June 15, 2006; September 25, 2007. CP 93, CP TBD (State's Supp., 5/18/2006 - Appendix L), CP 89, CP 72, CP 71. The Defendant was the one who forced the long delay in the present case.

The State did seek two brief continuances to ensure witness

availability: (1) the State sought the first continuance on February 14, 2008, before defense counsel raised “speedy trial” for the first time on May 2, 2008, see CP 65; and (2) the State sought to reset the trial date after the defendant asserted speedy trial rights on May 22, 2008, CP 43. The *Iniguez* Court stated that the unavailability of a key witness is a valid reason for delaying a trial, so long as the State is not responsible for the unavailability. 143 Wn.App. at 856-57 (citing *Barker*, 407 U.S. at 531 and *Cain v. Smith*, 686 F.2d 374, 382 (6th Cir. 1982)). In the present case, unlike *Iniguez*, the State worked diligently to ensure that its witnesses attended the hearings, 1 RP 31 (02/07/2008), and only sought to continue the hearing or trial date when key witnesses were unavailable due to no fault of the State. See CP 65, CP 43.

While the trial court did not reset the matter for trial after February 2008, the oversight is explained by the facts that (1) three judges and one commissioner handled the matter at different times over the tortuous four years, and (2) the Defendant failed to alert the trial court to the expiration of 90-day period before it took the CrR 3.6 matter under advisement. The Defendant did not assert his right to speedy trial to any judicial officer until May 2, 2008; and he failed to alert the superior court to the fact that the trial date was about to expire, despite the fact that the court was still in a position to remedy the pending

expiration. See 1 RP 83-84 (2/7/2008); CP 65; RP 19 (2/21/2008). The delay that resulted after February was relatively short (two months) and was due to the trial court's efforts to address the merits of the Defendant's CrR 3.6 motion – a motion the Defendant said would be dispositive. CP 88, CP 74, CP 70, CP 66, RP 19 (2/21/2008).

This Court should hold that the four year delay in the present case was forced primarily by the conduct of the Defendant and his attorneys. The Defendant's actions over the four years do not justify a dismissal of the charge.

3.) Defendant did not assert his constitutional right until the eve of trial.

“The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” *Iniguez*, 143 Wn.App. at 857 (quoting *Barker*, 407 U.S. at 531-32) “The timeliness, vigor, and frequency with which the right to a speedy trial is asserted are probative indicators of whether a defendant was denied needed access to a speedy trial over his objection.” *Id.* (quoting *Cain v. Smith*, 686 F.2d 374, 384 (6th Cir. 1982) (quoting *Barker*, 407 U.S. at 528-29)). In the present case, the first time the Defendant asserted his right to speedy trial was on May 2, 2008. 1 RP 88-89(5/2/2008). For more than three years, the Defendant

remained mute with respect to his speedy trial rights, allowing the trial court to believe that continuances were necessary to prepare for trial and denying the court the opportunity to bring the matter for trial earlier or timely cure any potential violation of CrR 3.3.

4.) The delay did not prejudice the Defendant.

The Defendant claims that the delay prejudiced his defense at trial because (1) he was unable to locate Mr. Wahl, whom he expected to provide exculpatory testimony, (2) he was unable to remember the details that related to the day of his arrest, and (3) the State's witnesses were unable to answer some of defense counsels on cross examination due to their own lack of memory. Appellant's Brief at 17. These arguments are unpersuasive.

First, the four year delay provided ample time for the Defendant to locate Wahl and compel him to testify. The failure of the Defendant to locate Wahl was not due to a short trial schedule that surprised the Defendant and denied him an opportunity to locate necessary witnesses. Rather, the failure to locate Wahl was due to the fact that the Defendant did not know how to contact the witness and/or he failed to exercise the necessary diligence to locate the witness. 3 RP 456 (7/2/2008).

Second, the four-year delay did not prevent the Defendant from remembering the details most important to his defense: (1) while the

Defendant was not able to remember which stores he visited and in what order, he always maintained that he never knew that Wahl was purchasing ingredients associated with the manufacture of methamphetamine, 3 RP 400, 415, 445 (7/03/2008); (2) while he doesn't remember if Wahl actually purchased cold medicine, he does remember that he never saw cold medicine in the car and that Wahl never opened any medicine in the vehicle, 3 RP 450 (7/03/2008); and (3) while he doesn't remember whose jumper cables he used when he tried to repair his friends vehicle, he does remember working on the vehicle with a third party (an individual not called as a witness), which was the alleged purpose of the trip, 3 RP 447 (7/03/2008). The problems posed to the Defendant's time line was not that he couldn't remember the details but that his account did not fit with certain undeniable facts – e.g. the time the sun went down, 3 RP 444 (07/03/2008).

Finally, the four year delay actually prejudiced the State's case. As the Defendant notes in his brief: Fjellman could not identify the Defendant at trial, 2 RP 208 (7/02/2008); Reidel could not recall what the Defendant was wearing on the evening of the arrest, 2 RP 219 (7/02/2008); Reidel could not remember what time additional officers arrived at the scene, 2 RP 221 (7/02/2008); Keegan did not remember if he was the individual who placed the confiscated evidence into the

evidence locker, 2 RP 248 (07/02/2008); Malone did not remember if she requested tests of certain drugs discovered in the Defendant's vehicle to be tested, 2 RP 295 (07/02/2008). The difficulty the State's witnesses had in recalling every aspect of the arrest and investigation is a fact that actually benefited the Defendant.

5.) The Defendant agreed with the actions of trial counsel.

On appeal, the Defendant argues that because his first trial attorney was either unwilling or unable to prepare for trial in over three years, his constitutional right to speedy trial was violated. Appellant's Brief at 15-18. The Defendant provides no case law to support his position.

In *State v. Thomas*, the Court of Appeals – Division I considered whether dismissal is an appropriate remedy when the conduct of defense counsel forced the defendant either to waive speedy trial under CrR 3.3, or forego an adequate defense. 95 Wn.App. 730, 735-36, 976 P.2d 1264 (1999). In *Thomas*, the assigned public defender had a conflict of interest because counsel had previously represented the defendant's accomplice, who entered into a plea bargain that required her to testify against the defendant. *Id.* at 733. As trial neared, counsel believed the defendant faced a grave risk of conviction, due in part to the cooperation

of the defendant's accomplice. *Id.* Thus, counsel did not investigate trial strategies and operated under the premise that it was in the defendant's best interest to plea guilty. *Id.* However, the defendant, who was frustrated with the lack of representation, made it clear that he would not plea guilty ten days before the "time for trial period" expired. *Id.* at 734. Counsel finally disclosed the conflict of interest to her client and explained that a continuance would be necessary so the defendant could obtain a new attorney. *Id.* The defendant agreed to the plan. *Id.* The trial court appointed a new attorney, who moved to dismiss on speedy trial grounds. *Id.* at 735. The trial court denied the motion. *Id.*

On appeal, the *Thomas* defendant argued that his own counsel forced him to waive speedy trial by her failure to disclose conflicts of interest and investigate trial strategies. *Id.* at 736. Division I recognized that had the ineffectual trial attorney withdrawn earlier, "the [defendant] could have been represented by an attorney capable of advising him to plead guilty while also standing ready to defend him at trial within 60 days." *Id.* at 737. However, Division I concluded that the waiver was effective because the applicable standard to test the validity of a waiver to "speedy trial" under court rule was found in the rule. *Id.* at 737-38. Thus, the appellate court refused to apply the rule that "[a] waiver of a constitutional right to a speedy trial must be knowing, intelligent, and

voluntary” and that such would not be presumed. *Id.* at 737-38.

In the present case, the Defendant’s first attorney sought continuance after continuance. Unlike *Thomas*, where the defendant was frustrated by the representation he received, desired a new attorney, and agreed to the continuance for the sole purpose to have the trial court appoint effective counsel, *see* 95 Wn.App. at 734, the record in the present case does not show that Defendant was ever dissatisfied with his first attorney or the level of representation he provided. In fact the Defendant notes in his appellate brief that he “told the court that he agreed to give [his first attorney] three years to allow [him] to prepare for trial.” Appellant’s Brief at 17, n. 10. There are no facts to show that the Defendant was misled by his attorney, or that his attorney was incompetent. However, the record does reflect that the Defendant knew (1) that he had a constitutional right to a speedy trial, (2) that he had the right to insist on his speedy trial right, and (3) that a continuance would prolong any resolution to the case. *See* RP 5-6 (8/17/2004); CP TBD (See State’s Supplemental Designation of Clerk’s Papers (State’s Supp), filed 8/17/2004 – Appendix A); RP 5 (12/13/2004); RP 8 (02/14/2005); RP 2-3 (07/28/2005); 1 RP 31-32 (02/07/2008).

In light of all these factors addressed in this section, this Court should find that the four year delay did not violate the Defendant’s

constitutional right to a speedy trial.

C. DEFENSE COUNSEL WAS NOT INEFFECTIVE WHEN HE REQUESTED AN UNWITTING POSSESSION INSTRUCTION.

Appellate courts review ineffective assistance of counsel claims de novo. *In re Fleming*, 142 Wn.2d 853, 865, 16 P.3d 610 (2001); *State v. Horton*, 136 Wn.App. 29, 146 P.3d 1227 (2006). To show ineffective assistance of counsel, an appellant must prove both (1) that his attorney's performance was deficient, and (2) that this deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

Deficient performance is that which falls below an objective standard of reasonableness. *Horton*, 116 Wn.App. 909, 912, 68 P.3d 1145 (2003). However, appellate courts review ineffective assistance claims with a strong presumption that defense counsel was competent. *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

To satisfy the prejudice prong of an ineffective assistance of counsel claim, the appellant must show that counsel's performance was so inadequate that there is a reasonable probability that, but for the deficient performance, the result at trial would have been different –

thereby undermining an appellate court's confidence in the outcome. *Strickland*, 466 U.S. at 694.

In the present case, the Defendant requested the following jury instruction:

A person is not guilty of possession of a substance if the possession is unwitting. Possession of a substance is unwitting if a person did not know that the substance was in his possession.

The burden is on the defendant to prove by a preponderance of the evidence that the substance was possessed unwittingly. Preponderance of the evidence means that you must be persuaded, considering all of the evidence in the case, that it is more probably true than not true.¹⁵

CP 24, No. 13. The Defendant argues that this instruction shifted the burden of proof and cites *State v. Carter*, 127 Wn.App. 713, 718, 112 P.3d 561 (Div. 3, 2005). Appellant's Brief at 21-23. In *Carter*, Division III held that a similar instruction was erroneous as a matter of law because it shifted the burden of proof to the Defendant to prove the possession of a *firearm* was unwitting. 127 Wn.App. 718. However, *Carter* was premised on the fact that the possession of a firearm is unlawful only if the Defendant *knowingly* possessed the firearm. *Id.* at 717. And the State had the burden to prove beyond a reasonable doubt that the defendant knowingly (i.e. not unwittingly) possessed a firearm.

See State v. Anderson, 141 Wn.2d 357, 365, 5 P.3d 1247 (2000). Thus, the inconsistent instructions resulted in a misstatement of the law and required a new trial. *Carter*, 127 Wn.App. at 718.

“Knowledge” is not an element of the crime of possession of pseudoephedrine with the intent to manufacture methamphetamine. *See* RCW 69.50.440. While the manufacture of a controlled substance may necessarily include knowing acts, see *State v. Sims*, 119 Wn.2d 138, 142, 829 P.2d 1075 (1992), the crime actually requires a higher mens rea – intent. “A person acts with intent or intentionally when he acts with *the objective or purpose to accomplish a result* which constitutes a crime.” RCW 69.50.440(1)(a). Here, the to convict instruction, No. 7, and the unwitting possession instruction, No. 13, require two distinct mens rea elements. See CP 24. Because jury instruction No. 13 only required that the Defendant prove that he did not knowingly possess pseudoephedrine by a preponderance of the evidence, it did not relieve the State of its burden to prove beyond a reasonable doubt that the Defendant actually possessed pseudoephedrine with the objective or purpose to manufacture methamphetamine.

¹⁵ This instruction is nearly a verbatim copy of the pattern jury instruction for unwitting possession. See 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 52.01 at 1007 (3rd ed. 2008).

Furthermore, the Supreme Court has recognized that it is the Defendant's burden to prove the affirmative defense of unwitting possession and rejected the argument that this scheme improperly shifts the burden to the defendant. *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004).

This Court should find that the jury instruction that defense counsel proposed was not erroneous and did not shift the burden of proof in the present case. As such, defense counsel's performance was not deficient, and his decision to request the instruction did not prejudice the ultimate outcome at trial.

IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the Defendant's conviction and sentence.

RESPECTFULLY SUBMITTED this 21st day of May, 2009.

DEBORAH S. KELLY, Prosecuting Attorney



BRIAN PATRICK WENDT
Deputy Prosecuting Attorney
Attorney for Respondent

WBA 40537

APPENDIX "A"

SCANNED - /

FILED
CLALLAM COUNTY
7 2004
MOLLIE LINGVALL, Clerk
BY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JACOB MATTHEW YADEN, JR. ,

Defendant.

NO 04 1 00348 1

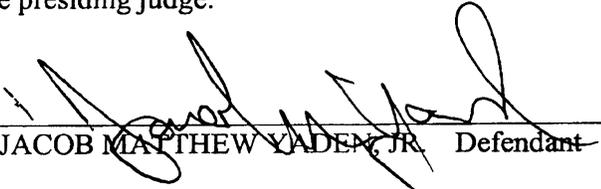
DEFENDANT'S RIGHTS (AKAR)

- The rights of the Accused include:
1. The right to remain silent before and during trial. Furthermore, the Defendant need not testify against himself or herself at trial;
 2. The right to be represented by a lawyer, and if the Defendant cannot afford one, a lawyer will be provided at no expense to the Defendant and this lawyer may be present during any questioning.
 3. The right to a speedy and public trial by jury;
 4. The right (at trial) to confront and question witnesses who testify;
 5. The right to call witnesses to testify on behalf of the Defendant and that these witnesses may be compelled to appear at trial at no expense to the Defendant;
 6. The Defendant is presumed innocent until a charge is proven beyond a reasonable doubt or when the Defendant enters a plea of "guilty".
 7. In the event the Defendant is found guilty after trial, the right to appeal the conviction;
 8. By pleading "guilty", the Defendant waives his/her right to a trial and may not thereafter appeal the question of his/her guilt.
 9. If the Defendant is not a citizen of the United States, he/she has the right to contact the consular representative of his/her own country located here in the United States, as provided in the Vienna Convention of 1963.

I, the undersigned Defendant, acknowledge that this form was read by me or to me or explained to me and was signed in open court before the presiding judge.

Witnessed by:

(Deputy) Prosecuting Attorney


JACOB MATTHEW YADEN, JR. Defendant

Date: 8-17-04 WBA # _____

DEFENDANT'S RIGHTS

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

APPENDIX "B"

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

FILED
CLALLAM COUNTY
AUG 27 2004
MOLLIE LINGVALL, Clerk

CAUSE NO.

04-1-348-1

Defendant.

Vaden, Jacob

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: _____ DEF. ATTY.: P.D INTERPRETER? No Yes Language: _____

ARGNMT/RE-APRNC. DATE: 8-27-04 OUTSIDE DATE: 10.26.04 By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: 9-10-04 MOTION REQUEST DEADLINE: 9-17-04

STATUS/OMNIBUS CONFR.: 9.17-04 TRIAL DATE: 10.13.04 LENGTH: 2 days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 8-27-04

SIGNED BY JUDGE: 

SCANNED

APPENDIX "C"

SCANNED - 2

FILED
CLALLAM COUNTY
SEP - 9 2004
MOLLIE LINGVALL, Clerk

License # APLUSBB986KB
A Plus Bail Bonds
P.O. Box 1562
Vancouver, WA 98668
(360) 696-9910

American Surety
Company

In the Superior Court Clallam County, State of WA.
The State of Washington
Plaintiff

V.S. SS.

Jacob M. Yaden
Defendant

No. 041003481

Known All Men by These Presents:

That we, Jacob M. Yaden as Principal and AMERICAN SURETY
COMPANY, as surety (identified by attached power of attorney No.) A515216192
Are held firmly bound unto the Clallam County Superior Court
Court, County, City, State

In the sum of fifteen thousand Dollars (\$ 15,000.00)
For the payment whereof well and truly to be made we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally firmly by these presents. The condition
of this obligation is such that if said Principal, shall appear at the next regular term of the
Superior Court as required to answer the charge of
Manufacturing Control Substance / Poss. Meth.
And shall appear from day to day and term to term of said court and not to depart the same without
Leave then this obligation to be void, else to remain in full force and virtue.

IN TESTIMONY WHEREOF, Said parties, principal and surety, have hereunto set their hands and
Seals this 8th Day of September 2004.

Principal [Signature]
Attorney in fact Thomas T. [Signature]
Bail Bond Agent Karen A. Nichols

APPENDIX "D"

SCANNED - 1

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
SEP 17 2004
MOLLIE LINGVALL, Clerk
BY

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
v.)
JACOB M. YADEN,)
Defendant.)

NO. 04-1-00348-1
ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

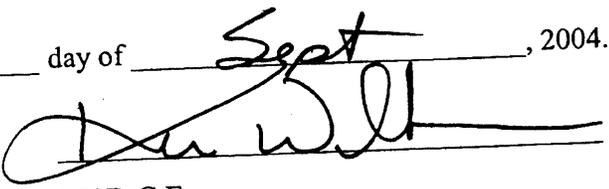
ORDERED that the trial, currently set for 10/13/04 is continued to Dec 13, 2004 *upon agreement of the parties [CrR3.3(f)(1)] or is

required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is JANUARY 12, 2005
(not less than 30 days after new trial date).

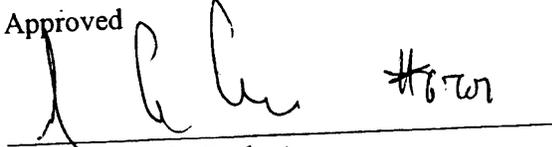
DONE IN OPEN COURT this 17 day of Sept, 2004.



JUDGE

Approved

Deputy Prosecuting Attorney

Approved
 #6701

Attorney for Defendant

Approved


Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Yaden, Jacob

Defendant.

FILED CLALLAM COUNTY CAUSE NO. 04-1-348-1 SEP 17 2004 BY MOLLIE LINGVALL, Clerk Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: L. Erickson DEF. ATTY.: R. Anderson INTERPRETER? No Yes Language: _____

ARGNMT/RE-APRNC. DATE: _____ OUTSIDE DATE: _____ [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____

MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: _____

TRIAL DATE: 12/13/04 LENGTH: 2-3 days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE: Dept. I JUDGE GEORGE L. WOOD Dept. II JUDGE KEN WILLIAMS VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
(a) severance or joinder of counts or defendants;
(b) making charges more definite and certain, sufficiency of information to state an offense;
(c) depositions of witnesses, production of witnesses for trial or hearing;
(d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 9-17-04

SIGNED BY JUDGE: Ken Williams

SCANNED

APPENDIX "E"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
DEC 13 2004
MOLLIE LINGVALL, Clerk
BY

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
David YADON)
Defendant.)

NO. 04-1-00348-7

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought
by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 12/13/04 is continued
to Feb 14, 2005 *upon agreement of the parties [CrR3.3(f)(1)] or is

required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial;
 witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is March 16, 2005
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 13 day of Dec, 2004.

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature] #6702
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

FILED
CLALLAM COUNTY
DEC 13 2004
Plaintiff
MOLLIE LINGVALL, Clerk
BY

STATE OF WASHINGTON,

vs.

Yaden, Jacob

Defendant.

CAUSE NO. 04-1-348-1

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: LE DEF. ATTY.: RA INTERPRETER? [X] No [] Yes Language: _____

ARGUMENT/RE-APRNC. DATE: 12-13-04 OUTSIDE DATE: 3-16-05 [X] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: _____ TRIAL DATE: 2-14-05 LENGTH: 3 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. JUDGE: [X] Dept. I JUDGE GEORGE L. WOOD
[] Dept. II JUDGE KEN WILLIAMS
[] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 12/13/04

SIGNED BY JUDGE: Ken Will

SCANNED

APPENDIX "F"

SCANNED - 1

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
FEB 14 2005
MOLLIE LINGVALL, Clerk
BY

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
v.)
JACOB YADEN,)
Defendant.)

NO. 04-1-00348-1
ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 2/14/05 is continued to May 16, 2005 *upon agreement of the parties [CrR3.3(f)(1)] or is

required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial;
 witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is June 15, 2005
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 14 day of Feb, 2005

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature]
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

CLALLAM COUNTY
FEB 14 2005
MOLLIE LINGVALL, Clerk
BY _____

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

CAUSE NO. 04-1-348-1

Yaden, Jacob

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: LE DEF. ATTY.: RA INTERPRETER? No Yes Language: _____

ARGNMT./RE-APRNC. DATE: 2-14-05 OUTSIDE DATE: 6-15-05 By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____

MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: 4-14-05

TRIAL DATE: 5-16-05 LENGTH: 3 days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE:

- Dept. I JUDGE GEORGE L. WOOD
- Dept. II JUDGE KEN WILLIAMS
- VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 2-14-05

SIGNED BY JUDGE: Ken Williams

SCANNED

APPENDIX "G"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
MAY - 5 2005
MOLLIE LINGVALL, Clerk
BY

THE STATE OF WASHINGTON,
Plaintiff,

v.
JAWB YAPER
Defendant.

NO. 04-1-00348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant - the court. It is hereby

ORDERED that the trial, currently set for _____ is continued to July 25, 2005 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is August 24, 2005
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 5th day of May, 2005

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature]
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

FILED
CLALLAM COUNTY
MAY - 2 2005
MOLLIE LINGVALL, Clerk
Defendant.

vs.

CAUSE NO. 04-1-348-1

Yaden, Jacob

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: DEF. ATTY.: PD INTERPRETER? No Yes Language:

ARGNMT/RE-APRNC. DATE: OUTSIDE DATE: 8-24-05 By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE:

MOTION REQUEST DEADLINE:

STATUS/OMNIBUS CONF.: 6-2-05
@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

TRIAL DATE: 7-25-05 LENGTH: 3 days

JUDGE:

- Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
(a) severance or joinder of counts or defendants;
(b) making charges more definite and certain, sufficiency of information to state an offense;
(c) depositions of witnesses, production of witnesses for trial or hearing;
(d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 5-5-05

SIGNED BY JUDGE: [Signature]

SCANNED

APPENDIX "H"

SCANNED - 1

FILED
CLALLAM COUNTY
AUG - 4 2005
MOLLIE LINGVALL, Clerk
BY _____

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

THE STATE OF WASHINGTON,)
Plaintiff,)
)
v.)
JACOB YADEN)
Defendant.)

NO. 04-1-00348-1
ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for PASAD is continued to Nov. 28, 2005 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is Dec. 28, 2005
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 4th day of August, 2005

Approved

[Signature]
Deputy Prosecuting Attorney

JUDGE

Approved

[Signature]
Attorney for Defendant #0201

Approved

[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

vs.

Yaden, Jacob

FILED
CLALLAM COUNTY
AUG - 4 2005
MOLLE LINGVALL, Clerk

CAUSE NO. 04-1-348-1

Raset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: _____ DEF. ATTY.: PD INTERPRETER? [X] No [] Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 12.28.05 [X] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: 8/18/05 TRIAL DATE: 11.28.05 LENGTH: 3 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. JUDGE: [X] Dept. I JUDGE GEORGE L. WOOD
[] Dept. II JUDGE KEN WILLIAMS
[] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 8-4-05

SIGNED BY JUDGE: [Signature]

B. P. OWEN

Revised 6/98

SCANNED

APPENDIX "I"

SCANNED - 1

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

THE STATE OF WASHINGTON,)
Plaintiff,)

James Gaden)
Defendant.)

FILED
CLALLAM COUNTY
NOV 28 2005
BY
MOLLIE LINGVALL, Clerk

NO. 2-1-3457

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 11/27/05 is continued to 2/06/06 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is 3/08/06 (not less than 30 days after new trial date).

DONE IN OPEN COURT this 28 day of Nov., 2005

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature]
Attorney for Defendant
[Signature]

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

FILED
CLALLAM COUNTY
NOV 28 2005
MOLLIE KINGVALL, Clerk
BY _____ CAUSE NO. _____

STATE OF WASHINGTON,

Plaintiff,

vs.

Yaden, Jacob

Defendant.

Rose

04-1-348-1

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: _____ DEF. ATTY.: *PD* INTERPRETER? No Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: *3/18/06* By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: _____ TRIAL DATE: *2/16/06* LENGTH: *2* days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: *11-28-05*

SIGNED BY JUDGE: *[Signature]*

SCANNED

APPENDIX "J"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
FEB - 6 2006
BARBARA CHRISTENSEN, Clerk

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
v.)
JACOB YADEN,)
Defendant.)

NO. 04-1-00348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for JAN 6, 2006 is continued to APRIL 19, 2006 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is MAY 19, 2006
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 6TH day of FEB, 2006

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature] #6707
Attorney for Defendant

Approved
[Signature]
Defendant
360-479-6752

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

FILED
CLALLAM COUNTY
FEB - 6 2006
BARBARA CHRISTENSEN, Clerk

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 Jacob Yaden Defendant.)

CAUSE NO. 04-1-348-1
Re-Set

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Erickson DEF. ATTY.: Anderson INTERPRETER? [] No [] Yes Language: _____
ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 5/19/06 By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: _____ TRIAL DATE: 4-19-06 LENGTH: 2 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 2/6/06

SIGNED BY JUDGE: [Signature]

SCANNED

APPENDIX "K"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
APR 19 2006
BARBARA CHRISTENSEN, Clerk

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
v.)
JACOB YODEN,)
Defendant.)

NO. 04-1-348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

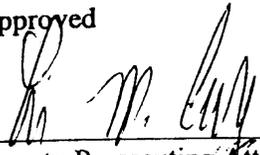
ORDERED that the trial, currently set for 4/19/06 is continued to July 17, 2006 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

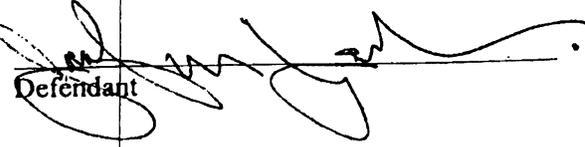
IT IS FURTHER ORDERED that the expiration date is Aug 18, 2006
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 19 day of April, 2006


JUDGE

Approved

Deputy Prosecuting Attorney

Approved
 #6702
Attorney for Defendant

Approved

Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

FILED
CLALLAM COUNTY
APR 19 2006
BARBARA CHRISTENSEN, Clerk

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 Defendant.)
)
 Yaden, Jacob)

CAUSE NO. 04-1-348-1
Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Erickson DEF. ATTY.: Anderson INTERPRETER? [] No [] Yes Language: _____
ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 8/16/06 [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: May 4, 2006 TRIAL DATE: 7/17/06 LENGTH: 2 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. A court appear by phone JUDGE: Dept. I JUDGE GEORGE L. WOOD 9:00 AM
[] Dept. II JUDGE KEN WILLIAMS
[] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

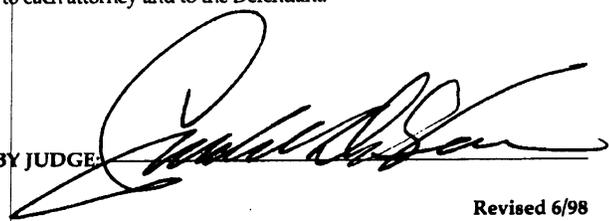
AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 4-19-06

SIGNED BY JUDGE: 

SCANNED

APPENDIX "L"

FILED
CLALLAM COUNTY
MAY 18 2006
BARBARA CHRISTENSEN, Clerk

SCANNED-1

CRIMINAL MINUTES

DATE 5/16/2006

CAUSE # 04-1-00348-1
 CAUSE # _____
 CAUSE # _____

JUDGE GEORGE WOOD
 CLERK DIANE RALSTON
 PTR RECORDER: 13916

NAME YADEN, JACOB

L ERICKSON _____
 C CASE _____
 D KELLY _____
 T DAVIS _____
 J LANDES _____
 B HANIFY _____

APPEARING: YES NO IN CUSTODY: YES NO

CCO: JERRY BROWN _____ L. HOOPER-OBRIEN _____
 T. O'BRYANT _____ CLINT ALDRICH _____

DEFENSE COUNSEL APPEARING: YES NO
 RALPH ANDERSON _____ HARRY GASNICK
 JOHN HAYDEN _____ LOREN OAKLEY _____

INTERPRETER (Language Line) _____
 OTHERS APPEARING _____

OTHER _____

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> ORDER DETERMINING PROBABLE CAUSE
<input type="checkbox"/> (AMENDED) INFORMATION FURNISHED TO DEFENDANT
<input type="checkbox"/> TRUE NAME AS FILED OR:
<input type="checkbox"/> ACKNOWLEDGEMENT OF DEF'S RIGHTS
<input type="checkbox"/> APPOINTED PUBLIC DEFENDER
<input type="checkbox"/> FINANCIAL CERTIFICATE IS TO BE COMPLETED
<input type="checkbox"/> BASED ON THE DEF'S CRIMINAL &/OR WARRANT HISTORY &/OR CHARGES THE STATE REQUESTS BAIL \$ _____
<input type="checkbox"/> ORDER ON CONDITIONS OF RELEASE
<input type="checkbox"/> ARRAIGNMENT @ 9:00 1:30
<input type="checkbox"/> WAIVED READING INFORMATION
<input type="checkbox"/> NOT GUILTY TO ALL COUNTS CHARGED
<input type="checkbox"/> TRIAL SET ON _____ FOR _____ DAYS
<input type="checkbox"/> ORDER CONTINUING TRIAL SIGNED
<input type="checkbox"/> STATUS HRG @ 1:00 (TP), 1:30 (JP)
<input type="checkbox"/> DEFENDANT IS INTERESTED IN DRUG COURT
<input type="checkbox"/> PLEA OFFER ACCEPTED/REJECTED
<input type="checkbox"/> 3.5/3.6 HRG: A.M. OF TRIAL OR
<input type="checkbox"/> STMT ON PLEA OF GUILTY SIGNED, & APPROVED BY THE COURT
<input type="checkbox"/> DEFENDANT ADMITS/DENIES ALLEGATIONS
<input type="checkbox"/> ADMIT/DENY/ FACT FINDING @ 9:00 1:30
<input type="checkbox"/> JUDGMENT & SENTENCE SIGNED
<input type="checkbox"/> NOTIFICATION OF FIREARM WARNING
<input type="checkbox"/> PAY OR APPEAR ORDER SIGNED SETTING PMTS @ \$ _____ /MO, BEGINNING _____
<input type="checkbox"/> DEFENDANT WAIVES PRESENCE/NEED NOT APPEAR AT RESTITUTION HRG OR
<input type="checkbox"/> ORDER FOR B/W WITH BAIL SET AT \$ _____
<input type="checkbox"/> COURT SIGNED ORDER | <input type="checkbox"/> PRELIMINARY APPEARANCE ORDER
<input type="checkbox"/> ORDER PERMITTING AMENDED INFORMATION
<input type="checkbox"/> ADVISED OF RIGHTS ON APPEAL
<input type="checkbox"/> WAIVED COUNSEL APPOINTED
<input type="checkbox"/> RELEASED ON PR OR BAIL SET AT \$ _____
<input type="checkbox"/> FILING INFORMATION @ 1:00
<input type="checkbox"/> NOT GUILTY AS CHARGED TO AMENDED INFO
<input type="checkbox"/> ORDER SETTING TRIAL & PRE-TRIAL HEARINGS
<input type="checkbox"/> RESOLUTION OR TRIAL RESET
<input type="checkbox"/> DRUG COURT CONTRACT SIGNED
<input type="checkbox"/> CHANGE OF PLEA
<input type="checkbox"/> NO CONTACT ORDER SIGNED, DEF SERVED
<input type="checkbox"/> COUNSEL AGREE ON THE OFFENDER SCORE
<input type="checkbox"/> COUNTS/ALLEGATIONS # _____ DISMISSED
<input type="checkbox"/> PROBATION ORDER SIGNED
<input type="checkbox"/> ORDER MODIFYING JUDGMENT & SENTENCE
<input type="checkbox"/> ORDER CONVERTING CSW
<input type="checkbox"/> ORDER REVOKING/QUASHING B/W SIGNED |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

HEARING FOR _____ ON _____ @ 9:00 1:00 1:30

THIS MATTER CAME ON FOR: STATUS HRG

MINUTES:
Def is not present; Mr. Gasnick does not have his phone #. This is Mr. Anderson's case. Def. was approved to appear by phone. Def presented copies of cases in support of duppr. mtr. ST v Carlson 123 Pac 3d 891, 130 Wap 589

*Leave on for trial
 Ct will rule if a hrg is needed.*

C: CT ADMIN TRIAL DATE () STRICKEN C: PD / PROS / PMH _____

APPENDIX "M"

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

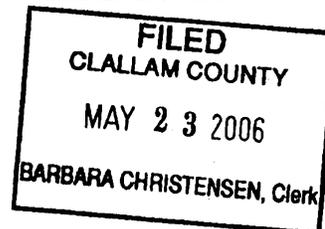
JUDGES
George L. Wood
Ken Williams



Courthouse
223 East Fourth Street, Suite 8
Port Angeles, WA 98362-3015

COMMISSIONER
William G. Knebes

(360) 417-2386
Seattle 464-7098



May 23, 2006

Ms. Lauren Erickson
Deputy Prosecuting Attorney
Clallam County Courthouse
223 East 4th Street
Port Angeles, WA 98362

RE: State of Washington vs. Jacob Yaden
Clallam County Cause No. 04-1-00348-1

Dear Ms. Erickson:

The Defendant has filed an oral motion under Criminal Rule 3.6 and has supplied the Court with the case of State v. Carlson, 130 Wn. App. 589 (2004). The Court has reviewed the Carlson case together with the Probable Cause Certificate filed in this matter and believes that a response by the State is warranted. Upon receiving such response the Court will then determine whether or not a hearing is warranted.

Please submit your response by June 9, 2006. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "George L. Wood".

George L. Wood
JUDGE

Cc: Ralph Anderson

SCANNED- 1

APPENDIX "N"

1 several items were found, including a 20 pound bag of ammonium sulfate fertilizer, a one
2 gallon container of Xylene, a container of acetone, 20 feet of vinyl tubing, two 18 ounce cans
3 of Red Devil Lye, rock salt, 90 white pills labeled L054, a smoking device with white residue,
4 two punch cards of Sudafed-type pills, and a small plastic bag with white powder residue.

5
6 **ARGUMENT**

7 An officer may briefly detain occupants of a vehicle for investigation if the
8 circumstances satisfy the Terry stop reasonable suspicion standard. State v. Mendez, 137
9 Wn.2d 208, 220, 970 P.2d 722 (1999). Reasonableness is determined from the totality of the
10 circumstances known by the officer at the inception of the stop. State v. Glover, 116 Wn.2d
11 509, 514, 806 P.2d 760 (1991).

12 The defendant relying upon State v. Carlson¹ argues that there was an insufficient basis
13 for reasonable suspicion of criminal activity when Deputy Reidel stopped his car. This is
14 incorrect.

15 In Carlson, there were two defendants – they had entered a store together, then split up
16 with one man purchasing a container of denatured alcohol and the other man buying muriatic
17 acid.

18 In Carlson, the Court looked at several cases from around the country. In reviewing
19 those cases, the Court stated that “With respect to shopping practices, the act of entering a store
20 with a companion and then splitting up to purchase **pseudoephedrine products** is a suspicious
21 activity often seen in methamphetamine manufacture litigation, and it frequently serves to
22 support investigative stops in published cases.” Carlson, @ 594. The Court went on to say that

23
24 _____
25 ¹ 130 Wn.App. 589 (Dec. 2005).

1 "But that activity has not been documented in cases involving the purchase of anything other
2 than pseudoephedrine products." Carlson, @ 594.²

3 The Court appears to be making a distinction between those situations where products
4 such as acid and tubing are purchased versus those situations where actual pseudoephedrine is
5 purchased. The Court also seems to want to specifically address the situation where courts
6 have used the shopping practice of splitting up in order to not draw attention and using this as a
7 basis for reasonable suspicion.

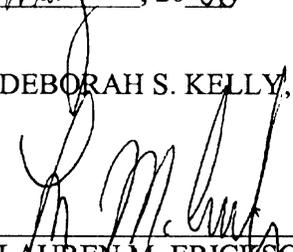
8 Here, we do not have a scenario wherein the reasonable suspicion is in anyway based
9 upon a type of "shopping practice", and here the two defendants purchased a pseudoephedrine
10 product along with another product. Mr. Yaden and Mr. Wahl purchased rock salt and
11 Sudafed, and also inquired about lithium batteries. Moreover, the two men did not split up and
12 this occurred at 2:00 a.m.

13 As indicated, reasonableness for the stop is determined by the totality of the
14 circumstances. It seems reasonable to believe that criminal activity is afoot where two men
15 together purchase rock salt and Sudafed, and inquire about lithium batteries at 2:00 a.m.

16 The facts here are distinguishable from the facts in State v. Carlson, supra, and the
17 defendant's motion to suppress should be denied.

18 DATED this 27th day of May, 2006

19 DEBORAH S. KELLY, Prosecuting Attorney

20 
21 _____
22 LAUREN M. ERICKSON WBA #19395
23 Deputy Prosecuting Attorney

24 /am
25 _____

² The Court does however, reference a case out of Kansas, wherein it appears that the defendants purchased pseudoephedrine products.

APPENDIX "O"

SCANNED- 1

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FILED
CLALLAM COUNTY
JUN - 6 2006
BARBARA CHRISTENSEN, Clerk

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

STATE OF WASHINGTON,)
)
Plaintiff,)
vs.)
JACOB MATTHEW YADEN, II,)
)
Defendant.)

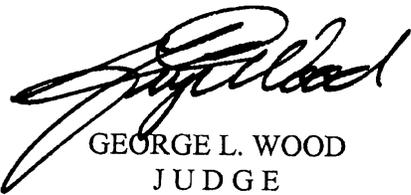
NO. 04-1-00348-1

MEMORANDUM OPINION
RE MOTION TO SUPPRESS

(Clerk's Action Required)

The Court has received the State's response to the Defendant's oral motion under Criminal Rule 3.6. It appears that a hearing will be necessary in order for the Court to resolve the issues presented. The Court will note the matter for the status calendar on June 15, 2006 at 1:00 p.m. for purposes of setting a hearing date for the suppression motion.

DATED this 6th day of June, 2006.


GEORGE L. WOOD
JUDGE

APPENDIX "P"

FILED
CLALLAM COUNTY
JUL 12 2006
BARBARA CHRISTENSEN, Clerk

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

THE STATE OF WASHINGTON,)
Plaintiff,)
)
)
v.)
JACOB YADEN,)
Defendant.)

NO. 04-1-348-1
ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for July 17, 2006 is continued to Sept. 18, 2006 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is Oct 18, 2006 (not less than 30 days after new trial date).

DONE IN OPEN COURT this 13 day of July, 2006

[Signature]
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature] #6757
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

FILED
CLALLAM COUNTY
JUL 12 2006
CAUSE NO
BARBARA CHRISTENSEN, Clerk

04-1-348-1

vs.

Yaden, Jacob

Defendant

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Kelly DEF. ATTY.: Anderson INTERPRETER? [] No [] Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 10-18-06 [X] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: 8-17-06 TRIAL DATE: 9-18-06 LENGTH: 3 days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m. 3.6 hr. 9:00 AM JUDGE: [X] Dept. I JUDGE GEORGE L. WOOD [] Dept. II JUDGE KEN WILLIAMS 9:00 AM [] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
(a) severance or joinder of counts or defendants;
(b) making charges more definite and certain, sufficiency of information to state an offense;
(c) depositions of witnesses, production of witnesses for trial or hearing;
(d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 7-13-06

SIGNED BY JUDGE: [Signature]

SCANNED

APPENDIX "Q"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM CO CLERK

2006 OCT 12 A 9:40

THE STATE OF WASHINGTON,)
Plaintiff,)
)
v.)
JACOB YADEN)
Defendant.)

NO. BARBARA CHRISTENSEN
04-1-00348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for PASSED is continued to DEC. 11, 2006 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is Jan. 10, 2007
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 12th day of October, 2006



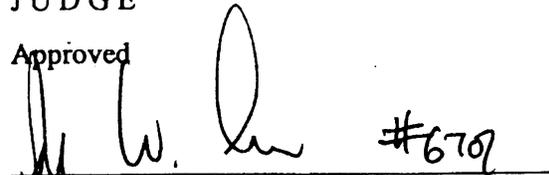
JUDGE

Approved



Deputy Prosecuting Attorney

Approved



Attorney for Defendant

Approved



Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

FILED
CLALLAM CO CLERK
Plaintiff,

vs.

2006 OCT 12 A 8:39 No. 04-1-348-1
CAUSE

Defendant, BARBARA CHRISTENSEN

Jacob Yaden

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: *Erickson* DEF. ATTY.: *Anderson* INTERPRETER? No Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: *1-10-07* By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: *3-6 hearing NOV 9, 2006* MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONF.: *@ 8:45 a.m., 1:00 p.m., 1:30 p.m. 9 AM* TRIAL: *12-11-06* @ 9:00 a.m., *3* days
JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: *Oct 12, 2006*

SIGNED BY JUDGE: *George L. Wood*

SCANNED

APPENDIX "R"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM CO CLERK

THE STATE OF WASHINGTON,
Plaintiff,

DEC 11 A 11: 36

BARBARA CHRISTENSEN

v.
JACOB YADEN
Defendant.

NO. 04-1-00348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 12/11/06 is continued to FEB 20, 2007 *upon agreement of the parties [CrR 3.3(f)(1)] or is

required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is March 22, 2007
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 11 day of Dec, 2006

Approved
[Signature]
Deputy Prosecuting Attorney

[Signature]
JUDGE
Approved
[Signature] #6207
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

Yaden, Jacob

FILED
CLALLAM CO. CLERK 4-1-3487
CAUSE NO. _____
2006 DEC 11 A 11:36
BARBARA CHRISTENSEN *Reset*

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: *Ericson* DEF. ATTY.: *Anderson* INTERPRETER? No Yes Language: _____

ARGNMT/RE-APRNC. DATE: _____ OUTSIDE DATE: *3-22-07* By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____

MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: _____

TRIAL: *2-20-07* @ 9:00 a.m., *2* days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (d) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 12-11-06

SIGNED BY JUDGE: *[Signature]*

SCANNED

APPENDIX "S"

SCANNED - 1

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM CO CLERK
2007 FEB 20 A 9:45
BARBARA CHRISTENSEN

THE STATE OF WASHINGTON,)
Plaintiff,)

v.)
Joseph T. Jordan)
Defendant.)

NO. 04-1-348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 2/20/07 is continued to 5/2/07 *upon agreement of the parties [CrR3.3(f)(1)] or is

required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is 6/1/07
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 20 day of Feb, 2007

[Signature]
JUDGE
Approved

Approved

Carol S. Case 1905-2
Deputy Prosecuting Attorney

[Signature]
Attorney for Defendant

Approved

[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

FILED
CLALLAM CO CLERK

vs.

2007 FEB 20 A) 9:45

CAUSE NO. 04-1-348-1

Yaden, Jacob

Defendant BARBARA CHRISTENSEN

Reset

SCANNED

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Erickson DEF. ATTY.: Anderson INTERPRETER? [x] No [] Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 6-1-07 [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: 3-29-07 3.6 hrs TRIAL: 5-2-07 @ 9:00 a.m., 2 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. @ 9:00AM JUDGE: [x] Dept. I JUDGE GEORGE L. WOOD
[] Dept. II JUDGE KEN WILLIAMS
[] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 2-20-07

SIGNED BY JUDGE: [Signature]

APPENDIX "T"

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

FILED
CLALLAM CO CLERK NO. 041-348-1

Yaden, Jacob

Defendant MAY 25 11:11 AM Reser

BARBARA CHRISTENSEN

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Erickson DEF. ATTY.: Anderson INTERPRETER? No Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: 8-10-07 By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____

MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: _____

TRIAL: 7-11-07 @ 9:00 a.m., 2 days

@ 8:45 a.m., 1:00 p.m., 1:30 p.m.
3-6 hearing 6/28/07 9am

JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 52507

SIGNED BY JUDGE Ken Williams

SCANNED

APPENDIX "U"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM CO CLERK

2007 JUN 28 A 9 29

BARBARA CHRISTENSEN

NO. 04-1-348-1

THE STATE OF WASHINGTON,)
Plaintiff,)
)
v.)
JACOB TADEN)
Defendant.)

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for July 11, 2007 is continued to SEPT 25, 2007 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is Oct 25, 2007
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 28th day of June, 2007

[Signature]
JUDGE

Approved
[Signature] 37987
Deputy Prosecuting Attorney

Approved
[Signature] #620
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff **FILED**
CLALLAM CO CLERK

vs.

2007 JUN 28 CAUSE NO. 04-1-348-1

Yaden, Jacob

Defendant **BARBARA CHRISTENSEN** *Ruest*

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: *Hall* DEF. ATTY.: *Anderson* INTERPRETER? [] No [] Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: *10-25-07* [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: _____ TRIAL: *9-25-07* @ 9:00 a.m., *2* days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. JUDGE: Dept. I JUDGE GEORGE L. WOOD
3.6 hearing: 9-13-07, 9am [] Dept. II JUDGE KEN WILLIAMS
[] VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: *6-28-07*

SIGNED BY JUDGE: *[Signature]*

SCANNED

APPENDIX "V"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

STATE OF WASHINGTON,)
Plaintiff,)
vs)
JACOB MATTHEW YADEN JR)
Defendant.)

NO. 04-1-00348-1
BENCH WARRANT
SPD 04-03019

FILED
CLALLAM CO CLERK
2007 SEP 25 A 9 24
BARBARA CHRISTENSEN

STATE OF WASHINGTON)
County of Clallam)

THE SHERIFF OF CLALLAM COUNTY OR ANY PEACE OFFICER
OF THE STATE OF WASHINGTON, GREETINGS:

WHEREAS, the Prosecuting Attorney for said County and State did petition said Court
for a bench warrant, and probable cause having been determined; now, therefore,

YOU ARE HEREBY COMMANDED to apprehend and bring before the Honorable
Presiding Judge of the Superior Court of the State of Washington, in and for the County of

Clallam, the body of: JACOB MATTHEW YADEN JR Race: WHITE
MALE DOB: 09/19/1964 Hgt: 6'2" lbs: 200 Hair: BROWN Eyes: BROWN
DOL: YADENJM360ORWA

LKA: 1914 BURWELL, BREMERTON WA 98337

to show cause, if any, why he/she did not obey the Order of the above-entitled Court.

WITNESS, The Honorable KEN WILLIAMS, Judge of the said Superior Court, and
the seal of the Court affixed this, 25TH day of SEPTEMBER, 2007.

- Bond fixed in the sum of \$ 1000.00
- Promise to Appear authorized if arrested in Clallam County.

BARBARA CHRISTENSEN, Clerk

By: [Signature] [Title]

**IF BAIL IS POSTED OR PROMISE TO APPEAR IS SIGNED, DEFENDANT SHALL APPEAR IN
CLALLAM COUNTY SUPERIOR COURT, PORT ANGELES WA., AT 1:00 PM, ON THE NEXT
JUDICIAL DAY (M-F) FOLLOWING POSTING OF BAIL OR SIGNING THE PROMISE TO APPEAR.**

The Prosecuting Attorney will extradite from Washington State Only

FAXED: PEN COM/PROS 09/25/2007

J:\USERS\ECARPENT\FORMS\BENCH WARRANT.DOC

FAXED

[Handwritten Signature]
9-25-07

SCANNED

APPENDIX "W"

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Yaden, Jacob

Defendant

FILED CLALLAM CO CLERK

CAUSE NO. 04-1-3484

OCT -4 P 3:58

Raset

~~BARBARA CHRISTENSEN~~

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY: *Lawrence* DEF. ATTY.: *Anderson* INTERPRETER? [] No [] Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: ~~1-2-07~~ *1-3-08* [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____

MOTION REQUEST DEADLINE: _____

STATUS/OMNIBUS CONFR.: _____
@ 8:45 a.m., 1:00 p.m., 1:30 p.m.

JUDGE: Dept. I JUDGE GEORGE L. WOOD
 Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

3.6 hearings: 11-1-07

TRIAL: 11-20-07 @ 9:00 a.m., 2 days

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 10/4/07

SIGNED BY JUDGE: *[Signature]*

Revised 7/2

SCANNED

APPENDIX "X"

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff, FILED CLALLAM CO CLERK

vs.

2007 NOV 30 11:02 AM CAUSE NO. 04-1-348-1

Spencer Upden

Defendant BARBARA CHRISTENSEN

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Wassell DEF. ATTY.: Barnick INTERPRETER? No Yes Language: _____

ARGNMT/RE-APRNC. DATE: _____ OUTSIDE DATE: 3-13-08 By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: 1-17-07 @ 9:00 TRIAL: 2-12-08 @ 9:00 a.m., 2 days
@ 8:45 a.m., 1:00 p.m., 1:30 p.m. JUDGE: Dept. I JUDGE GEORGE L. WOOD
3.6 Hrg Dept. II JUDGE KEN WILLIAMS
 VISITING JUDGE

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 11/30/07

SIGNED BY JUDGE: 

SCANNED

APPENDIX "Y"

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

FILED)
Plaintiff, CLALLAM CO CLERK)

vs.

Yaden Jacob Matthew

7008 MAY -21 11:59 AM
Defendant, BARBARA CHRISTENSEN

CAUSE NO. 64-1-00348-1

Reset

SCANNED

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: A. Lundwall DEF. ATTY.: L. Oakley INTERPRETER? No Yes Language: _____

ARGNMT./RE-APRNC. DATE: _____ OUTSIDE DATE: _____ By CrR 3.3 By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: _____ MOTION REQUEST DEADLINE: _____
STATUS/OMNIBUS CONFR.: _____ TRIAL: 5-27-08 @ 9:00 a.m., 2 days
1:00 p.m., 1:30 p.m. JUDGE: JUDGE GEORGE L. WOOD VISITING JUDGE
 JUDGE KEN WILLIAMS
 JUDGE S. BROOKE TAYLOR

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
- 2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
- 3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
- 4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
- 5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
- 6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
- 7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
- 8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
- 9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
- 2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
- 3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
- 4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER CrR 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
- 2. Stipulate, or file written motions, on the following issues:
 - (a) severance or joinder of counts or defendants;
 - (b) making charges more definite and certain, sufficiency of information to state an offense;
 - (c) depositions of witnesses, production of witnesses for trial or hearing;
 - (d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 5/2/08

SIGNED BY JUDGE: 

APPENDIX "Z"

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLALLAM

FILED
CLALLAM COUNTY
MAY 22 2008
BARBARA CHRISTENSEN, Clerk
4:30 pm

THE STATE OF WASHINGTON,
Plaintiff,

Jacob Yecker
Defendant.

NO. 04-1-348-1

ORDER CONTINUING TRIAL
(ORCTD)

THIS MATTER came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for May 27, 2008 is continued to June 30, 2008 *upon agreement of the parties [CrR3.3(f)(1)] or is required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- plaintiff's counsel in trial; defense counsel in trial;
- witness unavailable; other _____

IT IS FURTHER ORDERED that the expiration date is July 30, 2008 (subject to motion to dismiss)
(not less than 30 days after new trial date).

DONE IN OPEN COURT this 22 day of May, 2008

Kennell
JUDGE

Approved
[Signature]
Deputy Prosecuting Attorney

Approved
[Signature]
Attorney for Defendant

Approved
[Signature]
Defendant

SUPERIOR COURT OF WASHINGTON AND FOR CLALLAM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Yaden, Jacob

Defendant

FILED CLALLAM COUNTY MAY 22 2008 BARBARA CHRISTENSEN, Clerk

USE NO. 04-1-00348-1

Reset

ORDER SETTING SCHEDULE AND DIRECTING PRETRIAL PROCEDURE

PROS. ATTY.: Lundwall DEF. ATTY.: Oakley INTERPRETER? [X] No [] Yes Language:

ARGNMT./RE-APRNC. DATE: OUTSIDE DATE: 7-30-08 [] By CrR 3.3 [] By Waiver

THE COURT ORDERS THE FOLLOWING PRETRIAL SCHEDULE AND DISCOVERY OBLIGATIONS:

COMPLIANCE DATE: MOTION/REVIEW MOTION REQUEST DEADLINE: STATUS/OMNIBUS CONFR.: 6-13-08 TRIAL: 6:30-08 @ 9:00 a.m., 2 days 1:00 p.m., 1:30 p.m. 9:AM JUDGE: [X] JUDGE GEORGE L. WOOD [] VISITING JUDGE [] JUDGE KEN WILLIAMS [] JUDGE S. BROOKE TAYLOR

ON OR BEFORE THE COMPLIANCE DATE, THE PLAINTIFF SHALL:

- 1. State (a) if there was an informant involved; (b) whether the informant will be called as a witness; and (c) the informant's name and address (or claim a privilege not to disclose the same).
2. Disclose evidence in its possession favorable to the Defendant on the issue of guilt.
3. Disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge, intent, etc.
4. Supply the names, addresses, telephone numbers, known prior conviction records and statements of Plaintiff's witness.
5. As to any expert witness who will be called, supply (a) name, address, telephone number and qualifications of the expert witness; (b) the anticipated subject of the witnesses' testimony; and (c) a copy of the witnesses' report(s).
6. Supply any report of tests, physical or mental examinations, experiments or comparisons pertaining to this cause in Plaintiff's control.
7. Permit inspection and copying of any books, papers, photographs or other tangible objects which (a) were obtained from, or belong to, the Defendant, or (b) Plaintiff intends to use at any trial or hearing.
8. Inform the Defendant of any information it has indicating entrapment of the Defendant.
9. Make any plea offer not later than two courts days before the pretrial conference.

ON OR BEFORE THE COMPLIANCE DATE, THE DEFENDANT SHALL:

- 1. State (a) the general nature of the defense; (b) whether an alibi defense will be offered; (c) whether incompetency, diminished capacity or insanity will be alleged, and, if so, whether Defendant will submit to an examination by an expert selected by plaintiff; (b) whether Defendant's prior convictions, if any, will be stipulated to if admissible; and (e) whether Defendant will stipulate to a continuous chain of custody of physical evidence from seizure to trial.
2. Supply the names, addresses, and telephone numbers of defense witnesses, specifying any who will testify to alibi or mental condition, or as an expert.
3. Permit inspection and copying of all medical reports relevant to defense allegations or defenses.
4. Supply any reports of tests, experiments or comparisons pertaining to this case in Defendant's control.

ON OR BEFORE THE MOTION REQUEST DEADLINE THE APPROPRIATE PARTY SHALL:

- 1. FILE A WRITTEN REQUEST FOR A HEARING UNDER C+R 3.5 OR 3.6 ON OR BEFORE THE DEADLINE STATED ABOVE OR BE DEEMED TO HAVE WAIVED THE SAME.
2. Stipulate, or file written motions, on the following issues:
(a) severance or joinder of counts or defendants;
(b) making charges more definite and certain, sufficiency of information to state an offense;
(c) depositions of witnesses, production of witnesses for trial or hearing;
(d) participation in identification procedures (line-up, voice or handwriting exemplar, photography, trying on clothing, sampling blood, hair or tissue, etc.).

AT THE STATUS/OMNIBUS CONFERENCE, THE DEFENDANT SHALL BE PRESENT, AND THE PARTIES SHALL:

Certify that (a) they have complied with all of the foregoing; and (b) a plea agreement, if one is to be offered, has been communicated to the other party, and has been accepted or rejected.

MOTIONS IN LIMINE MUST BE FILED IN WRITING BEFORE TRIAL COMMENCES.

DONE IN OPEN COURT, in the presence of the parties and/or their counsel, a copy provided to each attorney and to the Defendant.

DATE: 5-22-08

SIGNED BY JUDGE: Ken Will

SCANNED 1