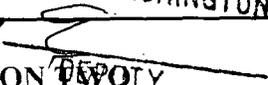


FILED
COURT OF APPEALS
DIVISION II

2012 JUN 13 PM 2:11

No. 427079

STATE OF WASHINGTON

BY 
DEPUTY

COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

MARIO GADEA-RIVAS.

Petitioner.

v.

STATE OF WASHINGTON,

Respondent.

PETITIONER'S OPENING BRIEF

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I. IDENTITY OF PETITIONER

The Petitioner is Mario Gadea Rivas. Mr. Gadea Rivas was also the Petitioner on direct appeal at the Thurston County Superior Court.

II. ASSIGNMENT OF ERROR

Mr. Gadea Rivas assigns error to the Thurston County Superior Court's finding that there was no violation of the right to a speedy trial pursuant to CrRLJ 3.3.

III. ISSUE PRESENTED

Whether, under the somewhat unique circumstances of this case, the rule-based right to a speedy trial was violated when the trial date was not set until after the expiration date. Specifically, the lower court erred in finding that CrRLJ 3.3 (a) (4) and CrRLJ 3.3 (c) (2) (ii) applied to prevent the expiration of the time for trial.

IV. STATEMENT OF THE CASE

The Petitioner was arraigned in the Thurston County District Court on one count of DUI on December 2, 2009. (Court Docket, hereafter Appendix A). The case was set for pretrial conference, which was to occur on April 22, 2010. (Appendix A). The Petitioner filed a speedy trial waiver with an expiration of July 3, 2010. (Appendix A). The Petitioner appeared for the pretrial as scheduled. The case was continued for pretrial to May 27, 2010. (Appendix A). The Petitioner filed a speedy

trial waiver with an expiration of August 3, 2010. (Appendix A). The Petitioner appeared for pretrial as scheduled. At the pretrial, Petitioner's attorney scheduled a motions hearing for June 25, 2010. (Appendix A). The Petitioner's attorney requested that his presence be waived. The court granted the request. (Appendix A). Petitioner's attorney filed briefing in support of the motion to suppress on June 7, 2010. (Appendix A). Exhibits to the motion were filed on June 8, 2010. (Appendix A). It should be noted that at least 100 defendants were joined on this motion, which included several private attorneys and attorneys from the Department of Assigned Counsel. (RP, pg. 21).

On June 15, 2010, the State moved for a continuance of the motion hearing. (Appendix A). A status hearing was scheduled for June 18, 2010, presumably to address the State's motion to continue. (Appendix A); (RP, pg. 1). The docket entry indicated that the Petitioner was not present for the status hearing, however, an official failure to appear was not noted, no warrant was issued and the subject was not addressed in any way. (Appendix A); (RP, pg. 1-20). In fact, the State pointed out at the hearing that most of the defendant's speedy trial expirations were at the end of August and September. (RP, pg. 10) The court denied the State's request for a continuance and noted that the hearing was to remain set for the defense part of the motion and another hearing would be set 40 days

out for the State's part of the motion to be heard. (RP, pg. 15-17). The State filed a response brief on June 21, 2010. (Appendix A). On June 22, 2010, Petitioner's attorney filed a motion to continue the June 25, 2010 motion hearing. (Appendix A). A status hearing was scheduled for June 24, 2010 to address the motion to continue. (Appendix A).

On June 24, 2010, the court granted the request for a continuance. Another docket entry was made indicating that the Petitioner was not present or the status hearing, again, an official failure to appear was not noted, no warrant was issued and the subject was not addressed in any way. (Appendix A). The State expressed concerns over current speedy trial expirations and indicated that any continuance would require a speedy trial waiver. (RP, pg. 28). The docket further indicated that the court warned the parties about speedy trial; at this point expiration was still August 3, 2010. (Appendix A). Counsel for the Petitioner agreed to waive speedy trial and indicated that she would get the speedy trial waivers to the court. (RP, pg. 30). The motion hearing was then reset to August 13, 2010. (RP, pg. 33). The hearing was then apparently reset to August 27, 2010. (Appendix A). The Petitioner filed a speedy trial waiver with an expiration of December 31, 2010. (Appendix A; copy of the waiver was requested and provided for the motion on discretionary review). This would be the last waiver filed.

On August 25, 2010, the State filed an index of exhibits. (Appendix A). On August 26, 2010, the State requested a continuance of the August 27, 2010 motions hearing. (Appendix A). On August 27, 2010, the court granted the State's request for a continuance. (RP, pg. 36-51). Another docket entry was made indicating the Petitioner was not present. (Appendix A). Once again, an official failure to appear was not noted, no warrant was issued, and the subject was not addressed in any way. A status hearing was scheduled for September 24, 2010. (Appendix A; RP, pg. 51). The Petitioner's attorney filed copies of transcripts on September 23, 2010. (Appendix A). On September 24, 2010, the Petitioner's attorney appeared for the status hearing and the motion hearing was scheduled for November 5, 2010. (RP, pg. 52-62). Another docket entry was made indicating that the Petitioner was not present for the status hearing. (Appendix A). Again, the subject was not addressed in any other way. The court ordered that a list of witnesses and exhibits were to be filed no later than 7 days prior to the motion hearing. (RP, pg. 62).

On September 30, 2010, the Petitioner's attorney filed a DVD containing exhibits. (Appendix A). On October 27, 2010, the State filed its witness list and a motion to continue the motion hearing. (Appendix A). On November 1, 2010, the State filed supplemental briefing. (Appendix A). Another status hearing was held on November 3, 2010

wherein the court denied the State's motion to continue. The same docket entry was made regarding the Petitioner's non-presence for the hearing even though Petitioner's attorney appeared by phone. (RP, pg. 63) Other parties involved in the motion from the defense side were apparently not even made aware that there was a hearing. (RP, pg. 64) The State was given two weeks to provide supplemental declarations of their witnesses. The parties agreed to have a tele-conference on November 4, 2010 at noon. On November 4, 2010, the court granted the State's request for a continuance. (Appendix A). Despite the fact this was a tele-conference, the same docket entry was made regarding the Petitioner's non-appearance. (Appendix A). The motion hearing was reset for December 13, 2010. (Appendix A).

The motion hearing was finally heard on December 13, 2010. Again, the same docket entry was made indicating the Petitioner was not present. The court indicated it would issue a ruling on January 10, 2011. (Appendix A). This would be beyond the speedy trial expiration date. The court denied the defense motion to suppress on January 20, 2011. (Appendix A). The Petitioner appeared with counsel on February 1, 2011 for pretrial. A trial date was set for February 28, 2011. (Appendix A). The Petitioner, through counsel, objected to speedy trial on the record and filed a written motion on February 7, 2011. (Appendix A). The district

court denied the motion on February 22, 2011 and found that the Petitioner had failed to appear for hearing and that as a result the 90 day speedy trial clock did not restart until the Petitioner appeared on February 1, 2011. (Appendix A).

On February 25, 2011, Petitioner's attorney filed an application for writ of review with the Thurston County Superior Court. The Superior Court denied the writ on September 26, 2011. The court cited to CrRLJ 3.3 (a) (4), and held that the trial setting was delayed by circumstances not addressed in the rule, which was the desire to have an issue litigated and decided prior to trial. (RALJ RP, pg. 47-48) The court also agreed with the district court and held that the Petitioner failed to appear, specifically for the June 24, 2010 status hearing, and that the commencement date would be at the next appearance by the Petitioner. (RALJ RP, pg. 49) Motion for discretionary review was filed on October 20, 2011. This Court accepted review on the grounds that this matter presented an important public issue that should be decided by the Court of Appeals.

It should be noted that the record referred to in the above statement of facts was filed with the motion for discretionary review. A copy of the speedy trial waiver referenced above was also filed at the Commissioner's request after oral argument was taken on the motion for discretionary

review. A full docket from the trial court is again attached as Attachment A.

V. ARGUMENT

1. The time for trial rules pursuant to CrRLJ 3.3 were violated and the case should have been dismissed in accordance with that rule.

The court carries the main burden to ensure that a trial is timely. Gissberg v. Everett Dist. Ct., 63 Wn. App. 435 (1991). It is the trial court that ultimately bears the responsibility to ensure a trial is held within the speedy trial period, but as between the defendant and the State, it is the State who has the primary duty to see that the defendant is tried in a timely fashion. State v. Jenkins, 76 Wn. App. 378 (1994). It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime. CrRLJ 3.3 (a) (1).

Interpretation of a court rule is reviewed de novo, such interpretation relies upon principles of statutory construction. City of Seattle v. Guay, 150 Wn.2d 288 (2003). The question of whether the speedy trial rule applies to particular facts is a question of law reviewed de novo. State v. Ledenko, 87 Wn. App. 39 (1997).

The superior court invoked CrRLJ 3.3 (a) (4) and CrRLJ 3.3 (c) (2) (ii) in finding that the Petitioner's court rule based right to a speedy trial was not violated. It has been, and remains, the Petitioner's position that he

waived speedy trial to a date certain. That date came and went without a trial setting. Furthermore, there was no event that would have or did cause any excluded period or tolling of the time for trial; nor was there any cure period invoked.

A. The superior court's ruling pursuant to CrRLJ 3.3 (a)(4).

CrRLJ 3.3 (a) (4) reads as follows:

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

The superior court held that the trial setting was delayed by circumstances not addressed in the rule, which was the desire to have an issue litigated and determined prior to trial. (RALJ RP, pg. 47-48) This was the superior court's primary basis for finding speedy trial had not been violated.

As an initial matter it should be noted that under CrRLJ 3.3 (a) (4) the default to constitutional speedy trial analysis occurs only where the trial was timely under the language of the rule. Here, there was never a trial setting within the expiration of speedy trial after the Petitioner last waived to an expiration date certain. In fact, a trial date had never been set even prior to the waiver. The plain language of the rule dictates that it simply does not apply to the facts in the case at hand, particularly in light

of the fact that the delay was caused by a violation of provisions within the rule.

CrRLJ 3.3 (a) (4) was discussed thoroughly in State v. George, 160 Wn.2d 727 (2007) by our State Supreme Court. The Court pointed out that the purpose of the provision, according to the time for trial task force, was to avoid appellate court interpretation that expanded the rules by reading in new provisions. George, 160 Wn.2d at 737. The task force attempted to cover the necessary range of time for trial issues so that additional provisions would not need to be read in and ensure that criminal cases would only be dismissed under the time for trial rules if one of the rules' express provisions had been violated. Id.

The Court went on to indicate that CrRLJ 3.3 (a) (4) resulted from the task force's concern that the due diligence standards imposed by the court in applying certain sections of the rules were vague and of limited value in predicting how other cases would be decided. George, 160 Wn.2d at 738. The Court further pointed out that the purpose of the 2003 reform was to clarify and simplify the time for trial rule, making it easier to apply, and thus avoiding the unpredictability that resulted from the due diligence standards imposed under the former rule. Id. Further still, the Court stated that although the fundamental principle that the State must exercise due diligence in bringing a defendant to trial continues in force,

in refining the rule, the task force intended to embody the State's due diligence obligations in the express requirements of the rule itself. Id.

The court in George, quoting the time for trial task force, made it clear that the purpose of section (a) (4) is to avoid a broad application of the due diligence standard imposed on the State in bringing defendants before the court. The 2003 amendments to 3.3, specifically section (a) (4), sought to narrow the due diligence standard by essentially eliminating the Striker/Greenwood constructive arraignment scenario. Section (a) (4) now replaces Striker/Greenwood with a default to constitutional speedy trial analysis. That is not to say that the amendments to 3.3 were narrowly drawn to address only the Striker/Greenwood line of cases, but it was certainly the central concern made clear by the task force comments quoted in George. *See also*. State v. Thomas, 146 Wn. App. 568 (2008).

The clear point of the amendments was to ensure that a dismissal would only occur as the result of an actual violation of the rule. Any other perceived violation not covered by the rule would default to constitutional speedy trial analysis. This conclusion is clear when 3.3 (a) (4) and 3.3 (h) are read together.

It was clearly not the intent of the task force that section (a) (4) be used as a failsafe provision for a court to cite to when it fails in its obligation to ensure trial in accordance with the rules. Here, the superior

court used section (a) (4) as a failsafe mechanism to avoid what should have been a dismissal under the time for trial rules. The superior court held that the parties desire to litigate a suppression issue prior to trial caused the delay and that amounted to circumstances not addressed in the rule under section (a) (4). The lower court's failure to conduct a suppression hearing pursuant to CrRLJ 3.6 prior to the expiration of speedy trial in the absence of a set trial date does not amount to circumstances not addressed in the rule. The lower court in fact alerted the parties early on regarding the need for speedy trial waivers. The Petitioner obliged and set a new commencement date and new expiration date. The new speedy trial expiration was noted in the court docket.

The filing of the written waiver reset the commencement date as contemplated in the rule. See CrRLJ 3.3 (c) (2) (i). Under the rule the time for trial became 90 days after the date specified in the written waiver, which here was apparently 12/31/10. See CrRLJ 3.3 (b) (2) (i). A trial date was never set within the time for trial, consequently, the Petitioner was not obligated to object until a trial date was actually set. The trial date here was not set until after the time for trial had expired. The Petitioner then timely objected within 10 days and filed a motion as required under CrRLJ 3.3 (d) (3).

In this case, when the allowable time for trial is computed in accordance with the rule, it is clear the rule was violated as the charge was not brought to trial within the time limit determined under the rule. Under such circumstances CrRLJ 3.3 (h) requires dismissal with prejudice. The superior court's use of CrRLJ 3.3 (a) (4) as a failsafe provision to avoid dismissal for violation of the rule is in conflict with the decisions of the Court of Appeals and of the Supreme Court and reasonable interpretation of the rule. While the factual setting of the George case is distinguishable from the case at hand, as it would have to be to properly invoke CrRLJ 3.3 (a) (4), the George holding provides a clear interpretation of the rule, which simply does not apply here.

B. The superior court's ruling pursuant to CrRLJ 3.3 (c)(2)(ii).

The superior court expressed some concern over its analysis of 3.3 (a) (4) and the possibility that it may be reviewed. Accordingly, the superior court addressed a second issue and specifically found that the Petitioner failed to appear at the June 24, 2010 status hearing. (RALJ RP. pg. 49) The court cited to CrRLJ 3.3 (a) (3) (iii), the definition of "appearance," in support of its finding that the Petitioner failed to appear.

First, the definition of "appearance" does not operate to toll the time for trial or reset the commencement date. It is presumed the superior

court contemplated the use of CrRLJ 3.3 (c) (2) (ii), which states as follows:

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

As noted in detail above, the Petitioner was present for pretrial on May 27, 2010. At that hearing the parties scheduled the motion hearing for June 25, 2010. The Petitioner's presence was waived for the motion hearing. It should be remembered that over 100 defendants were joined for this motion. After the pretrial hearing on May 27, 2010, every hearing from that point forward pertained to the status of the motion hearing or the resetting of the motion hearing.

Although the clerk made a docket entry which noted the Petitioner was not present for these hearings, two of which were by phone, the court never noted or entered an official failure to appear. The presence of the Petitioner and the over 100 other defendants was never an issue and was never discussed in any way. In fact, despite the Petitioner's non-presence, the court raised speedy trial concerns at the June 24, 2010 status hearing. It was at this hearing Petitioner's counsel informed the court that Petitioner would be willing to file a waiver, and shortly thereafter a waiver of time for trial was in fact filed with the court. If this was truly a failure to appear, the speedy trial concerns and subsequent waiver would have

been entirely moot. Furthermore, the Petitioner was not present at a status hearing prior to this date, which was the first such status hearing held on June 18, 2010. The superior court seemed to arbitrarily select the June 24 hearing as the date to assign the failure to appear.

The presence of the Petitioner and the over 100 other defendants was never an issue at any of these hearing because it was clearly understood that all such hearings were associated with the motion hearing for which presence had been waived. It seems clear that the trial court, as well as the superior court on RALJ appeal, reviewed the docket and decided to take advantage of a clerk's entry to create a reset of the commencement date to avoid a dismissal.

In State v. George, 160 Wn.2d 727 (1007), the Supreme Court made it clear that the failure to appear section pursuant to CrRLJ 3.3 (c) (2) (ii) was not a catchall provision that allows a trial court to reset the time for trial regardless of why the defendant was absent. The court held that the provision applies only to defendant's who deliberately thwart the government's attempt to provide a trial within the time limits specified under the rule by absenting himself from a proceeding. Thus, the phrase "failure to appear" refers to a defendant's unexcused absence from a court proceeding. George, 160 Wn.2d at 738-739.

The Petitioner here did not willfully fail to appear for any hearing. The Petitioner here did not thwart any attempt to bring him to trial nor were any absences unexcused. To the contrary, all reasonable inferences point to the fact that the parties and the court were operating under the clear understanding that the Petitioner's presence, along with the other 100 plus defendants, was waived for the motion and all proceedings related thereto. Most of the status hearings were arranged with very little notice, sometimes just by e-mail to the attorneys most deeply involved. At least two of the hearings were held by phone. To suggest that it was not understood that the Petitioner's presence was waived is just absurd.

The superior court's use of CrRLJ 3.3 (c) (2) (ii) as a catchall provision to reset the commencement date at all cost in effort to avoid dismissal for violation of the time for trial rule is an improper interpretation and use of the rule.

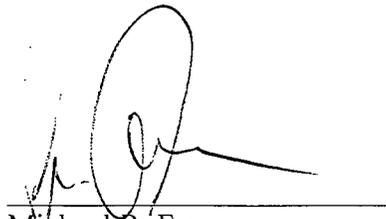
The case law is sparse on the subject of the 2003 amendments to the time for trial rule. Perhaps that is a sign that the task force has accomplished its goal of less need for judicial interpretation of the rule. However, when there is an attempt to stretch the rule in a manner that avoids dismissal at all cost, there is need for clarification. Stretching the rules to create catchall provisions and failsafe applications to eliminate any possible rule-based violations of the time for trial rule is wrong. This

case presents a simple rule-based violation of the time for trial rules. A commencement and expiration was set at the trial court's request. The trial court thereafter failed to properly manage the case. Once the time for trial expired, the trial court, and later the superior court on direct appeal, sought to avoid accepting responsibility for this failure through an improper and self serving interpretation of the time for trial rules. This was wrong.

VI. CONCLUSION

Based on the foregoing, the Petitioner respectfully asks this Court to reverse the lower court's ruling and find that the time for trial rules in CrRLJ 3.3 were violated and that the appropriate remedy is dismissal with prejudice as called for within the rule.

Respectfully submitted this 13th day of June, 2012.

A handwritten signature in black ink, appearing to read 'M. Frans', is written over a horizontal line. The signature is stylized and cursive.

Michael R. Frans
WSBA #29905
Attorney for Petitioner

APPENDIX A

09:23:25 Thu Nov 03, 2011

D0030I Beginning of Docket

DD1000PI

11/03/11 09:23:24

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R

DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S 11 13 2009 Received eTicket 9Y6320729 @ 09:33 PM by designated computer SYS

S 11 16 2009 Case Filed on 11/16/2009 BMS

S DEF 1 GADEA, MARIO R Added as Participant BMS

S ARR MAND Set For 11/16/2009 01:30 PM In Room 3 BMS

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

03 04 2010	AT ATD REQ PTR TO BE RESET; NOTICE TO MAIL. DEFT REMINDED	TMG
	ALL PRIOR IMPOSED CONDS REMAIN. ADDRESS VERIFIED. CR2-PM	TMG
S	PTR Set for 04/22/2010 01:45 PM	BDG
S	in Room 1 with Judge SAD	BDG
	DEFENDANT WAIVES SPEEDY TRIAL TO JULY 3, 2010.	BDG
S	PTR: Not Held, Hearing Canceled	TMG
S	OTH MTN: Held	TMG
S 03 05 2010	Notice Issued for PTR on 04/22/2010 01:45 PM	BDG
04 08 2010	DEF ATTENDED INTATKE APT & ATTENDED 1ST SESSION 4-1-10	AET
04 22 2010	DEFT PRES WITH ATTY CALLAHAN FOR PTR; JUDGE MBB; DPA C JONES.	MGL
	AT REQUEST OF ATD, PTR TO BE RESET FOR 30 DAYS; NOTICE TO BE	MGL
	MAILED. DEFT REMINDED ALL CONDS REMAIN. CR1-PM	MGL
	DEFENDANT WAIVES SPEEDY TRIAL TO 6-3-10.	MGL
S	PTR Set For 05/27/2010 02:15 PM In Room 2	BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S	04 22 2010	PTR: Not Held, Hearing Canceled	MGL
S		OTH MTN: Held	MGL
S	04 23 2010	Notice Issued for PTR on 05/27/2010 02:15 PM	MGL
	05 14 2010	NOTICE OF MOTION AND MOTION TO SUPPRESS BREATH TEST FILED BY ATD CALLAHAN	BDG
	05 27 2010	DEFT PRES W/ATY CALLAHAN FOR PTR; JUDGE PRO TEM POTTORFF; DPA ERIKSON-MULDREW. ATD REQ TO HAVE DEFT WAIVE PRES AT MTN HRG, GRANTED. PTR TO BE RESET; NOTICE TO MAIL. CR2-PM	TMG
S		OTH MTN Set For 06/25/2010 09:00 AM In Room 3	BDG
S		PTR: Not Held, Hearing Canceled	TMG
S		OTH MTN: Held	TMG
S	05 28 2010	Notice Issued for OTH MTN on 06/25/2010 09:00 AM	BDG
	06 07 2010	MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS FILED BY ATD CALLAHAN	BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R

DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

06 07 2010 SUPPLEMENT TO MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS BDG
 - LIST OF DEFENDANTS FILED BY ATD CALLAHAN BDG
 ***** BDG
 ORIGINAL MOTION FILED IN GUNDERSON 8Y6054725 WSP ***** BDG
 ***** BDG

06 08 2010 EXHIBITS TO MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS BDG
 FILED BY ATD CALLAHAN (ORIGINAL PAPER COPY & CD FILED) BDG
 **SEE 8Y6054725 WSP GUNDERSON FOR EXHIBITS ** BDG

06 15 2010 MOTION AND AFFIDAVIT FOR CONTINUANCE FILED BY DPA PENTILLA BDG
 ***** FILED IN 8Y6054725 GUNDERSON *** BDG

06 18 2010 DEFT NOT PRES FOR STATUS HRG; COUNSEL PRES FOR ATY CALLAHAN; BDG
 JUDGE SGM; DPA PENTILLA. STATE'S MOTION TO CONTINUE 6-25-10 BDG
 HEARING DENIED. HEARING TO REMAIN SET FOR THE 'DEFENSE PART' BDG
 OF MOTION TO BE HEARD. A NEW MOTION DATE TO BE SET 40 DAYS BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R

DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S 06 24 2010	OTH MTN on 06/25/2010 09:00 AM in Room 3 Canceled	BDG
	DEF NOT PRESENT FOR HRNG; ATY CALLAHAN PRES; JUDGE SGM;	BDG
	DPA PENTILLA AND LCA SVOBODA. DEFENSE MOTION TO CONTINUE	BDG
	ADDRESSED, DPA/LCA OBJECT TO CONTINUANCE. JUDGE SGM GRANTS	BDG
	MOTION TO CONTINUE. TENTATIVE DATE PICKED, HEARING TO BE	BDG
	RESET. PARTIES WARNED ABOUT SPEEDY TRIAL ISSUES ON PENDING	BDG
	CASES. CR2-PM	BDG
06 30 2010	NOTE FOR MOTION DOCKET FILED BY ATD CALLAHAN	BDG
S 07 01 2010	OTH MTN Set For 08/27/2010 09:00 AM In Room 3	BDG
07 06 2010	DEFENDANT WAIVES SPEEDY TRIAL TO DECEMBER 31, 2010.	BDG
07 22 2010	CD COMPLIANCE REPT RECVD	DXC
08 25 2010	STATE OF WASHINGTON & CITY OF LACEY EXHIBITS / INDEX OF	BDG
	EXHIBITS FILED BY DPA PENTILLA *FILED IN 8Y6054725 WSP ONLY*	BDG
08 26 2010	MOTION AND AFFIDAVIT FOR CONTINUANCE FILED BY DPA PENTILLA	BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

09 30 2010	ATD CALLAHAN - ORIG COPY FILED IN GUNDERSON (8Y6054725 WSP)	BDG
10 27 2010	MOTION AND AFFIDAVIT FOR CONTINUANCE OF MOTIONS TO SUPPRESS FILED BY ATTY PENTTILA. PLAINTIFF'S LIST OF WITNESSES FILED BY ATTY PENTTILA.	AET AET
11 01 2010	STATE'S SUPPLEMENTAL RESPONSE BRIEF OPPOSING SUPPRESSION OF BREATH TEST RESULT EVIDENCE (AND CD) FILED BY DPA PENTTILA.	AET AET
11 02 2010	MEMORANDUM CONCERNING ADMISSION OF KING COUNTY RECORD FOR PRETRIAL SUPPRESSION HEARING FILED BY ATTY CALLAHAN.	AET AET
11 03 2010	DEFT NOT PRES FOR MOTION; ATY CALLAHAN PRES; JUDGE SGM; DPA PENTTILA; LCA SVOBODA. JUDGE DENIES DPA MOTION TO CONTINUE 11/5/10 MOTION HEARING. MR. VOSS/ DEFENSE ARGUMENT TO BE HEARD ON 11/5/10. DPA TO BE GIVEN 2 WEEKS TO RETURN SUPPLEMENTAL DECLARATIONS OF THEIR 2 WITNESSES NOTED. ALL PARTIES AGREE TO HAVE A TELECONFERENCE ON 11/4/10 AT NOON.	AET AET AET AET AET AET

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

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NmCd: IN

Name/Title: GADEA, MARIO R

DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

11 03 2010	CR2-PM		AET
	** CXA WAS CLERK **		AET
11 04 2010	DEFT NOT PRES FOR MOTION HRG; ATTY CALLAHAN PRES; JUDGE SGM;		MGL
	DPA PENTTILA; LCA SVOBODA; ATY VOSK. JUDGE GRANTS DPA'S		MGL
	MOTION TO CONTINUE MOTION HRG FOR 11-5-10. HRING FOR 11-5-10		MGL
	STRICKEN. MOTION HRG TO BE RESET; NO NOTICE. CR2-PM		MGL
	CLERK WAS CXA		MGL
S 11 05 2010	OTH MTN: Not Held, Hearing Canceled		MGL
S	OTH MTN Set For 12/13/2010 09:00 AM In Room 10		MGL
12 13 2010	DEFT NOT PRES FOR MTN; ATY CALLAHAN; JUDGE SGM; DPA WHEELER;		LMS
	LCA SVOBODA; ATY GARICIA MOSES FOR STATE; ATY TED VOSK FOR		LMS
	DEFENSE. ARGUEMENTS HEARD. NO RULING MADE TODAY. JUDGE SGM		LMS
	TO ISSUE OPINION BY 1-10-11. HRG FOR RULING ON MOTION TO		LMS
	SET; NOTICE TO MAIL. CR2-AM AND PM		LMS

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

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DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S	12	13	2010	OTH MTN: Held	LMS
	01	20	2011	ORDER DENYING MOTION TO SUPPRESS FILED BY JUDGE S MEYER	BDG
				- ORIGINAL COPY OF ORDER FILED IN GUNDERSON 8Y6054725 WSP	BDG
				ORDER SENT TO INTERESTED PARTIES VIA EMAIL BY CLRK THIS DATE	BDG
S	01	21	2011	PTR Set For 02/01/2011 01:30 PM In Room 1	BDG
S				Notice Issued for PTR on 02/01/2011 01:30 PM	MGL
	02	01	2011	DEFT PRES W/ATY CALLAHAN FOR PTR; JUDGE SGM; SPECIAL DPA	TMG
				EVANS. CNFRM/JTR TO BE SET; NOTICE TO MAIL. ADDRESS	TMG
				VERIFIED. DEFT REMINDED ALL PRIOR IMPOSED CONDS REMAIN.	TMG
				CR1-PM	TMG
S				OTH CNFRM Set For 02/22/2011 03:00 PM In Room 2	BDG
S				JTR Set For 02/28/2011 09:00 AM In Room 3	BDG
S				Notice Issued for OTH CNFRM on 02/22/2011 03:00 PM	MGL
S				Notice Issued for JTR on 02/28/2011 09:00 AM	MGL

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

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DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S 02 01 2011	PTR: Held	TMG
02 07 2011	MOTION PURSUANT TO CRRLJ 3.3(D) (3) OBJECTION TO TRIAL DATE FILED BY ATD CALLAHAN	BDG
S	OTH MTN Set For 02/22/2011 03:00 PM In Room 2	BDG
S 02 08 2011	Notice Issued for OTH MTN on 02/22/2011 03:00 PM CRIMINAL SUBPOENA / DEMAND FOR DISCOVERY / PLAINTIFF'S LIST OF WITNESSES FILED BY DPA WINDER	MGL BDG
	MOTION TO DISMISS FOR EXPIRATION OF SPEEDY TRIAL UNDER CRRLJ 3.3(H) FILED BY ATD CALLAHAN	BDG
02 16 2011	STATE'S RESPONSE TO DEFENSE MOTION TO DISMISS FILED BY DPA WINDER	BDG BDG
02 22 2011	DEFT PRES W/ATY CALLAHAN FOR CNFRM/MTN; JUDGE SGM; DPA WINDER. DEFENSE MTN TO DISMISS, DENIED. JTR CONFIRMED. CR2-PM	TMG TMG TMG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IX

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S	02 22 2011	OTH CNFRM: Held	TMG
S		OTH MTN: Held	TMG
	02 28 2011	DEFT PRES W/ATY CALLAHAN FOR JTR; JUDGE MBB; SPECIAL DPA	TMG
		EVANS. JTR TO BE RESET; NOTICE HANDED TO DEFT. CRI-AM	TMG
S		JTR Set For 03/07/2011 09:00 AM In Room 3	TMG
S		JTR: Not Held, Hearing Canceled	TMG
S		OTH MTN: Held	TMG
	03 03 2011	PER T/C W/ ATY CALLAHA - JURY PANEL STRUCK - WILL REQST CONT	BDG
	03 07 2011	APPLICATION FOR WRITE OF PROHIBITION AND MANDAMUS ARRESTING	BDG
		TRIAL FROM PROCEEDING, STAYING PROCEEDINGS AND MANDATING	BDG
		DISMISSAL OF CHARGE FILED BY ATY CALLAHAN (ALREADY FILED IN	BDG
		SUPERIOR COURT ON 2/25/11)	BDG
		DECLARATION OF MARIO GADEA-RIVAS IN SUPPORT OF APPLICATION	BDG
		FOR WRITE OF PROHIBITION AND MANDAMUS ARRESTING TRIAL FROM	BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

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Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

03 07 2011	PROCEEDING, STAYING PROCEEDINGS AND MANDATING DISMISSAL OF	BDG
	CHARGE FILED BY ATD CALLAHAN (ALREADY FILED IN TCSC 2/25/11)	BDG
	DECLARATION OF LINDA M CALLAHAN IN SUPPORT OF APPLICATION	BDG
	FOR WRITE OF PROHIBITION AND MANDAMUS ARRESTING TRIAL FROM	BDG
	PROCEEDING, STAYING PROCEEDINGS AND MANDATING DISMISSAL OF	BDG
	CHARGE FILED BY ATD CALLAHAN (ALREADY FILED IN TCSC 2/25/11)	BDG
	PER ATY CALLAHAN - WRIT WAS ALREADY HEARD IN TCSC EX PARTE	BDG
	NO ACTION TAKEN ON WRIT IN TCDC AT THIS TIME	BDG
	DEFT PRES W/ATY CALLAHAN FOR JTR; JUDGE SDGM; SPECIAL DPA	TMG
	EVANS. AT ATD REQ CNFRM/JTR TO BE RESET; NOTICE HANDED TO	TMG
	DEFT. CR2-AM	TMG
S	JTR: Not Held, Hearing Canceled	TMG
S	OTH MTN: Held	TMG
03 08 2011	REC'D REQST FOR QUICK SET STATUS HEARING FROM DPA HANSEN	BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

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Name: GADEA, MARIO R

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DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

S	03 08 2011	OTH CNFRM Set For 04/20/2011 10:00 AM In Room 2	BDG
S		JTR Set For 04/27/2011 09:00 AM In Room 3	BDG
S		OTH STATS Set For 03/22/2011 02:15 PM In Room 2	BDG
S	03 09 2011	Notice Issued for OTH STATS on 03/22/2011 02:15 PM	BDG
S		Notice Issued for OTH CNFRM on 04/20/2011 10:00 AM	BDG
S		Notice Issued for JTR on 04/27/2011 09:00 AM	BDG
	03 11 2011	CRIMINAL SUBPOENA FILED BY ATD HANSEN (JTR)	BDG
	03 22 2011	DEFT NOR ATY CALLAHAN PRES FOR STATUS; JUDGE SGM; DPA HANSEN. STATUS HEARING STRUCK; NO ACTION TAKEN. CR2-PM	CXA
S		OTH STATS: Not Held, Hearing Canceled	CXA
S	04 20 2011	JTR on 04/27/2011 09:00 AM in Room 3 Canceled	BKS
		DEFT PRES W/ATY CALLAHAN FOR CONFRY; JUDGE KBW; DPA EVANS.	BKS
		ATD MOTION TO CONTINUEN GRANTED. JTR TO BE RESET; NOTICE TO BE MAILED. CR2-AM	BKS

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

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Name: GADEA, MARIO R

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DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

	04 20 2011	DEFENDANT WAIVES SPEEDY TRIAL TO 9/30/11.		BKS
S		OTH CNFRM Set For 09/07/2011 10:00 AM In Room 2		MGL
S		JTR Set For 09/12/2011 09:00 AM In Room 3		MGL
S		Notice Issued for OTH CNFRM on 09/07/2011 10:00 AM		MGL
S		Notice Issued for JTR on 09/12/2011 09:00 AM		MGL
S		OTH CNFRM: Not Held, Hearing Canceled		BKS
S		OTH STATS: Held		BKS
	04 25 2011	CRIMINAL SUBPOENA FILED BY DPA		BDG
S	04 28 2011	11118100932 Miscellaneous Payment Received	120.00	CAU
S		for PREP TRANSCRIPT		CAU
S	05 12 2011	11118100932 PREP TRANSCRIPT Adjusted	-120.00	MKS
S		Authorized by: MKS		MKS
S		11132100606 Miscellaneous Payment Received	100.00	MKS
S		for COPY/TAPE FEES		MKS

DD1001MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6320729 WSP CT StID: _____
 Name: GADEA, MARIO R NmCd: IN
 Name/Title: GADEA, MARIO R
 DUI

Case: 9Y6320729 WSP CT Criminal Traffic On appeal

S 05 12 2011 11132100607 Appearance Bail Posted for DEF 1 20.00 MKS
 S Posted by: CALLAHAN LAW MKS
 S Appearance Bail Marked Payable 20.00 MKS
 ABOVE REVERSAL MADE TO 1) ALLOW \$20 TO BE REFUNDED TO PAYOR MKS
 BECAUSE OF DEFECTIVE CD 2) TO CORRECT COST CODE FOR ENTRY OF MKS
 COPY FEE. MKS
 S Court Chk Ref 25538 for Bail Refund 20.00 MKS
 S to Payee: CALLAHAN LAW MKS
 08 23 2011 ATY OFFICE CALLED - WILL BE FILING A MOTION BDG
 NOA FILED BY ATD BALDWIN BDG
 NOTICE OF INTERLOCUTORY APPEAL TO SUPERIOR COURT FILED BY BDG
 ATD BALDWIN BDG
 NOTICE OF ISSUE FILED BY ATD BALDWIN BDG
 MOTION AND DECLARATION FOR ORDER OF CONTINUANCE FILED BY BDG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

08 23 2011	ATD BALDWIN	BDG
	ORDER OF CONTINUANCE FILED BY ATD BALDWIN	BDG
S	OTH CNFRM Rescheduled to 09/07/2011 03:00 PM in Room 1	BDG
S	OTH MTN Set For 09/07/2011 03:00 PM In Room 1	BDG
S 08 24 2011	Notice Issued for OTH CNFRM on 09/07/2011 03:00 PM	BDG
S	Notice Issued for OTH MTN on 09/07/2011 03:00 PM	BDG
08 26 2011	REQUEST FROM ATNY BALDWIN'S OFFICE FOR CD OF 2-22-11 MOTION HEARING.	SKC
S	11238100342 Miscellaneous Payment Received	20.00 SKC
S	for COPY/TAPE FEES	SKC
09 02 2011	T/C TO DEFT ADVISING CD COPY READY FOR PICK UP.	TMG
S 09 07 2011	JTR on 09/12/2011 09:00 AM in Room 3 Canceled	TMG
	DEFT PRES W/ATY BALDWIN FOR CNFRM/MTN HRG; JUDGE MBB; SPECIAL DPA EVANS. AT ATD REQ CNFRM/JTR/MTN TO BE RESET; NOTICE TO	TMG

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NrCd: IN

Name/Title: GADEA, MARIO R
DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

	09 07 2011	MAIL. DEFT REMINDED ALL PRIOR IMPOSED CONDS REMAIN. CR3-PM	TMG
S		OTH CNFRM: Not Held, Other	TMG
S		OTH MTN: Not Held, Other	TMG
S	09 08 2011	OTH CNFRM Set For 09/21/2011 03:00 PM In Room 1	BDG
S		OTH MTN Set For 09/21/2011 03:00 PM In Room 1	BDG
S		JTR Set For 09/26/2011 09:00 AM In Room 3	BDG
S		Notice Issued for OTH MTN on 09/21/2011 03:00 PM	BDG
S		Notice Issued for OTH CNFRM on 09/21/2011 03:00 PM	BDG
S		Notice Issued for JTR on 09/26/2011 09:00 AM	BDG
	09 12 2011	INTERLOCUTORY APPEAL FILED IN SUPERIOR COURT. COPIES SENT	MGL
		TO DPA AND ATD.	MGL
		SUPERIOR COURT CASE # 11 1 01453 7	MGL
		CRIMINAL SUBPOENA FILED BY DPA HANSEN (JTR)	BDG
S		Case Set on Appeal Tracking	MGL

D0031I End of Docket

DD1000PI

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

11/03/11 09:19:23

Case: 9Y6320729 WSP CT

StID: _____

Name: GADEA, MARIO R

NmCd: IN

Name/Title: GADEA, MARIO R

DUI

Case: 9Y6320729 WSP CT Criminal Traffic

On appeal

09 21 2011	DEFT PRES W/ATY BALDWIN FOR CNFRM/MOTION; JUDGE SGM; DPA	LMS
	EVANS. ATD'S MOTION FOR CONTINUANCE ON JTR GRANTED.	LMS
	CNFRM & JTR RESET; NOTICE HANDED TO DEFT. CR3-PM	LMS
S	OTH CNFRM Set For 09/26/2011 08:45 AM In Room 3	LMS
S	JTR Set For 09/28/2011 09:00 AM In Room 3	LMS
S	JTR on 09/26/2011 09:00 AM in Room 3 Canceled	LMS
S	OTH CNFRM: Not Held, Defendant Contd	LMS
S	OTH MTN: Held	LMS
S 09 26 2011	JTR on 09/28/2011 09:00 AM in Room 3 Canceled	BDG
	DEFT PRES W/ ATY CALLAHAN & BALDWIN FOR CNFRM; JUDGE KBW;	CXA
	DPA EVANS. SUPERIOR COURT JUDGE TABOR SIGNS ORDER FOR STAY.	CXA
	JTR STRUCK. CR2-AM	CXA
S	OTH CNFRM: Not Held, Hearing Canceled	CXA
S	OTH MTN: Held	CXA

PROOF OF SERVICE

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I certify that I served a copy of the PETITIONER'S OPEN BRIEF on all parties or their counsel of record on the date below as follows: by certified mail.

TO: Thurston County Prosecuting Attorneys Office
2000 LAKERIDGE DRIVE SW
Olympia, WA 98502

RE: Mario Gadea-Rivas case # 427079

2012 JUN 13 PM 2:09
STATE OF WASHINGTON
BY [Signature]
DEPUTY

FILED
COURT OF APPEALS
DIVISION II

I, Margaret L. Tillman on June 12, 2012 mailed PETITIONER'S OPEN BRIEF by Certified Mail at United State Post Office Located at 609 SW 150th St Burien WA. 98166 to the address listed above.

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

DATED this 12th day of June at Burien, WA.

Margaret Tillman

MICHAEL R. FRANS
Attorney at Law
645 SW 153rd Street, Suite C-2
Burien, Washington 98166
(206) 246-5300
Fax (206) 246-5747