

No. 42707-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JEFFREY S. MOORE

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

CrRLJ 3.3 governs the time for trial in courts of limited jurisdiction. The State must bring a criminal defendant to trial within 60 days after arraignment if the defendant is detained and within 90 days if the defendant is not detained. The time for trial is recommenced if any of the eight circumstances listed in the rule occur. CrRLJ 3.3(c)(2)(i)-(viii). Tolling of the time for trial occurs if one of nine enumerated events occurs. CrRLJ 3.3(e)(1)-(9). If the State fails to bring a defendant to trial within the time limitations set by the rule, the charges lodged against the defendant must be dismissed with prejudice. CrRLJ 3.3(h). If a trial is delayed by circumstances not addressed by CrRLJ 3.3, criminal charges are not to be dismissed, unless the defendant's constitutional speedy trial rights have been violated. CrRLJ 3.3(a)(4).

The Superior Court concluded that the circumstances in this case qualified as "circumstances not addressed" in CrRLJ 3.3, making a speedy trial violation inapplicable. The Superior Court also concluded that the Defendant, Jeffrey S. Moore, failed to appear at a status hearing, thus resetting the speedy trial period. These conclusions of law are correct and should be affirmed. Alternatively, the Defendant constructively waived his right to a speedy trial.

II. STATEMENT OF THE CASE

The following statement of the case is taken primarily from the case docket for *State of Washington v. Jeffrey Scott Moore*, Case No. 9Y6075915, attached in its entirety and in ascending chronological order as State's Exhibit 1. Statements regarding the hearings that occurred on June 18, 2010, through November 3, 2010, are taken from the Verbatim Report of Proceedings (RP), where they are characterized as "status hearings" and "motion to continue hearings." RP ii.

On May 8, 2009, the Defendant, Jeffrey S. Moore, was arrested for driving under the influence. He was neither detained at the time nor at any time subsequently as a result of this case. The Defendant was arraigned in Thurston County District Court on May 11, 2009, at which time Chester Baldwin filed a notice of appearance and a pre-trial hearing was set for June 11, 2009. Notice was issued for the hearing. On June 11, 2009, the Defendant was present with counsel, however, at the Defendant's request, the hearing was rescheduled for July 2, 2009. Notice was issued for the pre-trial hearing. On July 2, 2009, the Defendant was present with counsel, where he filed a speedy trial waiver through December 1, 2009, and, for the second time, requested that the hearing be reset. The pre-trial hearing was rescheduled for August 27, 2009, and notice was issued. On

August 27, 2009, the Defendant was present with counsel, however, at the Defendant's third request, the hearing was rescheduled for October 6, 2009. Notice was issued for the pre-trial hearing.

On October 6, 2009, the Defendant was present with counsel and the case was set for trial. A confirmation hearing and jury trial were scheduled for November 19, 2009, and November 30, 2009, respectively, and notice was issued for both. On October 16, 2009, the Defendant moved for a fourth continuance. The Defendant then requested on October 22, 2009, that the confirmation hearing be rescheduled. Notice for a confirmation hearing on November 18, 2009, was issued. At the confirmation hearing, the Defendant was present with counsel, where he filed a motion to suppress and a second speedy trial waiver through February 18, 2010. In response to the Defendant's request, the District Court indicated that it would reset the confirmation and jury trial. Notice for a motion hearing on December 16, 2009, was issued.

On December 16, 2009, defense counsel was present without the Defendant and, at the Defendant's fifth request, the hearing was rescheduled. Notice for a motion hearing on January 13, 2010, was issued. On January 13, 2010, the Defendant was present with counsel, at which time his motion to suppress was denied and he filed a third speedy trial waiver through June 1, 2010. A pre-trial hearing was set for March 9,

2010, and notice was issued. On March 9, 2010, the Defendant was present with counsel, and, at the Defendant's sixth request, the hearing was rescheduled. Notice for a pre-trial hearing on April 8, 2010, was issued. On April 8, 2010, the Defendant was present with counsel and, at the Defendant's seventh request, the hearing was rescheduled. Notice for a pre-trial hearing on May 6, 2010, was issued. On May 6, 2010, defense counsel was present without the Defendant and, at the Defendant's eighth request, the hearing was rescheduled. Notice for a pre-trial hearing on May 24, 2010, was issued.

On May 14, 2010, the Defendant filed a second motion to suppress, but did not file a supporting memorandum. This motion was part of the "Vosk Uncertainty Motion" (Vosk Motion), a large defense suppression motion involving around one hundred and fifteen defendants and multiple defense attorneys. On May 24, 2010, the Defendant was present with counsel, at which time he filed a fourth speedy trial waiver through September 1, 2010. A hearing for the Vosk Motion was set for June 25, 2010, and notice was issued. On June 2, 2010, the Defendant filed a waiver of appearance for the upcoming Vosk Motion hearing. Linda Callahan, another defense attorney involved in the Vosk Motion, filed a memorandum in support of the motion. Supporting exhibits were filed the next day. Having received the Defendant's arguments regarding

the motion just eight days earlier, the State filed its first motion for a continuance on June 15, 2010, more than a year after the Defendant's arraignment.

The District Court convened a status hearing on June 18, 2010, at which Mr. Baldwin was present. The Defendant did not appear. The State made clear at the hearing that the speedy trial period for most of the cases attached to the Vosk Motion would expire in two to three months, in August or September 2010. RP 3, lines 5-6. The District Court ultimately denied the State's motion to continue. However, in the interest of efficiency and considering the scheduling difficulties that the parties would encounter given the magnitude of the Vosk Motion, the District Court determined that defense counsel would present their arguments on June 25, 2010, while the State would present its arguments forty days later. RP 15-16, lines 25 and 1-25. On June 22, 2010, just three days prior to the Vosk Motion hearing, Ms. Callahan filed what would be the Defendant's ninth motion to continue. In response, the District Court immediately sent an e-mail to all parties involved in the motion to notify them of a status hearing to be held two days later.

On June 24, 2010, Ms. Callahan appeared on Mr. Baldwin's behalf. The Defendant did not make an appearance for the second consecutive time. At the hearing, defense counsel requested a new motion

hearing date to be set sometime in early August 2010. RP 25, lines 19-21. The State objected and again raised the issue of the expiration of speedy trial and suggested that trials be set. RP 28, lines 5-11. Ms. Callahan then indicated that they were “willing to waive speedy,” and that she would “get waivers in.” RP 30, lines 14-19. The Defendant’s motion to continue was granted and a new motion hearing date of August 13, 2010, was discussed. RP 31, lines 12-25. On July 1, 2010, a motion hearing was set for August 27, 2010. The State filed its second motion for a continuance on August 26, 2010. On August 27, 2010, Mr. Baldwin was present, but the Defendant did not make an appearance for the third consecutive time. The State’s motion to continue was granted, and Mr. Baldwin had no objection to the continuance. RP 38, line 18. During the hearing, another status hearing was set for September 24, 2010. RP 46, lines 1-22.

On September 23, 2010, Ms. Callahan filed more materials regarding the motion, including a copy of transcripts from King County. On September 24, 2010, the Defendant did not make an appearance for the fourth consecutive time. Ms. Callahan appeared on Mr. Baldwin’s behalf and a motion hearing was set for November 5, 2010. The State filed its third motion to continue on October 27, 2010, having had the first denied and the second granted with no objection. Ms. Callahan then filed a memorandum regarding the admission of the King County record in

support of the Vosk Motion on November 2, 2010. On November 3, 2010, a hearing regarding the State's motion to continue was held and the Defendant did not make an appearance for the fifth consecutive time. Ms. Callahan appeared on Mr. Baldwin's behalf and a teleconference was scheduled for the next day. As a result of the November 4, 2010, teleconference, the State's previously-denied motion to continue was granted and the Vosk Motion hearing was set for December 13, 2010. When that hearing took place, Mr. Baldwin was not present and the Defendant's presence had been waived. The District Court entered its order denying the Defendant's Vosk Motion on January 20, 2011. Notice for a pre-trial hearing on February 27, 2011, was issued the next day.

On February 27, 2011, the Defendant was present with counsel. This was the first time the Defendant had made an appearance since May 24, 2010, and the first time Mr. Baldwin had been noted as present in the District Court docket since August 27, 2010. At the pre-trial hearing, at which a pro tem judge presided, defense counsel made an oral motion to dismiss based on an alleged lapse of the speedy trial period, objected to a setting outside of the speedy trial period, and indicated that a written motion would be filed. The District Court issued notice for a pre-trial hearing set on March 29, 2011. On March 29, 2011, the Defendant was present with counsel and a written motion to dismiss was filed based on an

alleged violation of the speedy trial period under CrRLJ 3.3. The District Court indicated during the hearing that a motion hearing and a jury trial would be set. On April 1, 2011, a motion hearing was set for April 21, 2011, a confirmation was set for May 11, 2011, and a jury trial was set for May 18, 2011. Notice was issued for all three of these hearings on April 4, 2011.

On April 21, 2011, the Defendant was present with counsel, where the motion hearing was reset and the Defendant's motion to waive his presence at that hearing was denied. Notice for a motion hearing set on May 5, 2011, was issued. The Defendant was present with counsel for the hearing of his motion to dismiss, where the District Court denied the motion and found that the Defendant's actions were a waiver of his right to a speedy trial so that his Vosk Motion could be decided and that the Defendant's repeated failures to appear in court caused his speedy trial period to recommence only when he finally appeared on February 27, 2011.

On May 9, 2011, the Defendant filed a Notice of Appeal. A confirmation hearing for the Defendant's upcoming jury trial took place on May 11, 2011, and the trial was confirmed. The Defendant filed his appeal with the Superior Court on May 12, 2011. On May 17, 2011, the parties filed an agreed order of continuance and an agreed order to stay the

case pending the appeal. The trial was cancelled. At no time was the Defendant placed into custody as a result of this case.

A RALJ appeal hearing was held on September 22, 2011. *See* State's Exhibit 2, p. 1, line 13. The Superior Court denied the appeal. *See* State's Exhibit 2, p. 3, lines 6-7. The Superior Court's conclusions of law from the RALJ appeal hearing have been provided as State's Exhibit 2. This appeal followed.

III. ARGUMENT

A. Standard of Review

Issues of statutory construction and interpretation are questions of law, reviewed *de novo*. *State v. O'Connor*, 155 Wn.2d 335, 343, 119 P.3d 806 (2005). Courts are to interpret court rules as though they were drafted by the legislature. *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993). Effect is to be given to the plain language of a court rule. Courts must read the entire rule, harmonize its provisions, while ensuring that portions are not rendered superfluous. *Id.*

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B. The Superior Court correctly ruled that the desire of the Defendant to litigate the Motion to Suppress prior to trial qualified as a circumstance not addressed by CrRLJ 3.3.

The Superior Court concluded that the circumstances in this case qualified as circumstances not addressed in CrRLJ 3.3, thereby eliminating the Defendant's claim to a rule-based speedy trial violation. This ruling should be affirmed.

CrRLJ 3.3(a)(4) states that “[i]f 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.” (Emphasis added). This rule does not require that a trial must first be set as a prerequisite to the rule's application, only that when it is set, it must be timely. In the case at hand, trial was set twice and the setting was timely in both instances. On October 6, 2009, the Defendant had his trial set for the following month, just before the expiration of his first speedy trial waiver on December 1, 2009. However, the Defendant then put in motion a series of events that delayed the pending trial, a trial that the District Court clearly sought to reset as evidenced by the District Court docket entries for that time period. *See* State's Exhibit 1. The Defendant appeared for confirmation on November 18, 2009, and filed a motion to

suppress along with another waiver through February 18, 2010. After a fifth continuance by the defense, and on the day his first motion was denied, the Defendant filed a third waiver through June 1, 2010. The Defendant then requested three more continuances until May 14, 2010, when defense counsel filed a motion without a memorandum indicating their intent to include the Defendant in the Vosk Motion so that a second suppression issue could be litigated prior to trial. The Defendant filed his fourth waiver of speedy trial. This one had an expiration date of September 1, 2010. The Defendant then failed to appear for the next three hearings. Defense counsel made their last appearance of 2010 on August 27, 2010, just four days before the Defendant's written waiver would expire. After specifically indicating that he had no objection to another continuance, almost certainly so that his motion to suppress might be successfully litigated, defense counsel and the Defendant then became absent from the courtroom for six months.

Memoranda and exhibits in support of the Vosk Motion continued to be filed on behalf of the Defendant through November 2, 2010. During the litigation of the motion, the State and the District Court made multiple attempts to bring the issue of speedy trial to the attention of all parties involved, and defense counsel appearing on the matter made oral representations that speedy trial would be waived. These unique

circumstances fit squarely within the language of CrRLJ 3.3(a)(4) because the remainder of the rule simply does not address the circumstances present in this case.

The Defendant, in claiming that CrRLJ 3.3(a)(4) does not cover the circumstances in this case, argues that the Superior Court's decision runs contrary to *State v. George*, 160 Wn.2d 727, 158 P.3d 1169 (2007), and the State's duty of due diligence with regards to bringing the defendant to trial within the speedy trial period. However, the Defendant's reliance on that case is misplaced. In *George*, the Supreme Court of Washington held that the State's duty to use due diligence when bringing a defendant to trial was subsumed into the new time-for-trial rule enacted in 2003 and was no longer a separate requirement that needed to be independently met. *George*, 160 Wn.2d at 738. The Defendant points to language in *George* indicating that the State's duty of due diligence still exists. *Id.* However, the very next line of the *George* opinion goes on to analyze and explain the change to CrRLJ 3.3(a)(4):

“...in refining the rule, the task force intended to embody the State's due diligence obligations in the *express* requirements of the rule itself. Thus, rather than filling a perceived gap in the time-for-trial rule, and broadening the category of cases subject to automatic dismissal with prejudice, the task force concluded that a court should assume that a defendant is not entitled to dismissal with prejudice unless he or she establishes a violation of the *expressed* rules or the constitutional right to a speedy trial.”

George, 160 Wn.2d at 738 (emphasis added). The intent to narrowly define those cases that warrant dismissal is further enumerated in CrRLJ 3.3(h), which states that “no case shall be dismissed for time-for-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.”

The Defendant claims that because the particular situation at hand is not expressly covered by CrRLJ 3.3, dismissal is warranted. Setting aside the fact that the language of CrRLJ(a)(4) and (h) *does* expressly apply to this case, the Defendant’s argument runs completely contrary to the intent expressed in those rules and in *George*. Both disallow dismissal unless expressly required by the rules. Furthermore, it is the duty of the Defendant to determine which express provision of the CrRLJ has been violated before he is entitled to dismissal with prejudice. *George*, 160 Wn.2d at 738. If we are to follow the *George* ruling that the CrRLJ should be applied *only* as expressly written, then the situation that the Defendant created, which is not addressed by the rule, demands application of CrRLJ 3.3(a)(4) and, therefore, affirmation of the Superior Court’s denial of the Defendant’s motion to dismiss.

The Defendant next relies on *State v. Wilks*, 85 Wn. App. 303, 932 P.2d 687 (1997), claiming that the decision from the Court of Appeals is similar to the case at hand and that the current set of circumstances

therefore do not fall under CrRLJ 3.3(a)(4). Yet, the Defendant has again applied a dated interpretation of CrRLJ 3.3 in support of his arguments. In *Wilks*, the defendant was charged with felonies and tried in Superior Court, where, by the day after arraignment, a trial date had been set in accordance with CrR 3.3(d)(1). *Wilks*, 85 Wn. App. at 304. Only a month after arraignment, the defendant's suppression motion was heard and denied, and the defendant began seeking discretionary review just a month after that. *Id.* By the time speedy trial expired in the third month, all of the parties were under the mistaken impression that the case had been automatically stayed. *Id.* The Court in *Wilks* went into a lengthy analysis of the applicable rules regarding the staying of a case, and determined that the situation expressly required dismissal. *Id.* at 308-09.

Neither the fact pattern nor the applicable court rule at issue in *Wilks* are analogous to this case. In the Defendant's case, as already described in detail, the circumstances involve an alleged expiration of speedy trial in District Court while the Defendant was attempting to litigate a complex motion that he clearly believed would be dispositive and end the need for having a trial at all. It was not a situation similar to the stay that was at issue in *Wilks* in that stays were one of the circumstances expressly covered by CrR and the RAP at the time. *Wilks*, 85 Wn. App. at 308. Additionally, when *Wilks* was decided, it addressed a

1991 version of the CrR (the Superior Court equivalent of CrRLJ), and the rule had yet to go through the four amendments it would take to get the language that is applicable to the case at hand. As discussed previously, prior to 2003, a duty of “due diligence” was being applied to the State when the rule did not expressly apply it. This is clearly evidenced by the court’s decision to refer to the State’s obligation under CrR 3.3 and to list the potential steps that the State could have taken in ensuring a speedy trial for the defendant. *Wilks*, 85 Wn. App. at 308-09. The 2003 amendment to CrR (and CrRLJ) changed all of this, making *Wilks* inapplicable. The circumstances in the current case are now covered by an express rule: a rule that covers unexpressed and unanticipated circumstances, which arise frequently in a District Court setting where the rules regarding the scheduling of trials are far more flexible than they are for Superior Court. *Compare* CrR 3.3(d)(1) *and* CrRLJ 3.3(d)(1).

- C. The Superior Court correctly ruled that the speedy trial commencement date reset because the Defendant did not appear at court hearings as contemplated by CrRLJ 3.3(a)(3)(iii).

As an alternate ground for its decision, the Superior Court concluded that the Defendant’s speedy trial date reset when he failed to appear at a status hearing. CrRLJ 3.3(c)(2)(ii) mandates the resetting of

the commencement date when a defendant fails “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.” An appearance is defined as the “defendant’s physical presence in the trial court,” and a physical appearance only satisfies the rule if “(A) the prosecutor was notified of the presence and (B) the presence is contemporaneously placed on the record under the cause number of the pending charge.” CrRLJ 3.3 (a)(3)(iii). The Superior Court concluded that on June 24, 2010, the Defendant did not “appear” for a status hearing, and the failure to appear served to reset the commencement date to the Defendant’s next appearance on February 27, 2011. Additionally, the District Court characterized all five hearings between June 18, 2010, and November 3, 2010 as either “status” or “motion to continue” hearings. RP ii. None of these was the June 25, 2010, Vosk Motion hearing that the Defendant’s appearance had been waived for, and the Defendant appeared at none of them as evidenced by the District Court docket. *See* State’s Exhibit 1. Without his presence being placed on the record, the Defendant did not “appear” as defined by CrRLJ 3.3 (a)(3)(iii), regardless of whether or not he was present in the courtroom. *George* explicitly states that “[a] defendant who negligently or even inadvertently fails to appear when required to do so forfeits the right to a trial within the statutory time-for-

trial period, even if the defendant has not deliberately or intentionally absconded.” 160 Wn.2d at 739.

The Defendant argues that he did not receive notice for the five hearings at which he failed to appear. However, he did have a combination of actual and constructive notice for at least the first four. For the June 18, 2010, status hearing, the Defendant’s counsel was present and therefore clearly had been given notice of the hearing date. *See* State’s Exhibit 1. For June 24, 2010, the hearing that the Superior Court specifically identified as being one that the Defendant failed to appear at, the defendants were the ones who had requested a continuance just two days prior, and only three days prior to the Vosk Motion hearing that the Defendant had so vehemently objected to the rescheduling of on June 18, 2010. RP 3, lines 18-21. LCrRLJ 3.3(C), a local court rule specifically applicable to Thurston County District Court, makes clear that requests for continuances shall require appearance in court by the party requesting the continuance. Further, all parties were immediately emailed by the District Court to notify them of the hearing to handle the Defendant’s motion to continue. For the August 27, 2010, hearing regarding the State’s motion to continue, the Defendant’s counsel made his last appearance for the 2010 calendar year. Since he appeared, he obviously had notice of that court date. Prior to the end of that hearing, all parties were informed on the

record of the next court date: September 24, 2010. RP 50, lines 11-16. While the Defendant may not have been mailed notice, his attorney and the attorneys who appeared for his attorney all had notice for the status and motion to continue hearings that took place on June 18, June 24, August 27, and September 24, 2010.

The Washington State Rules of Professional Conduct state that “a lawyer shall keep the client reasonably informed about the status of the matter.” RPC 1.4. Certainly, informing the Defendant that hearings had been scheduled for which his appearance had not been waived falls under the responsibility of keeping one’s client “reasonably informed.” Here, defense counsel at the very least inadvertently failed to follow the requirements of the rule needed to preserve the original speedy trial date. As a result, the commencement date reset, and there was no violation of CrRLJ. Thus, the Superior Court’s conclusion of law should be affirmed.

- D. The Defendant failed to uphold his duties related to ensuring himself speedy trial and, as a result, waived any speedy trial objections he might have had.

Throughout his brief, the Defendant attempts to place an outdated, currently non-existent duty on the State to *always* operate with due diligence in bringing him to trial, not just when expressly required to do so by the rules as described in *George*. All parties involved, including the

Court, certainly have some responsibility to see that the speedy trial period is observed and respected. In fact, CrRLJ 3.3(a) indicates that it “shall be the responsibility of the court to ensure a trial in accordance with [CrRLJ 3.3].” Yet, when it comes to the case at hand, the court rules and case law specifically place some of the burden on the Defendant in ensuring his own speedy trial. LCrRLJ 3.3(a) addresses continuances of court dates and notes that the court and both parties have the ability to request a continuance: “The defendant must file a waiver of speedy trial if the continuance has the possibility of impairing the court’s ability to schedule a trial within 60/90 days.” The Court of Appeals has confirmed this expectation of defense counsel, holding that they have a positive duty to raise speedy trial issues when action could still be taken to avoid violation of the speedy trial rule. *State v. Becerra*, 66 Wn. App. 202, 206, 831 P.2d 781 (1992).

In *Becerra*, the defendant’s trial was set for August 13, 1990, the last day before the speedy trial period expired. *Id.* at 203. The trial was continued so that another case could proceed. *Id.* On that day, a jury was selected but not sworn. *Id.* at 205. On August 14, 1990, the defendant moved for a dismissal based on a violation of the speedy trial rule. *Id.* The trial resumed on August 15, 1990. *Id.* The jury was sworn, and pretrial motions were considered. *Id.* The trial court denied the

defendant's motion to dismiss under the speedy trial rule because of the defendant's failure to object when the error could have been remedied. *Id.* The Court affirmed the lower court's ruling, stating that "by not objecting on August 13 when the trial was recessed until August 15, defense counsel waived any speedy trial objection. It was his responsibility to raise the issue when action could still be taken." *Id.* at 206. Thus, the Court held that the lack of an objection resulted in a constructive waiver of a speedy trial violation.

At the August 27, 2010, hearing to continue, where the Defendant's counsel was present, the District Court handled a motion by the State. This hearing took place just four days prior to the expiration of the Defendant's written speedy trial waiver¹, where a trial date had not been set due to the continued litigation of the Defendant's Vosk Motion. Defense counsel was on notice then that a trial would not occur within the four days left on the waiver. Additionally, August 27, 2010, was a Friday, leaving actually only two days left to potentially have trial. Yet, defense counsel did more than just say nothing, as was the case in *Becerra*. He specifically indicated that he had no objection to the continuance before becoming absent from court for six months. LCrRLJ 3.3(d) specifically

¹ Although, based on the Defendant's failures to appear in prior and subsequent hearings, speedy trial was actually tolling at the time and did not reset until the Defendant's first appearance on February 27, 2010.

puts the burden on a defendant to notice when there is *even a possibility* that the court's ability to schedule trial within the speedy trial period will be impaired, regardless of who requested the continuance. The rule also *mandates* that a defendant file a waiver of speedy trial under those circumstances. At four days prior, the error could have still been remedied, and so it was the Defendant's responsibility under *Becerra* to raise the issue. By not doing so, defense counsel waived any speedy trial objection. It was not until six months later, when the Defendant and defense counsel finally appeared in District Court on February 27, 2011, that defense counsel had the foresight to object to the setting of a trial date despite the fact that a date had not yet been set. Surely this was because he believed that, at least from his point of view, there was not a possibility that trial could be set within the speedy trial limits. Defense counsel should have and could have easily used the same foresight when it was more appropriate back on August 27, 2010. The Defendant constructively waived any objection to a speedy trial violation by failing in the duties proscribed to him under *Becerra* and LCrRLJ 3.3(d), and as such, the Defendant's appeal should be denied.

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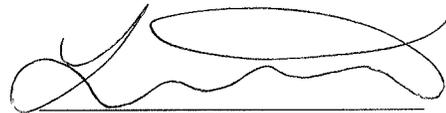
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IV. CONCLUSION

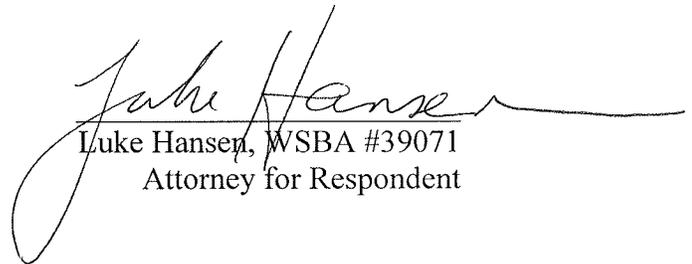
For the reasons set forth above, the State respectfully requests that the Court affirm the Superior Court's ruling.

Respectfully submitted this 7 day of October, 2012.

JON TUNHEIM
PROSECUTING ATTORNEY



Lindsey A. Millar, WSBA #9123683
Rule 9 Intern for Respondent



Luke Hansen, WSBA #39071
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of Cost Bill, on the date below as follows:

Electronically filed at Division II

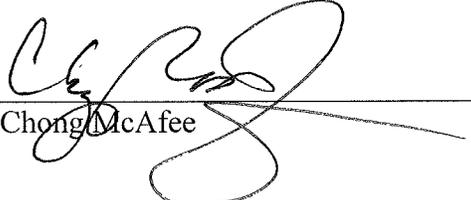
TO: DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND VIA US MAIL TO--

CHESTER BALDWIN, ATTORNEY FOR APPELLANT
CHET@CLB-OLYLAW.COM

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

Dated this 15th day of October, 2012, at Olympia, Washington.


Chong McAfee

State's Exhibit 1

D0030I Beginning of Docket

DD1000PI

09/27/12 17:04:34

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh: Pty: StID: _____

Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT Cln Sts:
DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S 05 09 2009 Received eTicket 9Y6075915 @ 02:04 AM by designated computer SYS
S 05 11 2009 Case Filed on 05/11/2009 CXA
S DEF 1 MOORE, JEFFREY SCOTT Added as Participant CXA
S OFF 1 ZELLER, RHONDA Added as Participant CXA
S ARR MAND Set For 05/11/2009 01:31 PM In Room 4 CXA

D0071I More records available.

DD1000PI

09/27/12 17:05:41

DD1000MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6075915 WSP CT Csh: Pty: StID:
 Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441
 Name: MOORE, JEFFREY SCOTT Cln Sts:
 DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S 05 11 2009 Case linked to electronic ticket 9Y6075915 CXA
 S Vehicle Linked to MOORE, JEFFREY SCOTT CXA
 S ATY 1 BALDWIN, CHESTER L III Added as Participant MGL
 S PTR Set for 06/11/2009 02:00 PM MGL
 S in Room 1 with Judge SAD MGL
 NOTICE OF APPEARANCE FILED BY CHESTER BALDWIN. MGL
 S ARR MAND: Held TMG
 S 05 13 2009 Notice Issued for PTR on 06/11/2009 02:00 PM BDG
 06 02 2009 ATY OFF CALLED: ADV ON NOTICE OF APPEARANCE FILED. MCB
 ADV ON CT TIME AND DATE. MCB
 06 11 2009 DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE SAD; DPA DAVIS. LMS
 AT ATD'S REQ, PTR TO RESET; NOTICE TO MAIL. CR1-PM LMS
 S PTR Set For 07/02/2009 01:30 PM In Room 2 BDG
 S PTR: Not Held, Hearing Canceled LMS

D0071I More records available.

DD1000PI

09/27/12 17:06:07

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh: Pty: StID:

Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S 06 11 2009 OTH MTN: Held LMS

S 06 12 2009 Notice Issued for PTR on 07/02/2009 01:30 PM BDG

07 02 2009 DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE SGM; DPA INTERN MILLER TMG
 AT ATD REQ PTR TO BE RESET; NOTICE TO BE MAILED. CR2-AM TMG
 DEFENDANT WAIVES SPEEDY TRIAL TO DECEMBER 1, 2009. BDG

S PTR Set For 08/27/2009 01:30 PM In Room 2 BDG
 000 BDG

S PTR: Not Held, Hearing Canceled TMG

S OTH MTN: Held TMG

S 07 08 2009 Notice Issued for PTR on 08/27/2009 01:30 PM MGL

S 08 27 2009 PTR Set for 10/06/2009 01:30 PM BDG

S in Room 1 with Judge SAD BDG
 DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE SGM; DPA INTERN MONU. LMS
 AT ATD'S REQ, PTR TO RESET; NOTICE TO MAIL. CR2-PM LMS

D0071I More records available.

DD1000PI

09/27/12 17:06:10

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

S	08 27 2009	PTR: Not Held, Hearing Canceled	LMS
S		OTH MTN: Held	LMS
S	08 28 2009	Notice Issued for PTR on 10/06/2009 01:30 PM	BDG
	10 06 2009	DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE SAD; DPA PENTTILA. JTR TO SET; NOTICE TO MAIL. ATD MAY FILE WRITTEN MOTION. CR1-PM	LMS LMS LMS
S		OTH CNFRM Set For 11/19/2009 01:30 PM In Room 2	BDG
S		JTR Set For 11/30/2009 09:00 AM In Room 3	BDG
S		PTR: Held	LMS
S	10 09 2009	Notice Issued for OTH CNFRM on 11/19/2009 01:30 PM	MGL
S		Notice Issued for JTR on 11/30/2009 09:00 AM	MGL
	10 13 2009	CRIMINAL SUBPOENA FILED BY DPA PENTILLA (JTR) WITNESS LIST FILED BY DPA PENTILLA DEMAND FOR DISCOVERY FILED BY DPA PENTILLA	BDG BDG BDG

D0071I More records available.

DD1000PI

09/27/12 17:06:14

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh: Pty: StID:

Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

10 16 2009	MOTION AND DECLARATION FOR ORDER OF CONTINUANCE FILED BY	BDG
	ATD BALDWIN	BDG
10 22 2009	REC'D REQST FOR CNFRM HRNG TO BE RESET FROM ATY BALDWIN	BDG
S 10 26 2009	OTH CNFRM Rescheduled to 11/18/2009 10:00 AM	BDG
S	in Room 1 with Judge SAD	BDG
S 10 27 2009	Notice Issued for OTH CNFRM on 11/18/2009 10:00 AM	MGL
11 18 2009	DEFENDANT WAIVES SPEEDY TRIAL TO FEBRUARY 18, 2010.	BDG
	MOTION TO SUPPRESS FILED BY ATD BALDWIN	BDG
	MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION TO SUPPRESS	BDG
	FILED BY ATD BALDWIN	BDG
	ORDER OF SUPPRESSION FILED BY ATD BALDWIN	BDG
	DEFT PRES W/ATY BALDWIN FOR CNFRM; JUDGE PRO TEM CROWE; DPA	TMG
	MONU. AT ATD REQ CNFRM/JTR TO BE RESET; NOTICE TO BE MAILED.	TMG
	CR1-AM	TMG

D0071I More records available.

DD1000PI

09/27/12 17:06:17

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh: Pty: StID:

Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT Cln Sts:
DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S	11	18	2009	OTH CNFRM: Not Held, Defendant Contd	TMG
S	11	19	2009	JTR on 11/30/2009 09:00 AM in Room 3 Canceled	BDG
S				OTH MTN Set For 12/16/2009 03:00 PM In Room 2	BDG
S				Notice Issued for OTH MTN on 12/16/2009 03:00 PM	MGL
	12	11	2009	CRIMINAL SUBPOENA FILED BY DPA PENTILLA (JTR)	BDG
	12	14	2009	STATE OF WASHINGTON'S RESPONSE TO DEFENSE MOTIONS TO SUPPRESS FILED BY DPA PENTILLA	BDG
S	12	16	2009	OTH MTN Set for 01/13/2010 03:00 PM	BDG
S				in Room 1 with Judge SAD	BDG
S				Notice Issued for OTH MTN on 01/13/2010 03:00 PM	BDG
				DEFT NOT PRES FOR MTN HRG; ATY BALDWIN PRES; JUDGE SGM; DPA	TMG
				DAVIS. AT ATD REQ MTN TO BE RESET; NOTICE TO BE MAILED.	TMG
				CR3-PM	TMG
S				OTH MTN: Held	TMG

D0071I More records available.

DD1000PI

09/27/12 17:06:21

DD1000MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6075915 WSP CT Csh: Pty: StID:
 Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441
 Name: MOORE, JEFFREY SCOTT Cln Sts:
 DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

12 21 2009 CRIMINAL SUBPOENA FILED BY DPA PENTILLA (MTN) BDG
 01 13 2010 DEFT PRES WITH ATTY BALDWIN FOR MTN; JUDGE SAD; DPA INTERN MGL
 MONU. PLTF'S WITNESS: TROOPER ZELLER. ATD'S MOTION DENIED. MGL
 MATTER TO BE RESET FOR PTR; NOTICE TO BE MAILED. CR3-PM MGL
 DEFENDANT WAIVES SPEEDY TRIAL TO 6-1-20.. MGL
 S OTH MTN: Held MGL
 S PTR Set For 03/09/2010 01:30 PM In Room 2 BDG
 S 01 14 2010 Notice Issued for PTR on 03/09/2010 01:30 PM BDG
 03 09 2010 DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE MBB; DPA INTERN MONU. TMG
 AT ATD REQ PTR TO BE RESET; NOTICE TO BE MAILED. PTR REL TMG
 CONDS: NAD, NAE, REFUSE TO TAKE BAC WHEN DIRECTED, NLI, NCR TMG
 CR2-PM TMG
 S PTR Set for 04/08/2010 02:00 PM BDG
 S in Room 1 with Judge SAD BDG

D0071I More records available.

DD1000PI

09/27/12 17:06:25

DD1000MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6075915 WSP CT Csh: Pty: StID:
 Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441
 Name: MOORE, JEFFREY SCOTT Cln Sts:
 DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S 03 09 2010 PTR: Not Held, Hearing Canceled TMG
 S OTH MTN: Held TMG
 S 03 10 2010 Notice Issued for PTR on 04/08/2010 02:00 PM MGL
 04 08 2010 DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE MBB; DPA JONES. AT TMG
 ATD REQ PTR TO BE RESET 3 WKS; NOTICE TO MAIL. DEFT REMINDED TMG
 ALL PRIOR IMPOSED CONDS REMAIN. CR1-PM TMG
 S PTR Set for 05/06/2010 01:45 PM BDG
 S in Room 1 with Judge SAD BDG
 S PTR: Not Held, Hearing Canceled TMG
 S OTH MTN: Held TMG
 S 04 09 2010 Notice Issued for PTR on 05/06/2010 01:45 PM MGL
 05 06 2010 DEFT NOT PRES FOR PTR; ATY BALDWIN; JUDGE MBB; DPA ERIKSON- LMS
 MULDREW. FTA NOTED. PTR TO RESET AT ATD'S REQ, NOTICE TO LMS
 MAIL. CR1-PM LMS

D0071I More records available.

DD1000PI

09/27/12 17:06:28

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT
DUI

Cln Sts:

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

S	05 06 2010	PTR Set for 05/24/2010 10:00 AM	BDG
S		in Room 1 with Judge SAD	BDG
S		PTR: Not Held, Hearing Canceled	LMS
S		OTH MTN: Held	LMS
S	05 07 2010	Notice Issued for PTR on 05/24/2010 10:00 AM	MGL
	05 14 2010	NOTICE OF MOTION AND MOTION TO SUPPRESS BREATH TEST FILED BY ATD BALDWIN	BDG BDG
	05 24 2010	DEFENDANT WAIVES SPEEDY TRIAL TO SEPTEMBER 1, 2010.	BDG
S		OTH MTN Set For 06/25/2010 09:00 AM In Room 3	BDG
		DEFT PRES WITH ATTY BALDWIN FOR PTR; JUDGE PRO TEM HAAKE; DPA ERIKSON-MULDREW. MTN HRG TO BE SET; NOTICE TO BE MAILED CR1-AM	MGL MGL MGL
S		PTR: Not Held, Hearing Canceled	MGL
S		OTH MTN: Held	MGL

D0071I More records available.

DD1000PI

09/27/12 17:06:31

DD1000MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6075915 WSP CT Csh: Pty: StID:
 Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441
 Name: MOORE, JEFFREY SCOTT Cln Sts:
 DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

S 05 24 2010 Notice Issued for OTH MTN on 06/25/2010 09:00 AM MGL
 06 02 2010 WAIVER OF APPEARANCE FILED BY ATD BALDWIN BDG
 06 07 2010 MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS FILED BY BDG
 ATD CALLAHAN BDG
 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

D0071I More records available.

DD1000PI

09/27/12 17:06:33

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh: Pty: StID:

Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

06 18 2010 DEFT NOT PRES FOR STATUS HRG; COUNSEL PRES FOR ATY CALLAHAN; BDG
 JUDGE SGM; DPA PENTTILA. 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
 FROM 6-25-10 FOR THE 'STATE PART' OF MOTION TO BE HEARD. BDG
 DPA'S ORAL MOTION FOR COURT TO SET TIME LIMITS ON MOTION NOT BDG
 RULED ON TODAY - JUDGE WILL TAKE UNDER ADVISEMENT. CR2-AM BDG
 (BDG COPIED DOCKET FROM CLRK LMS ORIGINAL ENTRY 8Y6054725) BDG

06 21 2010 STATE'S RESPONSE BRIEF ON WHETHER 'UNCERTAINTY' CALCULATIONS BDG
 ARE FUNDATIONAL FILED BY DPA INTRN HORLACHER , DPA PENTTILA BDG
 AND LCA SVOBODA BDG
 ORIGINAL FILED IN 8Y6054725 WSP GUNDERSON BDG

06 22 2010 EMAIL SENT TO ALL PARTIES RE: QUICK SET STATUS HEARING BDG
 RE: MOTION TO CONTINUE FILED BY ATD CALLAHAN BDG

D0071I More records available.

DD1000PI

09/27/12 17:06:35

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: _____ StID: _____

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

06 22 2010 NOTE FOR HEARING; MOTION, DECLARATION AND (PROPOSED) ORDER OF CONTINUANCE FILED BY ATD CALLAHAN BDG
 NOTICE OF ASSOCIATION OF COUNSEL AND WITNESS LIST FOR HEARING ON MOTION TO SUPPRESS FILED BY ATD CALLAHAN BDG
 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; DPA PENTILLA AND LCA SVOBODA. DEFENSE MOTION TO CONTINUE ADDRESSED, DPA/LCA OBJECT TO CONTINUANCE. JUDGE SGM GRANTS MOTION TO CONTINUE. TENTATIVE DATE PICKED, HEARING TO BE RESET. PARTIES WARNED ABOUT SPEEDY TRIAL ISSUES ON PENDING 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
 08 25 2010 STATE OF WASHINGTON & CITEY OF LACEY EXHIBITS / INDEX OF BDG

D0071I More records available.

DD1000PI

09/27/12 17:06:37

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT
DUI

Cln Sts:

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

08 25 2010 EXHIBITS FILED BY DPA PENTILLA *FILED IN 8Y6054725 WSP ONLY* BDG

08 26 2010 MOTION AND AFFIDAVIT FOR CONTINUANCE FILED BY DPA PENTILLA BDG

08 27 2010 DEFT NOT PRES FOR MTN HRG; ATY BALDWIN PRES; JUDGE SGM; DPA MGL
PENTTILA. DPA PENTILLA'S MOTION TO CONTINUE THE MOTION MGL
HEARING GRANTED; NO OBJECTION FROM ATTORNEY BALDWIN. STATUS MGL
HRG SET FOR 9-24-10; NO NOTICE. CR3-AM MGL

S OTH STATS Set For 09/24/2010 09:00 AM In Room 3 MGL

09 23 2010 COPY OF KING CO TRANSCRIPTS FILED BY ATD CALLAHAN - BDG
ORIGINAL COPY FILED IN GUNDERSON (8Y6054725 WSP) BDG

09 24 2010 DEFT NOT PRES FOR STATUS HRG; ATY CALLAHAN PRES FOR ATY MGL
BALDWIN; JUDGE SGM; DPA PENTTILA. MOTION HRG TO BE SET; NO MGL
NOTICE. LIST OF WITNESSES AND EXHIBITS TO BE PROVIDED BY ALL MGL
PARTIES NO LATER THAN 7 DAYS PRIOR TO THE MOTION HRG. CR3-AM MGL

S OTH MTN Set For 11/05/2010 09:00 AM In Room 10 MGL

D0071I More records available.

DD1000PI

09/27/12 17:06:40

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT
DUI

Cln Sts:

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

S	09 24 2010	OTH STATS: Held	MGL
	09 30 2010	COPY OF DVD OF KING CO UNCERTAINTY MOTION EXHIBITS FILED BY 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.	BDG
		PLAINTIFF'S LIST OF WITNESSES FILED BY ATTY PENTTILA.	AET
	11 01 2010	STATE'S SUPPLEMENTAL RESPONSE BRIEF OPPOSING SUPPRESSION OF BREATH TEST RESULT EVIDENCE (AND CD) FILED BY DPA PENTTILA.	AET
	11 02 2010	MEMORANDUM CONCERNING ADMISSION OF KING COUNTY RECORD FOR PRETRIAL SUPPRESSION HEARING FILED BY ATTY CALLAHAN.	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	AET

D0071I More records available.

DD1000PI

09/27/12 17:06:43

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: _____ StID: _____

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

11 03 2010 SUPPLEMENTAL DECLARATIONS OF THEIR 2 WITNESSES NOTED. ALL AET
PARTIES AGREE TO HAVE A TELECONFERENCE ON 11/4/10 AT NOON. AET
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 NOR ATY BALDWIN PRES FOR MTN; JUDGE SGM; DPA WHEELER; LMS
LCA SVOBODA; ATY GARCIA MOSES FOR STATE; ATY TED VOSK FOR LMS
DEFENSE. ARGUEMENTS HEARD. NO RULING MADE TODAY. JUDGE SGM LMS

D0071I More records available.

DD1000PI

09/27/12 17:06:46

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

	12	13	2010	TO ISSUE OPINION BY 1-10-11. HRG FOR RULING ON MOTION TO SET; NOTICE TO MAIL. CR2-AM AND PM	LMS
				OTH MTN: Held	LMS
S	01	20	2011	ORDER DENYING MOTION TO SUPPRESS FILED BY JUDGE S MEYER - ORIGINAL COPY OF ORDER FILED IN GUNDERSON 8Y6054725 WSP ORDER SENT TO INTERESTED PARTIES VIA EMAIL BY CLRK THIS DATE	BDG
S	01	21	2011	PTR Set For 02/17/2011 02:15 PM In Room 2	BDG
S				Notice Issued for PTR on 02/17/2011 02:15 PM	MGL
S	02	17	2011	PTR Set For 03/29/2011 03:00 PM In Room 1	BDG
S				Notice Issued for PTR on 03/29/2011 03:00 PM	BDG
				DEFT PRES W/ ATY BALDWIN FOR PTR; PRO TEM CROWE; DPA JONES	CXA
				ATD MAKES ORAL MOTION TO DISMISS BASED ON SPEEDY TRIAL LAPSE; NO ACTION TAKEN AT THIS TIME. ATD TO FILE WRITTEN MOTION. ATD OBJECTS TO SETTING OUTSIDE OF SPEEDY TRIAL.	CXA

D0071I More records available.

DD1000PI

09/27/12 17:06:49

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

	02 17 2011	PTR TO BE SET; NOTICE TO BE MAILED. CR2-PM	CXA
S		PTR: Not Held, Hearing Canceled	CXA
S		OTH MTN: Held	CXA
	03 29 2011	DEFT PRES W/ATY BALDWIN FOR PTR; JUDGE SGM; DPA EVANS.	BKS
		MTN TO DISMISS FILED BY ATD. MTN HRNG/JTR TO BE SET; NOTICE	BKS
		TO BE MAILED. CR1-PM	BKS
S		PTR: Held	BKS
S	04 01 2011	OTH MTN Set For 04/21/2011 03:00 PM In Room 1	BDG
S		OTH CNFRM Set For 05/11/2011 10:00 AM In Room 1	BDG
S		JTR Set For 05/18/2011 09:00 AM In Room 3	BDG
S	04 04 2011	Notice Issued for OTH MTN on 04/21/2011 03:00 PM	MGL
S		Notice Issued for OTH CNFRM on 05/11/2011 10:00 AM	MGL
S		Notice Issued for JTR on 05/18/2011 09:00 AM	MGL
	04 06 2011	CRIMINAL SUBPOENA FILED BY DPA HANSEN (MTN)	BDG

D0071I More records available.

DD1000PI

09/27/12 17:06:53

DD1000MI Case Docket Inquiry (CDK) THURSTON COUNTY DIST PUB
 Case: 9Y6075915 WSP CT Csh: Pty: StID:
 Name: MOORE, JEFFREY SCOTT NmCd: IN 74B 68441
 Name: MOORE, JEFFREY SCOTT Cln Sts:
 DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic On appeal N

04 06 2011 CRIMINAL SUBPOENA FILED BY DPA HANSEN (JTR) BDG
 04 18 2011 STATE'S RESPONSE TO DEFENSE MOTION FILED BY DPA HANSEN BDG
 04 21 2011 DEFT PRES W/ATY BALDWIN FOR MTN; JUDGE MBB; DPA EVANS. BKS
 MTN TO CONTINUE GRANATED. MTN TO BE RESET; NOTICE TO BE BKS
 MAILED. ALL PRIOR IMPOSED CONDS REMAIN. ATD MOTION TO WAIVE BKS
 DEFT APPEARANCE DENIED. OFFICER PRES WAIVED. CR1-AM BKS
 S OTH MTN: Held BKS
 S 04 27 2011 OTH MTN Set For 05/05/2011 03:00 PM In Room 1 BDG
 S 04 28 2011 Notice Issued for OTH MTN on 05/05/2011 03:00 PM MGL
 05 05 2011 DEFT PRES W/ ATY BALDWIN FOR MOTION; JUDGE SGM; DPA HANSEN CXA
 JUDGE DENIES ATD MOTION TO DISMISS FOR EXPIRATION OF CXA
 SPEEDY TRIAL. CNFRM/JTR TO REMAIN AS SET. CR1-PM CXA
 S OTH MTN: Held CXA

D0071I More records available.

DD1000PI

09/27/12 17:06:56

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: _____ StID: _____

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT

Cln Sts:

DUI

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

S	05	06	2011	11126100090	Miscellaneous Payment Received	20.00	TLB
S					for COPY/TAPE FEES		TLB
S	05	09	2011	11129100757	Miscellaneous Payment Received	220.00	TLB
S					for APP FILING FEE		TLB
					NOTICE OF APPEAL TO SUPERIOR COURT FILED BY ATY BALDWIN. TO		MGL
					REMAIN SET FOR 5-11-11--THIS APPEAL ISSUE TO BE ADDRESSED AT		MGL
					THE CNFRM HRG.		MGL
S	05	10	2011	11129100757	APP FILING FEE Adjusted	-220.00	MKS
S					Authorized by: MKS		MKS
S					PYR 1 JACK W. HANEMANN, P.S. Added as Participant		MKS
S					11130100728 Appearance Bail Posted for DEF 1	220.00	MKS
S					Posted by: JACK W. HANEMANN, P.S.		MKS
					ABOVE REVERSAL MADE AND \$ POSTED AS NO FILING FEE FOR CRIM.		MKS
					CASE. \$ TO BE REFUNDED. ABOVE \$20 FOR CD COPY REMAINS.		MKS

D0071I More records available.

DD1000PI

09/27/12 17:06:59

DD1000MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: 9Y6075915 WSP CT Csh:

Pty: StID:

Name: MOORE, JEFFREY SCOTT

NmCd: IN 74B 68441

Name: MOORE, JEFFREY SCOTT
DUI

Cln Sts:

Note:

Case: 9Y6075915 WSP CT Criminal Traffic

On appeal

N

S	05	10	2011	Appearance Bail Marked Payable	220.00	MKS
S				11130101203 Miscellaneous Payment Received	40.00	TLB
S				for PREP APP RECORD		TLB
S	05	11	2011	OTH CNFRM: Held		MGL
				DEFT PRES WITH ATTY BALDWIN FOR CNFRM; JUDGE MBB; DPA INTERN		MGL
				J SMITH. JTR CONFIRMED. CR1-AM		MGL
	05	12	2011	SUPERIOR COURT CASE # 11 1 00753 1.		MGL
				APPEAL FILED IN SUPERIOR COURT. COPIES FORWARDED TO DPA, ATD,		MGL
				AND DEFT.		MGL
	05	17	2011	MOTION AND DECLARATION FOR ORDER OF CONTINUANCE FILED BY ATD		BDG
				BALDWIN		BDG
				AGREED ORDER OF CONTINUANCE FILED BY ATD BALDWIN / DPA HANSEN		BDG
				AND GRANTED BY JUDGE MBB ON RECORD THIS DATE		BDG
				AGREED ORDER FOR STAY FILED BY ATD BALDWIN / DPA HANSEN		BDG

D0031I End of Docket

DD1000PI

09/27/12 17:07:04

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S 12 14 2011 REV Set For 01/18/2012 10:00 AM In Room 1 BDG
 S Notice Issued for REV on 01/18/2012 10:00 AM BDG
 12 19 2011 RECVD FAXED REQST FOR COPIES OF ANY/ALL SPEEDY TRIAL WAIVERS CMW
 FRM ATTY JACK HANEMANN OFC CMW
 S 12 20 2011 11354100446 Miscellaneous Payment Received 7.50 CAU
 S for COPY/TAPE FEES CAU
 REQSTED RECS PICKED UP CMW
 01 12 2012 PER DOUG BALES IN SUPERIOR COURT, THIS CASE SHOULD HAVE NOT MGL
 BEEN REMANDED TO DISTRICT COURT. IT HAS GONE ON TO THE COURT MGL
 OF APPEALS. HRG FOR 1-18 STRICKEN. MR BALES WILL NOTIFY THE MGL
 PARTIES THAT THE DISTRICT COURT HRG HAS BEEN STRICKEN. MGL
 S REV on 01/18/2012 10:00 AM in Room 1 Canceled MGL
 01 13 2012 COPY OF LETTER MAILED TO APPEAL PARTIES FILED WITH DISTRICT MGL
 COURT. MGL

State's Exhibit 2

3
FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2011 NOV -3 PM 4: 10

BETTY J. GOULD, CLERK

ORIGINAL

EX PARTE

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

CASE NOS 11-1-01453-7 11-1-00753-1

STATE OF WASHINGTON,
Plaintiffs/Respondents,

vs.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW, AND ORDER

JEFFREY S. MOORE,
MARIO GADEA-RIVAS,
Defendants/Petitioners.

A RALJ hearing was held on September 22, 2011, to consider the appeal by the Defendants in the above-entitled cause numbers; the Defendants, Jeffrey Moore and Mario Gadea-Rivas, appeared in person and through their attorney, Chester Baldwin; the Plaintiff, State of Washington, appeared by its counsel, Terra Evans, Special Deputy Prosecuting Attorney. The Court considered the trial court docket, the written motions and memoranda of both parties, and the arguments of both parties. Based on the above, the Court now enters the following:

I. FINDINGS OF FACT

1. The setting of both trials was delayed at the requests of the Defendants because they wished to have an issue litigated prior to trial. As a result, the Defendants' attorneys orally represented to the trial court that speedy trial would not be a problem, and would be waived for the time period necessary for the issue to be litigated.
2. The trial court never set a firm date for trial.

- 1 3. The presence of the Defendants was waived for motion hearings, but not for status hearings.
2 4. There is no evidence that the Defendants attended the status hearing held on June 24, 2010. The
3 State was not notified of their presence and their presence was not put on the record.

4 **II. CONCLUSIONS OF LAW**

- 5 1. Under CrRLJ 3.3(d), if a court sets a trial date outside of the period for speedy trial, a defendant
6 must make a motion objecting to the trial date and move to have a trial date set within the time
7 for speedy trial within ten days, or the objection is waived. Here, no trial date was set, so the
8 Defendants were not required to object.
9 2. CrRLJ 3.3(a)(4) states that:

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

14 Here, the setting of the trials was delayed because the Defendants wished to have an issue
15 litigated prior to trial. This qualifies as a "circumstances not addressed in [CrRLJ 3.3]" and the
16 case should not be dismissed. The Defendants' constitutional rights to a speedy trial were not
17 violated.

- 18 3. CrRLJ 3.3(a)(3)(iii) states that:

19 'Appearance' means the defendant's physical presence in the trial court. Such
20 presence constitutes appearance only if (A) the prosecutor was notified of the
21 presence and (B) the presence is contemporaneously placed on the record under
22 the cause number of the pending charge.

23 Under the definition of "appearance" contained in CrRLJ 3.3(a)(3)(iii), the Defendants failed to
24 appear at a status hearing on June 24, 2010, because, regardless of whether or not they were
25 physically present in the courtroom, (1) the State was not notified of their presence, and (2) their
26 presence was not placed on the record. As a result, the speedy trial clock reset at their next court
27 appearance and there was not a violation of the speedy trial rule.

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4. The appearance by the Defendants' attorneys at the status hearing on June 24, 2010, constituted waiver of any notice issues. Furthermore, the Defendants' attorneys had an ethical duty under the Washington Rules of Professional Conduct to notify their clients of the hearing so that they could attend.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' appeal be denied for the aforementioned reasons.

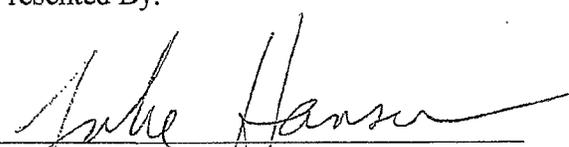
DATED this 3 day of November, 2011.



HONORABLE JUDGE GARY R. TABOR

Approved as to Form, Notice of Presentment Waived:

Presented By:



LUKE HANSEN, WSBA #39071
DEPUTY PROSECUTING ATTORNEY

Approved telephonically

CHESTER BALDWIN, WSBA #39789
ATTORNEY FOR DEFENDANTS

THURSTON COUNTY PROSECUTOR

October 01, 2012 - 3:47 PM

Transmittal Letter

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Case Name: STATE V. JEFFREY S. MOORE

Court of Appeals Case Number: 42707-9

Is this a Personal Restraint Petition? Yes No

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- Statement of Arrangements
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- Answer/Reply to Motion: _____
- Brief: Respondent's
- Statement of Additional Authorities
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- Letter
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- Other: _____

Comments:

No Comments were entered.

Sender Name: Chong H McAfee - Email: mcafeec@co.thurston.wa.us

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