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Division II
State of Washington
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No. 53178-0-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

V.

MARK GELINAS, RESPONDENT

Appeal from the Superior Court of Mason County

No. 18-2-00590-23

BRIEF OF APPELLANT (Amended)

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A. INTRODUCTION

The defendant-respondent in this case is Mark Gelin. This case was initiated when a police officer issued Gelin a citation for driving under the influence and summoned him into the Mason County District Court. This appeal seeks to answer the question of whether on the facts of this case the district court had the authority to issue an arrest warrant for Gelin when he failed to appear at the trial readiness hearing.

B. ASSIGNMENT OF ERROR AND ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Assignment of Error: The superior court erred when, pursuant to a writ of certiorari from the district court, it ruled that the district court erred when it issued an arrest warrant for the defendant when the defendant failed to appear at the pretrial readiness hearing as ordered by the court.

Issues pertaining to assignments of error: *Whether a limited jurisdiction court can order a defendant to personally appear at a pretrial readiness hearing and whether the court may issue an arrest warrant if the defendant fails to appear at the hearing.*

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C. FACTS AND STATEMENT OF THE CASE

The underlying facts of the criminal charge are unimportant to the issue for review and are, therefore, omitted, except where necessary to develop the State's arguments, below.

D. ARGUMENT

During the course of the district court criminal litigation, Gelinias appeared in court and signed an order that set a trial "Readiness Hearing" for August 31, 2018. CP 82. At the top of the section of the order that specified the court date, the following language appears: "You must appear at all scheduled hearings or a warrant will issue for your arrest." *Id.* Although his attorney appeared, Gelinias failed to appear at the readiness hearing, and the trial court issued a warrant for his arrest. CP 55, 56, 58, 148-54. Gelinias sought review by writ of certiorari, which the superior court granted, holding that the district court's issuance of the arrest warrant was error because, the superior court reasoned, the readiness hearing was not a "necessary" hearing. CP 59-60, 155-58.

The superior court's reasoning was partially derived from its interpretation of CrRLJ 2.5, which states:

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The court may order the issuance of a bench warrant for the arrest of any defendant who has failed to appear before the court, either in person or by a lawyer, in answer to a citation and notice, or an order of the court, upon which the defendant has promised in writing to appear, or of which the defendant has been served with or otherwise received notice to appear, if the sentence for the offense charged may include confinement in jail.

CrRLJ 2.5. Title 2 of the rules is applicable to “Procedures Prior to Arrest and Other Special Proceedings[.]” One question that arises in the instant case is whether Gelinias had a right to appear through counsel at the readiness hearing rather than to appear in person. A separate rule, CrRLJ 4.1(g), provides that “[e]xcept as otherwise provided by statute or by local rule, a lawyer may enter an appearance or a plea of not guilty on behalf of a client...” in response to citation and notice and, thereby, waive arraignment and waive the defendant’s appearance at an arraignment hearing.

Thus, when read in context it appears that the language of CrRLJ 2.5 is permissive, rather than restrictive. CrRLJ 2.5 specifies two circumstances when the trial court may issue an arrest warrant for the defendant, but it does not restrict the trial court from issuing an arrest warrant in circumstances other than the two permissive circumstances

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described in the rule. Those two permissive circumstances are: 1) when the defendant fails to appear either in person or by a lawyer in answer to a citation and notice; and, 2) when a defendant fails to appear in response to any other order of the court if the defendant has received notice to appear.

CrRLJ 3.4(a) and (c) are also at issue in this case. Tile 3 of the rules is applicable to “Rights of Defendants[.]” CrRLJ 3.4(a) states as follows:

When Necessary. The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

CrRLJ 3.4(a). In the case of *State v. Branstetter*, 85 Wn. App. 123, 935 P.2d 620 (1997), the Court of Appeals considered the identical superior court rule and found that “[b]ecause CrR 3.4(a) is clearly intended to identify only those proceedings at which a defendant’s presence is always required under the constitution, it does not list certain proceedings which, depending on the circumstances, may require the defendant’s presence.” *Id.* at 128, n.1. The *Branstetter* court further noted as an example that “pretrial motions to suppress involving factual issues would appear to

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require the defendant's presence" and that "subsection (a) is not an exhaustive list of the proceedings at which a defendant's presence is required." *Id.* Thus, the *Branstetter* court noted the distinction between a *necessary* appearance and a *required* appearance.

In turn, CrRLJ 3.4(c) states as follows:

Defendant Not Present. If in any case the defendant is not present when his or her personal attendance is *necessary*, the court *may* order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

CrRLJ 3.4(c) (emphasis added). Thus, CrRLJ 3.4(c) is permissive rather than restrictive. It permits the trial court to issue a warrant for a defendant who fails to appear at any hearing where the defendant's personal presence is, absent a waiver, constitutionally necessary. But the rule does not prohibit the trial court from issuing a warrant in other circumstances, such as where the defendant fails to appear at a hearing where his or her personal appearance is otherwise required.

Additionally, Mason County has local rules that require the defendant's personal appearance at all hearings. RCW 3.30.080 and CrRLJ 1.7 empower courts of limited jurisdiction to enact local rules provided that the local rules do not conflict with the general rules enacted

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by the Supreme Court. Mason County has enacted local rule 4.5.1 which requires defendants to be personally present at all pretrial hearings and states that “[f]ailure to appear for the pretrial hearing may result in the issuance of a warrant of arrest and/or forfeiture of any bail or bond.” *Id.* at (b). And, Mason County local rule 4.11 requires defendants to appear at confirmation hearings and states that if a defendant fails to appear, a warrant of arrest may be ordered. These local rules do not conflict with the general rules. (Copies of the local rules are attached as exhibits).

Also, “[t]rial courts have the inherent authority to control and manage their calendars, proceedings, and parties.” *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012). *See also, Bus. Servs. of Am. II, Inc. v. WaferTech, LLC*, 174 Wn.2d 304, 313, 274 P.3d 1025 (2012); *In re Matter of Firestorm 1991*, 129 Wn.2d 130, 139, 916 P.2d 411 (1996); *State v. Knapstad*, 107 Wn.2d 346, 353, 729 P.2d 48, 53 (1986). The State contends that in addition to the requirements of the local rules, the district court also has the inherent authority to require Gelinis to appear in person at the confirmation or jury readiness hearing.

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In summary, even if Gelinás's personal appearance at the readiness hearing was not *necessary* under CrRLJ 3.4(c), his personal appearance was nevertheless required under Mason County LCrRLJ 4.5.1 and 4.11. Still more, his appearance was also required by the trial court's order setting the hearing. The trial court's order is enforceable under the trial court's inherent authority to enforce the procedures in its own courtroom. *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012); *State v. Branstetter*, 85 Wn. App. 123, 935 P.2d 620 (1997). Accordingly, the State asks this Court to reverse the Mason County Superior Court's Memorandum Opinion on Writ of Certiorari and to affirm the trial court's issuance of an arrest warrant on the facts of this case.

D. CONCLUSION

Irrespective of whether the readiness hearing at which Gelinás failed to appear was a *necessary* hearing, as the term is defined by CrRLJ 3.4(a), the readiness hearing was nevertheless a hearing at which Gelinás was *required* to personally appear pursuant to local rules 4.5.1 and 4.11 and by direct order of the trial court. Therefore, the trial court did not err

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when it ordered an arrest warrant when Gelinas failed to appear at the readiness hearing.

DATED: October 1, 2019.

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Wash. Mason Dist. Ct. LCrRLJ 4.11

Rules current through September 1, 2018

WA - Washington Local, State & Federal Court Rules > LOCAL RULES OF THE SUPERIOR COURTS AND DISTRICT COURTS > LOCAL RULES OF THE MASON COUNTY DISTRICT COURT > LOCAL CRIMINAL RULES (LCrRLJ)

LCrRLJ 4.11. Jury Trial Confirmation--Notification of Court.

(a) All cases set for a jury trial will also be set for a Confirmation Hearing prior to the jury trial date. The prosecutor, defense counsel and the defendant shall attend the confirmation hearing. If the defendant fails to appear for the confirmation hearing, a warrant for the arrest of the defendant may issue, and the court may continue or strike any scheduled hearing or trial date. If the prosecutor or defense counsel fails to appear at the pre-trial hearing, the court may impose terms and any other sanctions authorized by law, and the court may continue or strike any scheduled hearing or trial date. At the Confirmation Hearing all parties are expected to verify readiness to proceed to trial, or to propose an alternate disposition. When a case assigned for jury trial is settled or will not be tried by the jury for any reason, notice of that fact shall be given immediately to the court. The court may impose terms including requiring payment of the actual costs of the jury in the event a case settles after the Confirmation Hearing.

History

Adopted effective September 1, 2015

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Wash. Mason Dist. Ct. LCrRLJ 4.5.1

Rules current through September 1, 2018

WA - Washington Local, State & Federal Court Rules > LOCAL RULES OF THE SUPERIOR COURTS AND DISTRICT COURTS > LOCAL RULES OF THE MASON COUNTY DISTRICT COURT > LOCAL CRIMINAL RULES (LCrRLJ)

LCrRLJ 4.5.1. Pre-Trial Procedures.

(a)Duty of Parties. It is the duty of the parties and their counsel to move expeditiously to seek resolution of these matters prior to trial. It is the strong policy of this court that the Rules of Professional Conduct require the completion of investigation, discovery, and plea negotiations prior to trial setting.

(b)Pre-Trial Hearings. The Court shall set all out of custody cases where a plea of not guilty has been entered for a pretrial hearing approximately 45 days after the date of first appearance, all in-custody cases will be set within approximately 14 days after arraignment. Said hearing shall provide an opportunity for execution of plea negotiations, resolution of discovery issues and trial setting. All defendants must be present, with counsel, where applicable. Failure to appear for the pretrial hearing may result in the issuance of a warrant of arrest and/or forfeiture of any bail or bond.

All parties are encouraged to complete negotiations prior to the pre-trial hearing as there is very little time available during court hearings. All amendments to the charges and any pretrial motions except a motion in limine should be made in writing and filed with the court at, or prior to, the pretrial hearing.

Following this hearing, if a pretrial disposition of any charge does not occur, an order shall be entered setting forth the following: trial date; trial confirmation date; date of hearing on pretrial motions; and the date by which witness lists must be exchanged and filed. The court may set a discovery schedule.

(c)Notice of 3.5 and 3.6 Motions. All demands for a CrRLJ 3.5 hearing on admissibility of statements or confessions must be made in writing and filed no later than the pretrial hearing. The Court will set hearing dates for motions filed as part of that proceeding. See LCrRLJ 3.6 for suppression motions.

(d)Imposition of Jury Costs. In order to efficiently schedule the calling of jurors, to avoid unnecessary disruptions of the jurors lives, and to further avoid the waste of public funds, the court will not, unless good cause is shown, permit the waiver of a jury trial nor the entry of a plea of guilty in a matter scheduled for jury trial after the date of the trial confirmation hearing unless the jury costs are imposed against the moving party.

(e)Trial Confirmation Hearing. See LCrRLJ 4.11.

History

Adopted effective September 1, 2015; amended September 1, 2017

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