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Court of Appeals
Division II
State of Washington
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No. 53383-9-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

ARTHUR S. DURONE,

Respondent.

Appeal from the Superior Court of Washington for Lewis County
Case No. 18-1-01044-21

Appellant's Reply Brief

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I. ARGUMENT

A. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE STATE'S MOTION FOR RECONSIDERATION FOR BEING UNTIMELY FILED.

Durone contends the State does not have the right to appeal the denial of the trial court's motion for reconsideration and the motion for reconsideration was not timely. Durone's reading of RAP 2.2(b)(1) is overly narrow. Durone also ignores the purpose of a motion for reconsideration, seemingly asserting a party should file a motion without the benefit of the trial court's required written findings and conclusions or order. Such a practice at a minimum wastes both the parties and the court's time, and potentially could result in the party making arguments that are not required or supported by the findings and conclusions.

Contrary to Durone's assertion, the State could not file a motion for reconsideration without the trial court first entering the findings of fact and conclusion of law. The trial court was required to enter findings of fact and conclusion of law after the suppression hearing. CrR 3.6(b). If the State were to appeal the trial court's ruling, a step a motion for reconsideration attempts to avoid, the State is required in their notice of appeal to "designate the decision or part of the decision the party wants reviewed" and they should also attach a

copy of the decision. RAP 5.2(a). A party is also required, when designating Clerk's papers, to include written orders the party is seeking review of that were not attached to the notice of appeal and findings of fact and conclusions of law. RAP 9.6(a)(1)(D)(F).

A motion for reconsideration is just that, it is a motion filed by a party requesting the judge, or adjudicating authority, reconsider its decision. In a matter, such as a CrR 3.6 hearing, where a trial court is required to enter findings of fact and conclusions of law, best practice is to file a motion for reconsideration after the trial court enters the requisite findings and conclusions that would potentially become the basis of an appeal. In this matter, the oral ruling only stated the trial court's legal basis for its decision, it did not include the facts it found that supported its legal conclusions. RP 23-25; CP 39-34. The written conclusions of law entered by the trial court down break with precision the trial court's legal reasoning for its suppression of the State's evidence. RP 23-25; CP 39-43.

CR 59 states "[a] motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision." The State's motion for reconsideration specifically requested reconsideration of the trial court's conclusions of law, as set forth in the findings of fact and conclusions of law

entered on May 22nd. CP 39-43, 50-62. In the motion for reconsideration, filed May 23rd, State requested the trial court reconsider conclusion of law 2.2, 2.4, 2.5, and 2.6. CP 54-59. No other reasonable judge would have ruled that the State's motion for reconsideration was timely filed one day after the findings of fact and conclusion of law were entered. The trial court's denial of the State's motion for reconsideration for being untimely was an abuse of discretion. *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002). (internal quotations and citation omitted).

The State can appeal the trial court's denial of its motion for reconsideration. RAP 1.2(a)(c); RAP 2.2(b)(a). The Rules of Appellate Procedure allow the State to appeal, in a criminal case, "[a] decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c)," as long as it does not violate double jeopardy. RAP 2.2(b)(1). The denial of a motion for reconsideration effectively discontinues Durone's case. This Court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c). RAP 1.2(c).

Therefore, even if a motion for reconsideration does not squarely fall under RAP 2.2(b)(1), this Court should liberally interpret the rule to promote and facilitate a decision on the case on its merits. RAP 1.2(a).

The State has the right to appeal the trial court's erroneous denial of its motion for reconsideration. The trial court abused its discretion when it ruled the State's motion for reconsideration was untimely. This Court should reverse the trial court and remand for further proceedings.

II. CONCLUSION

For the reasons argued in the State's Opening Brief and this Reply Brief this court should reverse the trial court's ruling that the warrant lacked particularity and was overboard. This Court should reverse the trial court's suppression of evidence. This Court should also find the State can appeal a denial of a motion for reconsideration and the trial court abused its discretion when it denied the State's motion for reconsideration. This Court should remand Durone's matter back to the trial court to allow the State to reinstate the prosecution with its evidence.

RESPECTFULLY submitted this 24th day of April, 2020.

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