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Division II
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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

MARY THEMLA WALKER,

Respondent.

Appeal from the Superior Court of Washington for Lewis County
Case No. 19-1-00312-21

Appellant's Opening Brief

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I. ASSIGNMENTS OF ERROR

3. The trial court erred when it dismissed Walker's case with prejudice for a violation of the time for trial rule, CrR 3.3.
4. The trial court erred when it denied the State's motion for reconsideration.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Did the trial court err when it concluded dismissal with prejudice was the proper remedy when it set Walker's trial date outside the 90 day expiration allowed for by CrR 3.3 and Walker filed a written objection within 10 days of the trial setting, but after the time for trial had expired?
- B. Did Walker's attorney have a duty to protect her right to speedy trial, and therefore should have informed the trial court at the time of the trial setting that the trial date was beyond the expiration of Walker's time for trial?
- C. Did the trial court abuse its discretion when it denied the State's motion for reconsideration?

III. STATEMENT OF THE CASE

The Lewis County Prosecuting Attorney's Office filed an information alleging Walker committed one count of Assault of a Child in the Third Degree. CP 1-2. The information was filed on May 1, 2019. *Id.* The charge stemmed from an incident on November 6, 2017, when Walker spanked a four-year old child she was babysitting, striking the child with enough force to leave bruising. CP 1, 3.

Walker originally faced a gross misdemeanor assault charge from the November 2017 incident in Centralia Municipal Court. CP 11, 14-15. Centralia Municipal dismissed the matter at the end of August 2018 to allow for filing of charges in Superior Court. CP 15.

Walker was summonsed into Lewis County Superior Court for a preliminary appearance on May 17, 2019. CP 5. Walker appeared for the preliminary appearance, counsel was appointed, and the case set for arraignment on May 30th. RP (5/17/19) 2-4. Walker appeared with her counsel, David Arcuri, for the arraignment hearing, pleaded not guilty, and trial dates were set. RP (5/30/19) 2-3. The trial court stated the speedy trial expiration was August 28th and the State requested trial be set for the week of August 19th. *Id.* at 3.

On June 6th, Walker's trial counsel filed an objection, pursuant to CrR 3.3(d)(3), to the trial date. CP 16. There was an accompanying motion and declaration in support of dismissal of Walker's case for failing to bring Walker to trial prior to the expiration of her right to a speedy trial pursuant to CrR 3.3. CP 10-13. The State responded. CP 19-21. The trial court heard argument from the parties, found for the defendant, and dismissed Walker's case with prejudice. RP (6/26/19); CP 23.

The State filed a motion for reconsideration and a brief in support of the motion. CP 23-32. The trial court denied the State's motion for reconsideration without a hearing. CP 33. The State timely appeals the trial court's order granting the motion to dismiss with prejudice and the denial of the motion for reconsideration. CP 34-36.¹

The State will further supplement the facts in the argument section below.

IV. ARGUMENT

A. THE TRIAL COURT ERRED WHEN IT GRANTED WALKER'S MOTION TO DISMISS FOR FAILURE TO ADHERE TO THE TIME FOR TRIAL REQUIREMENTS SET FORTH IN CrR 3.3.

The trial court erroneously dismissed the State's case with prejudice after determining CrR 3.3 was not complied with. The impossibility of setting the trial within limitations of CrR 3.3 once Walker filed an objection to the trial date was sufficient justification to deny Walker's motion to dismiss. Further, Walker's counsel had a responsibility to the inform the trial court at the time of trial setting that the trial date was outside of Walker's speedy trial. The trial court

¹ When the State filed its notice of appeal it attached both the order of dismissal and the order denying reconsideration. It has been brought to the attention of the Lewis County Clerk's Office that part of the document is missing from the file and the undersigned deputy was informed the matter would be fixed.

abused its discretion when it denied the State's motion for reconsideration. This Court should reverse the trial court and remand the matter to allow the State to prosecute Walker.

1. Standard Of Review.

Alleged violations of the speedy trial rule are reviewed de novo. *State v. Kenyon.*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009).

2. The Trial Court Erred When It Granted Walker's Motion To Dismiss The Case With Prejudice As A Sanction For Violations Of CrR 3.3.

The impetus behind the enactment of the time for trial rule, CrR 3.3, was the protection of a "defendant's constitutional right to speedy trial." *State v. Mack*, 89 Wn.2d 788, 791-92, 576 P.2d 44 (1978) (citations omitted). CrR 3.3, originally known as "Speedy Trial," has evolved since its inception as a court rule in 1973, when it superseded several statutes.² The rule had a minor revision in 1976, but it was two years later the rule underwent significant retooling. In 1978, CrR 3.3 was renamed Time for Trial, and a provision was added which stated,

A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days of receive the notice from the court, move that the court set a trial within those time

² The court rule can be found in the print copy of the Washington Reports: 82 Wn.2d 1127-29 (1973). CrR 3.3 as it was first drafted, then modified in 1976, and again in 1978 are attached as Appendix A for convenience.

limits. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such date is not within the time limits prescribed.

CrR 3.3(d)(1) (1978 version). The 10 day deadline to object to a trial date that is believed to be set outside the time limits prescribed in CrR 3.3 has remained in the rule throughout the various amendments to this day. CrR 3.3(d)(3). Today's version of the court rule states:

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

CrR 3.3(d).

There is no dispute in this case that Walker filed a written objection, per CrR 3.3(d) within 10 days of the trial setting date. CP 9, 16-17. Walker's trial was set on May 30, 2019, and the objection was filed seven days later, on June 6, 2019. *Id.* The dispute is not adherence to the procedure of CrR 3.3(d) on behalf of Walker. The dispute is the impossibility of the trial court to be able to avail Walker to the remedy sought through CrR 3.3(d) and Walker's counsel's

silence during the trial setting. The trial court's failure to take these two factors into account led to an erroneous ruling which is contrary to nearly four decades of precedent.

a. The allowance of ten days to object, pursuant to CrR 3.3(d)(3), is inapplicable to matters set with fewer than ten days of speedy trial left.

The time for trial rule has, since its inception, sanctioned the failure to adhere to strict compliance with a dismissal with prejudice. CrR 3.3(h); *State v. White*, 94 Wn.2d 498, 503, 617 P.2d 998 (1980). Yet, there are times dismissal is not warranted, such as when a tardy motion objecting to the time for trial has been filed. *State v. Austin*, 59 Wn. App. 186, 199-200; 796 P.2d 746 (1990). Similar to Walker's matter, Austin's case began in district court, some time elapsed (17 days), and the matter ultimately was tried in Superior Court. *Austin*, 59 Wn. App. at 198-99. In *Austin*, the trial court, under a mistaken calculation set trial on what would be the 61st day, July 14th, rather than the 60th day, July 13th, allowed for trial. *Id.* at 199. Austin waited until 4:15 p.m. on July 12th to file the notice of objection to the time for trial. *Id.* at 200. The Court found that filing the notice at such a time was effectively filing it after the time for trial had expired. *Id.*

The Court held the trial court correctly ruled Austin had waived his speedy trial objection due to the untimely objection. *Id.* "We hold

that CrR 3.3(f)(2), which allows 10 days for any party objecting the resetting of a trial date to move for a new trial date, does not apply to a trial setting procedure which occurs fewer than 10 days before expiration of the speedy trial period.” *Id.* The Court further held, “In such event, the defense must notify the prosecutor and the court of its speedy trial objection is sufficient time for the trial to commence within the proper speedy trial time.” *Id.*

Walker’s trial was set on May 30, 2019, when there was only one day of speedy trial left. CP 1, 9, 11-12. Walker’s attorney, Mr. Arcuri, was present during the setting of the trial dates, acknowledged the dates, and signed the trial setting form. RP (5/30/19) 2-3; CP 9. The trial court set the trial for August 19th, well outside the May 31st speedy trial expiration. RP (5/30/19) 3; CP 9, 11-12. Walker did not alert the trial court until after her speedy trial time had expired that she was objecting to the time for trial pursuant to CrR 3.3(d)(3), filing a written objection and docket notice on June 6, 2019. CP 16-17.

The trial court erred, in its ruling, stating “that since the objection was made within the 10 days, that right to object was not lost.” RP (6/26/19) 15. The trial court attributed fault to the State for waiting too long to file the matter, thereby making it not possible to

try within the limitations of speedy trial.³ *Id.* The trial court further stated, “The argument that, well, since Mr. Arcuri could have objected earlier but didn’t doesn’t violate the rule.” *Id.* While, the trial court is correct, CrR 3.3(d)(3) does state a party has 10 days, the interpretation of that rule by the courts has been a party cannot wait until speedy trial has expired to assert their objection. *Austin*, 59 Wn. App. at 200.

Mr. Arcuri was required, due to the short trial setting in relation to Walker’s speedy trial right, to inform the court and the prosecutor of an objection with sufficient time to remedy the improper setting. The purpose of CrR 3.3(d)(3) is to notify the court that a party believes there is an error in the setting of the trial date, it is outside the allowable time, and to move the trial within the proper limits. The trial court incorrectly found that Walker did not have an obligation to bring the matter to the trial court’s attention immediately. Further, the 10 day rule was inapplicable to Walker’s case due to the trial being set with fewer than 10 days before the expiration of speedy trial. *Austin*, 59 Wn. App. at 200. The trial court’s dismissal of Walker’s case with prejudice for violating CrR 3.3 was error.⁴

³ The trial court ignored that it was the court that chose the May 30, 2019 date for Walker’s arraignment, 13 days after her preliminary appearance. RP (5/17/19) 3.

⁴ The trial does not in its dismissal order, or in its oral ruling, reference CrR 3.3(h), but it is assumed given the trial court’s statements and the order of dismissal that

b. Defense counsel has a duty to protect their client's speedy trial rights; therefore, counsel has a responsibility to inform the trial court if they are aware at the time of the trial setting that the date the court has chosen for trial is outside of the defendant's speedy trial.

While it is the trial court's responsibility to ensure a defendant is tried in accordance to CrR 3.3, this responsibility does not abdicate defense counsel's duty to protect their client's speedy trial rights. CrR 3.3(a)(1); *State v. Malone*, 72 Wn. App. 429, 433-34, 864 P.2d 990 (1994). This responsibility has been required by the Supreme Court and the Appellate Courts in Washington for the last 39 years. An attorney cannot sit back, at the time the trial court sets the trial date with knowledge the date has been set outside the allowable time for defendant's speedy trial, and simply do nothing until it is too late. *State v. White*, 94 Wn.2d at 502-03; *Malone*, 72 Wn. App. At 433-35.

In *White* the Supreme Court affirmed the Court of Appeals reversal of a conviction for violation of CrR 3.3. *White*, 94 Wn.2d 498. The Court discussed how *White's* case would be different if they had any indication *White's* attorney was complicit in setting the date outside of the time trial. *Id.* at 503.

While counsel may protest that his duty to his client forbade him advising the court of its mistake at the time

the trial court dismissed the case pursuant to CrR 3.3(h). See RP (6/26/19) 14-16; CP 22.

the trial date was fixed, we would disagree...Had we any indication counsel was in any way attempting to mislead the court or, in this instance, that he had recognized the court had fixed an erroneous date and remained silent, our view would be different.

Id.

In *Malone*, the defendant was originally charged in district court, 26 days of speedy trial elapsed, the case was dismissed, and charges were later filed in Superior Court. *Malone*, 72 Wn. App. at 431-32. During the trial setting, the deputy prosecutor, for reasons unknown, did not inform the trial court that the date set for trial was beyond the expiration of speedy trial. *Id.* at 432. Approximately one month later, Malone's attorney moved, pursuant to CrR 3.3, to dismiss the case for violation of the time for trial rule. *Id.* The record is silent as to when Malone's attorney learned that the charge had originally been prosecuted in district court. *Id.* The State argued waiver, as Malone's counsel did not object within 10 days, per the rule. *Id.* The trial court agreed with the prosecutor and denied the motion to dismiss. *Id.*

The Court of Appeals noted, while it is the responsibility of the trial court to set a trial date in accordance with CrR 3.3, "defense counsel has a duty to protect a client's speedy trial rights." *Malone*, 72 Wn. App. at 433-34. When a court is determining if an objection

tendered on behalf of a client asserting a speedy trial violation is proper, the court inquires when the attorney first learned of the lapse. *Id.* at. 434. The trial court's inquiry of defense counsel is significant for two reasons. *Id.* "First, if defense counsel knew of the speedy trial violation at the time of the trial setting," pursuant to CrR 3.3(d)(3), the attorney has "a duty to move for a proper trial date within 10 days to avoid waiver." *Id.* "Second, if defense counsel learned of the speedy trial violation at any point *before* the speedy trial period expired," the attorney has "a duty to raise the issue *before* the period expired to avoid waiver." *Id.* (emphasis original).

Mr. Arcuri knew at the time of the trial setting how many days were left of speedy trial. RP (6/30/19) 8-9, 11-12. During the motion to dismiss Mr. Arcuri made it clear he had no intention of protecting his client's right to a speedy trial: "If a trial date is set outside allowed by this rule -- it was, and let's make clear that when I showed up on May 30th, I have no obligation and it would be against my client's best interests to point out the failing of their speedy trial obligations." *Id.* at 9. Mr. Arcuri then points out that he did not file his written objection sooner, because the State could have cured the issue by invoking the cure period. *Id.* 9-10. Mr. Arcuri then states:

None of that stuff counsel for the state is arguing applies, because my client didn't lose her right to

object. That's what I'm doing right now. And the mere fact that they can't cure it doesn't mean that I don't get to object. It just means they can't cure it, they can't use the cure period. There's no other way to save this case.

Id. at 11. Mr. Arcuri then tells the trial court that the court rules allow him to wait and use the rules effectively, that is what he did, which leaves the trial court no option but to dismiss Walker's case with prejudice. *Id.* at 12.

The actions of Walker's counsel is the type of the behavior directly discussed and disfavored in *White* and *Malone*. The trial court erred by refusing to apply waiver due to Walker's counsel's admission that he knew, on the date it was set, that the trial date was outside speedy trial and did nothing to remedy the situation until speedy trial had expired. The trial court's erroneous ruling demands reversal and remand by this Court to allow the State to reinstate the prosecution of Walker.

3. The Trial Court Erred When It Failed To Grant The State's Motion For Reconsideration.

The State filed a timely motion for reconsideration and brief in support of the motion for reconsideration of the trial court's granting of Walker's motion to dismiss the case with prejudice for violation of CrR 3.3. CP 23-32. The trial court denied the State's motion without argument by a written order. CP 33. This Court should reverse the

trial court's errors, and remand the matter back to the trial court to allow the State to reinstate the prosecution of Walker.

Motions for reconsideration are reviewed by this Court for abuse of discretion. *West v. Dep't of Licensing*, 182 Wn. App. 500, 331 P.3d 72 (2014).

The State filed a motion for reconsideration of the trial court's erroneous ruling dismissing Walker's case with prejudice. CP 23-32. The State's argument was similar to the argument above, including citing to *Austin* and *Malone*. CP 26-32. The State outlined how a tardy filing of a time for trial motion waives the objection, citing to *Austin*, 59 Wn. App. 186. CP 28-29. The State also raised a new ground, based upon the statements of Mr. Arcuri during the motion to dismiss hearing, that he intentionally delayed filing the objection and motion, citing to *Malone*, 72 Wn. App. 429.⁵ CP 29-32. The trial court summarily denied the State's motion without explanation beyond it had reviewed the record and the file. CP 33. The trial court's denial of the State's motion for reconsideration was manifestly unreasonable because it ignores the precedent and refused to acknowledge the additional ground for denial of Walker's

⁵ The State also cited to *State v. Carson*, 128 Wn.2d 805, 912 1016 (1996) in its motion for reconsideration brief in this section.

motion to dismiss. This Court should reverse the trial court's ruling, remand Walker's matter back to the trial court, and allow the State to proceed with the prosecution of this case.

V. CONCLUSION

The trial court erroneously dismissed Walker's case with prejudice for violation of CrR 3.3. Walker's failure to object to the trial date until after her speedy trial had expired constituted waiver. While it was the court's responsibility to set the trial date within the prescribed time limits, Walker's attorney knew the trial date was outside her allowed speedy trial time and did nothing to protect her speedy trial rights until after expiration. Walker's attorney's failure to assert her right to a speedy trial constitutes waiver. Further, the trial court abused its discretion when, after being presented the argument above in a motion for reconsideration, failed to reverse its ruling. Therefore, this Court should reverse the trial court and remand the

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matter back to the trial court to allow the State to reinstate its prosecution of Walker.

RESPECTFULLY submitted this 9th day of January, 2020.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'JL Meyer', written over a horizontal line.

by: _____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

CONTENTS OF APPENDIX

CrR 3.3 (1973) (print version, 82 Wn.2d 1125-27).

CrR 3.3 (1976) (print version, 87 Wn.2d 1102-03)

CrR 3.3 (1978) (print version, 90 Wn.2d 1150-53)

law enforcement officer having probable cause to believe that a defendant released pending trial for a felony is about to leave the state or that he has violated a condition of such release, imposed pursuant to section (c), under circumstances rendering the securing of a warrant impracticable, may arrest the defendant and take him forthwith before the court.

(h) Release After Verdict. A defendant (1) who is charged with a capital offense, or (2) who has been found guilty of a felony and is either awaiting sentence or has filed an appeal, shall be released pursuant to this rule, unless the court finds that the defendant may flee the state or pose a substantial danger to another or to the community. If such a risk of flight or danger exists, the defendant may be ordered detained.

(i) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(j) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(k) Defendant Discharged on Recognizance or Bail—Absence—Forfeiture. If the defendant has been discharged on his own recognizance, on bail, or has deposited money instead thereof, and does not appear when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Comment: Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035

RULE 3.3
SPEEDY TRIAL

(a) Responsibility of Court. It shall be the responsibility

of the court to ensure to each person charged with crime a speedy trial in accordance with the provisions of this rule.

(b) Time Limit. A criminal charge shall be brought to trial within 90 days following the preliminary appearance.

(c) Priority Over Civil Cases. Criminal trials shall take precedence over civil. A defendant unable to obtain pretrial release shall have priority and the charge shall be brought to trial within 60 days following the preliminary appearance.

(d) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) All proceedings relating to the competency of the defendant to stand trial.

(2) Preliminary proceedings and trial on another charge.

(3) Delay granted by the court pursuant to section (e).

(4) Delay in justice court resulting from a stipulated continuance made of record.

(5) Delay resulting from the absence of the defendant.

(6) The time between the dismissal and the refiling of the same charge.

(e) Continuances. Continuances or other delays may be granted as follows:

(1) On motion of the defendant on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the defendant expressly consents to a continuance or delay and good cause is shown; or

(ii) the state's evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or

(iii) required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(3) The court on its own motion may continue the case when required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.

(f) Dismissal With Prejudice. A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice.

Comment: Supersedes RCW 10.40.020; RCW 10.43.010; RCW 10.46.010

RULE 3.4

PRESENCE OF THE DEFENDANT

(a) 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.

(b) Effect of Voluntary Absence. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

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

Comment: Supersedes RCW 10.01.080; RCW 10.46.120, .130; RCW 10.64.020, .030

RULE 3.5

CONFESSION PROCEDURE

(a) Requirement for and Time of Hearing. When a state-

AMENDMENT OF
SUPERIOR COURT CRIMINAL RULE 3.3

[By an order dated May 3, 1976, the Supreme Court amended CrR 3.3, to read as set forth below, effective May 21, 1976.]

RULE 3.3
SPEEDY TRIAL

(a) **Responsibility of Court.** It shall be the responsibility of the court to insure to each person charged with crime a speedy trial in accordance with the provisions of this rule.

(b) **Time Limit.** A criminal charge shall be brought to trial within 90 days following the preliminary appearance.

(c) **Priority Over Civil Cases.** Criminal trials shall take precedence over civil. A defendant unable to obtain pretrial release shall have priority and the charge shall be brought to trial within 60 days following the preliminary appearance.

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for trial:

(1) All proceedings relating to the competency of the defendant to stand trial.

(2) Preliminary proceedings and trial on another charge.

(3) Delay granted by the court pursuant to section (e).

(4) Delay in justice court resulting from a stipulated continuance made of record.

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(1) On motion of the defendant on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the defendant expressly consents to a continuance or delay and good cause is shown; or

(ii) the state's evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or

(iii) required in the due administration of justice and the

defendant will not be substantially prejudiced in the presentation of his defense.

(3) The court on its own motion may continue the case when required in the due administration of justice the defendant will not be substantially prejudiced in the presentation of his defense.

(f) **Absence of Defendant.** If and in event the defendant is absent and thereby unavailable for trial or for any pretrial proceeding at which his presence is required, the time period specified in section (b) or (c) shall start to accrue anew upon defendant's being actually present in the county wherein the criminal charge is pending, and his presence appearing upon the record of the court.

(g) **Dismissal With Prejudice.** A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice.

AMENDMENT OF ADMISSION TO PRACTICE RULE 3

[By an order dated June 4, 1976, the Supreme Court amended APR 3(a), to read as set forth below, effective July 1, 1976.]

(a) **Definition.** An "attorney applicant" means an attorney who (1) has been in the active full time practice of law in a state or territory of the United States or a foreign country for a period of five years or more, or (2) has held a judicial position at least equal to a judge of the superior court of the State of Washington for a period of five years or more in a state or territory of the United States or a foreign country, or (3) has held a full-time teaching position in an approved law school for a period of five years or more.

RULE 3.3

SPEEDY TRIAL TIME FOR TRIAL

(a) **Responsibility of Court.** It shall be the responsibility of the court to insure to each person charged with crime a speedy trial in accordance with the provisions of this rule.

(b) **Time Limits.** A criminal charge shall be brought to trial within 90 days following the preliminary appearance:

(1) The time limits set forth in subsections (b)(2) and (b)(3) shall commence to run from the date: (a) of the order binding the defendant over to the superior court following a preliminary hearing pursuant to JCrR 2.03 or (b) of the tenth day following the defendant's arrest in the event a preliminary hearing is not held or the charge is initially filed in the superior court.

(2) A defendant unable to obtain pretrial release from custody shall be brought to trial within 60 days of the applicable event set forth in subsection (b)(1).

(3) A defendant who is released from custody shall be brought to trial within 90 days of the applicable event set forth in subsection (b)(1).

(4) A defendant who is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, shall be tried within 90 days or 60 days as provided in subsections (b)(2) or (b)(3) of this rule, from the date of the mistrial, entry of the order granting a new trial, or the receipt of the mandate of the appellate court.

(5) A defendant who is released pursuant to Rule 3.2 and whose release is subsequently revoked by order of the court shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in custody, and in no event later than 90 days from the date of the defendant's arraignment in superior court unless the time period is otherwise extended pursuant to this rule.

(6) When a change of venue has been granted pursuant to Rule 5.2, the receiving court shall bring the change to trial as prescribed by this rule, or within 30 days following

the date the receiving court receives the file on the case, whichever is greater.

(7) In any case where the prosecuting attorney or judge becomes disqualified from participating in the case, the case shall be brought to trial as prescribed by this rule, or within 30 days following the date of disqualification, whichever is greater.

(8) In any case where the defendant fails to make any appearance required pursuant to Rule 3.2 and Rule 3.4 and a warrant is issued for the defendant's arrest pursuant to Rule 3.4(c), the case shall be brought to trial as prescribed by this rule, or within 30 days following his reappearance before the court that issued the warrant, whichever is greater.

(c) Priority Precedence Over Civil Cases. Criminal trials shall take precedence over civil. A defendant unable to obtain pretrial release shall have priority and the charge shall be brought to trial within 60 days following the preliminary appearance:

(d) Setting of Trial Date; Notice to Parties.

(1) The court shall, within 10 days of the defendant's arraignment in superior court, set a date for trial which is within the time limits prescribed by this rule, and notify all parties and their counsel of the date set. The notice shall set forth the date of the defendant's arraignment in court on the charge to be tried and the number of days which will elapse before the trial date. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days of receiving the notice from the court, move that the court set a trial within those time limits. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such date is not within the time limits prescribed by this rule.

(2) When the court determines that a period shall be excluded in computing the time for trial pursuant to section (e), the court shall set a new date for trial and notify the parties and their counsel of the date set as provided in

subsection (d)(1). A party who objects to the date set on the ground that it is not within the time limits prescribed by this rule must, within 10 days of receiving the notice from the court, move that the court set a trial date within those time limits. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such a date is not within the time limits prescribed by this rule.

~~(d)~~**(e) Excluded Periods.** The following periods shall be excluded in computing the time for trial:

(1) All proceedings relating to the competency of the defendant to stand trial.

(2) Preliminary proceedings and trial on another charge.

(3) Delay granted by the court pursuant to section ~~(e)~~(f).

~~(4) Delay in justice court resulting from a stipulated continuance made of record.~~

~~(5)~~(4) The time between the dismissal and the defendant's arraignment in superior court following the refile of the same charge.

(5) Delay resulting from the granting of a stay by an appellate court.

~~(e)~~**(f) Continuances.** Continuances or other delays may be granted as follows:

~~(1) On motion of the defendant on a showing of good cause:~~

(1) Upon written agreement of the parties which must be personally signed by the defendant or all defendants and must be approved by the court.

~~(2) On motion of the prosecuting attorney if:~~

~~(i) the defendant expressly consents to a continuance or delay and good cause is shown; or~~

~~(ii) the state's evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or~~

~~(iii) required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense.~~

~~(3)~~(2) On motion of the state or ~~The~~ court on its own motion or on the motion of a party the court may continue the case when required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of his defense. The court must state its reasons therefor.

(g) Extension of Time for Trial. The court may extend the time in which a trial must be held for no more than 5 days when, because of unavoidable and unforeseen circumstances beyond the control of the court or the parties, the trial has not begun on the date set, even if the time for trial has expired, unless the defendant will be substantially prejudiced in the presentation of his defense. The court must state its reasons therefor.

(f)(h) Absence of Defendant. If and in event the defendant is absent and thereby unavailable for trial or for any pretrial proceeding at which his presence is required, the time period specified in section (b) ~~or (c)~~ shall start to accrue anew upon defendant's being actually present in the county wherein the criminal charge is pending, and his presence appearing upon the record of the court.

(g)(i) Dismissal With Prejudice. A criminal charge not brought to trial as required by this rule shall be dismissed with prejudice.

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

January 10, 2020 - 8:47 AM

Transmittal Information

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Appellate Court Case Title: State of Washington, Appellant v. Mary T. Walker, Respondent
Superior Court Case Number: 19-1-00312-4

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