

FILED
Court of Appeals
Division II
State of Washington
3/30/2020 3:59 PM

No. 53646-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Appellant,

v.

MARY THELMA WALKER,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

BRIEF OF RESPONDENT

MAUREEN M. CYR
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ISSUE 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT..... 5

The trial court did not err in ruling that Walker’s objection was timely and her right to a speedy trial was violated 5

1. The trial court must strictly comply with the speedy trial rule in order to safeguard the accused’s fundamental right to a speedy trial 6

2. Under the plain language of the speedy trial rule, Walker’s objection was timely because she filed her objection within 10 days after the trial date was set 8

3. The court did not err in dismissing the charge with prejudice and denying the State’s motion to reconsider 13

D. CONCLUSION..... 14

TABLE OF AUTHORITIES

Cases

Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)..... 11

State v. Austin, 59 Wn. App. 186, 796 P.2d 746 (1990) 11

State v. Carson, 128 Wn.2d 805, 912 P.2d 1016 (1996) 12, 13

State v. Chavez-Romero, 170 Wn. App. 568, 285 P.3d 195 (2012)..... 8, 10, 12

State v. Chhom, 162 Wn.2d 451, 173 P.3d 234 (2007)..... 7

State v. Farnsworth, 133 Wn. App. 1, 130 P.3d 389 (2006) 7, 9

State v. Hatt, 11 Wn. App.2d 113, 452 P.3d 577 (2019)..... 6, 10

State v. Kenyon, 167 Wn.2d 130, 216 P.3d 1024 (2009)..... 7

State v. Malone, 72 Wn. App. 429, 864 P.2d 990 (1994) 11

State v. Parker, 99 Wn. App. 639, 994 P.2d 294 (2000) 9, 11, 13

State v. Raschka, 124 Wn. App. 103, 100 P.3d 339 (2004) 8, 11, 12

State v. Ross, 98 Wn. App. 1, 981 P.2d 888 (1999)..... 6

State v. Tolles, 174 Wn. App. 819, 301 P.3d 60 (2013)..... 13

State v. White, 94 Wn.2d 498, 617 P.2d 998 (1980)..... 6, 12, 13

Court Rules

CrR 3.3(a)(1)..... 8

CrR 3.3(b)(2)(i)..... 6, 13

CrR 3.3(d)(3)	3, 4, 5, 6, 9, 13
CrR 3.3(d)(4)	3, 9
CrR 3.3(h)	6, 13

A. ISSUE

The speedy trial rule requires a defendant to object within 10 days after receiving notice of an untimely trial date. Here, the court set Mary Walker's trial to begin after the speedy trial period expired. Walker objected within 10 days after receiving notice of the trial date. Was her objection timely? Was the court correct to dismiss the charge for a violation of the speedy trial rule?

B. STATEMENT OF THE CASE

On January 17, 2018, Mary Walker was charged in Centralia Municipal Court with one count of fourth degree assault. CP 11. The charge arose out of an incident in which she allegedly struck a child while babysitting. CP 1, 3.

On February 13, 2018, Walker was arraigned and pled not guilty. CP 11. On April 17, 2018, she waived her right to a speedy trial through June 11. CP 11. Walker failed to appear at a pre-trial hearing scheduled for June 12, 2018. CP 11. The matter was re-set for June 19. That day, Walker appeared with her attorney Jason Arcuri and a new trial date was set for August 27, 2018. CP 11, 14.

On August 28, 2018, the City moved to dismiss the charge “to allow filing in superior court.” CP 11, 15. The court struck the trial date and dismissed the charge without prejudice. CP 11, 15.

On May 1, 2019, the State filed an information charging Walker in Lewis County Superior Court with one count of third degree assault of a child, based upon the same factual allegations underlying the fourth degree assault charge. CP 1-2, 11. A preliminary hearing was held on May 17, 2019, at which the court appointed Arcuri as Walker’s attorney. 5/17/19RP 2-3.

Walker was arraigned on May 30, 2019. CP 9; 5/30/19RP 2. The court determined the speedy trial period expired on August 28.¹ 5/30/19RP 3. In calculating the expiration date, the court did not take into account the time that had elapsed while the charge was pending in municipal court.² The deputy prosecutor requested a trial date of August 19. 5/30/19RP 3. The court set the omnibus hearing for June

¹ Generally, a defendant not detained in jail must be brought to trial within 90 days of arraignment. CrR 3.3(b)(2)(i), (c)(1).

² The computation of the allowable time for trial of a pending charge applies equally to all “related charges.” CrR 3.3(a)(5). A “related charge” is “a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.” CrR (a)(3)(ii). The fourth degree assault charge was a “related charge” and the allowable time for trial must take into account the amount of time that elapsed while that charge was pending in municipal court.

27, the trial confirmation hearing for August 15, and trial for August 19. CP 9; 5/30/19RP 3.

Seven days later, on June 6, 2019, defense counsel filed an objection to the August 19 trial date as beyond the speedy trial period. CP 16 (citing CrR 3.3(d)(3)). Counsel pointed out that, under CrR 3.3(b)(5), the speedy trial period had expired on May 31, 2019.³ CP 10-15. Counsel moved to dismiss the charge. CP 10-15.

A hearing was held. The State objected to dismissal. 6/26/19RP 3. The prosecutor argued that because defense counsel did not file his objection until after the speedy trial period had expired, he waived the right to object under CrR 3.3(d)(4).⁴ 6/26/19RP 4-5. According to the State, the absence of a timely objection meant the speedy trial period

³ CrR 3.3(b)(5) provides, “If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.” Under CrR 3.3(e)(4), the time between the dismissal of Walker’s charge in municipal court and the refile of the charge in superior court was excluded. More than 60 days of the speedy trial period had already elapsed while the charge was pending in municipal court. Therefore, the time for trial expired 30 days after May 1, 2019, the date the charge was filed in superior court. CrR 3.3(a)(5), (b)(5), (e)(4).

⁴ CrR 3.3(d)(4) provides, “If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial” Under CrR 3.3(d)(3), a defendant loses the right to object to an untimely trial date if she does not object within 10 days after she receives notice of the trial date.

actually expired on August 19, the date the court set for trial.

6/26/19RP 3-4, 13.

Defense counsel argued his objection was timely because CrR 3.3(d)(3) requires only that the objection be made within 10 days of the trial date setting. 6/26/19RP 8-12. Walker did not waive her right to object simply because, due to the State's delay in bringing her to trial, the speedy trial period had already expired. 6/26/19RP 12.

The trial court agreed with the defense. 6/26/19RP 4-7, 15-16. The court reasoned that the State's argument led to absurd results. If the State were correct, a defendant would have no right to object to an untimely trial date unless time still remained within the speedy trial period in which to bring her to trial. 6/26/19RP 6. Thus, a defendant would be more likely to lose her right to object if the State were especially dilatory in bringing her to trial. 6/26/19RP 4-8.

The court concluded that under the plain language of the rule, counsel's objection was timely because it was made within 10 days after receiving notice of the setting of the trial date as required by CrR 3.3(d)(3). 6/26/19RP8. The court explained, "it's the failing to make the motion which loses the right, not the impossibility of getting the trial set within speedy trial." 6/26/19RP 8. Walker did not lose the right

to object simply because the speedy trial period had already expired.

6/26/19RP 8.

The court dismissed the charge with prejudice due to the speedy trial violation. CP 22. The court denied the State's motion to reconsider. CP 33. The State appeals.

C. ARGUMENT

The trial court did not err in ruling that Walker's objection was timely and her right to a speedy trial was violated.

Walker objected to the untimely trial date within 10 days after the trial date was set. Under the plain language of the speedy trial rule, her objection was timely. See CrR 3.3(d)(3) ("A party who objects to the trial date set upon the ground that it is not within the time limits prescribed 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."). A defendant objecting to an untimely trial date need not ask the court to set the trial within the speedy trial period if the speedy trial period has already expired. In such circumstances, a timely trial is impossible. Yet the defendant still has the right to object to the speedy trial violation.

The State did not bring Walker to trial before the speedy trial period expired. The trial court applied the plain language of the rule correctly and did not err in dismissing the charge with prejudice.

1. The trial court must strictly comply with the speedy trial rule in order to safeguard the accused's fundamental right to a speedy trial.

An accused who is not held in custody has a right to be brought to trial within 90 days of arraignment. CrR 3.3(b)(2)(i); State v. Ross, 98 Wn. App. 1, 4, 981 P.2d 888 (1999). If a defendant is not brought to trial within the applicable time period, the court must dismiss the charge with prejudice, provided the defendant objects within 10 days after receiving notice of the trial date setting. State v. Hatt, 11 Wn. App.2d 113, 150-51, 452 P.3d 577 (2019); CrR 3.3(d)(3), (h).

“The right to a speedy trial under this rule is a fundamental right.” Ross, 98 Wn. App. at 4. Our supreme court has consistently insisted on strict compliance with the speedy trial rule and a sanction of dismissal with prejudice in those instances where the speedy trial rule is not followed. State v. White, 94 Wn.2d 498, 501, 617 P.2d 998 (1980); CrR 3.3(h). The court has “adhered to the basic principle underlying the rule, that it is in the best interest of all concerned that criminal matters be tried while they are fresh.” White, 94 Wn.2d at 501. Unjust results

routinely occurred before the court rule was adopted, when “it was commonplace for trials to be delayed for many months. Witnesses became unavailable, memories dimmed, evidence disappeared, and charges were required to be reduced or dismissed.” *Id.* at 502. For these reasons, the court “continue[s] to be convinced that many more injustices between society and defendants are avoided as a result of the adoption of CrR 3.3 than occur because of it.” *Id.*

The Court reviews an alleged violation of the speedy trial rule *de novo*. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009).

The Court interprets the rule as though it were enacted by the Legislature, giving effect to its plain meaning as an expression of legislative intent. *State v. Chhom*, 162 Wn.2d 451, 458, 173 P.3d 234 (2007). “Plain meaning is discerned from reading the rule as a whole, harmonizing its provisions, and using related rules to help identify the legislative intent embodied in the rule.” *Id.* If the rule is ambiguous, the rule of lenity requires the Court to adopt the interpretation that favors the accused. *State v. Farnsworth*, 133 Wn. App. 1, 11, 130 P.3d 389 (2006).

2. Under the plain language of the speedy trial rule, Walker’s objection was timely because she filed her objection within 10 days after the trial date was set.

The trial court bears the ultimate responsibility for ensuring that the accused receives a speedy trial. State v. Chavez-Romero, 170 Wn. App. 568, 583, 285 P.3d 195 (2012); CrR 3.3(a)(1) (“It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.”). And, as between the State and the defendant, the State is primarily responsible for bringing the defendant to trial within the speedy trial period. Chavez-Romero, 170 Wn. App. at 583. The amended version of the speedy trial rule “retains the fundamental principle that the State must exercise due diligence in bringing a defendant to trial.” Id. at 584 (internal quotation marks and citation omitted). That is especially true where the speedy trial rule was violated by the State’s oversight. State v. Raschka, 124 Wn. App. 103, 111, 100 P.3d 339 (2004).

The principal burden on the defense is to lodge a timely objection. The rule requires an objection within 10 days of receiving notice of an untimely 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 after the notice is mailed or otherwise given, move that the court set a trial within

those time limits. . . . 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)(3).

The rule requiring an objection within 10 days of receiving notice of the trial date is a bright-line rule. State v. Parker, 99 Wn. App. 639, 645, 994 P.2d 294 (2000). It is not ambiguous. Farnsworth, 133 Wn. App. at 12-13. A party who fails to object within 10 days as required “shall lose the right to object.” CrR 3.3(d)(3); Farnsworth, 133 Wn. App. at 12-13. Absent a timely objection, the trial date set by the trial court becomes the last allowable trial date (subject to certain exceptions). Farnsworth, 133 Wn. App. at 13; CrR 3.3(d)(4) (“If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial . . .”).

Here, Walker timely objected. The State concedes that she filed a written objection within 10 days of the trial setting date, as required by CrR 3.3(d). AOB at 5. Under a plain reading of the speedy trial rule, she preserved her right to object to the speedy trial violation. CrR 3.3(d)(3). Because the speedy trial period had already expired, the court

properly dismissed the charge with prejudice. Hatt, 11 Wn. App.2d at 150-51; CrR 3.3(d)(3), (h).

Contrary to the State's argument, a defendant does not lose the right to object simply because the speedy trial period has already expired when she makes her objection. The court rule contains no such language. As the trial court observed, 6/26/19RP 4-8, precluding a defendant from objecting simply because the speedy trial period has already expired is illogical and contrary to the primary purpose of the rule, which is to guarantee a speedy trial. If the State's argument were correct, a defendant could never object to an untimely trial date if the trial setting hearing is held after the speedy trial period has expired. Even if the defendant objected *that same day*, and not within 10 days as the court rule allows, her objection would be untimely. She would have no means to vindicate her speedy trial rights. And the State would have an incentive to delay the setting of the trial date. Such a result cannot be what the drafters of the speedy trial rule intended.

"Timely objections are required so that, *if possible*, the trial court will have an opportunity to fix the error and still satisfy the speedy trial requirements." Chavez-Romero, 170 Wn. App. at 581 (emphasis added). But if "the time for trial calculation has already

expired, such an objection would not assist the court in setting a trial within the requirements of CrR 3.3. In such cases, a defendant cannot be deemed to have waived his or her objection.” Parker, 99 Wn. App. at 643; see also Chavez-Romero, 170 Wn. App. at 582-83; Raschka, 124 Wn. App. at 111. In Chavez-Romero, the Court held that a defendant raising an objection need not ask for a new trial date if he believes the speedy trial period has already expired. Chavez-Romero, 170 Wn. App. at 582-83. And in Raschka, the Court held the defendant had no obligation to object to the untimely trial date where the speedy trial period had already expired when the new trial date was set. Raschka, 124 Wn. App. at 111. Under these authorities, Walker’s objection was timely even though the expiration date had already passed and she could no longer be brought to trial within the speedy trial period.⁵

Generally, a defendant has no duty to bring herself to trial. Id. (citing Barker v. Wingo, 407 U.S. 514, 527, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). But defense counsel does bear some responsibility to assert his client’s speedy trial rights and assure compliance before the speedy trial period expires. Raschka, 124 Wn. App. at 111. If counsel is

⁵ To the extent State v. Austin, 59 Wn. App. 186, 796 P.2d 746 (1990) and State v. Malone, 72 Wn. App. 429, 864 P.2d 990 (1994) are inconsistent with this analysis, they contravene the plain language of the

aware at the time of the trial setting that the trial date is beyond the speedy trial limit, counsel has a duty as an officer of the court to so advise the court. Id. (citing White, 94 Wn.2d at 502-03). But conversely, if counsel is *not* aware that the trial date is untimely, he has no such duty to notify the court. Raschka, 124 Wn. App. at 111.

In addressing this issue on appeal, the reviewing court must be able to ascertain from the record that counsel deliberately tried to mislead the court or recognized at the time of the trial date setting that the court had fixed an erroneous date and remained silent. White, 94 Wn.2d at 503. In White, defense counsel did not inform the court at the trial setting that the date was six days beyond the speedy trial period, but the record did not reveal when counsel became aware of the erroneous date. Id. Thus, the charge was properly dismissed. Id.; cf. State v. Carson, 128 Wn.2d 805, 815-19, 912 P.2d 1016 (1996) (holding defense counsel waived right to object where “counsel acknowledged he knew all along when the speedy trial period expired,” and knew the case would not be set within the speedy trial period, but did not object until almost two weeks after the expiration date).

rule, and the Court’s decisions in Chavez-Romero and Raschka, and should not be followed.

Here, the record does not demonstrate that defense counsel deliberately tried to mislead the court or recognized at the time of the trial setting that the court had fixed an erroneous date and remained silent. Counsel did not explicitly acknowledge that he knew all along when the speedy trial period expired. See Carson, 128 Wn.2d at 815-19. The trial court made no finding regarding when counsel became aware of the erroneous trial date. See White, 94 Wn.2d at 503. This is a highly factual issue that should have been decided by the trial court, not this Court. See Parker, 99 Wn. App. at 644. Walker did not forfeit her right to object. White, 94 Wn.2d at 503.

The trial court set a trial date after the speedy trial period expired and Walker objected within 10 days after the trial date was set. Her objection was timely. CrR 3.3(d)(3). Her fundamental right to a speedy trial was violated. CrR 3.3(b)(2)(i).

3. The court did not err in dismissing the charge with prejudice and denying the State's motion to reconsider.

The speedy trial rule requires that “[a] charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice.” CrR 3.3(h). Failure to comply strictly with CrR 3.3 requires dismissal, whether or not the defendant can show prejudice. State v. Tolles, 174 Wn. App. 819, 823, 301 P.3d 60 (2013).

The State did not bring the charge to trial within the speedy trial time limit. The trial court did not err in dismissing the charge with prejudice or in denying the State's motion to reconsider.

D. CONCLUSION

The trial court did not err in ruling Mary Walker's right to a speedy trial was violated. This Court should affirm the trial court's order dismissing the charge with prejudice.

Respectfully submitted this 30th day of March, 2020.

/s Maureen M. Cyr
State Bar Number 28724
Washington Appellate Project – 91052
1511 Third Avenue, Suite 610
Seattle, WA 98101
Phone: (206) 587-2711
Fax: (206) 587-2710
Email: maureen@washapp.org

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Appellant,)	
)	NO. 53646-3-II
v.)	
)	
MARY WALKER,)	
)	
Respondent.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF MARCH, 2020, I CAUSED THE ORIGINAL **BRIEF OF RESPONDENT** TO BE FILED IN THE COURT OF APPEALS – DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> SARA BEIGH, DPA [appeals@lewiscountywa.gov] [sara.beigh@lewiscountywa.gov] LEWIS COUNTY PROSECUTING ATTORNEY 345 W MAIN ST FL 2 CHEHALIS, WA 98532	() () (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
<input checked="" type="checkbox"/> MARY WALKER 2118 N PEARL ST CENTRALIA, WA 98531	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF MARCH, 2020.

x _____ 

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

March 30, 2020 - 3:59 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53646-3
Appellate Court Case Title: State of Washington, Appellant v. Mary T. Walker, Respondent
Superior Court Case Number: 19-1-00312-4

The following documents have been uploaded:

- 536463_Briefs_20200330155807D2260158_6286.pdf
This File Contains:
Briefs - Respondents
The Original File Name was washapp.033020-08.pdf

A copy of the uploaded files will be sent to:

- appeals@lewiscountywa.gov
- greg@washapp.org
- sara.beigh@lewiscountywa.gov
- teri.bryant@lewiscountywa.gov
- wapofficemail@washapp.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Maureen Marie Cyr - Email: maureen@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200330155807D2260158