FILED
NOV 17 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 28892-7-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Appellant,

v.

WALLACE JOSEPH GRIFFITH,

Respondent.

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

BRIEF OF RESPONDENT

MAUREEN M. CYR
Attorney for Respondent

WASHINGTON APPELLATE PROJECT
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A. SUMMARY OF ARGUMENT

In June 1996, the State charged Wallace Griffith with one count of third degree child molestation and an arrest warrant was issued. But for the next 13 years, the State made *no* attempt to bring Mr. Griffith to trial and in fact actively tried to keep him away from Washington State. California police notified the prosecutor of Mr. Griffith's whereabouts on at least two separate occasions, but both times the prosecutor deliberately refused to seek extradition or even contact Mr. Griffith and request his voluntary return. At the same time, the prosecutor deliberately refused to quash the warrant in an effort to keep Mr. Griffith out of the state. The prosecutor made these decisions so that the victim would not have to testify at trial.

The Sixth Amendment imposes a categorical duty on the State to attempt to provide a speedy trial. In determining whether a constitutional speedy trial violation has occurred, the State's deliberate attempts to delay the trial weigh heavily against the State. Here, in light of the extraordinary length of the 13-year delay, the State's deliberate stalling tactics, and the resulting presumptive prejudice to Mr. Griffith, the trial court did not err in concluding his speedy trial right was violated.

B. ISSUES

1. In determining whether a criminal defendant's Sixth Amendment speedy trial right has been violated, the court considers the length of the delay, the reason for the delay, the defendant's assertion of his right, and the resulting prejudice. Was Mr. Griffith's constitutional speedy trial right violated, where the 13-year delay was extreme, the State deliberately attempted to delay the trial, Mr. Griffith did not actively try to avoid prosecution, and the excessive delay presumptively compromised his ability to present a defense?

2. When a person is charged with a crime in Washington State and the State is aware that the person is incarcerated in a different state, the State has a good faith and due diligence duty to file a detainer so that the person may request speedy disposition of the Washington charge. Did the State violate its good faith and due diligence duty where it was aware Mr. Griffith was in jail in California but did not file a detainer?

C. STATEMENT OF THE CASE

On June 27, 1996, the State charged Mr. Griffith in Benton County with one count of third degree child molestation (RCW

9A.44.089). CP 1. The complaining witness was 14 or 15 years old at the time of the alleged offense (DOB: 8/27/80). CP 1.

That same date, the court issued an arrest warrant. CP 4. A "Warrant Service Sheet" was attached to the arrest warrant, listing Mr. Griffith's last known address as 5647 Riverside Avenue, Rialto, California. CP 5.

Three and one-half months later, the sheriff's office in Riverside County, California, contacted the Richland, Washington, Police Department and told them that sheriff's deputies had contacted Mr. Griffith as a "suspicious person." CP 99. The sheriff's office inquired about the outstanding felony warrant and informed Richland Police of Mr. Griffith's current address. CP 99. Benton County Prosecutor Andy Miller was informed and telephoned the victim's mother. CP 100. They "both agreed" that the warrant should remain in effect in order "to make sure [Mr. Griffith] stays away from Washington and therefore [the] victim." CP 100. They also agreed Mr. Griffith should not be extradited and brought to trial in order to avoid "put[ting the] victim through trial and possibly causing recontact." CP 100.

Five and one-half years later, in March 2002, California police again notified the Benton County Prosecutor of Mr. Griffith's

whereabouts and inquired about the warrant. A police detective from Truckee, California, told the prosecutor that Mr. Griffith had been arrested. CP 100. The prosecutor again telephoned the victim's mother who stated "[s]he and her daughter don't want it pursued," because the daughter was "starting college at Eastern in the fall." CP 100. The prosecutor therefore asked California authorities to advise Mr. Griffith that the "warrant was unextraditable," and noted that this "should keep him away."[1] CP 100.

In July 2009, Mr. Griffith was arrested in Orange County, California on a probation violation and again the Benton County Prosecutor was notified. CP 100. Richland Police contacted the victim, who said that she was now "emotionally willing and able to testify." CP 101. Thus, the State finally sought extradition. CP 101. Mr. Griffith ultimately waived extradition and appeared in Benton County Superior Court on the charge on September 18, 2009. CP 101. He was arraigned five days later. CP 101.

On October 28, 2009, defense counsel filed a motion to dismiss the charge with prejudice, arguing Mr. Griffith's speedy trial rights were violated. CP 16-18, 19-68. After a hearing, the trial

[1] The record does not show whether Mr. Griffith was so informed.

court granted the motion and dismissed the charge.[2] CP 99-108. The court concluded the State had a duty to file a detainer pursuant to the Interstate Agreement on Detainers in either October 1996 or March 2002, when the State learned that Mr. Griffith was in custody in California. CP 101. The court also found the delay prejudiced Mr. Griffith's defense. CP 101; 3/09/10RP 28. The State appeals.

D. ARGUMENT

1. MR. GRIFFITH'S SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL WAS VIOLATED WHERE THE STATE DELIBERATELY REFUSED TO SEEK MR. GRIFFITH'S RETURN TO WASHINGTON IN ORDER TO DELAY THE TRIAL AND THE EXTRAORDINARY THIRTEEN-YEAR DELAY PRESUMPTIVELY PREJUDICED MR. GRIFFITH

a. Criminal defendants have a fundamental constitutional right to a speedy trial which is violated when there is an extraordinary delay between the filing of the charge and arraignment, the State deliberately attempts to delay the trial, and the defendant is prejudiced. The Sixth Amendment guarantees an accused person the right to a speedy trial, which is "as fundamental as any of the rights secured by the Sixth Amendment." Klopfer v. North Carolina, 386 U.S. 213, 223, 87 S.Ct. 988, 18 L.Ed.2d 1

[2] A copy of the court's written findings of fact and conclusions of law is attached as an appendix.

(1967); U.S. Const. amend. 6 ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ."). The Sixth Amendment right to a speedy trial is enforceable against the states through the Fourteenth Amendment. Klopfer, 386 U.S. at 222-23.

Article 1, section 22 of the Washington Constitution also guarantees the right to a speedy trial. Const. art. 1, § 22 ("In criminal prosecutions the accused shall have the right . . . to have a speedy public trial."). Article 1, section 22 "requires a method of analysis substantially the same as the federal Sixth Amendment analysis and does not afford a defendant greater speedy trial rights." State v. Iniguez, 167 Wn.2d 273, 290, 217 P.3d 768 (2009).

The criteria by which the speedy trial right is assessed were set forth by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). In Barker, the Court refused to "quantif[y]" the right "into a specified number of days or months" or to hinge the right on a defendant's explicit request for a speedy trial. Id. at 522-25. Instead Barker established a "balancing test, in which the conduct of both the prosecution and the defendant are weighed." Id. at 529. The

factors to consider are: the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Id.

Barker instructs that "different weights should be assigned to different reasons." Id. at 531. In applying Barker, the question is "whether the government or the criminal defendant is more to blame for th[e] delay." Doggett v. United States, 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992). Deliberate delay by the prosecution "to hamper the defense" weighs heavily against the prosecution. Barker, 407 U.S. at 531. Ultimately, it is the State, not the defendant, who has the duty of bringing the defendant to trial. Id. at 527.

b. Applying the four-factor *Barker* test, Mr. Griffith's constitutional right to a speedy trial was violated.

i. The thirteen-year delay between the filing of the information and arraignment was extraordinary. Simply to trigger a speedy trial analysis, an accused must show that the interval between accusation and trial has crossed the threshold from ordinary to "presumptively prejudicial" delay. Doggett, 505 U.S. at 651-52 (citing Barker, 407 U.S. at 530-31). As discussed below, the length of the delay is also significant to the fourth

(prejudice) factor of the speedy trial analysis, because the presumption that pretrial delay has prejudiced the accused intensifies over time. Doggett, 505 U.S. at 651-52.

In Doggett, the Court concluded that an eight and one-half year delay between indictment and arrest was "extraordinary" and "clearly suffice[d] to trigger the speedy trial inquiry." Id. In Iniguez, the Washington Supreme Court determined that an eight-month delay between arrest and trial was "substantial" and sufficient to trigger the Barker inquiry. Iniguez, 167 Wn.2d at 292. Here, there should be no question that the 13-year delay between accusation and arraignment is sufficient to require application of the remaining Barker factors.

ii. The State deliberately delayed the trial. As to the second factor, "[a] deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government," whereas "[a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily." Barker, 407 U.S. at 531. Where the State intentionally holds back in its prosecution in order "to gain some impermissible advantage," the defendant may prevail even if there is no showing of specific prejudice. Doggett, 505 U.S. at 656.

Here, the record is unequivocal that the State deliberately attempted to delay the trial and keep Mr. Griffith out of Washington State. Three months after the charge was filed, California police told the Benton County Prosecutor of Mr. Griffith's whereabouts. But rather than attempt to bring Mr. Griffith to trial, the prosecutor contacted the victim's mother and they "both agreed" not to seek extradition in order to avoid "put[ting the] victim through trial." CP 100. They also "both agreed" not to withdraw the warrant in order "to make sure [Mr. Griffith] stays away from Washington and therefore [the] victim." CP 100.

Five and one-half years later, in March 2002, California police again contacted the Benton County Prosecutor and inquired about the warrant. CP 100. As before, the prosecutor consulted with the victim's mother and then deliberately refused to seek Mr. Griffith's return to Washington State so that the victim would not have to testify at trial. Id. Again, the prosecutor did not withdraw the warrant but instead brazenly asked California authorities to inform Mr. Griffith that the "warrant was unextraditable" so that he would "keep . . . away" from Washington. CP 100.

The prosecutor made no attempt to bring Mr. Griffith to trial until 2009, when the victim was 29 years old and "emotionally

willing and able to testify." CP 101. Thus, for 13 years, the State deliberately refused to withdraw the warrant while at the same time made *no* effort to fulfill its constitutional obligation to provide a speedy trial.

The State contends it had no duty to bring Mr. Griffith to trial, because he was residing out of state. The State misunderstands its obligation under the Sixth Amendment. The Constitution "requires the State to make a diligent and good faith effort to secure the presence of an accused from another jurisdiction if a mechanism is available to do so." State v. Anderson, 121 Wn.2d 852, 858, 855 P.2d 671 (1993) (citing Dickey v. Florida, 398 U.S. 30, 37-38, 90 S.Ct. 1564, 26 L.Ed.2d 26 (1970); Smith v. Hooey, 393 U.S. 374, 383, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969)). The Sixth Amendment requires the government to pursue the accused "with reasonable diligence" even if it believes the accused is outside the jurisdiction. Doggett, 505 U.S. at 656. Doggett requires the government to "make some effort" to notify an out-of-state accused of a pending charge and attempt to bring him to trial. United States v. Mendoza, 530 F.3d 758, 763 (9th Cir. 2008).

Here, California authorities informed the State of Mr. Griffith's whereabouts on two separate occasions but the

prosecutor made no effort to bring him to trial. Instead, for 13 years, the State deliberately attempted to keep him *away* from Washington State. The State could have sought Mr. Griffith's return either through the Uniform Criminal Extradition Act, RCW 10.88 et seq, which the State finally did in 2009, or by filing a detainer when the State learned that Mr. Griffith was incarcerated in a California jail.[3] Or, the State could simply have tried to notify Mr. Griffith of the pending charge and sought his voluntary return. Instead, by deliberately refusing to pursue any of those options, the State ran the risk of a constitutional speedy trial violation.

Courts in other jurisdictions agree that the government's constitutional duty to bring an accused to trial does not end simply because the accused is outside the jurisdiction. If extradition is a possibility, the State has a duty to make a diligent and good-faith effort to pursue that option. In People v. Romeo, 12 N.Y.3d 51, 904 N.E.2d 802 (2009), for example, Romeo was charged in New York and then tried, convicted and imprisoned in Canada on unrelated charges, but New York never sought extradition. Id. at 54. Because nothing in the record demonstrated an extradition request would have been futile, "the prosecution's failure to make an

[3] The State's obligation to file a detainer under the Interstate Agreement on Detainers is discussed in section 2 below.

extradition request evidenced a lack of diligent efforts to secure the defendant." Id. at 57.

Similarly, in United States v. Rowbotham, 430 F.Supp. 1254, 1256 (D. Mass. 1977), the United States charged Rowbotham while he was in custody in Canada on unrelated charges but did not seek extradition, citing its policy of refusing to seek extradition when an accused is in another country. Id. at 1256-57. The court acknowledged this was a political judgment not subject to judicial review but held the consequences of such a political decision *are* subject to judicial action when they directly affect the orderly administration of the courts (and, presumably, a defendant's constitutional rights). Id. at 1257; see also United States v. Pomeroy, 822 F.2d 718 (8th Cir. 1987) (State had duty under Sixth Amendment to make diligent, good-faith effort to seek extradition of defendant incarcerated in Canada); United States v. Raffone, 405 F.Supp. 549 (S.D. Fla. 1975) (same).

Even where the accused is not incarcerated in a foreign jurisdiction, the State has a duty of due diligence and good faith to make *some* reasonable effort to bring the accused to trial. Doggett, 505 U.S. at 656. In Mendoza, for instance, the government was aware that Mendoza had left the country but made no effort to

inform him of the charge or bring him to trial; the government simply entered his arrest warrant in a law enforcement database. Mendoza, 530 F.3d at 763-64. Where Mendoza was not actively attempting to avoid detection, the Ninth Circuit held the government was negligent by not conducting a serious effort to find him. Id.

Similarly, in United States v. Judge, 425 F.Supp. 499, 501-02 (D. Mass. 1976), the government knew of Judge's address in Ecuador but did not seek extradition or even mail a copy of the indictment to him and request his voluntary return. The court held the government's unnecessary delay was inexcusable. Id. at 504; see also United States v. Ostroff, 340 F.Supp.2d 362 (S.D.N.Y. 2004) (government's failure to try to find defendant after learning he had moved to Florida, where defendant resided openly under his own name at the same address, was inexcusable).

Washington courts have held that under the speedy trial court rule and State v. Striker, 87 Wn.2d 870, 557 P.2d 847 (1976), the State has no obligation to bring an accused to trial who resides out of state, because such a person is not "amenable to process." See State v. Lee, 48 Wn. App. 322, 325, 738 P.2d 1081 (1987); State v. Hudson, 130 Wn.2d 48, 921 P.2d 538 (1996) ("For purposes of CrR 3.3, an out-of-state defendant who is not in

custody is not amenable to process in the usual sense of the term."). Because Washington has no "power" over the out-of-state defendant or the foreign jurisdiction, the court rule does not require the State to seek extradition. Lee, 48 Wn. App. at 325.

But concepts of "power" and "authority" cannot "submerge the practical demands of the constitutional right to a speedy trial." Hooey, 393 U.S. at 381. In Hudson, 130 Wn.2d at 57-58, the Washington Supreme Court acknowledged that under the Sixth Amendment, the State may have an obligation to contact an out-of-state accused whose address is known, even if the State has no such obligation under the speedy trial court rule. The time for trial provisions of CrR 3.3 provide a right to a speedy trial that is separate from and inferior to the constitutional right. Id. To Mr. Griffith's knowledge, no Washington case has ever held that the State has no obligation under the Sixth Amendment to seek to extradite an out-of-state accused, or at least try to contact him and seek his voluntary return, if the accused's whereabouts are known.

For 13 years, the State made absolutely no effort to provide Mr. Griffith a speedy trial and in fact actively undermined any possibility of a speedy trial. The State unequivocally failed to fulfill its obligation under the Sixth Amendment.

iii. Mr. Griffith was not at fault for the delay. "A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process." Barker, 407 U.S. at 527. But "the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right." Id. at 528.

If the record contains no evidence that the defendant was aware of the pending charge, he cannot be taxed for invoking his speedy trial right only after his arrest. Doggett, 505 U.S. at 654. Here, the record contains no evidence that Mr. Griffith was aware of the pending charge prior to his arrest. The trial court made no finding regarding whether Mr. Griffith was aware of the charge. CP 99-101. Therefore, he cannot be deemed at fault for the delay in the trial.

The prosecutor asserted without evidentiary support that Mr. Griffith "knew these charges were outstanding," and that "he contacted the victim three times and requested she withdraw the charge." 3/02/10RP 7. The prosecutor's assertions are not evidence. Also, even if Mr. Griffith became aware of the charge at

some point, there is no indication of *when* he gained that knowledge.

If Mr. Griffith had actively tried to keep his whereabouts unknown, this would weigh against him. E.g., Mendoza, 530 F.3d at 763-64. But the record contradicts the State's assertions that Mr. Griffith deliberately attempted to avoid trial. Mr. Griffith was living openly in California. At the time the charge was filed, the prosecutor knew his address in California. CP 5. The prosecutor was repeatedly informed of his whereabouts but made no effort to contact him. CP 100-01. On balance and in light of the State's obligation to assure a speedy trial, the State's deliberate attempts to avoid trial far outweigh any fault of Mr. Griffith's.

iv. Mr. Griffith was presumptively prejudiced by the delay. The fourth Barker factor, prejudice to the accused, is to be assessed in light of the interests the speedy trial right was designed to protect. Barker, 407 U.S. at 532. The Court identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Id. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire

system. Id. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Id.

Because Mr. Griffith was not incarcerated prior to arraignment and the record does not show he was aware of the pending charge, the principal prejudice that resulted from the 13-year delay is impairment to his defense.

"While impairment to the defense is the most serious form of prejudice, it is often the most difficult to prove because 'what has been forgotten [or lost] can rarely be shown.'" Iniguez, 167 Wn.2d at 285 (quoting Barker, 407 U.S. at 532). Accordingly, the United States Supreme Court held that "affirmative proof of particularized prejudice is not essential to every speedy trial claim." Doggett, 505 U.S. at 655. That is because "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." Id. Courts must presume this prejudice to the accused "intensifies over time." Id. at 652.

"[W]hether a delay is presumptively prejudicial is necessarily a fact-specific inquiry dependent on the circumstances of each case." Iniguez, 167 Wn.2d at 291 (citing Barker, 407 U.S. at 530-31). Along with the passage of time, other relevant factors are the

complexity of the charges and a reliance on eyewitness testimony.[4] Id. at 292 (citing Barker, 407 U.S. at 531 & n.31).

In Doggett, the Court concluded the eight-and-one-half-year delay between the charge and Doggett's arrest would not be presumptively prejudicial "if the Government had pursued Doggett with reasonable diligence from his indictment to his arrest." Doggett, 505 U.S. at 656. On the other hand, prejudice would be presumed and "present an overwhelming case for dismissal" if "the Government had intentionally held back in its prosecution of him to gain some impermissible advantage at trial." Id. (citing Barker, 407 U.S. at 531) (official bad faith in causing delay will be weighed heavily against the government). The facts in Doggett lay somewhere in between. The Court concluded that the length of delay in combination with the government's negligent but "egregious persistence in failing to prosecute Doggett," was "clearly sufficient" to demonstrate presumptive prejudice. Doggett, 505 U.S. at 657; see also Mendoza, 530 F.3d at 767 (prejudice presumed where delay 10 years and government negligent); United

[4] The State contends the case does not depend upon eyewitness testimony, but that is incorrect. The complaining witness is an alleged eyewitness to the crime that the State would call at trial. Her ability to remember the events accurately and without distortion has undoubtedly been affected by the passage of time.

States v. Cardona, 302 F.3d 494, 499 (5th Cir. 2002) (prejudice presumed where delay five years and government negligent).

Here, given the extreme length of the delay—13 years—and the State's *deliberate* attempts to delay the prosecution, the facts "present an overwhelming case for dismissal." Doggett, 505 U.S. at 656. This Court must presume Mr. Griffith was prejudiced in his ability to present a defense. The State has not rebutted that presumption, because it has not "affirmatively proved that the delay left his ability to defend himself unimpaired." Doggett, 505 U.S. at 658 n.4.

In sum, in light of the extraordinary length of the 13-year delay, the State's deliberate attempts to delay the trial, the absence of any showing that Mr. Griffith intentionally attempted to avoid prosecution, and the presumption that the 13-year delay prejudiced his ability to present a defense, the trial court did not err in concluding his speedy trial right was violated.

c. The trial court was correct to dismiss the charge. Dismissal of the charges against the accused is "the only possible remedy" for a deprivation of the constitutional right to a speedy trial. Strunk v. United States, 412 U.S. 434, 440, 93 S.Ct. 2260, 37

L.Ed.2d 56 (1973). Thus, the trial court correctly dismissed the charge.

2. THE PROSECUTOR VIOLATED ITS DUTY OF GOOD FAITH AND DUE DILIGENCE BY FAILING TO FILE A DETAINER ONCE IT LEARNED MR. GRIFFITH WAS INCARCERATED IN CALIFORNIA

When the prosecutor received notice in March 2002 that Mr. Griffith was incarcerated in California, it had a due diligence and good faith duty to file a detainer under the Interstate Agreement on Detainers, RCW 9.100.010 (IAD). State v. Welker, 157 Wn.2d 557, 566, 141 P.3d 8 (2006). On March 27, 2002, the Benton County Prosecutor learned that Mr. Griffith had been arrested in California. CP 100. Mr. Griffith was ultimately charged with theft, pled no contest, and was sentenced to one day in jail with credit for time served. CP 33-39. The prosecutor admitted that in "March of '02 I know we did get notice" of Mr. Griffith's incarceration in California. 3/09/10RP 24; see also 3/09/10RP 14. The prosecutor's knowledge of Mr. Griffith's incarceration triggered its duty to file a detainer.

The IAD is an interstate compact designed to address problems that may arise when an individual is incarcerated in one jurisdiction while also facing charges in another jurisdiction.

Welker, 157 Wn.2d at 563. There are several steps in the process to trigger a defendant's rights under the IAD. First, the receiving state lodges a detainer against the defendant in the foreign sending state. RCW 9.100.010 (Article III(a) of IAD). Then, the official in the sending state who has custody of the prisoner must inform the defendant of the detainer and of his right to request final disposition of the charges in the receiving state under the IAD. RCW 9.100.010 (Article III(c) of IAD). Finally, upon notice of the detainer, the defendant himself must invoke his IAD rights by giving his request for final disposition to the official having custody of him, who then must promptly forward the request to the court and the prosecutor of the county where the receiving state's charges are pending. RCW 9.100.010 (Article III(b) of IAD). From the time the prosecutor receives that request, the prosecutor's office has 180 days to bring the defendant to trial in the receiving state. Welker, 157 Wn.2d at 563-64.

CrR 3.3(b) guarantees Washington defendants a right to a speedy trial within a specific time frame. Welker, 157 Wn.2d at 564. Under CrR 3.3(e)(6), time spent incarcerated in a foreign jurisdiction is excluded from that time frame. But the IAD is a mechanism by which the speedy trial rights of a defendant

incarcerated in another jurisdiction are ensured. Welker, 157 wn.2d at 564 (citing State v. Anderson, 121 Wn.2d 852, 858, 855 P.2d 671 (1993)). "Thus, despite CrR 3.3(e)(6), a violation of the IAD may mean a defendant's foreign jurisdiction time is *included* in his speedy trial calculation, resulting in a corresponding violation of the defendant's speedy trial right under CrR 3.3(b)." Welker, 157 Wn.2d at 564 (citing Anderson, 121 Wn.2d at 864).

In Welker, the Washington Supreme Court held that, although there is no statutory duty of good faith and due diligence imposed on prosecutors to bring a defendant to trial under the IAD, "to the extent that the IAD and CrR 3.3(b) are interrelated, such a duty is impliedly imposed on prosecutors." Welker, 157 Wn.2d at 564-65. The imposed duty ensures that the IAD remains a vehicle for complying with defendant's speedy trial rights under Washington court rules. Id. at 565.

Although prosecutors are not statutorily required under the IAD to file a detainer against a defendant, a defendant may not file a valid request for speedy disposition under the IAD *until* a detainer is lodged against him. Id. (citing Anderson, 121 Wn.2d at 861). Thus, the Washington Supreme Court held that in certain contexts,

good faith and due diligence require prosecutors to utilize the IAD by filing detainers against defendants. Welker, 157 Wn.2d at 565.

"[A] prosecutor's mere knowledge of an incarcerated defendant's whereabouts prompts the good faith and due diligence duty to file a detainer." Id. at 566 (citing Anderson, 121 Wn.2d at 863-65). Thus, a defendant need not request disposition under the IAD in order to trigger the prosecutor's implied duty of good faith and due diligence. Instead, the prosecutor's duty is triggered when he has actual knowledge of an incarcerated defendant's whereabouts in a foreign penal institution. Welker, 157 Wn.2d at 566.

The court reviews challenges under the IAD on a case-by-case basis, considering whether the prosecutor acted in good faith and with due diligence and, if not, whether the violation resulted in prejudice to the defendant. Id. "The prosecutor's failure to at least file the detainer, regardless of what would have happened had he done so, amounts to a lack of due diligence on his part." Id. at 567.

Here, the State violated its duty of good faith and due diligence by failing to file a detainer once it learned in 2002 that Mr. Griffith was incarcerated in a California jail. Although the prosecutor acknowledged the State was aware of Mr. Griffith's

incarceration, he explained the State was under the impression it had no duty under the IAD to file a detainer and that it was Mr. Griffith who had the duty to request speedy disposition. 3/09/10RP 14-15. But that view is contrary to the holding of Welker. Because a defendant may not file a valid request for speedy disposition under the IAD *until* a detainer is lodged against him, the prosecutor's duty of good faith and due diligence requires him to file the detainer. Welker, 157 Wn.2d at 565.

The State contends it had no duty to file a detainer under the IAD because Mr. Griffith was incarcerated in a California jail rather than a prison. That view is contrary to the plain meaning of the IAD statute.

When called upon to interpret a statute, the court's fundamental obligation is to give effect to the Legislature's intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). When interpreting a statute the court first looks to its plain language. Id. If the plain language is subject to only one interpretation, the inquiry ends because plain language does not require construction. Id. at 9-10. To determine the plain meaning of an undefined term, the court may look to the dictionary. Garrison v. Wash. State Nursing Bd., 87 Wn.2d 195, 196, 550 P.2d 7 (1976).

The plain meaning of the IAD statute is that it applies to defendants incarcerated in foreign jails as well as prisons. The IAD applies "[w]henever a person has entered upon a term of imprisonment in a *penal* or correctional institution of a party state." RCW 9.100.010 (Article III(a) of IAD) (emphasis added). "Penal" means "designed to impose punishment." Webster's Third New International Dictionary 1668 (1993). Jails are undoubtedly "penal institutions." The Supreme Court implicitly agreed in Welker, where the court held the IAD applied to a prisoner incarcerated in a county jail in Oregon. Welker, 157 Wn.2d at 561, 567.

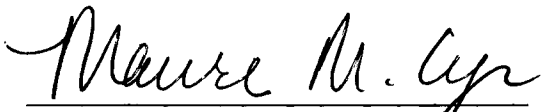
Because the State failed to file a detainer once it learned in 2002 that Mr. Griffith was incarcerated in a California jail, it violated its duty of good faith and due diligence. For the reasons above, Mr. Griffith was prejudiced. Thus, this Court should affirm the trial court's decision to dismiss the charge.

D. CONCLUSION

Because the State deliberately delayed the trial and the 13-year delay between the charge and arraignment presumptively prejudiced Mr. Griffith, Mr. Griffith's constitutional right to a speedy trial was violated. In addition, the State violated its duty of good faith and due diligence by failing to file a detainer once it learned

Mr. Griffith was incarcerated in a California jail. This Court should therefore affirm the trial court's order dismissing the charge.

Respectfully submitted this 15th day of November 2010.



MAUREEN M. CYR (WSBA 28724)
Washington Appellate Project - 91052
Attorneys for Appellant

APPENDIX

JOSIE DELVIN
BENTON COUNTY CLERK
MAR 19 2010
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

STATE OF WASHINGTON, Plaintiff,	NO. 96-1-00375-5
vs.	FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION TO DISMISS
WALLACE JOSEPH GRIFFITH, Defendant.	

The above matter having come before the Court on the defendant's motion to dismiss and the Court having heard oral argument and being aware of the file herein, the Court makes the following:

FINDINGS OF FACT

1 On June 26, 1996, the Information herein is alleging that the defendant committed the crime of Child Molestation in the Third Degree against Kelly Jolley, DOB: 08-27-1980.

2. A warrant for the defendant is ordered, with bail of *$5,000*, which can be served in Oregon or Washington.

3. On October 10, 1996, the Benton County Prosecutor's Office received the attached report from the Richland Police Department:

"On October 10, 1996, at 0100 hours, I was asked to confirm a warrant on Griffith. I confirmed the warrant and contacted Riverside County Sheriff's Office. They had contacted Griffith as a suspicious person and located the felony warrant.

I advised them the warrant was still in effect, but it was not extraditable from California. They provided me with Griffith's current address.

I will forward a copy of this supplement to the Prosecutor's office for their information."

SEE ATTACHMENT A.

4. A handwritten note is on this report, stating:

"Margaret (referring to office administrator Margaret Ault), how much would this cost?"

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5. The handwriting is a reference to how much it would cost to extradite the defendant from his Riverside address.

6. The note was written by elected prosecutor Andy Miller.

7. On October 16, 1996, Margaret Ault responded to Mr. Miller's inquiry, with a memo stating,

"I called Tri County Extradition Services. They will transport from Riverside to Medford for $605.28.

If you want me to get in touch with RPD, I will need to know the standard range and what our recommendation will be."

SEE ATTACHMENT B.

8. Handwritten on this memo, ATTACHMENT B, is:

"10-16-96

T/C (telephone call) w/ victim's mother. We both agreed we wanted to keep warrant to make sure he stays away from Washington and therefore victim. However, no need to bring him up here and put victim through trial and possibly causing recontact.

Mrs. Jolley will call if any new developments.

AM" (Andy Miller)

Also on this memo is a handwritten note from Ms. Ault, as follows:

"01-07-02

CPS contacted me indicating they might be able to track him. I read him AM's notes of 10-16-96 & PC--He said if he was able to contact def-he would advice warrant was unextraditable & that should keep him away.

mpa"

9. On March 27, 2002, the following was sent by Ms. Ault to Mr. Miller:

"Det. Rose from Truckee, California called. She would like to talk to someone about this case. Her number is 530-550-2336.

I will call her back if you wish - I just wanted to make sure your notes in the file still stand."

mpa" (Margaret P. Ault)

SEE ATTACHMENT C.

10. Our Victim/Witness Advocate Peggie Arnold noted in handwriting,

"3-27-02

Mom still not wanting prosecution.

Peg"

"3-28-02. Called Det. Rose per AKM (Andrew K. Miller) request. She wasn't there but I left info on voice mail."

11. Ms. Arnold noted in a file note:

"3-27-02 Def. was arrested in Calif. Called Mom. She and her daughter don't want it pursued. Kelli is starting college at Eastern in the fall."

12. On July 29, 2009, the defendant was arrested in Orange County, California, on a probation violation.

13. On August 5, 2009, Det. Jeff Taylor of the Richland Police Department contacted Kelly Jolley, now Kelly Anderson. He reports that Ms. Jolley-Anderson is emotionally willing and able to testify.

14. On August 7, 2009, the State files an amended Arraignment Warrant, increasing the bail to $*50,000* and providing for extradition anywhere in the nation.

15. On August 21, 2009, the defendant is released from custody on the probation violation in California. He is held pursuant to the Arraignment Warrant herein.

16. On August 24, 2009, the State files an Application for Requisition by the Governor of Washington was made to the Governor of California.

17. On September 3, 2009, the defendant waived extradition from California to Washington.

18. On September 18, 2009, the defendant appeared in the Benton County Superior Court on the charge herein.

19. On September 23, 2009, the defendant was arraigned on the Information.

From the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The State took appropriate action from July 29, 2009, to the present time.

2. The State had a duty to file a detainer pursuant to the Interstate Agreement on Detainers in October 1996 and/or in March, 2002.

3. The defendant was not required to cause delivery to the Benton County Prosecuting Attorney written notice of the place of his imprisonment and his request for a final decision to be made of the Information.

4. The length of the delay from 1996 and/or 2002 to the present prejudices the defendant in the defense of this matter.

5. This matter should be dismissed without prejudice.

DATED: 3/19, 2010.

VIC L. VANDERSCHOOR, *Judge*

Presented by:

TERRY J. BLOOR, *WSBA #9044*
Deputy Prosecuting Attorney
OFFICE ID #91004

Approved by:

TONYA MEEHAN-CORSI, *WSBA #32467*
Attorney for Defendant

ATTACHMENTS:

A: Police Report dated October 10, 1996.
B: Intraoffice Benton County Prosecuting Attorney Office Memo, dated October 16, 1996.
C: Intraoffice Benton County Prosecuting Attorney Office Memo, dated March 27, 2002.

ATTACHMENT A

RICHLAND POLICE DEPARTMENT
SUPPLEMENTAL CASE REPORT

OFFENSE:

CHILD MOLESTATION 3RD DEGREE

CASE # C96-1771

(NARRATIVE):

S: GRIFFITH, WALLACE JOSEPH WM DOB/06-11-64 ADDRESS/3391 RUBIDOUX BLVD RIVERSIDE, CA 92509

ON 10-10-96, AT 0100 HOURS, I WAS ASKED TO CONFIRM A WARRANT ON GRIFFITH. I CONFIRMED THE WARRANT, AND CONTACTED RIVERSIDE COUNTY SHERIFF'S OFFICE. THEY HAD CONTACTED GRIFFITH AS A SUSPCIOUS PERSON AND LOCATED THE FELONY WARRANT.

I ADVISED THEM THE WARRANT WAS STILL IN EFFECT, BUT IT WAS NOT EXTRADITABLE FROM CALIFORNIA. THEY PROVIDED ME WITH GRIFFITH'S CURRENT ADDRESS.

I WILL FORWARD A COPY OF THIS SUPPLEMENT TO THE PROSECUTOR'S OFFICE FOR THEIR INFORMATION.

DISPOSITION: PENDING

Margaret -
how much would this cost?

OFC. R. SHEPHERD R65 10-[redacted]:BA

ATTACHMENT B

BENTON COUNTY PROSECUTOR
7320 W. QUINAULT
KENNEWICK, WA 99336
Main: 735-3591 Child Support: 735-7316

TO: Andy

FROM: Margaret

DATE: October 16, 1996

RE: Sate v. Wallace Griffith

I called Tri County Extradition Services. They will transport from Riverside to Medford for $605.28.

If you want me to get in touch with RPD, I will need to know the standard range and what our recommendation will be.

10-16-96

T/C w/ victims mother. We both agreed we wanted to keep warrant to make sure he stays away from Washington and therefore victim. However, no need to bring him up here and put victim through trial and possibly causing recontact.

Mrs. Solley will call if any new development.

AM

1/7/08 - CPS contacted me indicating they might be able to track him. I read him AM's notes of 10/16/96 & PC - He said if he was able to contact def - he would advise warrant was unextraditable & that should keep him away.

MOC

ATTACHMENT C

March 27, 2002

To: Andy

Re: Wallace Griffith 96-1-00375-5

Det. Rose from Truckee, California called. She would like to talk to someone about this case. Her number is 530-550-2336.

I will call her back if you wish - I just wanted to make sure your notes in the file still stand.

mpa

3-27-02
Mom still not wanting prosecution.
Peg

3-28-02 Called Det. Rose per AKM request. She wasn't there but I left info on voice mail.

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

STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	NO. 28892-7-III
v.	)	
	)	
WALLACE GRIFFITH,	)	
	)	
Respondent.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF November, 2010, I CAUSED THE ORIGINAL **STATEMENT OF ARRANGEMENTS** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] TERRY BLOOR, DPA BENTON COUNTY PROSECUTOR'S OFFICE 7122 W OKANOGAN AVE BLDG A KENNEWICK, WA 99336-2359	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] WALLACE GRIFFITH 2519 HOUSTON CT RICHLAND, WA 99354	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF NOVEMBER, 2010.

X_____

Washington Appellate Project
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Phone (206) 587-2711
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