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Apr 10, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 29952-0-III

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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

RESPONDENT,

v.

PEDRO AROUSA,

APPELLANT.

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BRIEF OF RESPONDENT

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D. ANGUS LEE  
PROSECUTING ATTORNEY

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**I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecuting Attorney's Office, is the Respondent herein.

**II. RELIEF REQUESTED**

Reversal is not warranted and Appellant's conviction must be affirmed.

**III. ISSUES**

1. Did the Court find that the continuance of Appellant's trial and outside date was necessary, and can Appellant show prejudice from the Court's action?
2. Does substantial evidence support the Court's finding that the Appellant could allow officers access into the home?

**IV. STATEMENT OF THE CASE**

Appellant, Pedro Arousa, was charged by information with one count of possession of a controlled substance, to wit; methamphetamine, on March 4, 2011. CP 1-2. Appellant was arraigned on March 8, 2011, and a scheduling order was entered setting omnibus for March 29, 2011, trial for April 26, 2011, and setting a trial deadline of May 9, 2011. CP 6.

On April 11, 2011, defense counsel filed a motion to suppress under CrR 3.6. CP 16-23. Counsel inadvertently set the motion for Monday the 18<sup>th</sup>, a docket day. (Contrary to appellant's assertion, the hearing would not have occurred on April 18<sup>th</sup> regardless of whether or not the prosecutor was available). On April 18, 2011, the matter was set for the 3.6 hearing on April 20, 2011. CP 40. On April 20, 2011, the hearing was continued to April 26, 2011, to reset dates as the deputy prosecutor assigned to the case was in trial in another courtroom. CP 41.

On April 26, 2011 (the initial trial date), the parties reiterated the need to hold the CrR 3.6 hearing. Because of the looming outside date of May 9, 2011, the State suggested that the Court might need to change bail to a signature bond. RP 4.<sup>1</sup> This act would have had the effect of extending the appellant's outside date to June 8, 2011. Neither the Court nor defense counsel addressed this suggestion at that time. (Reduction of bail was raised by defense counsel at Mr. Arousa's hearing of May 4, 2011, and denied). 1RP 3.

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<sup>1</sup> To avoid confusion, the State adopts the Appellant's system of reference. Hearing dates April 26, 27, May 10, 11, 16, 17, 23, 24, and 31, 2011 will be referred to as RP; hearing date May 4, 2011 will be referenced as 1RP; and hearing date May 18, 2011 will be referenced as 2 RP.

On that date (April 26, 2011), defense counsel first identified a witness that the defense would be calling for the hearing, appellant's stepmother, Cherri Roberts. The State also indicated that it would be calling the two federal marshals who had been present to rebut appellant's assertion that he had not consented to the entry of his stepmother's home which had led to his arrest. RP 5-7, 27-29. Appellant's quoting of the deputy prosecutor's statement that she did "not have any good cause to put before the court" was in response to the court's enquiry as to whether or not the CrR 3.6 hearing could be heard that week and after she had indicated that she was not opposed. RP 5.

The Court stated that the hearing would be heard that week on April 27, 2011, thus necessitating that the trial be continued to May 3, 2011. RP 9-10. As a result of what it termed a "necessary continuance," the Court reset appellant's outside date to June 2, 2011. RP 10.

On April 27, 2011, both counsel for the State and the appellant were under the mistaken belief that hearings for the 27<sup>th</sup> had been cancelled. RP 12-13. Because of that mistaken belief, both counsel had called off their respective witnesses. *Id.*

(N.B. Appellant's assertion that actual court congestion prevented the hearing from being held on April 27, 2011 is in error). RP 12, 152. Due to an unexpected medical issue involving a member of the prosecutor's family, the State requested that the hearing be continued for one week rather than one day. RP 12, 16-17. Defense counsel agreed, citing financial difficulty for his client and witness should they need to appear the next day. RP 12-15. The Court asked if another prosecutor were available to hold the hearing on the following day, but it did not appear that anyone else was available. RP 17. In addressing scheduling, defense counsel indicated that the outside date by which the matter needed to proceed to trial was June 2, 2011. *Id.* Defense counsel prepared a new scheduling order placing the CrR 3.6 hearing on May 4, 2011, trial on May 10, 2011, and retaining the outside date of June 2, 2011. Counsel stated "[w]e will not agree to it going beyond June 2<sup>nd</sup>." RP 19.

On May 4, 2011, the deputy prosecutor assigned to Mr. Arousa's case was again in trial in another courtroom. RP 25, 29. 1 RP 3-4.

The CrR 3.6 hearing was held on May 11, 2011. RP 36-132. The Court heard from Grant County Sheriff's Office Deputy, Joe Harris, the appellant's stepmother, Cherri Roberts, the appellant, Pedro Arousa, and U.S. Marshal Deputies Johnsen and Hershey. Neither U.S. Marshal had prepared a report in conjunction with this incident. RP 99, 100, 107. Each testified that they had both reviewed Deputy Harris's report and had an independent recollection of the event. RP 102, 108.

Deputy Harris testified that he had been working a fugitive detail with the U.S. Marshals in March, and had been involved in looking for Anna Chavez at 306 East Fifth Street in Warden, Washington. RP 46-47. The officers had received information that day from the Warden Police Department that Anna Chavez lived at that residence, and that they had seen her there several times, but were never successful in contacting her there. RP 62. Deputy Harris did not recall how long they had kept the residence under surveillance prior to contact at the residence, but believed that it was longer than half an hour. RP 48, 68. During the course of their surveillance, the officers saw movement between the residence and a small travel trailer parked on the property, but were unable to identify the individuals that they saw moving between the two

structures. RP 58, 70, 71. Ms. Roberts, the appellant's stepmother and property owner, testified that the trailer was a 38-foot travel trailer parked 40-50 feet from the main residence. RP 85. When looking for Ms. Chavez, the officers initially approached the trailer and knocked, but received no answer. RP 56, 57. They then approached the home. *Id.*

When they knocked, Mr. Arousa answered the door. RP 49, 50. Deputy Harris and Deputy Johnsen were at the front while Deputy Hershey was covering the back of the residence. *Id.* Deputy Harris testified that he had told the appellant who they were and who they were looking for. RP 50. It was Deputy Harris's testimony that Mr. Arousa stated that Ms. Chavez did live there, but was not present at the time. RP 50-51, 60. Deputy Harris then asked if he and the two deputies could enter the home to look for Ms. Chavez, to which appellant answered that he'd have to check with "the boss." RP 51, 60. Deputy Harris then asked the appellant if they could come in to speak with Ms. Roberts, and Mr. Arousa said "sure." RP 52, 53, 61. Deputy Harris followed Mr. Arousa back to his stepmother's room, while the two deputies, who had also entered the home, stayed in the living room. RP 54. Deputy Harris stated that it was a small residence. *Id.* According to Deputy Harris, Ms. Roberts

indicated that she was willing to speak with him, and that as part of their conversation was asked for permission for the officers to be inside the home. RP 54, 55. Ms. Roberts told Deputy Harris that Ms. Chavez and Mr. Arousa only slept in the trailer, and that they did everything else within the residence, *i.e.*, eat, wash clothes, and watch television. RP 70. As Deputy Harris was speaking with Ms. Roberts, she mentioned appellant's first name, which "clicked" in the deputy's mind and Deputy Harris asked whether his last name was "Arousa", to which Ms. Roberts replied yes. RP 63. Once Deputy Harris realized who the appellant was, and had confirmed that they had a warrant for his arrest as well, the search for Ms. Chavez was terminated. RP 56, 63, 99.

Ms. Roberts testified that she resided at 316 (sic) East Fifth in Warden with the appellant's father, Pete Martinez. RP 78. According to Ms. Roberts neither Mr. Arousa nor Ms. Chavez lived with them, although she acknowledged that she had seen Ms. Chavez earlier in the day for approximately ten minutes. RP 78, 79, 80, 86. It was Ms. Roberts' testimony that both Mr. Arousa and Ms. Chavez stayed in the trailer, where they slept and watched television, but that they came into the residence to use the bathroom and shower. RP81. Occasionally, the two would also

come for meals. RP 86. Ms. Roberts also stated that she had previously been fined for allowing people to live in the trailer. RP 82. Ms. Roberts recalled the incident in which Mr. Arousa had knocked on her bedroom door, stating that the marshals were there looking for Anna. RP 79.

Appellant testified that on the day in question, he'd gone into his stepmother's house to make something to eat and use the restroom, when he heard the knock on the door and asked who it was. RP 89, 90. Mr. Arousa testified that he asked who it was, and that the response was "Joe." RP 90. (Deputy Harris's first name is "Joe".) RP 46. According to Mr. Arousa, if he had known that they were marshals or the police, he would have had his stepmother answer the door. *Id.* Mr. Arousa also believed that any warrant that law enforcement had would have included him. RP 91. Mr. Arousa testified that he had told Deputy Harris that Anna Chavez lived there, but that he had told the deputy that she lived there "in a sense, yes, you could say that, -- the residence, 'cause (sic) we live on the residence but she lives in the trailer with me." RP 90. In response to the Court's inquiry as to whether that was what the appellant had actually said to the officers, Mr. Arousa said "Well basically yes." RP 92. He went on to tell the court that he had

stated that Ms. Chavez lived in the trailer. RP 93. Mr. Arousa stated that when the officer had asked to enter the house, Mr. Arousa had said that he wanted to check with “the boss,” his stepmother, first but that Deputy Harris had followed him into the residence to her bedroom. RP 91.

U.S. Marshal Deputy Ryan Johnsen had been at the front of the residence with Deputy Harris when he knocked on the door. RP 96, 97. It was his testimony that when Mr. Arousa answered the door, he told them that Anna Chavez did live there, but was not currently present. RP 97. He also recalled Mr. Arousa initially telling them that he needed to check with “the boss” about coming in to look for Ms. Chavez, but then letting them come into the home when Deputy Harris asked if they could. RP 97. Deputy Johnsen testified that he and Deputy Hershey stayed in the living room with the appellant while Deputy Harris went to speak with Ms. Roberts. RP 98. Shortly thereafter Deputy Harris came out of the back bedroom to inform the appellant that he was under arrest on his warrant. *Id.* Deputy Hershey, who was not present during Deputy Harris’s initial contact with the appellant, confirmed that he and Deputy Johnsen stayed in the living room with the appellant and unsuccessfully attempted to make small talk. RP 105. Both

deputies testified that Mr. Arousa never asked law enforcement to leave the residence. RP 98, 105.

The Court issued its oral ruling on May 16, 2011, finding that although Mr. Arousa did not have apparent authority based on his initial statement to the officers, he did have actual authority much like a joint tenant, allowing him to invite third parties into common areas. RP 134-136. The parties proceeded to a stipulated facts trial on May 18, 2011. Mr. Arousa was found guilty as charged.

## V. ARGUMENT

### A. THE COURT FOUND THAT THE CONTINUANCE OF APPELLANT'S TRIAL AND OUTSIDE DATE WAS NECESSARY, AND APPELLANT CAN SHOW NO PREJUDICE FROM THE COURT'S ACTION.

A court may grant a continuance which results in the commencement of a criminal trial after the expiration of the period established by the court rule if the continuance is required for the proper administration of justice and will not substantially prejudice the defendant in the presentation of his defense. *State v. Guloy*, 104 Wn.2d 412, 705 P.2d 1182 (1985).

Trial in this matter was originally scheduled for April 26, 2011 with an outside date of May 9, 2011. A dispositive 3.6 hearing was

originally scheduled for April 18 (a non-hearing/docket day), and then continued to April 20, 2011. On April 20, the assigned prosecutor was in trial, and the hearing was continued to April 27. The court, at that time, continued the trial one week to May 3, with a new outside date of June 2. On April 27, both parties erred in calling off their witnesses under a mistaken belief that hearings had been cancelled. The 3.6 hearing was continued to May 4, with trial for May 10, with the outside date of June 2 retained based on the appellant's objection to continuance. On May 4, the assigned prosecutor was again in trial, and the 3.6 was heard on May 11, with trial on May 18, at which time the appellant was found guilty.

The court found it necessary to have the CrR 3.6 hearing prior to trial and so continued appellant's original trial date from April 27, 2011 to May 3, 2011, thus requiring a 30 day extension of speedy trial after the excluded period. Counsel argues that as the court's belief that the CrR 3.6 hearing should be heard prior to trial has no support in either case law or court rule, it is an erroneous position for the trial court to have taken.

On May 17, 2011, referring to the April 27, 2011 date, the court stated its position succinctly:

So it appears what the court did was, at the parties' request, to continue the 3.5/3.6 hearing one week, -- recognized the 3.5/3.6 hearing has to come before trial, case law does state that it's contemplated that the hearing will actually be on a different date, so that you don't have people not knowing at the time of trial what will be heard. RP 143 (emphasis added).

Appellant cannot show how the court's *sua sponte* continuance of his trial date was either manifestly unreasonable or exercised on either untenable grounds or reasons. *State v. Kenyon*, 167 Wn.2d 130, 216 P.3d 1024 (2009). Due to a communication error, neither party was ready to proceed on April 27, 2011, and was each asking that the hearing be continued. RP 12, 13, 15, 16, 18.

**B. SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S FINDING THAT THE APPELLANT COULD ALLOW OFFICERS ACCESS INTO THE HOME.**

An appellate court reviews a trial court's findings as to a motion to suppress for substantial evidence. *State v. Hoggatt*, 108 Wn.App. 257, 30 P.3d 488 (2001)(published in part). Whether a person consents to voluntarily allow an officer into a home without a warrant constitutes a factual inquiry. *Id.* The appropriate inquiry is

whether a rational trier of fact, taking the evidence in a light most favorable to the State, could find consent by clear and convincing evidence.

Of the three persons present when the appellant answered the door and the officers entered, only the appellant denies giving Deputies Harris and Johnsen unequivocal permission.

Deputy Harris originally asked the appellant whether or not officers could enter the home to search for Ms. Chavez, for whom they had a warrant. Mr. Arousa told Deputy Harris that he'd have to "ask the boss," referring to his stepmother, Cherri Roberts. Contrary to appellant's position, this does not imply that the appellant clearly had no authority to let the officers into the home, but rather implies that if the officers were to be allowed to search the premises, another's consent would be necessary. The court in its ruling, found that Mr. Arousa was much like a joint tenant, in that he had actual authority to invite others into a common area within the home. While officers need to seek permission for all joint tenants when conducting a search of non-common areas, and must stop a search of a common area when one joint tenant objects, the State is unaware of any case law that stands for the proposition

that all tenants of a home have to agree and give consent to entry into their residence for contact or for officers just to enter. In Mr. Arousa's case there simply was no search of the home.

Deputy Harris then asked appellant if they could enter the home. The objective facts known to the officers at that time would indicate to them that the appellant had that authority. He had both answered the door in response to their knock, and when asked, had told the officers that they could enter. Since he had just told the officers that he would need Cherri Roberts' permission to allow them to search, there is no reason why, if he also needed her permission to allow them to enter the house, he would not have told them so. The appellant's license to use his father's and stepmother's home indicates few barriers. Most would not presuppose that the appellant needed either an invitation or an appointment to utilize the bathroom, shower, or kitchen facilities.

Once the officers had entered, there was no search. Appellant was recognized as an individual for whom the officers had a warrant, and placed under arrest.

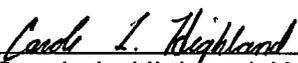
VI. CONCLUSION

Based upon the foregoing, the State respectfully requests this Court deny Appellant Arousa's appeal and affirm his conviction.

DATED THIS 10<sup>th</sup> day of April, 2012.

Respectfully submitted:

D. Angus Lee, Prosecuting Attorney

  
\_\_\_\_\_  
Carole L. Highland, WSBA #20504  
(Deputy) Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 29952-0-III
	)	
vs.	)	
	)	
PEDRO AROUSA,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
_____	)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Marie J. Trombley  
[marietrombley@comcast.net](mailto:marietrombley@comcast.net)

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

Pedro Arousa  
PO Box 776  
Warden WA 98857

Dated: April 10, 2012.

  
\_\_\_\_\_  
Kaye Burns