FILED

NOV 16, 2016

Court of Appeals
Division III
State of Washington

34033-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

BRADEN HALL, APPELLANT

APPEAL FROM THE JUVENILE COURT

OF SPOKANE COUNTY

APPELLANT'S AMENDED BRIEF

Janet G. Gemberling
Attorney for Appellant

JANET GEMBERLING, P.S.
PO Box 8754
Spokane, WA 99203
(509) 838-8585

INDEX

A. ASSIGNMENTS OF ERROR 1

B. ISSUES 1

C. STATEMENT OF THE CASE.....2

D. ARGUMENT 3

E. CONCLUSION.....7

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. GEORGE, 160 Wn.2d 727,
158 P.3d 1169 (2007)..... 4

COURT RULES

Former JuCR 7.8(d)(7)..... 3

JuCR 7.8(a)(1)..... 7

JuCR 7.8(b)(2) 4

JuCR 7.8(c)(2)..... 3, 5

JuCR 7.8(d)(3) 3, 4

JuCR 7.8(e)(3)..... 5

JuCR 7.8(e)(7)..... 3, 5

JuCR 7.8(f)(1) 3, 5, 6

JuCR 7.8(h) 7

A. ASSIGNMENT OF ERROR

1. The court erred in denying the defendant's motion to dismiss for violation of the speedy trial rule.

B. ISSUE

1. During the time when the defendant was arraigned and for the next 60 days, juvenile defendants were not required to appear at pretrial hearings in Spokane Juvenile Court. During this time the court entered several scheduling orders prepared by the deputy prosecutor and appointed defense counsel resetting the hearing dates. None of these orders was signed by the defendant and no orders of continuance were entered by the court. Did the court err in finding these were unavoidable or unforeseen circumstances beyond the control of the court such that the resulting delay should be excluded in calculating the time for trial under JuCR 7.8?

2. No adjudicatory hearing was scheduled for a date later than 60 days after the defendant's arraignment. Did defendant's failure to object to the date of an adjudicatory hearing

waive his right to dismissal of the charges under the provisions of the speedy trial rule?

C. FACTS

The State charged alleged juvenile offender Braden Hall with criminal mischief, fourth degree assault, obstructing a law enforcement officer, and being a person under 21 exhibiting effects of having consumed liquor. (CP 1-2) Under a local rule,[1] and pursuant to the parties' agreement, Mr. Hall was timely arraigned on November 25, 2014. (CP 6-11) The court set an adjudicatory hearing date for December 29 and scheduled a pre-trial hearing for December 17. (CP 11)

On December 18, the court reset the date for the adjudicatory hearing to January 12, 2015, and scheduled a pre-trial conference for December 31, 2014. (CP 12) On December 31, the pre-trial conference was rescheduled for January 14. (CP 13) On March 17, defense counsel advised the deputy prosecutor of the existence of a speedy trial issue, and on April 27 the defendant moved to dismiss the charges based on violation of the speedy trial rule. (CP 14-16)

---

[1] "An in-court appearance by the juvenile and counsel is required at the initial hearing unless a Waiver of Arraignment signed by the juvenile, the defense attorney and approved by the prosecutor has been filed with the court; or a continuance order signed by the prosecutor, the defense attorney and approved by the court has been filed." Former LJuCR 7.6(3)

The court heard the speedy trial motion on May 4 and found that the period of time from January 14 to about April 22 should be excluded in calculating the time for trial because it fell within the "unforeseen circumstances" provision of former JuCR 7.8(d)(7) (now JuCR 7.8(e)(7)). (RP 21; CP 80) In light of Mr. Hall's failure to object to the adjudicatory hearing date, the court denied the motion to dismiss. (RP 19-22; CP 79-80)

On December 15, 2015, the court found Mr. Hall guilty of criminal mischief and "Minor Exhibiting Effects" based on stipulated facts. (CP 63-71)

D. ARGUMENT

As a threshold matter, appellant notes that although the court did not expressly rely on the provisions of JuCR 7.8(c)(2), (d)(3), or (f)(1)[2] in denying the motion to dismiss, the written findings suggest that such provisions may have entered into the court's analysis. (RP 19-21, CP 79-80) None of these rules, however, provides a legal basis for the court's decision.

"A defendant waives the right to assert a time-for-trial violation by failing to object within 10 days after receiving notice of a trial date." *State*

[2] To simplify analysis, the current version of JuCR 7.8 is referenced in this section.

v. George, 160 Wn.2d 727, 733, 158 P.3d 1169 (2007). "A juvenile who is not held in detention shall be brought to hearing within . . . 60 days after the commencement date specified in this rule." JuCR 7.8(b)(2)(i).

> 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 an adjudicatory hearing 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 an adjudicatory hearing commenced on such a date is not within the time limits prescribed by this rule.

JuCR 7.8(d)(3). Based on the arraignment date of November 25, 2014, neither of the dates set for an adjudicatory hearing (December 29, January 12) was beyond the 60-day limit. (CP 11, 12) No subsequent date was set and thus there was no date to which the defendant could be required to object.

The State contended that Mr. Hall's failure to appear at pretrial hearings reset the time-for-trial clock. The rule provides:

> On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.
> . . .
> The failure of the juvenile to appear for any proceeding at which the juvenile's appearance was required. The new commencement date shall be the date of the juvenile's next appearance.

JuCR 7.8(c)(2). The trial court and all parties have agreed, however, that at the relevant time it was the prevailing practice in Spokane County not to require a juvenile defendant's presence at pretrial hearings. (RP 4, 16, 28-29) The court did not find that Mr. Hall's failure to appear at the scheduled pre-trial hearings reset the commencement date.

Nor does the rule permit time to be excluded under JuCR 7.8(e)(3) and (f)(1) in this case. Agreed continuances can only be excluded from the time for trial calculation if they are continuances of the adjudicatory hearing, and then only when signed by the defendant:

> (f) Continuances. Continuances or other delays may be granted as follows:
> (1) *Written Agreement*. Upon written agreement of the parties, which must be signed by the alleged juvenile offender or all the alleged offenders, the court may continue the hearing date to a specified date.

JuCR 7.8(f)(1). No such continuance exists here. Mr. Hall did not sign the 12/18 scheduling order purporting to reset the adjudicatory hearing to January 12. (CP 12) The scheduling order entered December 31, 2014 and filed January 5, 2015 does not set a new date for the adjudicatory hearing, and is not signed by the defendant. (CP 13)

Rather than apply either of these provisions, the trial court relied on JuCR 7.8(e)(7), which provides:

Excluded Periods. The following periods shall be excluded

in computing the time for the adjudicatory hearing:

> *Unavoidable or Unforeseen Circumstances.* Unavoidable or unforeseen circumstances affecting the time for the adjudicatory hearing beyond the control of the court or the parties. . . .

The court did not identify the unavoidable or unforeseen circumstances that affected the time for the adjudicatory hearing.

The juvenile court in Spokane County had established, followed, or at a minimum acquiesced in practices which left open the possibility that juvenile adjudicatory hearings could be rescheduled without regard for the provisions of the speedy trial rule or the rights of the alleged juvenile offender.

The court, at a minimum, was aware of and acquiesced in an accepted practice of not requiring juvenile defendants to appear at pre-trial hearings. The court should have been aware of the fact that it was entering agreed orders purporting to reschedule the date of adjudicatory hearings without any order of continuance signed by the juvenile. See JuCR 7.8(f)(1). The possibility that the lawyers would agree to such orders was not unforeseeable, and the entry of such orders was certainly not beyond the control of the court. As a result of these practices, the court lost control of the scheduling procedures that had been established under JuCR 7.8 to ensure the timely adjudication of charges filed against alleged juvenile offenders.

Responsibility for following the procedures established by the rule to ensure timely adjudication of charges against juveniles is assigned to the court: "(1) *Responsibility of Court*. It shall be the responsibility of the court to ensure an adjudicatory hearing in accordance with the provisions of this rule to each person charged with a juvenile offense." JuCR 7.8(a)(1). The rule expressly requires dismissal of the charges when the trial court fails to assume the responsibility for implementing the provisions of the rule: **"**A charge not brought to adjudicatory hearing within the time limit determined under this rule shall be dismissed with prejudice." JuCR 7.8(h).

E. CONCLUSION

Provisions of the speedy trial rule exist to ensure timely adjudication of juvenile charges. When the trial court acquiesces in practices and procedures that are not fully consistent with those provisions, a juvenile's rights under the rule are foreseeably jeopardized. The charges against Mr. Hall should be reversed and dismissed.

Dated this 14th day of November, 2016.

JANET GEMBERLING, P.S.

Janet G. Gemberling #13489
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 34033-3-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
BRADEN HALL,	)	
	)	
Appellant.	)	

I certify under penalty of perjury under the laws of the State of Washington that on November 16, 2016, I served a copy of the Appellant's Amended Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Brian O'Brien
scpaappeals@spokanecounty.org

I certify under penalty of perjury under the laws of the State of Washington that on November 16, 2016, I mailed a copy of the Appellant's Amended Brief in this matter to:

Braden Hall
615 E. Nebraska
Spokane, WA 99208

Signed at Spokane, Washington on November 16, 2016.

Janet G. Gemberling
Attorney at Law