

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

36348-1

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

CHELAN COUNTY, a municipal corporation.

Respondent.

v.

JEFFREY C. JONES, an individual.

Appellant.

REPLY BRIEF OF APPELLANT

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Sent 9-20-19 4:40pm

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I. REPLY

The fundamental question in this case is whether the superior court abused its discretion by denying Appellant Jeffrey Jones's motion for a continuance of trial. It did. Respondent Chelan County contends that the court acted reasonably in denying the motion, but the facts show that Mr. Jones did not receive notice of the trial dates and was not ready to proceed. He did not have counsel, and he did not have time to secure the participation of the witnesses he needed to prove his case. As a pro se defendant, he was unable to fully present his case. He is entitled to a new trial, and the Court should grant him one.

After the parties jointly agreed to continue the trial (scheduled for February 20-21, 2018) to a future date that was as yet undetermined, it is undisputed that the court mailed notices of the trial date (later set for August 23-24, 2018) to an improper address for Mr. Jones even though the correct address was included in a filed notice of withdrawal. Despite the County's attempt to cast this continuance as primarily to benefit Mr. Jones, the County needed it due to the unavailability of a witness. CP 918.

Mr. Jones did not discover the date of the trial until August 13, 2018, ten days before it was scheduled to begin. At the hearing on Mr. Jones's motion for continuance, immediately before trial, the court asked if he had received a notice ostensibly mailed June 28, 2018. Mr. Jones responded:

Didn't get it. Plus, I'm not getting other mail too and I've filed complaints with the postal service. I have a copy of one of the complaints with me. And I talked to Laurie at the Clerk's office. She said their address that they've got, P.O. Box 552, Dryden.

RP 10:25-11:4. He noted that he had "15 witnesses and only two showed up because they agreed to meet here with me, so." RP 12:17-18. As a pro se defendant, Mr. Jones was not an expert in civil procedure, including the issuing of subpoenas. RP 12:22-24.¹

Contrary to the County's position that there is nothing in the record regarding the witnesses and their proposed testimony, Mr. Jones listed names and stated what he expected them to say:

Yeah, their testimony would substantiate the claims that they make. I'm not making any of these claims. The people lived on the property, except with my own personal knowledge. Their statements are substantiated in claims from other people and themselves, the people who lived on that property prior to me even owning it. And for a continued length of time from 1959 until present.

They're very, very important to my case because it's prior to zoning.

RP 16:16-24; *see also* RP 13:16-25 (listing names of additional witnesses).

This testimony was critical to Mr. Jones's case, and its absence harmed his ability to mount a complete defense to the County's claims.

¹For the same reason, the County's argument that Mr. Jones's delay in filing a motion for a continuance is not persuasive. He had no way of knowing the niceties of local rules, nor is it likely that an earlier filing of the motion would have materially affected the ruling. The County was not prejudiced by the timing of the motion.

Contrariwise, the harm to the County of a continuance was minimal. The case had been pending for almost five years, so a short continuance was of little import. While witnesses were present, most were local, and the inconvenience of rescheduling another date pales when compared to the prejudice Mr. Jones experienced by not receiving adequate notice of the trial date and time to prepare for it. While some witnesses had passed away during the case, there was no evidence any other witnesses had pressing health concerns that would jeopardize their testimony if a continuance was granted.

Further, despite the County's attempt to cast the stipulated continuance in February 2018 as primarily intended to allow Mr. Jones to find another attorney, the County wanted the continuance because one of its witnesses was unavailable. CP 918-19. Further, no trial date was set at that time, rendering this situation similar to *MacKay v. MacKay*, 55 Wn.2d 344, 348-49, 347 P.2d 1062 (1959).² Mr. Jones did not know when the trial might be set, and the evidence is clear that the court's first two trial notices were mailed to the wrong address. CP 921, 922, 925. Even if the third notice was

² The County tries to distinguish this case because the court here set a specific trial date. But it did not do so at the time the continuance was granted, as in *MacKay*, and Mr. Jones did not receive subsequent notices, also similar to *MacKay*. The comparisons between the two cases are striking. As in *MacKay*, the Court should find an abuse of discretion and remand for a new trial.

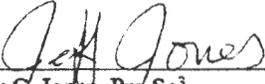
properly addressed and timely mailed. Mr. Jones did not receive it and did not learn of the trial date until ten days before it began.

Under the facts of this case, the trial court abused its discretion by denying Mr. Jones's motion for a continuance of trial until he could properly prepare and present his case, including the testimony of numerous other witnesses that would corroborate the historic use of the property as a recreational vehicle park. The Court should reverse the trial court's judgment and remand for a new trial.

II. CONCLUSION

Mr. Jones respectfully asks this Court to reverse the superior court's judgment and remand for a new trial.

Dated this 20th day of September, 2019.



Jeffrey C. Jones, Pro Se³

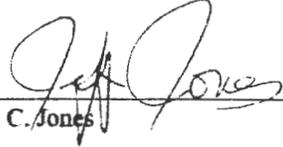
³ This brief was prepared with the assistance of counsel.

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury of the laws of the State of Washington that I am over the age of eighteen, and that on September 20, 2019, I caused to be served a true and correct copy of the foregoing document: *This Brief, Motion for extension*

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Dated this 20th day of September, 2019.



Jeffrey C. Jones

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