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Court of Appeals
Division III
State of Washington
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No. 37169-7-III

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

STATE OF WASHINGTON,

Respondent,

v.

SHANE MICHAEL CURTISS,

Appellant.

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

The Honorable Judges David A. Eloffson, Richard Bartheld, and Gayle Harthcock

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Shane Michael Curtiss accepts this opportunity to reply to the State's brief.

B. ARGUMENT IN REPLY

1. Whether Mr. Curtiss' right to a speedy trial under CrR 3.3 was violated when the trial court granted the State's request for a continuance past August 23, 2019.

The State claims "[t]here can be no doubt that the standards set forth in Barker v. Wingo, 407 U.S. 514, 522, 533, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) and the cases that followed apply to this case." *See* Respondent's Brief pg. 11. *Barker* addresses the constitutional right to a speedy trial under the Sixth Amendment, and sets forth a balancing test for determining when this constitutional right is violated. *See Barker*, 407 U.S. at 515-16, 530. However, in this appeal, Mr. Curtiss does not allege a violation of his constitutional right to a speedy trial under the Sixth Amendment. *See* Appellant's Opening Brief pgs. 7-14. Instead, Mr. Curtiss solely asserts a rule-based speedy trial violation, that his right to a speedy trial under CrR 3.3 was violated. *See* Appellant's Opening Brief pgs. 7-14. Specifically, Mr. Curtiss asserts he was not brought to trial within 60 days of his arraignment, as required by CrR 3.3(b)(1)(i), (c)(1), and the trial court abused its discretion in granting the State's request for a continuance on August 9, 2019, because neither reason set forth by the State supported the trial court granting a continuance under CrR 3.3(f)(2). *See* Appellant's Opening Brief pgs. 7-14. Therefore, the standards set forth in *Barker* do not apply in this case.

Instead, the following standards apply to this case. An alleged violation of the speedy trial rule is reviewed de novo. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d

1024 (2009). “[T]he decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court.” *State v. Flinn*, 154 Wn.2d 193, 199, 110 P.3d 748 (2005) (alteration in original) (quoting *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004)). The appellate court “will not disturb the trial court’s decision unless the appellant or petitioner makes a clear showing . . . [that the trial court’s] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id.* (internal quotation marks omitted) (alterations in original) (quoting *Downing*, 151 Wn.2d at 272). The remedy for a violation of the speedy trial rule is dismissal of the charges with prejudice. *Kenyon*, 167 Wn.2d at 139; *see also* CrR 3.3(h) (stating “[a] charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice.”).

C. CONCLUSION

Mr. Curtiss’ convictions should be reversed and the charges dismissed with prejudice, because his right to a speedy trial under the applicable court rule, CrR 3.3, was violated when the trial court granted the State’s request for a continuance past August 23, 2019.

Respectfully submitted this 9th day of September, 2020.


Jill S. Reuter, WSBA #38374

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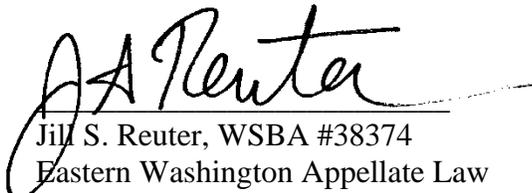
STATE OF WASHINGTON) COA No. 37169-7-III
Plaintiff/Respondent)
vs.) Yakima Co. No. 19-1-01028-8
)
SHANE MICHAEL CURTISS) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on September 9, 2020, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

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Having obtained prior permission, I also served a copy on the Respondent at David.Trefry@co.yakima.wa.us and appeals@co.yakima.wa.us using the Washington State Appellate Courts' Portal.

Dated this 9th day of September, 2020.


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