

NO. 78362-4

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KEITH GEORGE,

Appellant.

CLERK

BY C. J. HERRITT

06 DEC 26 AM 8:09

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

SUPPLEMENTAL BRIEF OF RESPONDENT

NORM MALENG
King County Prosecuting Attorney

JAMES M. WHISMAN
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUE</u>	1
B. <u>FACTS</u>	1
C. <u>ARGUMENT</u>	5
1. GEORGE'S TIME FOR TRIAL ARGUMENTS WERE NOT PRESERVED FOR REVIEW.....	5
2. GEORGE WAS TIMELY TRIED ON THE RENTON CASE.....	9
a. The Single Day of March 1, 2004 is not an "Excluded Period" Under the Time for Trial Rule.....	10
b. The Time for Trial Rule Does not Require a Showing of "Willful" Failure to Appear, or "Due Diligence" in Transporting a Defendant to Multiple Court Dates.....	14
D. <u>CONCLUSION</u>	20

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

City of Seattle v. Guay, 150 Wn.2d 288,
76 P.3d 231 (2003)..... 17

In re Stenson, 153 Wn.2d 137,
102 P.3d 151 (2004)..... 16

State v. Barton, 28 Wn. App. 690,
626 P.2d 509, review denied,
95 Wn.2d 1027 (1981)..... 7

State v. Bernhard, 45 Wn. App. 590,
726 P.2d 991, review denied,
107 Wn.2d 1023 (1987)..... 6, 7, 13, 14

State v. Chaney, 17 Wn. App. 258,
562 P.2d 259 (1977)..... 14

State v. Delgado, 148 Wn.2d 723,
63 P.3d 792 (2003)..... 17

State v. Durham, 13 Wn. App. 675,
537 P.2d 816 (1975)..... 14

State v. George, 131 Wn. App. 239,
126 P.3d 93 (2006)..... 6

State v. Greenwood, 120 Wn.2d 585,
845 P.2d 971 (1993)..... 14

State v. Hudson, 130 Wn.2d 48, 56-57,
921 P.2d 538 (1996).....20

State v. Young, 89 Wn.2d 613,
574 P.2d 1171 (1978)..... 14

State v. Welker, 157 Wn.2d 557,
141 P.3d 8 (2006).....20

Rules and Regulations

Washington State:

CrR 3.3..... 8, 11, 13, 14, 15
CrR 4.1..... 11
CrRLJ 3.3..... 4, 6, 7, 8, 9, 10, 12, 15, 16, 17, 18

Other Authorities

4A L. Orland, Wash. Prac., Rules Practice § 6201
(3rd ed. 1983)..... 14
Time-for-Trial Task Force, *Final Report*, 11, 12, 18
Criminal Rules Task Force,
Washington Proposed Rules of Criminal Procedure
(1971)..... 14

A. ISSUE¹

Under the plain, unambiguous time for trial rules, the period from arraignment through sentencing on an unrelated charge is excluded in computing the time for trial. When a defendant fails to appear for a hearing, his time for trial period is reset to zero and begins anew at the next hearing. Keith George was charged in Renton Municipal Court, but was also facing unrelated charges in Kent Municipal Court and in King County Superior Court. He twice missed hearing dates in Renton because he could not be transported from the Kent and King County Jails. His time for trial period was thus restarted each time. Should this Court reject his invitation to change the time for trial rule by finding an implied requirement that the failure to appear be "willful" or an implied requirement that the State act with "due diligence" in attempting to bring him to court when he is held on unrelated charges?

B. FACTS

The substantive facts are described in detail in the State's court of appeals brief. Br. of Resp. at 3-13. In short, the defendant, Keith George, had a turbulent, on-again off-again relationship with

¹ George's petition for review also raised a double jeopardy claim. That issue was fully briefed in the Court of Appeals, and the State incorporates its earlier arguments by reference. The Court of Appeals correctly rejected the argument.

his wife, Julianna.² When he assaulted her in front of her children in California in 2001, a restraining order was issued. The couple subsequently reconciled and moved to the Seattle area, but the domestic violence continued, and Juliana again left George. In late 2003 and early 2004, a number of incidents in Renton and Kent led to charges in three different courts.

First, George contacted Juliana in Renton, on December 22, 2003, at her place of employment, in violation of the no-contact order. This incident was investigated by Renton police. A charge of Violation of a No-Contact Order (VNCO) was filed in Renton Municipal Court on January 6, 2004 under Case Number CR33049. RD at 1.³

On February 14th, while speaking to Juliana's friends, George said in an angry, deliberate manner that he intended to kill his wife by cutting off her head and disposing of her body in such a manner that she would never be found. Br. of Resp. at 11-12.

Third, a separate violation occurred in Kent on February 21, 2004. George went to a domestic violence "safe house" where Juliana

² Because the appellant and the victim share the same last name, this brief will refer to Julianna by her first name for clarity.

³ The State will cite to these documents as RD (Renton Docket) and KD (Kent Docket). Copies are appended to Petitioner's Supplemental brief, and a chronology is provided as Appendix A to this brief.

was staying, and repeatedly rang her doorbell. CP 3-4; Br. of Resp. at 13. This case was filed in Kent Municipal Court on February 24, 2004, under Case Number K43924FV. KD at 2/24/04.

Based on the February 14th incident, the State charged Keith George on February 27, 2004, in King County Superior Court, with Felony Harassment. CP 1-2. The information also charged a misdemeanor for the Kent case that occurred on February 21st. CP 2. It appears that the county prosecutor was unaware of the fact that, three days earlier, the Kent case had been filed in Kent Municipal Court. KD at 2/24/04.

Each case was then litigated in the respective court. The Renton Municipal Court docket shows that on March 1, 2004, George did not appear for a pretrial hearing in court, so a bench warrant issued. RD at 2, 4-5. On that date, George was incarcerated at the Kent Jail on an unrelated domestic violence charge, and he could not be transported to Renton. Id.

When George reappeared in Renton Municipal Court after missing the March 1st hearing, the court reset his commencement date. RD at 3. On April 13th, the court set a trial date of May 6th. George did not object to this date at the time it was set, or in two subsequent court appearances. RD at 3-4. When May 6th arrived,

George was released on his personal recognizance, so his time for trial was extended. RD at 4.

On May 17th George was held at the Regional Justice Center on unrelated charges in the King County Superior Court. Thus, he was not transported to Renton for a pretrial hearing; the court again issued a warrant, and then reset his commencement date upon his next appearance in Renton. A trial date was set for July 15, 2004. RD at 5-6. This date was well within the new 60-day time period for trial under CrRLJ 3.3(c)(2)(ii) following George's failure to appear. The Renton trial date was stricken, however, when the city prosecutor moved for dismissal without prejudice on June 14, 2004 to allow the State to refile this charge in superior court. Id.

On July 13, 2004, during pretrial motions in King County Superior Court, the information was amended to add the Renton charge as Count III. CP 6-7; 2RP 3. George noted that he wished to preserve a speedy trial claim; the court invited briefing, but a motion was never filed. 2RP 3-5. A jury subsequently found George guilty of all three counts. CP 13-16, 39-40. The court imposed a standard range sentence of 12 months of incarceration on Count I, Felony Harassment; a consecutive sentence of 12 months on Count II (the February 14, 2004 Kent VNCO) and a 12-

month suspended sentence on Count III (the December 22, 2003 Renton VNCO). CP 50, 44.

George appealed and argued, inter alia, that Count III, the Renton case, should have been dismissed because he was not timely brought to trial on that charge. The Court of Appeals rejected his arguments, holding that it was proper to reset George's commencement date when he did not appear for pretrial hearings in Renton. State v. George, 131 Wn. App. 239, 126 P.3d 93 (2006). The Court also noted that George had failed to preserve this issue for review. George, 131 Wn. App. at 245 n.15.

C. ARGUMENT

1. GEORGE'S TIME FOR TRIAL ARGUMENTS WERE NOT PRESERVED FOR REVIEW.

The time for trial rule provides that a defendant must object to an allegedly untimely trial date:

(3) Objection to Trial Setting. A party who objects to the date set on 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 a trial date 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 a trial commenced on such a date, is not within the time limits prescribed by this rule.

CrRLJ 3.3(d)(3). Speedy trial claims, due to their technical and fact-specific nature, should not be reviewed when not properly lodged below. In State v. Bernhard, 45 Wn. App. 590, 726 P.2d 991, review denied, 107 Wn.2d 1023 (1987), for example, the court observed that:

Given the many facets of this technical rule [CrR 3.3], its several amendments and the many appellate decisions interpreting its provisions, the trial court cannot reasonably be expected, nor does it have the obligation, to rule on every possible aspect of CrR 3.3 every time there is a general incantation of the rule's applicability or an issue raised concerning one of its provisions.

A motion by a defendant addressed to the specific rule provision gives the trial court the opportunity to determine whether or not the applicable time limits have elapsed. It also enables the court in appropriate cases to find as a fact whether or not any excluded periods apply and to make a record of such rulings for possible appellate review.

Bernhard, 45 Wn. App. at 600 (quoting State v. Barton, 28 Wn. App. 690, 693-94, 626 P.2d 509, review denied, 95 Wn.2d 1027 (1981)). No proper objection was lodged in this case.

George's time for trial arguments turn on two failures to appear (FTA) in Renton Municipal Court on March 1st and May 17th. His commencement date was reset after each FTA and trial dates were reset accordingly. Yet, there was no objection to resetting the

commencement date on March 12th, following the March 1st failure to appear. On April 13, 2004, when a trial date of May 6, 2004 was set, George had an obligation to object, pursuant to CrRLJ 3.3(d)(3), by April 23rd. He did not. In fact, George did not object to the May 6th trial date even when he appeared in court on April 27th, May 4th, and May 6th. RD at 3-4. Thus, George lost his right to object based on the March 1st failure to appear, and this Court should not review that argument.

After the May 17th failure to appear, George appeared in Renton Municipal Court on June 4, 2004, and trial was set for July 15, 2004. George claims that the Renton court denied his time for trial motion at this point.⁴ This is incorrect. The only mention in the Renton docket regarding time for trial says: "DEFENSE REQUESTS MOTION TO DISMISS FOR SPEEDY TRIAL ISSUES BE ADDED TO MOTIONS CALENDAR -- GRANTED." RD at 5. There is no indication that a formal motion was ever filed, argued, or denied before the case was dismissed on June 15th.

⁴ "...Mr. George moved to dismiss the charge for a violation of the time for trial rule, which motion was denied." Supp. Br. of Pet. at 3 (citing RD at 5-6).

George suggests, however, that the superior court heard and denied his time for trial motion.⁵ Again, this is not correct. On the second day of trial, July 13, 2004, the prosecutor moved to amend the information to include, as Count III, the Renton charge that was dismissed in mid-June. 2RP 2-3. George entered a plea of not guilty to the charge, and then noted that he was not waiving an objection to the time for trial. 2RP 3-5. The court then said:

We'll go ahead and go forward with trial on that. And you at any time can submit a brief to me on the speedy trial issue with regard to the Renton charge, which, now, will be incorporated into Count III here.

2RP 4-5. Thus, it is clear that the trial court did *not* deny a time for trial motion. The issue was never again raised in the five-day superior court trial, and no formal motion was ever brought, so a ruling was never obtained from the superior court judge.

Under these circumstances, this Court should refuse to review the claim. George argues that the State had a duty to transport him from court to court, and that it failed in that duty. Yet, there was never any testimony on the alleged CrRLJ 3.3 violation, there is no trial court ruling on the matter, and it is impossible to say

⁵ "The superior court denied Mr. George's renewed motion to dismiss for violation of the time for trial, and the case proceeded to trial on the Renton charge as well as on the Kent charge that had already been dismissed with prejudice." Supp. Br. of Pet. at 4 (citing CP 6-7; 2RP 3-5).

from the existing record why George was not transported from Kent to Renton on the dates in question.⁶ It is entirely possible that George was ill, that he refused to be transported, or that other circumstances beyond the State's control prevented transport. For these reasons, it is inappropriate to review this purely rule-based claim when the claim was abandoned in the trial court.

2. GEORGE WAS TIMELY TRIED ON THE RENTON CASE.

George was arraigned in Renton Municipal Court on February 4, 2004. Since he was out-of-custody, his time for trial expiration date was May 4, 2004. CrRLJ 3.3(c)(2)(ii) provides that "[t]he failure of the defendant to appear for any proceeding at which the defendant's presence was required" requires resetting of the commencement date. Thus, when George did not appear for a pretrial hearing on March 1st, the court struck the hearing, and when George next appeared in court on March 12th, the commencement date was reset. *Id.* At this point, George was in custody, so he had to be tried within sixty days. CrRLJ 3.3(b)(4). At a pretrial hearing on April 13th, May 6th was set as the new trial date. RD at 3.

⁶ The State does not concede that it had a legal obligation to transport him.

On May 6, 2004, George was released without conditions, so the time for trial was extended by thirty days. CrRLJ 3.3(b)(3). A trial date was set for June 3, 2004, and a pretrial hearing was set for May 17, 2004. RD at 4.

On May 17th, George did not appear for the pretrial hearing because, for some reason, the transport did not occur. Thus, the commencement date was reset upon his next appearance in court, June 4, 2004. RD at 5. A new trial date was then set for July 15, 2004. Thus, when the case was dismissed to allow filing in superior court, there was a month left on the time for trial clock. When the charge was filed on July 13, 2004 in King County Superior Court, the date of filing and arraignment established a new commencement date. CrR 3.3(c)(1); CrR 4.1.⁷ Trial was completed over the next several days. Thus, George was tried within the limits set by the time for trial rules.

- a. The Single Day of March 1, 2004 is not an "Excluded Period" Under the Time for Trial Rule.

George asserts that his time for trial right was violated at two distinct points. First, he claims that because he was attending a

⁷ The 2003 amendments to CrR 3.3 eliminated the deduction for time spent in a court of limited jurisdiction. See former CrR 3.3(c)(2); Time-for-Trial Task Force, *Final Report*, at 31.

court proceeding in Kent Municipal Court on March 1st, his absence on that single day should be treated as an "excluded period" pursuant to CrRLJ 3.3(e)(2), so only one day should have been deducted from his Renton time for trial. Supp. Br. of Pet. at 8.

This argument relies on a flawed interpretation of the time for trial rules, and should be rejected. If the "excluded period" provision applies at all to this circumstance, it would operate to exclude the entire time spent adjudicating the Kent charge, not simply one day. CrRLJ 3.3(e)(2) provides:

- (e) Excluded Periods. The following periods shall be excluded in computing the time for trial:
 - (2) Proceedings on unrelated charges. Arraignment, pretrial proceedings, trial, and sentencing on an unrelated charge.

The policy underlying this provision is unchanged from the prior rule, see former CrRLJ 3.3(g)(2), but its application has become even broader under the new rule. See Time-for-Trial Task Force, *Final Report*, at 17 (October, 2002). The provision is designed to avoid placing courts in the impossible position of litigating numerous cases all at once. Thus, the provision has repeatedly been interpreted to mean that periods of time during which a defendant is litigating another case are excluded from the

time for trial calculation, regardless of whether the defendant is also within the grasp of another court.

State v. Bernhard, supra, 45 Wn. App. 590, is illustrative and contains an extensive discussion of this provision and the policy underlying it. Bernhard was charged in Snohomish County with robbery and remained in jail pending trial. He was subsequently charged with an unrelated robbery in King County. King County prosecutors were aware that Bernhard was in Snohomish County, but they did not attempt to transport him for trial. Once Bernhard pled guilty in Snohomish County, however, he was transported to King County and arraigned, but his case did not immediately proceed to trial. Bernhard, 45 Wn. App. at 592-93. Bernhard later moved to dismiss for violation of his time for trial rights. The trial court dismissed, concluding that CrR 3.3(g)(2) does not exclude all time awaiting trial and sentencing on another case "unless there is a specific finding that the defendant is beyond the reach of the State or that the State cannot obtain the presence of the defendant despite diligent efforts." Id. at 595.

The Court of Appeals rejected this ruling, however, and held "that CrR 3.3(g)(2) excludes from the speedy trial calculations the entire *period* that a defendant is involved in a trial on another

matter." Id. at 598 (italics in original). The court noted that its ruling was consistent with the language of the rule, with prior versions of the rule, and with the drafters' intent. Id. at 596-98 (citing former CrR 3.3(d)(2) (effective May 21, 1976); CrR 3.3(e)(2) (effective November 17, 1978); Criminal Rules Task Force, Washington Proposed Rules of Criminal Procedure (1971); 4A L. Orland, Wash. Prac., Rules Practice § 6201 (3rd ed. 1983)).

The Bernhard court also noted that its decision was consistent with prior decisions. Id. (citing State v. Chaney, 17 Wn. App. 258, 562 P.2d 259 (1977); State v. Young, 89 Wn.2d 613, 574 P.2d 1171 (1978); State v. Durham, 13 Wn. App. 675, 537 P.2d 816 (1975)). The court said that "[t]he absence of an exception such as CrR 3.3(g)(2) would pose severe practical problems in cases when a defendant is facing multiple charges in several jurisdictions." Bernhard, at 597. Finally, the court noted:

Were we to accept Bernhard's argument that CrR 3.3(g)(2) excluded only those time periods when a defendant was unavailable because of physical presence at an unrelated trial, calculations under CrR 3.3 would be virtually impossible, particularly if the defendant was incarcerated on unrelated charges in a distant jurisdiction.

Id. at 598.

State v. Greenwood, 120 Wn.2d 585, 845 P.2d 971 (1993) is also instructive. Greenwood had escaped from prison in Thurston County, was recaptured, and was charged with an assault that had occurred in Pierce County. He was also charged with escape in Thurston County, but arraignment on that charge was delayed. The Supreme Court held that the time for trial on the escape charge "began on the day the defendant pleaded guilty to the assault charge." Id. at 609.⁸

These authorities establish that pursuant to the "excluded period" provision, CrRLJ 3.3(e)(2), the Renton court need not have credited George with *any* time for trial deduction as long as the Kent case was being adjudicated. And, there is no basis whatsoever to interpret CrRLJ 3.3(e)(2) as requiring a single-day deduction.

- b. The Time for Trial Rule Does not Require a Showing of "Willful" Failure to Appear, or "Due Diligence" in Transporting a Defendant to Multiple Court Dates.

As to his failure to appear in Renton on March 17th, George claims that the court lacked authority to reset his commencement date because it was not his fault that he was not transported from

⁸ The applicable version of the rule covered "trial," but not sentencing, on another charge. See former CrR 3.3(g)(2).

Kent to Renton, so he did not "willfully" fail to appear. Supp. Br. of Pet. at 9. There are two flaws in this argument.

First, it erroneously assumes that the Renton court had *any* duty to transport him while the Kent case was in litigation. As set forth above, CrRLJ 3.3(e)(2) excludes time spent litigating unrelated cases.⁹ While the Renton court have requested a transport -- and did -- to expedite its proceedings, it had no obligation to bring George to trial until the other case was complete.

Second, George's argument is flawed because it asks this court to read a "willful" standard into the time for trial rule. Supp. Br. of Pet. at 9. Alternatively, he appears to suggest that this Court should create a standard of "good faith and due diligence" that would apply to CrRLJ 3.3(c)(2). Supp. Br. of Pet. at 10-12. These arguments should be rejected.

This Court applies the rules of statutory construction to the interpretation of court rules. In re Stenson, 153 Wn.2d 137, 146, 102 P.3d 151 (2004). "Where the language of a statute or rule is plain and unambiguous, the language will be given its full effect." City of Seattle v. Guay, 150 Wn.2d 288, 300, 76 P.3d 231 (2003).

⁹ George has not asserted that these cases were "related" for purposes of the rule. "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the trial court." CrRLJ 3.3(a)(3)(ii).

Language in a rule is not ambiguous unless it is susceptible to more than one reasonable meaning. Id. This Court "cannot add words or clauses to an unambiguous statute when the [drafter] has chosen not to include that language. [The Court should] assume the [drafter] 'means exactly what it says.'" State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

The plain language of the time for trial rule says that the commencement date shall be re-established upon "[t]he failure of the defendant to appear for any proceeding at which the defendant's presence was required." CrRLJ 3.3(c)(2). This language is unambiguous. There is nothing to suggest that a trial court must find a defendant's absence willful.

The usual rules of statutory construction are even more compelling as applied to the time for trial rule. Due to its complexity, and the fact-specific nature of its application, practitioners and lower courts must have clear, unchanging standards to guide their decisions. One of the important concerns of prosecutors and judges on the time for trial task force was the uncertainty created by frequent judicial amendments to the rule. See Time for Trial Task Force, *Final Report*, at 4, App. C. Thus, inserted directly into the rule was the following provision:

(4) *Construction.* The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

CrRLJ 3.3(a)(4). In light of the clear language of the rule, including the provision on construction, this Court should reject George's suggestion that a "willful" and/or "due diligence" requirement should be implied.

The time for trial rules attempt to balance the interest in prompt resolution of criminal cases with the sometimes competing interest -- given large caseloads and the multiplicity of courts -- in orderly court administration. An important component in striking that balance is the recognition -- since the rule's inception several decades ago -- of the fact that multiple cases cannot be resolved at the same time. Thus, time for trial rules have long required that time spent litigating unrelated cases would not be counted against the time for trial in a pending case.

Although George was transported to and from Renton on several occasions, he had no constitutional or statutory right to such transfer. Indeed, Renton could have decided to wait until George was finished litigating his other cases before transporting

him to Renton to adjudicate the Renton case. The fact that Renton tried to litigate its case at the same time as the Kent and King County cases does not recreate a right to have those cases litigated within sixty or ninety days.

This general rule well-serves all parties, and the courts. Defendants frequently have different lawyers on different cases, and the attorney-client relationship can be disrupted if a defendant must be transported to multiple courts. Courts can voluntarily attempt to resolve their own cases when other cases are pending before other courts. In fact, it will often be in all parties' interest to resolve cases as quickly as possible. If the charge is minor, or if conviction is inevitable, a defendant may wish to resolve several cases all at once, and perhaps receive concurrent sentences. If the charges are weak, the prosecutor may reduce or dismiss the charges and clear another case from the docket. But the plain language of the time for trial rules does not *require* such transfers, and importing such requirements by judicial opinion would upset the balance recently struck by the drafters of the rule, and by this Court when it adopted the rule.

By contrast, the rule advanced by George -- which would require that courts attempt to simultaneously litigate numerous

cases in different courts, all the while adhering to the strict requirements of only certain portions of the time for trial rule -- is contrary to the plain language of the rule, and is unworkable. In King County, there are thirty-seven municipal courts and six district court locations prosecuting misdemeanors.¹⁰ In addition, there are two separate locales for prosecuting felonies, the King County Courthouse and the Regional Justice Center. Thus, forty-five courts in King County alone are holding arraignments, pretrial hearings, trials, sentencings, and probation revocation hearings. See http://www.courts.wa.gov/court_dir/orgs/190.html; Appendix B. Many of the courts have multiple judges, each of whom schedules hearings and issues bench warrants when defendants fail to appear. Just across the county border are neighboring courts in Pierce and Snohomish counties. The most prolific misdemeanants routinely commit crimes in multiple jurisdictions, and can have numerous cases pending at once. By cooperation, courts manage a fair degree of shuttling of defendants among all these locations. But a *requirement* that defendants be shuttled among these forty-five courts, on a tight schedule that is bound to overlap, and without

¹⁰ Twelve cities currently contract for services with King County District Court but those courts operate independent calendars for the city cases.

any mechanism¹¹ to support the requirement, would ensure that the most prolific misdemeanants benefit from time for trial dismissals, rather than have their cases adjudicated on the merits.

D. CONCLUSION

George's time for trial arguments were not preserved. Even if preserved, the arguments should be rejected because they conflict with the plain language of the rule. The State respectfully asks that his judgment and sentence be affirmed.

DATED this 22nd day of December, 2006.

Respectfully submitted,

NORM MALENG
King County Prosecuting Attorney

By: 
JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

¹¹ Compare City of Seattle v. Guay, *supra*, 150 Wn.2d at 299-300 (no duty to transport under former rule when no mechanism exists to ensure consistent, reliable transports) and State v. Hudson, 130 Wn.2d 48, 56-57, 921 P.2d 538 (1996) (no duty to summon out-of-state defendant who is in out-of-custody because no reliable means to ensure service), with State v. Welker, 157 Wn.2d 557, 141 P.3d 8 (2006) (duty existed under old rule to transport out-of-state prison inmate using mechanism provided by the Interstate Agreement on Detainers).

Time for Trial Chronology

Renton Municipal Court

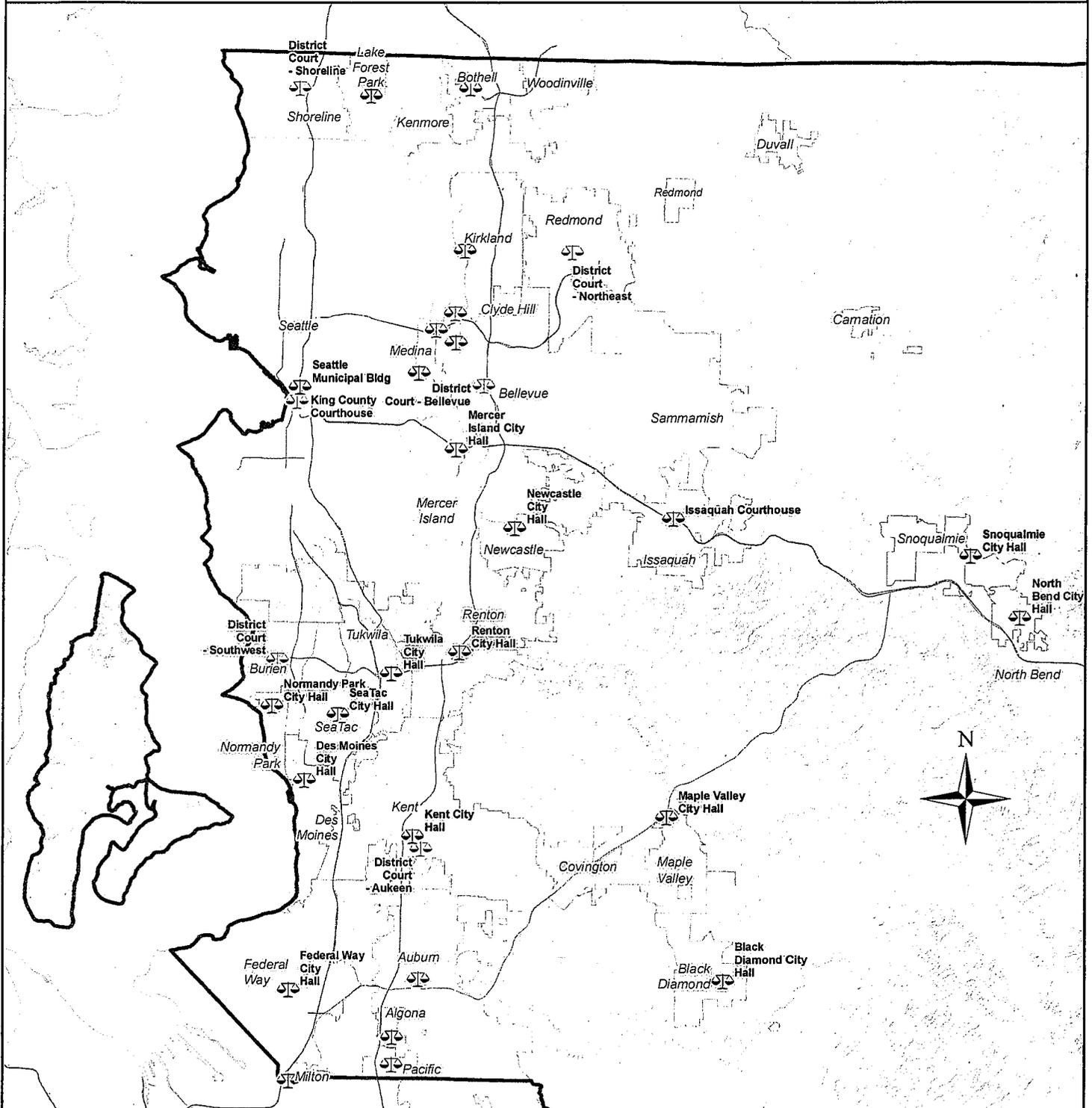
- 12/22/03 Deft. contacts Juliana in Renton -- Violation of a no-contact order.
- 1/6/04 VNCO order charge (from 12/22 incident) filed in Renton Municipal Court.
- 1/19/04 Deft. FTA arraignment. Bench warrant ordered.
- 1/22/04 Deft. appears at clerk's office to clear warrant.
- 1/23/04 Deft appears again, warrant quashed, arraignment reset for 2/4/04
- 2/4/04 Deft. arraigned in Renton Muni Court
- 3/1/04 Deft. FTA hearing. Bench warrant ordered. Deft. apparently appeared in Kent Muni Court on the Kent misd. VNCO.
- 3/08/04 Renton Muni Court advised that deft. is in Kent City Jail.
- 3/10/04 Renton Muni Court attempts to initiate voluntary transport from Kent City Jail.
- 3/12/04 Deft. appeared in custody after successful voluntary transport from Kent City Jail. Discussed prior FTA; no record on appeal concerning these discussions. Counsel appointed. Pretrial hearing set for 4/13/04
- 4/13/04 Deft. appeared in custody after transport from Kent City Jail. Pretrial discussions. Jury trial set for 5/6/04. No objection to trial date.
- 4/27/04 Deft. appeared in custody after transport from Kent Jail. Preliminary motions held. Case ready to proceed to jury trial. No objection to 5/6/04 trial date.
- 5/3/04 Renton Muni Court receives fax saying deft. is in custody at RJC
- 5/4/04 Deft. appeared in custody after transport from RJC. Litigation over copy of NCO. Hearing cont. to 5/6.
- 5/6/04 Deft. appeared in custody after transport from RJC. Released on this case on personal recognizance. Jury trial set for 6/3/04. No objection to jury setting.
- 5/7/04 Note to docket that deft. is in custody at RJC and will need transport
- 5/17/04 Pretrial hearing. Deft. does not appear. Docket says: "COURT NOTES DEFT. IN CUSTODY AT RJC UNABLE TO TRANSPORT" "NO HOLD."
- 5/24/04 Renton Muni court receives notice that defendant in King County Jail on felony charges.
- 6/4/04 Deft. appeared in custody after transport, claims was in custody at 5/17 hearing. Deft. asks for pretrial hearing for "speedy trial" issues. No ruling is made. Jury trial set for July 15, 2004.
- 6/14/04 Case dismissed without prejudice on prosecutor's motion. One month left on time for trial calculation.

King County Superior Court

- 7/13/04 King County Superior Court information amended to add the Renton case. Trial begins on felony charge (Count I), Kent charge (Count II), and Renton charge (Count III).

APPENDIX A

King County Municipal and District Courts

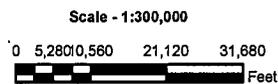


Legend

-  Municipal Court
-  District Court

Disclaimer

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.



King County
GIS CENTER

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah Hrobsky, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent, in STATE V. KEITH GEORGE, Cause No. 78362-4, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name James Whisman
Done in Seattle, Washington

12/22/06
Date 12/22/06