

63273-6

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No. 63273-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TEODULO RODRIGUEZ,

Appellant.

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

The Honorable Bruce E. Heller

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ARGUMENT.....1
B. CONCLUSION.....2

TABLE OF AUTHORITIES

Cases

People v. Dominguez, 166 Cal.App.4th 858,
83 Cal.Rptr.3d 284 (2008)2

People v. Kellin, 209 Cal.App.2d 574, 25 Cal.Rptr. 925 (1962).....2

State v. DeBolt, 61 Wn.App. 58, 808 P.2d 794 (1991)2

State v. Grothman, 13 N.J. 90, 98 A.2d 291 (N.J. 1953)2

State v. Spangler, 38 Kan.App.2d 817, 173 P.3d 656 (2007)..... 1

Rules

CrR 2.1(d).....2

A. ARGUMENT

In his opening brief, Teodulo Rodriguez argued that the trial court erred by permitting the State to amend the Information to expand the range of dates of the alleged stalking, after both the State and the defense rested. Br. of App. at 4-8. The State argues that Mr. Rodriguez was not prejudiced by this amendment. Br. of Resp. at 6-7.

However, the amendment of the date of the stalking charge substantially prejudiced Mr. Rodriguez because it deprived him of the opportunity to cross-examine the witnesses regarding the new dates in the amended Information. 3/16/09RP 389-92. Further, the amendment prejudiced Mr. Rodriguez because it prevented him from presenting an effective defense, as his defense on the stalking charge was highly focused on the State's ability to prove that the acts occurred within the charging period. 3/17/09RP 434-36, 447; State v. Spangler, 38 Kan.App.2d 817, 828, 173 P.3d 656 (2007). As in Spangler, because the amendment occurred after the defense had rested, Mr. Rodriguez was stuck with this prior strategy, which failed to take into account the new charging period. Finally, the amendment was prejudicial because it allowed the jury to convict Mr. Rodriguez of acts that were not charged in the

original information. See People v. Dominguez, 166 Cal.App.4th 858, 866-70, 83 Cal.Rptr.3d 284 (2008) (amendment after close of evidence expanding charging period to include additional incident of theft violated due process); People v. Kellin, 209 Cal.App.2d 574, 25 Cal.Rptr. 925 (1962) (amendment expanding charging period to include additional thefts not alleged in preliminary hearings prejudiced defendant because it allowed jury to convict for uncharged acts); State v. Grothman, 13 N.J. 90, 97-98, 98 A.2d 291 (N.J. 1953) (amendment expanding charging period to include offenses not considered by grand jury prejudiced defendant by allowing jury to convict based on uncharged acts).

The amendment in this case was not one of form rather than substance, as the State contends, because the amendment here added two days worth of additional acts that the jury could use to convict Mr. Rodriguez of felony stalking. In contrast, the amendment in DeBolt was a matter of form because there was no question about the date of the alleged acts in that case. State v. DeBolt, 61 Wn.App. 58, 61, 808 P.2d 794 (1991).

B. CONCLUSION

Because Mr. Rodriguez's substantial rights were prejudiced by the late amendment to the charging period, under CrR 2.1(d), it

was error for the trial court to permit the amendment to the Information. Therefore, this Court should reverse Mr. Rodriguez's conviction for felony stalking.

DATED this 16th day of February 2010.

Respectfully submitted,



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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 63273-6-I
v.)	
)	
TEODULO RODRIGUEZ,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF FEBRUARY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF FEBRUARY, 2010.

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