

FILED
Mar 14, 2013
Court of Appeals
Division III
State of Washington

NO. 30226-1-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

THOMAS M. KLINDWORTH,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF,

Dennis W. Morgan WSBA #5286
Attorney for Appellant
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES ii

RULES AND REGULATIONS ii

ARGUMENT 1

TABLE OF AUTHORITIES

TABLE OF CASES

State v. McNichols, 128 Wn.2d 242, 906 P.2d 329 (1995)..... 1

RULES AND REGULATIONS

CR 6 1
CR 6(a)..... 1
CR 6(e)..... 1

ARGUMENT

The State argues that CR 6(e) only applies to motions. The State is in error.

CR 6 is entitled “**TIME.**” Subparagraph (e) states:

Whenever a party has the right or is required **to do some act or take some proceedings** within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

(Emphasis supplied.)

There is no mention of motions in the subparagraph. Moreover, the State fails to address CR 6(a) which excludes intermediate Saturdays, Sundays and legal holidays.

Mr. Klindworth was not given appropriate notice of the October 2, 2007 hearing date. Oral notice by a court clerk is insufficient.

The State fails to present any authority supporting its argument that there was no obligation to preserve the third vial of blood that was drawn at Our Lady of Lourdes Hospital. The State relies upon *State v. McNichols*, 128 Wn.2d 242, 906 P.2d 329 (1995). The *McNichols* case requires that when an individual requests an independent blood test, law enforcement officers cannot interfere with his ability to obtain the test.

Mr. Klindworth concedes that a third vial of blood was drawn. However, the arresting officer did not retain that vial of blood. He left it with the hospital.

Finally, the pre-printed language contained in the Judgment and Sentence under paragraph 4.2(b)(4) does impose an ignition interlock (IID) requirement through the Department of Licensing (DOL). Whether or not DOL actually imposed the requirement on Mr. Klindworth is not part of the record. Nevertheless, it is clear that the statutory language does not authorize imposition of an IID when the offense is drug-related as opposed to alcohol-related.

Mr. Klindworth otherwise relies upon the argument contained in his original brief.

DATED this 14th day of March, 2013.

Respectfully submitted,

s/Dennis W. Morgan
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NO. 30226-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
) FRANKLIN COUNTY
 Plaintiff,) NO. 07 1 50040 4
 Respondent,)
) **CERTIFICATE OF SERVICE**
 v.)
)
 THOMAS M. KLINDWORTH,)
)
)
 Defendant,)
 Appellant.)
)

I certify under penalty of perjury under the laws of the State of Washington that on this 14th day of March, 2013, I caused a true and correct copy of the *APPELLANT'S REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK
Court of Appeals, Division III
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