

NO. 63559-0-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRANDON OLLIVIER,

Appellant.

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

The Honorable Palmer Robinson
The Honorable Brian Gain
The Honorable James Cayce
The Honorable Deborah Fleck

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR2

C. STATEMENT OF THE CASE.....5

D. ARGUMENT8

1. A 23-MONTH DELAY AND 19 OF 22 CONTINUANCES VIOLATED BOTH MR. OLLIVIER’S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AND CrR 3.3 8

 a. The delay violated CrR 3.3, which requires Mr. Ollivier be brought to trial within 60 days..... 11

 i. *Mr. Ollivier did not waive his objection to the delay* 12

 ii. *Continuances granted without a finding of the absence of prejudice violated CrR 3.3(f)(2), requiring reversal* 15

 iii. *The court abused its discretion by granting continuances which were manifestly unreasonable, in light of the extreme delay*..... 17

 b. The trial court violated Mr. Ollivier's speedy trial rights under the state and federal constitutions 21

 i. *The egregious delay requires this Court use the Barker test and closely scrutinize the circumstances of the delay*..... 22

 ii. *For the most part, defense counsel – but not the defendant – was the cause of the delay*..... 24

 iii. *Mr. Ollivier’s 19 objections and other attempts to assert his speedy trial right must be accorded “strong evidentiary weight.”* 28

 iv. *Mr. Ollivier was prejudiced by the delay*..... 29

c. For either violation, dismissal is required	32
2. MR. OLLIVIER’S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HIS HOME WAS SEARCHED BASED ON A SEARCH WARRANT NOT SUPPORTED BY PROBABLE CAUSE	32
a. The federal and state constitutions require that search warrants be based upon probable cause	32
b. The search warrant was not based on probable cause because it relied on reckless perjury.....	33
i. <i>Detective Saario intentionally or recklessly excluded material facts from the affidavit and included false information</i>	34
A. <i>False and unsupported statements</i>	34
B. <i>Omitted facts</i>	36
ii. <i>The repaired affidavit lacks probable cause</i>	37
c. The warrant was not based on probable cause but solely on information from an unreliable informant	38
i. <i>When a search warrant request is based on an informant’s tip, the affidavit must establish the informant’s credibility and the basis for his conclusions</i>	38
ii. <i>The affidavit failed to establish Mr. Anderson’s credibility</i>	40
A. <i>Other than his name, no facts in the affidavit demonstrated Mr. Anderson’s credibility</i>	40
B. <i>The circumstances under which Mr. Anderson made his report seriously undermine its veracity</i>	42
d. Reversal is required.....	44

3. THE SEARCH WARRANT WAS INVALID FOR OVERBREADTH.....	45
a. A warrant is unconstitutional if not sufficiently particular	45
b. A vague warrant cannot be saved by its supporting documents ..	46
c. The search warrant for Mr. Ollivier’s home was overbroad and failed to incorporate the affidavit	48
4. BECAUSE THE POLICE DELIBERATELY FAILED TO SERVE MR. OLLIVIER WITH THE SEARCH WARRANT, THE COURT ERRED IN REFUSING TO SUPPRESS THE EVIDENCE.....	50
a. CrR 2.3 requires the police to personally give a copy of the warrant to the defendant if he is present during the search	51
b. If the violation of this rule is either prejudicial <i>or</i> deliberate, the resulting evidence must be suppressed under either constitution	54
c. Because the violation was deliberate, reversal is required.....	56
E. CONCLUSION	57

TABLE OF AUTHORITIES

Washington Supreme Court

<u>Detention of Peterson</u> , 145 Wn.2d 789, 42 P.3d 952 (2002).....	39
<u>In re Disciplinary Proceeding Against Kagele</u> , 149 Wn.2d 793, 72 P.3d 1067 (2003).....	14
<u>In re Personal Restraint of Stenson</u> , 142 Wn.2d 710, 16 P.3d 1 (2001) ...	14
<u>State v. Adamski</u> , 111 Wn.2d 574, 761 P.2d 621 (1988)	11, 17, 21
<u>State v. Campbell</u> , 103 Wn.2d 1, 691 P.2d 929 (1984), <u>cert. denied</u> , 471 U.S. 1094, 105 S.Ct. 2169 (1985).....	19
<u>State v. Chenoweth</u> , 160 Wn.2d 454, 473, 158 P.3d 595 (2007)..	34, 37, 41
<u>State v. Clark</u> , 143 Wn.2d 731, 24 P.3d 1005 (2001).....	34
<u>State v. Copeland</u> , 130 Wn.2d 244, 922 P.2d 1304 (1996).....	37
<u>State v. Gentry</u> , 125 Wn.2d 570, 888 P.2d 1105 (1995).....	37
<u>State v. Gunwall</u> , 106 Wn.2d 54, 720 P.2d 808 (1986).....	53
<u>State v. Iniguez</u> , 167 Wn.2d 273, 217 P.3d 768 (2009)....	21, 22, 23, 28, 29
<u>State v. Jackson</u> , 102 Wn.2d 432, 688 P.2d 136 (1984) ...	33, 38, 39, 40, 42
<u>State v. Jackson</u> , 150 Wn.2d 251, 76 P.3d 217 (2003)	38
<u>State v. Jones</u> , 99 Wn.2d 735, 664 P.2d 1216 (1983).....	14
<u>State v. Kenyon</u> , 167 Wn.2d 130, 216 P.3d 1024 (2009)	11, 15, 17, 18
<u>State v. Lair</u> , 95 Wn.2d 706, 630 P.2d 427 (1981)	41, 42
<u>State v. Mack</u> , 89 Wn.2d 788, 576 P.2d 44 (1978).....	26

<u>State v. Michielli</u> , 132 Wn.2d 229, 937 P.2d 587 (1997)	27
<u>State v. Perrone</u> , 119 Wn.2d 538, 834 P.2d 611 (1992)	46
<u>State v. Reep</u> , 161 Wn.2d 808, 167 P.3d 1156 (2007).....	46
<u>State v. Riley</u> , 121 Wn.2d 22, 846 P.2d 1365 (1993)	45, 46, 47
<u>State v. Striker</u> , 87 Wn.2d 870, 557 P.2d 847 (1976).....	11, 32
<u>State v. Swenson</u> , 150 Wn.2d 181, 175 P.3d 513 (2003)	11
<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999).....	32, 38

Washington Court of Appeals

<u>City of Tacoma v. Mundell</u> , 6 Wn.App. 673, 495 P.2d 682 (1972)	55
<u>In re Kirby</u> , 65 Wn.App. 862, 829 P.2d 1139 (1992)	26
<u>State v. Aase</u> , 121 Wn.App. 558, 89 P.3d 721 (2004).....	52, 54, 55
<u>State v. Angelone</u> , 67 Wn.App. 555, 837 P.2d 656 (1992)	32
<u>State v. Bowman</u> , 8 Wn.App. 148, 504 P.2d 1148 (1972).....	55
<u>State v. Cox</u> , 106 Wn.App. 487, 24 P.3d 1088 (2001)	14
<u>State v. Duncan</u> , 81 Wn.App. 70, 912 P.2d 1090, <u>rev. denied</u> , 130 Wn.2d 1001 (1996).....	40, 41
<u>State v. Ellis</u> , 76 Wn.App. 391, 884 P.2d 1360 (1994).....	23, 32
<u>State v. Ettenhofer</u> , 119 Wn.App. 300, 79 P.3d 478 (2003)	53, 55
<u>State v. Franulovich</u> , 18 Wn.App. 290, 567 P.2d 264 (1977), <u>rev. denied</u> , 90 Wn.2d 1001 (1978).....	13
<u>State v. Jenkins</u> , 76 Wn.App. 378, 884 P.2d 1356 (1994).....	15

<u>State v. Kern</u> , 81 Wn.App. 308, 914 P.2d 114, <u>rev. denied</u> , 130 Wn.2d 1003 (1996).....	53, 55
<u>State v. Lackey</u> , 53 Wn.App. 791, 223 P.3d 1215 (2009)	15, 23
<u>State v. Lemley</u> , 64 Wn.App. 724, 7828 P.2d 587, <u>rev. denied</u> , 119 Wn.2d 1025 (1992).....	18
<u>State v. Nguyen</u> , 131 Wn.App. 815, 129 P.3d 21 (2006)	18, 21
<u>State v. Northness</u> , 20 Wn.App. 551, 582 P.2d 546 (1978).....	42
<u>State v. O'Connor</u> , 39 Wn.App. 113, 692 P.2d 208 (1994).....	41
<u>State v. Parker</u> , 28 Wn.App. 425, 626 P.2d 508 (1981).....	55
<u>State v. Raschka</u> , 124 Wn.App. 103, 100 P.3d 339 (2004)	11, 32
<u>State v. Rodriguez</u> , 53 Wn. App. 571, 574-76, 769 P.2d 309 (1989).....	41
<u>State v. Saunders</u> , 153 Wn.App. 209, 220 P.3d 1238 (2009) 12, 14, 15, 18, 19	
<u>State v. Stephens</u> , 37 Wn.App. 76, 678 P.2d 832, <u>rev. denied</u> , 101 Wn.2d 1025 (1984).....	38
<u>State v. Vicuna</u> , 119 Wn.App. 26, 79 P.3d 1 (2003), <u>rev. denied</u> 52 Wn.2d 1008 (2004).....	12

United States Supreme Court

<u>Aguilar v. Texas</u> , 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) ..	39
<u>Barker v. Wingo</u> , 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) .	18, 21, 22, 23, 24, 28, 29, 30, 31
<u>Brookhart v. Janis</u> , 384 U.S. 1, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966)....	14
<u>Crawford v. Washington</u> , 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 117 (2004).....	44

<u>Franks v. Delaware</u> , 438 U.S. 154, 155-56, 98 S.Ct 2674, 57 L.Ed.2d 667 (1978).....	34, 35
<u>Groh v. Ramirez</u> , 540 U.S. 551, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004)	46, 57
<u>Illinois v. Gates</u> , 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)..	38
<u>Klopper v. North Carolina</u> , 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967).....	21
<u>Kyllo v. United States</u> , 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001).....	32
<u>Lilly v. Virginia</u> , 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999)44	
<u>Moore v. Arizona</u> , 414 U.S. 25, 94 S.Ct. 188, 38 L.Ed.2d 183 (1973)	30
<u>United States v. Marion</u> , 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971).....	30
<u>United States v. Ventresca</u> , 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965).....	33
<u>Vermont v. Brillon</u> , ___ U.S. ___, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009)	24, 25, 26
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).....	37

United States District Courts

<u>United States v. Beamon</u> , 992 F.2d 1009 (9 th Cir. 1993).....	22
<u>United States v. Curry</u> , 911 F.2d 72 (8 th Cir. 1990).....	48
<u>United States v. Gantt</u> , 194 F.3d 987 (9 th Cir. 1999).....	51, 52, 55
<u>United States v. Grace</u> , 526 F.3d 499 (9 th Cir. 2008).....	51

<u>United States v. McGrew</u> , 122 F.3d 847 (9 th Cir. 1997).....	48
<u>United States v. Mendoza</u> , 530 F.3d 758 (9 th Cir. 2008).....	22
<u>United States v. Stefonek</u> , 179 F.3d 1030 (7 th Cir. 1999).....	47
<u>United States v. Tracey</u> , 597 F.3d 140 (3 rd Cir. 2010).....	48, 49
<u>United States v. Waker</u> , 534 F.3d 168 (2 nd Cir. 2008).....	48

Decisions of Other Courts

<u>Bloom v. State</u> , 283 So.2d 134 (Fla.Dist.Ct.App.1973)	47
<u>Townsend v. Superior Court</u> , 15 Cal.3d 774, 126 Cal.Rptr. 251, 543 P.2d 619 (1975).....	13

Statutes and Rules

CrR 2.3.....	1, 4, 51, 53, 55, 56
CrR 3.3.....	1, 2, 8, 11, 12, 15, 16, 17, 18, 20, 23, 24, 32
Former FCrR 41(d)	52
RCW 9.68A.070	49
RPC 1.2.....	13, 14

Washington Constitution

Wash. Const. art. 1 sec. 22.....	1, 18
Wash. Const. art. 1 sec. 7.....	1, 32, 38, 53, 54, 56

United States Constitution

U.S. Const. amend. I 46

U.S. Const. amend. IV 1, 32, 38, 45, 46, 51, 53, 54, 56

U.S. Const. amend. VI. 1, 18, 21

U.S.Const. amend. XIV 32

Other Authorities

ABA, Standards for Criminal Justice std. 4-5.2(a) (2d ed. Supp.1986).... 14

A. ASSIGNMENTS OF ERROR.

1. Pretrial delay of 23 months violated Brandon Ollivier's speedy trial right under the Sixth Amendment to the United States Constitution,¹ article 1, section 22 of the Washington Constitution² and CrR 3.3.

2. The search warrant was not based on probable cause, violating Mr. Ollivier's privacy rights under the Fourth Amendment to the U.S. Constitution³ and article 1, section 7 of the Washington Constitution.⁴

3. The search warrant was overbroad, violating the Fourth Amendment and article 1, section 7.

4. Deliberate failure to serve Mr. Ollivier with a copy of the search warrant violated the Fourth Amendment, article 1, section 7, and CrR 2.3(d).

¹ "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI.

² "In criminal prosecutions the accused shall have the right ... to have a speedy public trial." Art. 1, sec. 22.

³ U.S. Const. amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

⁴ "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Art. 1, sec. 7.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. To protect the constitutional right to a speedy trial, CrR 3.3 requires a defendant held in custody be brought to trial within 60 days of arraignment. The speedy trial period excludes continuances based on a party's motion if they are "required in the administration of justice" and will not prejudice the defendant in the presentation of his defense. Mr. Ollivier was in jail for 23 months awaiting trial. Over his explicit objection, the court granted 19 continuances "in the administration of justice," but found Mr. Ollivier would not be prejudiced by the delay in only three of those. Did the court violate CrR 3.3, requiring dismissal?

2. In light of the egregious delay and Mr. Ollivier's clear and consistent objections, did the court abuse its discretion in continuing to grant continuances for 23 months?

3. Both the state and federal constitutions guarantee the right to a speedy trial. Whether that right has been violated is assessed according to the length of the delay, the defendant's conduct and assertion of his speedy trial right, the prejudice caused by the delay, and the reasons for the delay. In this case the delay was unreasonably long, the defendant's conduct in no way caused or contributed to the delay, he asserted his speedy trial right at virtually every opportunity, he was demonstrably prejudiced in the

presentation of his defense, and he repeatedly urged his attorney to go to trial. Has Mr. Ollivier established a violation of his right to a speedy trial?

4. Under the state and federal constitutions, a search warrant must be based on probable cause as determined by a detached and neutral magistrate. If a defendant establishes the officer affiant included material misrepresentations or omitted material facts intentionally or with reckless disregard for the truth, and the corrected affidavit would not support probable cause, he is entitled to an evidentiary hearing or suppression of the evidence. Here, the court found the affiant detective falsely stated child pornography would be found in a certain location in Mr. Ollivier's apartment. The court ruled that this was reckless perjury but that the affidavit still provided probable cause. However, the detective also fabricated part of the informant's basis of knowledge, exaggerated what he saw, made unsupported assertions about Mr. Ollivier's history of offense and treatment, and omitted circumstances surrounding the informant's tip which undermined his credibility, as well as her own interactions with Mr. Ollivier. Does the corrected affidavit fail to establish probable cause?

5. When an affidavit is based on an informant's tip, the affidavit must persuade the magistrate of the informant's basis of knowledge and credibility. Here, the informant was Mr. Ollivier's roommate, also a

registered sex offender, who reported to his Community Corrections Officer that Mr. Ollivier had shown him child pornography. Did the circumstances surrounding this report show a strong motive to falsify, leaving the affidavit without probable cause?

6. A search warrant is unconstitutionally overbroad if it fails to state with particularity the items to be seized. An overbroad warrant cannot be cured by its supporting documents unless it refers to those documents with explicit language of incorporation. Here, the only item described with any specificity in the warrant was not supported by probable cause; the list of other items was generic, and the warrant does not refer to the affidavit. Is the warrant overbroad, requiring suppression?

7. CrR 2.3(d) requires that if the homeowner is present when the police execute a search warrant on his home, they must serve him with the warrant at the beginning of the search. The court found that the police deliberately refused to give Mr. Ollivier a copy of the warrant while they searched his apartment for approximately three hours, but that there was no prejudice and therefore suppression was not required. Under the Fourth Amendment, suppression is required if the police deliberately fail to provide the defendant with a copy of the warrant or if prejudice results. Was suppression therefore required whether or not prejudice was shown?

C. STATEMENT OF THE CASE.

Brandon Ollivier and his friend Daniel Whitson shared an apartment and their mutual friends Eugene Anderson and Ricky Moore often visited them there. 9RP 34, 62.⁵ All four are registered sex offenders and had met at Twin Rivers Correctional Center. 4RP 6; 9RP 32, 96. In February 2007, Mr. Ollivier moved to another apartment in the same building and Mr. Anderson moved in with him. 9RP 34.

On March 8, 2007, Mr. Anderson told Community Corrections Officer (CCO) Theodore Lewis that Mr. Ollivier had shown him what appeared to be child pornography on his computer. CP 233 (FF 1(b)). CCO Lewis in turn reported this to Seattle Police Detective Dena Saario,

⁵ The Verbatim Report of Proceedings will be referred to as follows:

- 1RP Pretrial hearings before the Honorable Palmer Robinson: 6/15/07, 7/13/07, 9/11/07, 10/19/07, 11/02/07, 11/30/07
- Pretrial hearings before the Honorable Brian Gain: 12/28/07, 1/18/08, 2/15/08, 3/7/08, 5/7/08, 6/4/08, 7/25/08, 10/10/08, 11/7/08, 11/21/08, 12/23/08
- Pretrial hearings before the Honorable James Cayce: 9/5/08, 11/13/08
- 1(a)RP Hearing on motion to discharge counsel before Judge Robinson: 12/10/08
- 2RP Pretrial hearing (hereafter, all before the Honorable Deborah Fleck): 1/21/09
- 3RP Pretrial motion hearing: 3/9/09
- CrR 3.6 hearing: 3/23/09
- 4RP CrR 3.6 hearing: 3/24/09
- 5RP CrR 3.6, 3.5 hearing: 3/26/09
- 6RP CrR 3.6, 3.5 hearing: 3/30/09
- Material witness hearing: 3/31/09
- Evidentiary motions, etc.: 4/2/09
- 7RP Evidentiary motions, etc.: 4/6/09
- 8RP Trial: 4/7/09
- 9RP Trial: 4/8/09, 4/9/09, 4/13/09, 4/14/09
- 10RP Sentencing: 5/22/09

who interviewed Mr. Anderson, prepared an affidavit, and obtained a warrant to search Mr. Ollivier's apartment. CP 233 (FF 1(c), (d), (g), (i)).

On April 5, 2007, Detective Saario led a team of police officers to execute the search warrant. CP 228 (FF 1(g)). While the police searched his apartment for approximately three hours, Mr. Ollivier was kept outside where he could not observe the search or see what was seized. CP 228 (FF 1(k)). He asked to see the search warrant but was not given a copy of it until the search was over. CP 229-30 (FF 1(l), (m), 3(a), 4(d)). Seized items included two desktop computers, one laptop computer, and several compact discs, USB drives, and other storage media. 7RP 84; 8RP 68, 97.

Mr. Ollivier was arrested on April 13, 2007, charged with possession of depictions of minors engaged in sexually explicit conduct and arraigned on April 30, 2007. CP 1-7. After 23 months and 22 continuances,⁶ CrR 3.5 and 3.6 hearings were held on March 9 and 23, 2007. The trial court denied all motions to suppress.

At trial, Seattle Police Department Detective Barry Walden testified he examined the contents of the computers and found pornographic images, some depicting adults and some depicting children,

⁶ A 23rd continuance was ordered over Mr. Ollivier's objection, on March 9, 2007, continuing the trial to March 23, but because motions began on March 9, the final continuance does not count for speedy trial purposes.

on one of the desktop hard drives. 8RP 125-26. He focused on four files in particular, which he believed were intentionally saved onto the hard drive and which Mr. Ollivier stipulated met the definition of child pornography. 8RP 120, 127, 135-36. Detective Walden testified these files were downloaded on March 2, 2007 and last accessed on April 4, 2007 at 3:00 pm. 8RP 133; 9RP 6. Four images that appeared to be child pornography were found on the laptop. These files had not been intentionally saved by the user, but had been automatically copied to a temporary folder, or cache, at 12:00 am on April 5, 2007. 8RP 8-9.

Mr. Anderson testified Mr. Ollivier showed him pornography on his computer once, on March 4, 2007. 9RP 48-50, 52, 54. Mr. Anderson believed the persons depicted were minors. 9RP 49. He admitted that although he previously said he was computer illiterate, he had taken and earned credits for computer skills courses while in prison. 9RP 59-60.

Daniel Whitson testified he had seen Mr. Anderson use Mr. Ollivier's computer and once saw him viewing a picture of a "really young" naked man on that computer. 9RP 92-94. Mr. Whitson mentioned this to Mr. Ollivier, who said he would talk to Mr. Anderson about it. 9RP 94. Mr. Whitson often saw Mr. Ollivier working or playing games on his computer, but never saw him viewing any type of pornography. 9RP 95.

Teresa Borst owns Bioclean, Inc, which employed Mr. Ollivier in the first week of April. 9RP 145. She testified he ended his shift on April 4, 2007 at 2:00 pm in Kirkland, giving him only an hour to reach his home in Burien in time to access his computer at 3:00 pm. 9RP 148-49.

After a jury trial before the Honorable Deborah D. Fleck, Mr. Ollivier was convicted of one count of possession of depictions of minors engaged in sexually explicit conduct. CP 253-67.

D. ARGUMENT

1. A 23-MONTH DELAY AND 19 OF 22 CONTINUANCES VIOLATED BOTH MR. OLLIVIER'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AND CrR 3.3.

Mr. Ollivier's original speedy trial expiration date was June 27, 2007. CP __ (Scheduling Order, supplementally designated and attached in Appendix A at 1). 22 continuances and almost two years later, Mr. Ollivier went to trial on March 23, 2009.

Mr. Ollivier agreed to the first two continuances. 1RP 6, 7; App. A1, A2.⁷ He first objected on September 12, 2007, 1RP 12, and from that point on, made sure his opposition to the delay was on the record at every opportunity, orally and in writing. On October 19, 2007, Mr. Ollivier gave a letter to the court, in which he detailed the continuances so far and wrote,

“I object to any continuance whatsoever.” 1RP 19-21; CP __ (Appendix B). After that, Mr. Ollivier agreed to only one continuance: on February 15, 2008, he agreed to a continuance so that his attorney could continue her efforts to obtain records from the Department of Corrections regarding witness Eugene Anderson. 1RP 39. In total, Mr. Olliver unequivocally objected on the record to 19 of the 22 continuances. App. A1-25.

The majority of the motions for continuance were made by defense counsel, requesting time to confer with an expert, obtain records, interview witnesses, or otherwise prepare for trial. App. A2-24. As the months wore on, however, even counsel was troubled by the delay, although she could not seem to remedy it. In a November 19, 2007 bond hearing, she promised the court that there would be no more continuances in this case; based at least partly on this assertion, the court denied bond. 1RP 27. A few days later, she requested another continuance, although admitting this was the oldest case she had (seven months after arraignment, less than one-third the total length of the delay). 1RP 27. On December 10, 2007, counsel admitted her promise at the bond hearing was unrealistic and untrue at the time, and she did not know why she had said it. 1(a)RP 2-3.

⁷ All continuance orders are supplementally designated and attached at Appendix A. The number following “App. A” is the page number within the appendix.

On March 7, 2008, when Judge Gain granted what he believed was “a short continuance,” defense counsel said, “I am acutely aware of how old this case is.” 1RP 42. On July 25, 2008, counsel had “confidence that this case can be tried in September.” 1RP 48. But on September 5, 2008, she requested another continuance, promising, “it will be done by the first of the year.” 1RP 50. On October 10, 2008, counsel reported “this case is a priority on my case load” and her supervisor was aware of it. 1RP 54. On November 7, 2008, she stated, “I’m extremely mindful of Mr. Ollivier’s situation [and] how long he’s been in custody and the age of this case.” 1RP 57. Despite repeated prior assertions that Mr. Ollivier’s case was a “priority,” on December 23, 2008, she claimed “two other cases... with live victims” took “precedence.” 1RP 70. On January 21, 2009, justifying the 22nd continuance request, she explained to the court:

He’s upset at being in custody and how long it’s taking to resolve this case. And I would put on the record I, too, am upset. Again, it’s a great professional embarrassment to me. I’ve never had a case this old on my case load ever.

2RP 8.

From arraignment to the initiation of suppression motions, Mr. Ollivier was in custody for 23 months awaiting trial.

a. The delay violated CrR 3.3, which required Mr. Ollivier be brought to trial within 60 days. CrR3.3 requires that a defendant who is in custody be brought to trial within 60 days, or the trial court must dismiss the charge. The speedy trial period excludes continuances based "on motion of the court or a party" where the continuance "is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." CrR 3.3(e)(2); (f)(1), (2).

Although the rule is "not a constitutional mandate," its purpose is to protect the constitutional right to a speedy trial. State v. Kenyon, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009). "[P]ast experience has shown that unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved." Id. (quoting State v. Striker, 87 Wn.2d 870, 877, 557 P.2d 847 (1976)). "Failure to strictly comply with the speedy trial rule requires dismissal, regardless of whether the defendant can show prejudice." State v. Raschka, 124 Wn.App. 103, 112, 100 P.3d 339 (2004) (citing State v. Adamski, 111 Wn.2d 574, 582, 761 P.2d 621 (1988)). If the court finds

that the time for trial deadline has passed and the defendant's objection was properly raised, the court has no discretion in deciding whether to dismiss the charges. The charges "shall" be dismissed with prejudice.

State v. Swenson, 150 Wn.2d 181, 186, 75 P.3d 513 (2003).

i. Mr. Ollivier did not waive his objection to the delay. Because the party who moves for continuance “waives that party's objection to the requested delay,” a motion for continuance made by defense counsel is generally presumed to waive objection on behalf of the defendant. CrR 3.3(f)(2); State v. Vicuna, 119 Wn.App. 26, 33, 79 P.3d 1 (2003), rev. denied 52 Wn.2d 1008 (2004). But this rule is not limitless.

Where a defendant repeatedly objects to further continuances and insists upon his right to a speedy trial, that request must be respected. The Court of Appeals has therefore dismissed a conviction for a CrR 3.3 violation despite defense counsel’s agreement to continuances beyond the speedy trial period. State v. Saunders, 153 Wn.App. 209, 217, 220 P.3d 1238 (2009). Two continuances were requested by defense counsel for the purpose of investigation or preparation for trial, two were agreed motions purportedly for the purpose of negotiations, and two were requested by the State without adequate explanation – but Saunders personally objected to all six, refused to sign each and every continuance form, and moved to dismiss pro se. Id. at 212-15. Because he “consistently resisted extending time for trial,” the Court found he did not waive his objection. Id. at 220.

Like Saunders, Mr. Ollivier objected personally, repeatedly, and contemporaneously to his attorney’s waivers of the CrR 3.3 time limit. In

State v. Franulovich, the Court found defense counsel waived his client's objection on the facts of that case: the defendant never objected to a continuance, but only moved to dismiss afterwards, through new counsel. 18 Wn.App. 290, 290-91, 293-94, 567 P.2d 264 (1977), rev. denied, 90 Wash.2d 1001 (1978)). However, the Court also recognized "counsel does not possess... 'carte blanche under any and all conditions to postpone his client's trial indefinitely. Counsel's power in this regard is not unlimited.'" Id. at 294 (quoting Townsend v. Superior Court, 15 Cal.3d 774, 781-82, 126 Cal.Rptr. 251, 543 P.2d 619 (1975)). Unlike Franulovich, Mr. Ollivier made clear objections for almost two years. Far from waiving his CrR 3.3 right, there is nothing more he could have done to preserve it.

Defense counsel's motions for continuance not only failed to waive Mr. Ollivier's speedy trial right, but may have been inconsistent with her ethical obligation. Under RPC 1.2(a), counsel "shall abide by a client's decisions concerning the objectives of representation and... shall consult with the client as to the means by which they are to be pursued."

Because "the client controls the goals of litigation," where the client's goal is to go to trial and the client has rejected further negotiation, a strategy to delay trial for further negotiation is a breach of the attorney's ethical duties.

Saunders, 153 Wn.App. at 218 n9.⁸

Although in Saunders, the specific issue was whether to negotiate, whereas here it was the choice between preparation and trial, in both cases the “fundamental decision” was whether to go to trial. Although Mr. Ollivier was frustrated by the pace of his attorney’s investigation and preparation for trial, he understood that she felt she was not ready. When he reluctantly agreed to the second continuance on July 13, 2007, Mr. Ollivier told the court, “I’m disappointed... I would rather be out sooner but... in order to obtain a fair trial... It’s better to be ready and [] get found not guilty than... not be ready...” 1RP 8. These remarks show his later objections were made with full comprehension of the need to balance preparation with the right to speedy trial. However, he explained on November 21, 2007, “I look at it as it may force my attorney’s hand to do

⁸ See also In re Disciplinary Proceeding Against Kagele, 149 Wn.2d 793, 809, 814, 72 P.3d 1067 (2003) (attorney violated RPC 1.2 in failing to abide by clients’ expressed wish for a jury trial); In re Personal Restraint of Stenson, 142 Wn.2d 710, 736, 16 P.3d 1 (2001) (citing ABA, Standards for Criminal Justice std. 4-5.2(a) (2d ed. Supp.1986), for rule that decision whether to enter a guilty plea is ultimately for the accused); State v. Jones, 99 Wn.2d 735, 743, 664 P.2d 1216 (1983) (“basic respect for a defendant’s individual freedom requires us to permit the defendant himself to determine his plea”); Brookhart v. Janis, 384 U.S. 1, 8, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966) (defense counsel cannot “override his client’s desire expressed in open court to plead not guilty and enter in the name of his client another plea”); contrast State v. Cox, 106 Wn.App. 487, 491-92, 24 P.3d 1088 (2001) (where both defense counsel and prosecutor requested a continuance over defendant’s objection, speedy trial right was not violated because defense counsel called his competency into question and court ordered competency evaluation).

her job and act accordingly and resolve my case.” 1RP 32. He understood the risk but made clear that his priority was to proceed to trial. Once counsel received this direction from her client, she breached her duties by ignoring it and continuing to prepare for trial at an equally slow pace.

ii. Continuances granted without a finding of the absence of prejudice violated CrR 3.3(f)(2), requiring reversal. The application of the speedy trial rule to the facts of a particular case is reviewed de novo. State v. Lackey, 53 Wn.App. 791, 798, 223 P.3d 1215 (2009); see e.g. Kenyon, 167 Wn.2d 130 (speedy trial violation found through de novo review of the court’s compliance with the rules regarding the continuance decision, not the discretionary decision itself).

Under CrR 3.3(a)(1), “it is the trial court which bears the ultimate responsibility to ensure a trial is held within the speedy trial period.” State v. Jenkins, 76 Wn.App. 378, 382-83, 884 P.2d 1356 (1994) (emphasis in original). This responsibility “underscore[s]... the importance” of the speedy trial rule. Saunders, 153 Wn.App. at 220. When the court grants a continuance under CrR 3.3(f)(2) it “must state on the record or in writing the reasons for the continuance.” For all 19 continuances granted over Mr. Ollivier’s objection, the judge indicated that they were required “in the administration of justice,” and put on the record the reasons for each:

9/12/07	<i>No prejudice to defendant</i> ; State witnesses not available; defense expert appointed. App. A4; 1RP 14.
10/19/07	Defense needs time for expert consultation. App. A5; 1RP 20.
11/2/07	<i>No prejudice to defendant</i> ; defense investigation ongoing; defense expert has not completed work; both counsel to be unavailable for trial. App. A6; 1RP 25.
11/30/07	<i>No prejudice to defendant</i> , forcing defense counsel to go to trial would cause greater prejudice; both parties seek additional discovery. App. A7; 1RP 29-32.
12/28/07	“Important” for defense counsel to be prepared; defense investigation incomplete. App. A8, 1RP 35.
1/18/08	Defense seeks records from DOC. App. A9.
3/7/08	Defense investigation incomplete. App. A11; 1RP 42.
5/6/08	Defense still seeks DOC records. A12; 1RP 44.
5/16/08	Defense has moved to compel DOC records. A13.
6/4/08	Defense investigation incomplete; court is “concerned” about case, one of the oldest in county. App. A14; 1RP 46-47.
7/3/08, 7/25/08	New defense investigator appointed; defense counsel to be on vacation. A15, A16; 1RP 49.
9/5/08	Defense seeks SPD records regarding Saario and OPD funds for DOC records; prosecutor to be on vacation. App. A17; 1RP 52.
10/10/08	Defense still seeks SPD records. App. A18; 1RP 53.
11/7/08	Defense counsel still “digesting” discovery; still seeks DOC records. App. A19; 1RP 57-58.
11/13/08	Prosecutor to be on vacation, discovery still incoming. App. A20; 1RP 62.
11/21/08	Defense counsel has not prepared CrR 3.5, 3.6 brief; prosecutor to be on vacation. Granted only to 12/23/08. App. A21; 1RP 66.
12/23/08	Defense counsel has not prepared CrR 3.5, 3.6 brief; will be in trial. Granted but pre-assigned. A22-23; 1RP 71.
1/21/09	Defense investigation and interviews ongoing; briefing schedule set. App. A23; 2RP 2-5.

But the record was not complete. CrR 3.3(f)(2) requires the court find “the defendant will not be prejudiced in the presentation of his or her defense.” The court made that finding in only three rulings: September 12, 2007 and November 2 and 30, 2007. 1RP 14, 25, 32. Ironically, as time

passed and prejudice increased, the court stopped considering it. Mr. Ollivier was prejudiced (as discussed below), and took great care to inform the court of that fact. But he need not show prejudice on appeal to establish a violation of CrR 3.3. Adamski, 111 Wn.2d at 582. Instead, the trial court must consider prejudice prospectively when deciding whether to grant a continuance which will exceed the speedy trial period. The 16 rulings which lack that basis violate CrR 3.3(f)(2).

Last year, the Supreme Court ordered dismissal based on just three continuances which violated CrR 3.3, without either considering prejudice to the defendant or reviewing the court's actual decisions to grant the continuances. Kenyon, 167 Wn.2d at 132, 136, 139.⁹ Here, the court granted 16 rulings without putting its reasons on the record as required by CrR 3.3(f)(2). As in Kenyon, the rule mandates dismissal.

iii. The court abused its discretion by granting continuances which were manifestly unreasonable in light of the extreme delay. Although the application of CrR 3.3 is reviewed de novo, a trial court's decision to grant a continuance is reviewed for abuse of discretion.

⁹ Although these continuances were based on CrR 3.3(e)(8), which does not require the court to put its reasons on the record as 3.3(f)(2) does, the Court inferred precisely that requirement and construed it so strictly that it held the trial court's failure to document the availability of judges and courtrooms violated Kenyon's speedy trial right.

Kenyon, 167 Wn.2d at 135. However, this discretion must be considered within the context of three principles: a) a defendant has a fundamental right to a speedy trial under the Sixth and Fourteenth Amendments and article 1, section 22; b) “a defendant has no duty to bring himself to trial;” and c) the trial court bears the ultimate responsibility for ensuring a speedy trial. Barker v. Wingo, 407 U.S. 514, 527, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); State v. Lemley, 64 Wn.App. 724, 728, 828 P.2d 587, rev. denied, 119 Wn.2d 1025 (1992); CrR 3.3(a). Here, the court abdicated that duty by allowing a manifestly unreasonable delay.

In Saunders, the trial court abused its discretion by granting continuances where the prosecutors who made the motions could not articulate “adequate basis or reason,” but apparently expected their motions to be granted because they asked. 153 Wn.App. at 220. The Court found the three continuances in question were “manifestly unreasonable, and exercised on untenable grounds and for untenable reasons.” Id. at 221. See also State v. Nguyen, 131 Wn.App. 815, 822-4, 129 P.3d 21 (2006) (trial court abused its discretion by granting a continuance because the prosecutor wanted to “track” the defendant’s case with a string of similar robberies, without evidence of a connection).

State v. Campbell, 103 Wn.2d 1, 14-15, 691 P.2d 929 (1984), cert. denied, 471 U.S. 1094, 105 S.Ct. 2169 (1985) is easily distinguished.

There, the trial court did not abuse its discretion in granting a continuance requested by defense counsel to prepare for trial, even over the defendant's objection. Campbell involved three counts of aggravated first degree murder, aggravating factors, the death penalty, and large amounts of complex forensic physical evidence, but the trial was delayed for only six months and the defendant objected to only a single continuance.

Mr. Ollivier, in contrast, waited 23 months for trial. No Washington case has allowed such a long delay over the defendant's objection. Campbell does not stand for the proposition that defense counsel may postpone trial indefinitely, over her client's objection, merely by asserting the continuances are needed to prepare for trial. Because the trial court has the duty to ensure a speedy trial, at some point the delay becomes so unreasonable the court must end it. As Saunders cautioned,

Trial courts should tread carefully and provide adequate explanation before granting a continuance where defense counsel moves for a continuance for further negotiation and the defendant objects to a continuance that will delay trial--that the State agrees to such a continuance does not relieve the trial court of its burden.

153 Wn.App. at 218 n9. The trial court must consider “counsel's duty under RPC 1.2(a) and its own duty to see that [the defendant] receive[s] a timely trial,” and abuses its discretion if it fails to do so. Id. at 218.

Here, the trial court abused its discretion by granting continuance after continuance long past the point of reasonableness, and by failing to exercise its discretion to ensure defense counsel’s assertions were subjected to inquiry and defendant’s speedy trial right was respected.

Aside from the court’s failure to consider prejudice to the defendant as required by the rule, Mr. Ollivier concedes that any of the continuances, standing alone, would not be abuse of discretion. But cumulatively, in the context of 23 months in jail and 19 objections, it is manifestly unreasonable to say they were granted in the “administration of justice.” Once it was clear that Mr. Ollivier’s case was the oldest in his attorney’s caseload and one of the oldest in the county, it should have been prioritized. Nothing on the record indicates this occurred or that the court seriously considered any concerns other than defense counsel’s assertions, which were repeatedly shown to be unrealistic and unreliable.

The “administration of justice” is not an incantation to negate any CrR 3.3 violation; it must have an articulable, adequate basis. This Court held, if that phrase “can be invoked at any time to grant a continuance,

then ‘there is little point in having the speedy trial rule at all.’” Nguyen, 131 Wn.App. at 824 (quoting Adamski, 111 Wn.2d at 580).

b. The trial court violated Mr. Ollivier's speedy trial rights under the state and federal constitutions. Both the Sixth Amendment and article 1, section 22 guarantee the right to a speedy trial. This right “‘is as fundamental as any of the rights secured by the Sixth Amendment.’” State v. Iniguez, 167 Wn.2d 273, 280-81, 217 P.3d 768 (2009) (quoting Barker, 407 U.S. at 515 n2). Review is de novo. Iniguez, 167 Wn.2d at 282.

Under both the federal and state constitutions, this Court must use the balancing test introduced in Barker to determine if the pretrial delay violated the defendant’s speedy trial right. Id. at 283. This test analyzes the length of the delay, the defendant’s conduct and assertion of his speedy trial right, the prejudice caused by the delay, and the reasons for the delay. Id. at 283-85; Barker, 407 U.S. at 529-30. No one factor is dispositive.

Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution.

Id. On balance, this analysis weighs in Mr. Ollivier’s favor.

i. The egregious delay requires this Court use the Barker test and closely scrutinize the circumstances of the delay. The Barker test is triggered if the delay is presumptively prejudicial. Iniguez, 167 Wn.2d at 291. Although there is no bright line rule and length of time is only one factor, “[d]epending on the nature of the charges, the lower courts have generally found postaccusation delay ‘presumptively prejudicial’ at least as it approaches one year.” Doggett v. United States, 505 U.S. 647, 652 n1, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992).¹⁰

The Washington Supreme Court recently found an eight-month delay presumptively prejudicial based on the fact that the defendant spent the entire pretrial period in custody, his charges (four counts of first degree robbery) were not “complex charges involving multiple actors... which might necessitate greater pretrial delay,” and eyewitness testimony played a key role in the prosecution. Iniguez, 167 Wn.2d at 292. Here, the delay (almost triple that in Iniguez) was all spent in custody. Mr. Ollivier had no codefendants, so the case against him was even more straightforward than in Iniguez. Eyewitness testimony was critical, as Daniel Whitson’s testimony was the only evidence pointing to another suspect, Mr.

¹⁰ See also United States v. Beamon, 992 F.2d 1009, 1013 (9th Cir. 1993) (17 and 20 month delays “more than sufficient to trigger” Barker); United States v. Mendoza, 530 F.3d 758, 763 (9th Cir. 2008) (more than one year is generally presumptively prejudicial).

Anderson. 9RP 93. At almost two years, the delay in Mr. Ollivier’s case easily crosses the “presumptively prejudicial” threshold.

The length of delay beyond the “presumptively prejudicial” mark is also the first factor of the Barker analysis.¹¹ “The longer the pretrial delay, the closer a court should scrutinize the circumstances surrounding the delay.” Id. at 293. This a fact-specific inquiry. “For example... a tolerable delay for trial on ‘an ordinary street crime is considerably less than for a serious, complex conspiracy charge.’” Id. at 283 (quoting Barker, 407 U.S. at 531). This was not an ordinary street crime, but neither was it extremely complex. On November 2, 2007, the prosecutor told the court she expected a relatively short trial “because we don’t have competency issues, we don’t have a child testifying.” 1RP 24. At that time, she expected the trial to be done “before Christmas.” 1RP 24. Two Christmases passed before the trial began.

The delay in this case was unusually long by any standard, requiring close scrutiny. This factor weighs in Mr. Ollivier’s favor.

¹¹ See e.g. State v. Breaux, 20 Wn.App. 41, 44, 578 P.2d 888 (1978) (300-day delay was a “prima facie violation of the constitutional right to speedy trial and CrR 3.3”); Lackey, 153 Wn.App. at 801 (11-month delay weighed in defendant’s favor); State v. Ellis, 76 Wn.App. 391, 395 884 P.2d 1360 (1994) (“oppressive” presentencing delay of almost two years was accorded more weight than any other factor, requiring dismissal).

ii. For the most part, defense counsel – but not the defendant – was the cause of the delay. The second factor is the reason and responsibility for the delay. Of the 19 continuances objected to by Mr. Ollivier, eight can be partially attributed to the State.¹² All 19 can be partially or wholly attributed to defense investigation or preparation.

However, just as defense counsel’s actions cannot, on these facts, fairly waive Mr. Ollivier’s CrR 3.3 objection, neither can her actions be attributed to him under the Barker factors. The U.S. Supreme Court recently addressed this issue on very different facts. Vermont v. Brillon, ___ U.S. ___, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009). At issue was a period of two years when defense counsel “failed to move the case forward.” Id. at 1287. The Court held that because public defenders are not state actors, any delays caused by them are attributable to the defendant. Id. However, the Court also emphasized the critical role of Brillon’s conduct in the analysis: “no speedy-trial issue would have arisen” but for his “deliberate attempts to disrupt the proceedings.”¹³ Id. at 1292.

¹²App. A4; 1RP 14 (joint motion because State’s witnesses are out of town); App. A6; 1RP 25 (prosecutor to be in trial); App. A7; 1RP 31 (prosecutor to be in trial); App. A15 (reason not recorded); App. A16; 1RP 49 (main case detective to be on vacation); App. A18; 1RP 53 (prosecutor to be out of town); App. A19; 1RP 58 (prosecutor in trial, has not read all discovery); App. A21; 1RP 66 (prosecutor to be out of town).

¹³ Brillon went through six public defenders in three years, firing one and threatening another until the attorney withdrew. Id. at 1287.

Mr. Ollivier's conduct was completely appropriate, with the court and counsel. There is no indication that he ever made a "deliberate attempt to disrupt proceedings." Given his consistent attempts to move the trial forward by every means available to him, it makes no sense to attribute to him the very acts of his attorney he tried so diligently to stop.

Public defenders are not state actors. But the Brillon Court oversimplified the issue by stating the relationship between a public defender and her client is "identical" to that between a private attorney and her client. Id. at 1291. The relationship is fundamentally different in certain respects relevant here. The public defender's client relies on her ethics and good will to do his bidding; he has no leverage to ensure she does. If he finds her representation inadequate, he can fire her only if the court allows him to and has no say in who will replace her. If he is incarcerated, he cannot easily check on the progress of his case. He has no control over how much or when she is paid. If she acts in direct conflict with his wishes, there is little, if anything, he can do about it. Like a State actor, the public defender system is determined by the government – in large part by the courts. The defendant has no control over the size of the public defender's caseload, but the courts do. If speedy trial violations are

caused by unmanageable caseloads, as seems to have been the case here, no purpose is served by attributing that fact to the defendant.

The Brillon Court acknowledged “the State may bear responsibility if there is “a breakdown in the public defender system.” Id. at 1287. But the defendant should not have to show “a breakdown.” Policy concerns would be better served by addressing systemic problems before they reach that point. It is well-established in Washington that court congestion cannot be good cause for a continuance violating speedy trial. State v. Mack, 89 Wn.2d 788, 576 P.2d 44 (1978). But Washington courts have never required a defendant to show the court system was approaching a “breakdown” in order to avoid being punished for it. “Underlying the decision in [Mack] was a concern that if docket congestion justified extended trial settings, the State would have no incentive to allocate the necessary resources to remedy the problem.” In re Kirby, 65 Wn.App. 862, 868, 829 P.2d 1139 (1992). Similarly, if defense counsel’s inability to prepare for trial in a reasonable timeframe is attributable to the defendant, then the only entity with incentive to remedy the problem is the defendant – the person with the least power and resources to do so.

Mr. Ollivier has never alleged that either the State or defense counsel intended to interfere with his speedy trial rights. In fact,

throughout the 23-month delay, he expressed his belief that his attorney was burdened with an unmanageable caseload. However, he also argued – and his attorney acknowledged – he was faced with a Hobson’s choice. In October 2007, Mr. Ollivier told the court, “I find it plain to see that my right to a speedy trial and my right to a publicly appointed attorney are mutually exclusive.” App. B4. Almost a year later on September 5, 2008, defense counsel stated, “I think [he] is being forced to choose between effective assistance to counsel [sic] and a speedy trial.” 1RP 51.

Washington Courts do not tolerate this situation when it is forced by the State without excuse. See e.g. State v. Michielli, 132 Wn.2d 229, 246, 937 P.2d 587 (1997) (State’s delay in amending charges forced defendant to waive his speedy trial right to prepare defense to new charges, requiring dismissal). Here, although the situation was forced by defense counsel, the result was the same. Yet, faced with the choice between effective counsel and speedy trial – a choice which no defendant should have to make – Mr. Ollivier consistently chose speedy trial.

This factor does not weigh in Mr. Ollivier’s favor, but it should not weigh against him either, in light of the policy concerns at stake and his objections to his attorney’s decision to delay his trial for almost two years.

iii. Mr. Ollivier's 19 objections and other attempts to assert his speedy trial right must be accorded "strong evidentiary weight." The third factor, the defendant's assertion of his speedy trial right, weighs heavily in favor of Mr. Ollivier. The Court should give "strong evidentiary weight" to the defendant's assertion of his right, including "the frequency and force of a defendant's objections... as well as the reasons why the defendant demands... a speedy trial." Iniguez, 167 Wn.2d at 295 (quoting Barker, 407 U.S. at 529). Iniguez "asserted his right at every request for a continuance," "at least four times." Id. at 295. This pales in comparison to Mr. Ollivier's 19 unsuccessful objections.

It would be difficult to find a case where a defendant sought to protect this right more explicitly and conscientiously. Mr. Ollivier reasonably agreed to the first two continuances, albeit reluctantly to the second. Thereafter, with only one exception,¹⁴ he objected to every continuance and explained his objection at every opportunity. 1RP 12, 18, 24, 27, 35, 41, 43, 46, 48, 51, 54, 58, 62, 65, 69; 2RP 9. To ensure his objection would be noted even if he was not present, he put it in writing, stating, "I object to any continuance in this matter whatsoever." App. B21.

¹⁴ February 15, 2008, App. A10; 1RP 39.

Mr. Ollivier took every possible action short of waiving his right to counsel in order to assert his speedy trial right. On November 30, 2007, Mr. Ollivier moved to discharge his attorney after she misrepresented (by her own admission) her ability to complete the case without any further continuances, quite possibly costing him the possibility of release on bond. App. A7; 1RP 27, 29; 1(a)RP 2-3. Mr. Ollivier withdrew the motion once he was persuaded that appointment of a new attorney would cause even greater delay and that his attorney had addressed the caseload issues that caused the problem. 1RP 29; 1(a)RP 2-4. But in the 16 months that followed, defense counsel requested 16 more continuances, all of which were granted, all but one over Mr. Ollivier's objection.

iv. Mr. Ollivier was prejudiced by the delay.

Prejudice to the defendant is the final factor of the Barker inquiry.

Prejudice is judged by looking at the effect on the interests protected by the right to a speedy trial: (1) to prevent harsh pretrial incarceration, (2) to minimize the defendant's anxiety and worry, and (3) to limit impairment to the defense. Even though impairment to the defense by the passage of time is the most serious form of prejudice, no showing of actual impairment is required to demonstrate a constitutional speedy trial violation... [T]his is difficult to prove, and as a result, we presume such prejudice to the defendant intensifies over time.

Iniguez, 167 Wn.2d at 295 (emphasis added). The U.S. Supreme Court has emphasized “affirmative proof of particularized prejudice is not

essential” to a speedy trial claim because “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.” Doggett, 505 U.S. at 655. Logically, this factor’s “importance increases with the length of delay.” Id. at 656.

The presumption of prejudice certainly weighs in Mr. Ollivier’s favor, particularly in light of the unusually long delay. However, he can also point to specific instances of prejudice, and did so even while making his objections. As early as October of 2007, Mr. Ollivier told the court he was worried about debt he could not attend to while in custody and about the stress his incarceration was causing his grandmother. 1RP 12; App.

B5.¹⁵ This reflects the Supreme Court’s repeated recognition that

[i]nordinate delay, “wholly aside from possible prejudice to a defense on the merits, may ‘seriously interfere with the defendant's liberty [and] may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.’ United States v. Marion, 404 U.S. 307, 320, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971). These factors are more serious for some than for others, but they are inevitably present in every case to some extent[.] Barker, 407 U.S. at 537 (White, J., concurring).

Moore v. Arizona, 414 U.S. 25, 27, 94 S.Ct. 188, 38 L.Ed.2d 183 (1973).

¹⁵ At the same time, Mr. Ollivier also stated he did not have access to services of his religion in jail and his physical health was suffering from the poor diet, inadequate medical care, and stress of incarceration. App. B5-6.

In November 2008, Mr. Ollivier explained that his main witness, Mr. Whitson, had a degenerative brain disorder and his memory could be fading greatly. 1RP 65.¹⁶ As the Barker Court pointed out, “[l]oss of memory... is not always reflected in the record because what has been forgotten can rarely be shown.” 407 U.S. at 532. In addition, the defense had expected Shilo Edwards to testify that Mr. Anderson attempted to sell him child pornography, but when trial finally began, the defense was not able to secure Mr. Edwards’ presence.¹⁷

The delay’s effect on Mr. Ollivier’s potential for release on bond was well documented.¹⁸ Not only was Mr. Ollivier held for the entire 23

¹⁶ At trial, Mr. Whitson testified he has problems with his memory because of an organic brain syndrome. 9RP 94, 98.

¹⁷ Mr. Edwards was in DOC custody but temporarily held in Snohomish County Jail pending sentencing on another case. 5RP 24. To have him brought to King County for this trial, the defense may have had to wait until after his sentencing on April 10, 2009, and perhaps longer so he could be transported back to DOC, and then obtain a material witness warrant to have him transported from DOC to King County. 6RP 4-6, 61-63, 127-28; 7RP 73-74. Transport would not have been an issue if trial had begun earlier.

¹⁸ Mr. Ollivier was denied release at a bond hearing on November 19, 2007. Defense counsel explained (in her fifth motion for continuance a few days later):

Part of the judge’s ruling in that [bond hearing] was based upon my assertion that the case would not be continued because at that time I did not think that I would be asking for a continuance.

1RP 27. Counsel admitted this was “not realistic” and did not “have a very good explanation” why she had made such an assertion, except that she was trying to manage a difficult caseload and thought she might have based her statement on her decision not to use the expert (suggesting she had not given sufficient thought to other aspects of the investigation) or might have been confused about the speedy trial date. 1(a)RP 2-3.

months he awaited trial, but he was refused bond at least twice based on the court's mistaken belief he would be brought to trial in a timely manner, a clear manifestation of prejudice.¹⁹

c. For either violation, dismissal is required. CrR 3.3 is strictly applied, requiring dismissal for any violation. Raschka, 124 Wn.App. at 112 (citing Striker, 87 Wn.2d at 875-77). Similarly, when a violation of the constitutional right is proven, dismissal is the only available remedy. Ellis, 76 Wn.App. at 395. Under either analysis, Mr. Ollivier's conviction must be dismissed.

2. MR. OLLIVIER'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HIS HOME WAS SEARCHED BASED ON A WARRANT WHICH LACKED PROBABLE CAUSE

a. The federal and state constitutions require that search warrants be based upon probable cause. Under the Fourth Amendment and article 1, section 7, a search warrant may only be issued upon a showing of probable cause. Kyllo v. United States, 533 U.S 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001); State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999).

Then, while making his 19th objection to a continuance on January 21, 2009, Mr. Ollivier told the court he had been denied release on bond in March 2008 "under [the] single understanding [that] I was going to trial in May, guaranteed." 2RP 8.

¹⁹ See also State v. Angelone, 67 Wn.App. 555, 562, 837 P.2d 656 (1992) (prejudice was "clear" because the defendant lost the opportunity to have his federal prison term run concurrently with a sentence on state charges "due to the failure of the authorities to adhere to his requests for a speedy trial").

The affidavit submitted in an application for a search warrant must set forth sufficient facts and circumstances so the magistrate may make a detached and independent evaluation of whether probable cause exists (i.e., if a reasonable, prudent person would understand from the facts in the affidavit that the defendant is probably involved in criminal activity and evidence of the crime will be found in the place to be searched). Id. at 140. The affidavit must contain more than mere conclusions; otherwise the magistrate becomes no more than a rubber stamp for the police. United States v. Ventresca, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965); State v. Jackson, 102 Wn.2d 432, 436-37, 688 P.2d 136 (1984).

In this case, the search warrant affidavit was based on information from Eugene Anderson, a registered sex offender. According to the affidavit, he reported to his Community Corrections Officer, Theodore Lewis, that he saw Mr. Ollivier viewing child pornography on his computer. CCO Lewis reported this information to Detective Saario, the affiant, who then interviewed Mr. Anderson herself. CP 65.

b. The search warrant was not based on probable cause because it relied on reckless perjury. When a warrant affiant uses intentional or reckless perjury to secure a warrant, “a constitutional violation obviously occurs” because “the oath requirement implicitly

guarantees that probable cause rests on an affiant's good faith." State v. Chenoweth, 160 Wn.2d 454, 473, 158 P.3d 595 (2007) (citing Franks v. Delaware, 438 U.S. 154, 155-56, 98 S.Ct 2674, 57 L.Ed.2d 667 (1978)).²⁰

If the defendant establishes the affiant's intentional or reckless disregard for the truth by a preponderance of the evidence, the court must strike the falsehoods; if the modified affidavit then fails to establish probable cause, the warrant is void, requiring suppression. Id. at 155-56.

i. Detective Saario intentionally or recklessly excluded material facts from the affidavit and included false information.

A. False and unsupported statements. In the affidavit, Detective Saario averred Mr. Anderson had described a red locked box, which Mr. Ollivier kept in his room, containing child pornography magazines. CP 233 (FF 3(f)(h)). In fact, Mr. Anderson had stated that the red box contained only adult pornography magazines. CP 233 (FF 3(f)). The trial court correctly ruled that Detective Saario made the false statement about the red box "intentionally and with reckless disregard for the truth." CP 233 (FF 3(h)). The court ruled it would not

²⁰ Recklessness may be shown by evidence that the affiant entertained serious doubts about the informant's veracity, or should have done so because of obvious reasons to doubt the informant or the tip. State v. Clark, 143 Wn.2d 731, 751, 24 P.3d 1005 (2001).

consider the claim that Mr. Ollivier had child pornography “in print form” or the claims contained in the following excerpt of the affidavit, because they were unsupported or contradicted by Mr. Anderson’s statements:

Mr. Anderson stated that while he lived with Mr. Ollivier, virtually every day, Mr. Ollivier was on his personal computer viewing and masturbating to child pornography. Mr. Anderson also stated Mr. Ollivier keeps a red locked box in his room approximately 1”X18”. In that box Mr. Ollivier keeps pornographic magazines containing unclothed photos of children under the age of 16 exposing in explicit sexual poses clearly for sexual gratification.

3RP 30; CP 65; CP 233 (FF 3(h)). However, the court found the affidavit even without the false statements still established probable cause. The court therefore denied the motions to suppress the evidence and for an evidentiary hearing under Franks v. Delaware. CP 234 (FF 3(b), (d), (e)).

The affidavit contained another false statement: that in the taped interview, “Mr. Anderson stated he knew the youths in the photos to be prepubescent because they did not have pubic hair and the females did not have breasts.” CP 65. The term “youths” here clearly refers to “minors under the age of 16 engaging in sexual intercourse.” CP 65. But Detective Saario never asked and Mr. Anderson never said how he knew they were under 16. She did ask, “how do you judge a nine year old girl?” Mr. Anderson replied, “She did not have pubic hair. Did not have any... breasts.” CP 55. Mr. Anderson’s statements, if taken as true, establish

that direct observation was his basis for knowledge of the depictions of the younger girls, but not the teenagers. Detective Saario provided no facts to establish Mr. Anderson's basis for knowledge of the ages of the teenagers.

Detective Saario also averred, "Mr. Ollivier admitted to having more than 25 victims ranging in age from 4 to 15 years old" and in prison "failed to complete his sex offender treatment program and was caught with pornographic magazines in his cell," but offered no authority for these assertions. CP 65; 3RP 11. The clear purpose of this statement was to portray Mr. Ollivier as unrehabilitated and dangerous.

B. Omitted facts. Mr. Anderson was arrested on the same day he reported to CCO Lewis. When Detective Saario interviewed him, he was not only in custody, but in the psychiatric ward of the jail. 4RP 24. As discussed below, both of these facts have a direct impact on Mr. Anderson's credibility, but neither appears in the affidavit.

Interestingly, Detective Saario never mentions in the affidavit that she had any prior contact with Mr. Ollivier, much less that she had been responsible for supervising him for several months. But she testified he had been assigned to her almost a year before this investigation, and since then she had checked on his apartment every 90 days. 3RP 103-04. This omission may be explained by Mr. Ollivier's testimony that his

relationship with Detective Saario had not been smooth. He testified that soon after he moved to Burien, she promised to let him know before notifying the community of his presence but failed to do so; on more than one occasion she was rude and “angry” towards him. 4RP 24-25.

ii. The repaired affidavit lacks probable cause. A fact included in or omitted from a warrant affidavit is “material” if it would affect the finding of probable cause. State v. Copeland, 130 Wn.2d 244, 277, 922 P.2d 1304 (1996); State v. Gentry, 125 Wn.2d 570, 604, 888 P.2d 1105 (1995). All of the facts just listed are material to a) Mr. Anderson’s credibility, b) his basis for knowledge, or c) Detective Saario’s credibility. In other words, the omissions and falsehoods go to the heart of the probable cause determination. The magistrate

cannot determine if there is probable cause when the affidavit misinforms him of the underlying circumstances; the magistrate cannot judge whether the informant was credible or obtained the information in a reliable way. Only by ensuring the magistrate is presented with truthful and complete information can he make a proper and independent judgment and act with authority of law.

Chenoweth, 160 Wn.2d at 486 (Sanders, J., dissent).

When a search warrant issues without probable cause, the evidence gathered pursuant to the warrant must be suppressed. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

[T]he integrity of this judicial process demands at the very least that the information provided be truthful if the magistrate's authority is to be respected and appropriately fostered. To hold otherwise would undermine the entire warrant procedure.

State v. Stephens, 37 Wn.App. 76, 80, 678 P.2d 832, rev. denied, 101

Wn.2d 1025 (1984). Thus reversal is required. Thein, 138 Wn.2d at 151.

c. The warrant was not based on probable cause but solely on information from an unreliable informant.

i. When a search warrant request is based on an informant's tip, the affidavit must establish the informant's credibility and the basis for his conclusions. The Washington Constitution provides greater protection of an individual's privacy than the federal constitution. State v. Jackson, 150 Wn.2d 251, 259, 76 P.3d 217 (2003). The focus under article 1, section 7 is on the "privacy interests which citizens of this state have held, and should be entitled to hold, safe from government trespass," not the reasonableness of the expectation of privacy. Id. at 261.

Under the Fourth Amendment, a search warrant affidavit based upon an informant's tip is evaluated under the "totality of the circumstances." Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). Washington courts, however, apply the Aguilar-Spinelli test under article 1, section 7. Jackson, 102 Wn.2d at 443. Under

this test, an informant's tip supports probable cause for a search warrant if the officer's affidavit (1) sets forth circumstances under which the informant drew his conclusions so the magistrate can independently evaluate the reliability of the manner in which the informant acquired the information, and (2) sets forth the circumstances from which the officer concluded the informant or the information was credible. Id. at 435 (citing Aguilar v. Texas, 378 U.S. 108, 114, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 413, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969)).

The credibility and the basis of knowledge prongs must both be separately established in the search warrant affidavit. Id. at 437, 441. The affidavit must, within its four corners, establish the informant's credibility – why there are reasons to believe he is telling the truth. Id. at 433.

The probable cause determination is reviewed de novo. Detention of Peterson, 145 Wn.2d 789, 799-800, 42 P.3d 952 (2002). Although the magistrate's or trial court judge's determination of whether the facts in the affidavit are competent is given "due weight," the ultimate legal conclusion of whether the "qualifying information as a whole amounts to probable cause" requires de novo review. Id. at 800.

ii. The affidavit failed to establish Mr. Anderson's credibility. The veracity prong of the Aguilar-Spinelli test is met when the police present the magistrate with sufficient facts to determine the informant's inherent credibility or reliability. State v. Duncan, 81 Wn.App. 70, 76, 912 P.2d 1090, rev. denied, 130 Wn.2d 1001 (1996). This prong is satisfied if the affidavit shows the informant is credible or, if nothing is known about the informant, the facts and circumstances support a reasonable inference the informant is telling the truth. Id. at 76-77.

Detective Saario's affidavit was based entirely on information she received, or claimed to receive, from Mr. Anderson, offering no facts to establish his credibility. To the extent Mr. Anderson reported direct observation of child pornography and an adequate basis for knowing that it was child pornography, the basis of knowledge prong is satisfied, but the credibility prong is not. A weak credibility prong can be strengthened by independent corroboration, but there was no independent corroboration here. Duncan, 81 Wn.App. at 77 (citing Jackson, 102 Wn.2d at 438). Therefore, the only question is whether the credibility prong was satisfied.

A. Other than his name, no facts in the affidavit demonstrated Mr. Anderson's credibility. The only fact weighing in favor of Mr. Anderson's credibility was that he was named in the affidavit. But

that fact does not suffice to establish the informant's reliability. Duncan, 81 Wn.App. at 78. Providing a name in the affidavit is only "at least more helpful than no name at all" but does little to demonstrate the informant's reliability. State v. Lair, 95 Wn.2d 706, 712, 630 P.2d 427 (1981).

There is no support for Mr. Anderson's credibility in the content of his tip. A particularly detailed tip supports credibility. See e.g. Chenoweth, 160 Wn.2d at 459 (informant provided a long, detailed list of methamphetamine-manufacturing components he saw in defendants' home); State v. O'Connor, 39 Wn.App. 113, 123, 692 P.2d 208 (1994) (informant recounted specific events on a certain date and recited brand names of stolen property he saw in defendant's possession). Mr. Anderson's tip was not detailed. He could not describe Mr. Ollivier's computer. CP 54. His descriptions of the child pornography were fairly generic. He could not name any website or publication where Mr. Ollivier found child pornography; in fact, the only publications he could name were of legal pornography and the only item he described with specificity was the red box containing legal pornography. CP 58-59.

Courts require a heightened showing of credibility for a criminal informant. State v. Rodriguez, 53 Wn. App. 571, 574-76, 769 P.2d 309 (1989). Criminal, or "professional", informants are presumed unreliable

because they have ulterior motives for making an accusation. State v. Northness, 20 Wn.App. 551, 557, 582 P.2d 546 (1978). The primary method to establish a criminal informant's credibility is to include facts showing the informant's "track record" of repeatedly providing accurate information to the police. Jackson, 102 Wn.2d at 437. Mr. Anderson had no track record of providing the police with reliable information.

B. The circumstances under which Mr. Anderson made his report seriously undermine its veracity. If an informant has no track record of credibility, the trustworthiness of the tip must be judged based on the circumstances under which it was given. Lair, 95 Wn.2d at 710. "One way of answering this question is to inquire whether an informant would have a motive to lie to his listener." Id. at 711.

Mr. Anderson had an obvious and pressing reason to lie to his CCO. A prohibition on pornography is a standard condition for sex offenders. As CCO Lewis explained, "[c]ommon themes of questioning during ... meetings [with CCO's] cover the prohibited use of pornography[.]" CP 75. If Mr. Anderson admitted to viewing legal pornography, the consequences could be dire (and even if he did not admit it directly, he could expect a polygraph test including questions about pornography); even more so if he admitted to viewing child pornography.

A person in Mr. Anderson's position would be highly motivated take some protective action, such as placing the responsibility for the pornography entirely on someone else before the subject came up. As a bonus, he could curry favor with his corrections officer, the police, and perhaps the court and prosecutor – all of which could be helpful in his impending probation hearing. Mr. Anderson presumably knew, when he went to meet with his CCO on March 5, 2007, that he was in violation of his probation conditions and was likely to be arrested. In fact, he was arrested that day.

Of course, the magistrate did not know that. He did not even know that the informant had been arrested, much less when or why. Detective Saario failed to mention in her affidavit that Mr. Anderson was in jail when she interviewed him, or how careful he was to assure her of his innocence. When asked if he would like to add anything, he replied, “[T]he reason that I’m tellin’ this is because... I don’t think about re-offending.” CP 59. Detective Saario then led him,

DET: You don’t want anybody reoffending?

WIT: No. And...

DET: You don’t want anybody to get hurt?

WIT: No.

CP 59. That is not what Mr. Anderson said. He was concerned about the impression that he was reoffending, not the threat of anyone else reoffending. He continued, “I did what I did and... for me it would never

happen again... I will intercede and yeah, I need to let somebody know.” CP 59-60. Mr. Anderson was exceedingly careful to keep his own name clear throughout this interview.

Courts have long recognized the inherent credibility problems arising from a cohort’s allegations against a suspect.²¹ Although he was never investigated, Mr. Anderson had been living with Mr. Ollivier and could reasonably worry that he would be a suspect. A statement against penal interest is generally presumed to be an indicator of reliability, but Mr. Anderson’s suspiciously self-interested statement was just the opposite, undermining his credibility.

d. Reversal is required. Looking at all the supported facts in the affidavit together with the recklessly omitted material facts, the corrected falsehoods, and the more complete understanding of Mr. Anderson’s circumstances, the following picture emerges:

Mr. Anderson was a registered sex offender who lived with Mr. Ollivier. If he saw pornography, he had a motive to preemptively pin the blame on someone else, to avoid a violation of his community custody

²¹ See e.g. Lilly v. Virginia, 527 U.S. 116, 133, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999) (noting “presumptive unreliability” of suspect’s non-self-inculpatory statements to police); Crawford v. Washington, 541 U.S. 36, 65-66, 124 S.Ct. 1354, 158 L.Ed.2d 117 (2004) (potential suspect’s statement to police not reliable).

conditions. If the pornography was illegal, he had a motive to focus the investigation on someone else, to avoid being a suspect. On the date he made his report, he knew he would be meeting with his CCO and could be arrested for a community custody violation, giving him a motive to please his CCO, the police, and the prosecutor. Although he said he had seen Mr. Ollivier view child pornography on the computer, his descriptions of innocuous facts were detailed and specific, while his descriptions of child pornography were generic. When Detective Saario interviewed Mr. Anderson, he was in the psychiatric ward of the jail. Detective Saario already knew Mr. Ollivier and their relationship seems to have been acrimonious. She appears to have intentionally fabricated critical facts for the affidavit: that the red locked box contained child pornography and that Mr. Anderson had some way of knowing whether the teenagers depicted in a sexual act were minors or not. The complete and accurate picture cannot provide probable cause for the search. Reversal is the proper remedy.

3. THE SEARCH WARRANT WAS INVALID FOR OVERBREADTH.

a. A warrant is unconstitutional if not sufficiently particular. A search warrant is invalid under the Fourth Amendment if it does not describe “with particularity the things to be seized.” State v. Riley, 121 Wn.2d 22, 28, 846 P.2d 1365 (1993). The particularity

requirement is an essential safeguard which “eliminates the danger of unlimited discretion in the executing officer's determination of what to seize.” State v. Perrone, 119 Wn.2d 538, 546, 834 P.2d 611 (1992).

Review of a warrant’s particularity is de novo. Riley, 121 Wn.2d at 29.

The Supreme Court has repeatedly struck down vague warrants in child pornography cases, explaining,

“child pornography, like obscenity, is expression presumptively protected by the First Amendment.” And “[w]here a search warrant authorizing a search for materials protected by the First Amendment is concerned, the degree of demanded is greater than in the case where the materials sought are not protected by the First Amendment”... such warrants must follow the Fourth Amendment’s particularity requirement with “scrupulous exactitude.”

State v. Reep, 161 Wn.2d 808, 814-15, 167 P.3d 1156 (2007) (quoting Perrone, 119 Wn.2d at 547, 550). Therefore this Court should take particular care in reviewing the warrant for Mr. Ollivier’s home.

b. A vague warrant cannot be saved by its supporting documents. If the warrant does not provide sufficient particularity on its face, it is “plainly invalid.” Groh v. Ramirez, 540 U.S. 551, 557, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004). Such a warrant cannot be saved by a sufficiently particular affidavit or other supporting documents, because

the Fourth Amendment requires that the warrant particularly describe the things to be seized, not the papers presented to the judicial officer ... asked to issue the

warrant. [The Fourth Amendment's] "high function" is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection.

Id. (quoting United States v. Stefonek, 179 F.3d 1030, 1033 (7th Cir. 1999) (emphasis in the original). As the Washington Supreme Court has explained, "[t]his is so because the purpose of a warrant is not only to limit the executing officer's discretion, but to inform the person subject to the search what items the officer may seize." Riley, 121 Wn.2d at 29.

In Riley, an overbroad warrant was not cured by an affidavit which was neither attached to it nor referred to therein. Id. at 30. The Court emphasized the affidavit could cure the warrant only if it was physically attached and incorporated with "suitable words of reference." Id. at 29-30 (quoting Bloom v. State, 283 So.2d 134, 136 (Fla.Dist.Ct.App.1973)).

Similarly, the Third Circuit Court of Appeals recently held a warrant invalid because it failed to expressly incorporate the affidavit:

[F]or an affidavit to cure a warrant's lack of particularity, the words of incorporation in the warrant must make clear that the section lacking particularity is to be read in conjunction with the attached affidavit. Merely referencing the attached affidavit somewhere in the warrant without expressly incorporating it does not suffice.

United States v. Tracey, 597 F.3d 140, 147-48, 149 (3rd Cir. 2010).²²

c. The search warrant for Mr. Ollivier's home was overbroad and failed to incorporate the affidavit. The warrant in this case authorized seizure of the following property:

I. A large red colored locked box...²³

II. The computer system(s) present at the above described location(s), its hardware including the Central Processing Unit (CPU) with all devices internal, attached or present, its peripherals including but not limited to the Keyboard, Monitor, Pointer device such as a mouse, Printer, external phone / Fax modem, hard drives, tape back up device, disk drives of other storage devices. Scanner, Personal Digital Assistants (PDA), Video and Digital cameras and their transfer equipment. All cables used for the connecting and linking of the computer equipment used to making it operational.²⁴

III. All storage media, including but not limited to hard drive(s), Diskettes of all size and capacity, Compact Disks (CDs, DVDs) both read only (ROM) and recordable, Tapes used for system and file back up and any other magnetic or optical storage medium.

IV. All manuals, notes and other documents that show the operation or use of the above described devices, equipment and programs.

²² See also United States v. Waker, 534 F.3d 168, 172 n. 2 (2nd Cir. 2008); United States v. McGrew, 122 F.3d 847, 849 (9th Cir.1997); United States v. Curry, 911 F.2d 72, 76-77 (8th Cir. 1990) (all requiring explicit words of incorporation to refer to affidavit).

²³ As discussed above, the trial court found the red box was included in the warrant only because of Detective Saario's reckless perjury. There was no probable cause to believe any evidence of a crime would be found within.

²⁴ Errors in the original document are copied here without "[sic]."

The warrant also authorized

a search of the system including all of the above items for evidence of the crime of:

RCW 9.68A.070 Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct

All materials, which show evidence of dominion and control or use of the computer system and related items as mentioned above, or of the computer storage media itself.

All files which relate to Internet usage and familiarity; including but not limited to e-mail received or sent, to include unread e-mail stored on the hard drive or other storage medium, correspondence with Internet providers, logs of usage, lists of newsgroup memberships or usernet addresses.

CP 63. Only the red box is described with any particularity; every other item is described as generically as possible. The warrant does not incorporate or even mention the affidavit. This warrant is similar to the one in Tracey, which authorized the seizure of

[a]ny items, images, or visual depictions representing the possible exploitation of children including video tapes or photographs.

COMPUTERS: Computer input and output devices to include but not limited to keyboards, mice, scanners, printers, monitors, network communication devices, modems and external or connected devices used for accessing computer storage media.

597 F.3d at 143. Elsewhere on that warrant, the officer recited the particular penal codes allegedly violated and indicated that the affidavit of

probable cause and additional pages were attached. Id. at 144. Although the affidavit provided detailed information relevant to the alleged crimes, the warrant itself was untenably generic. Id. at 144-45. Nothing but explicit language of incorporation could cure the defect.

Here as well, the warrant is too vague and generic to stand on its own. Without explicitly incorporation of the affidavit, the warrant is invalid, requiring suppression of all evidence seized as a result.

4. BECAUSE THE POLICE DELIBERATELY FAILED TO SERVE MR. OLLIVIER WITH THE SEARCH WARRANT, SUPPRESSION OF THE EVIDENCE WAS REQUIRED.

The trial court found that as the police began searching Mr. Ollivier's apartment, they seated him in a chair outside his apartment. CP 228 (FF 1(i)). The search lasted approximately three hours, some of which he spent in that location and some of which he spent in a patrol vehicle. CP 228 (FF 1(i), (j)). Mr. Ollivier was unable to observe the search or see what was removed from his apartment. CP 228 (FF 1(k)). Mr. Ollivier "probably expressed an interest in being shown a copy of the search warrant, and probably was shown a copy of the warrant. However, he was not allowed to read it at that time." CP (FF 3(a)). Instead of giving Mr. Ollivier a copy of the warrant, the police left it, with the inventory, taped to a bookcase when they departed. CP (FF1(l)). The court concluded:

not giving the copy of the warrant was deliberate, not in a malicious sense, but because the officers did not understand the court rule and the procedural requirements... However, the court finds there is no prejudice.

CP 230 (CL 4(d), (e)). The motion to suppress was therefore denied.

The trial court's findings of fact are correct, but the court reached the wrong conclusion by applying the wrong legal standard. The court found "[i]n Washington, suppression is not compelled unless there is prejudice to the defendant." CP 230 (4(c)). This is incorrect. If a violation of CrR 2.3 is prejudicial or deliberate, suppression is required.

a. CrR 2.3 requires police to personally serve the warrant on the defendant if he is present during the search. If the defendant is present when his home is searched, the police must personally give him a copy of the warrant.²⁵ Under the Fourth Amendment, a deliberate or prejudicial violation of this rule requires suppression. United States v. Gantt, 194 F.3d 987, 994 (9th Cir. 1999), overruled on other grounds by United States v. Grace, 526 F.3d 499 (9th Cir. 2008).

²⁵ CrR 2.3(d) provides:

The peace officer taking property under the [search] warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt.

Gantt concerned a nearly identical federal rule.²⁶ There, federal agents conducted a three-hour search of the defendant's apartment while she sat in the hall. Gantt, 194 F.3d at 996. They finally showed her the face of the warrant when she requested it, but did not give her a copy until after she was arrested and transported to FBI headquarters. Id. The Ninth Circuit unequivocally held "absent exigent circumstances, if a person is present at the search of her premises, Rule 41(d) requires officers to give her a complete copy of the warrant at the outset of the search." Id. at 994. The Court noted that generally, "technical violations of Rule 41(d) require suppression only if there was a deliberate disregard of the rule or if the defendant was prejudiced." Because this violation was deliberate, suppression was required, and the Court did not need to decide whether the violation was fundamental or technical. Id.

The Gantt rule was first applied in Washington in State v. Aase, 121 Wn.App. 558, 89 P.3d 721 (2004). In that case, the police failed to serve the defendant with a warrant at the outset of the search, but did give

²⁶ Former FCrR 41(d) provided:

The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.

him a copy within minutes of beginning. Id. Under those circumstances, Division Two found the violation, if any, was not deliberate. Id. at 567. Aase did not allege any prejudice, and the Court found none, holding suppression was therefore not required under the Fourth Amendment. Id. Because Aase argued that article 1, section 7 provides more protection in this context, the Court then conducted a Gunwall²⁷ analysis. The Court found no greater protection under the State Constitution because Washington cases have historically held “procedural noncompliance does not compel invalidation of an otherwise sufficient warrant or suppression of its fruits” if no prejudice results. Id. at 567 (citing State v. Kern, 81 Wn.App. 308, 311, 914 P.2d 114, rev. denied, 130 Wn.2d 1003 (1996)).

The Court arrived at a different result in State v. Ettenhofer, 119 Wn.App. 300, 79 P.3d 478 (2003). In that case, the police searched the defendant’s apartment pursuant to a telephonic warrant, but had no written warrant. This violated CrR 2.3(c), requiring a written warrant, and therefore rendered the telephonic warrant invalid. Id. at 309. But the Court also found the police violated CrR 2.3(d) by failing to serve the defendant with a copy of the warrant. Id. at 307. Because the violation of CrR 2.3(c) alone required reversal, the Court did not discuss whether a

²⁷ State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

violation of CrR 2.3(d) must be prejudicial, but its ruling – finding the rule was violated and emphasizing its mandatory language – indicated this error is not to be taken lightly under article 1, section 7. Id.

b. If the violation of this rule is either prejudicial or deliberate, suppression is required under either constitution. Here, the trial court read Aase to mean the violation must be deliberate and prejudicial in order to justify suppression of the evidence. The court ruled:

Under [Aase], the Washington State Constitution; and supporting caselaw, absent a showing of prejudice, procedural noncompliance does not compel suppression of physical evidence... The test in Washington is different from the 9th Circuit case in Gantt. In the 9th Circuit, a deliberate violation of the rule requires suppression. In Washington, suppression is not compelled unless there is prejudice to the defendant.

CP 230 (FF 4 (a), (c)). Thus, the trial court denied the motion to suppress only because it did not find prejudice. CP 230 (4(d)-(f)).

This interpretation, construing Washington’s rule as less protective than the federal rule, is contrary to the text and history of the Aase opinion. First, the Court in Aase never said it would require that a violation be both deliberate and prejudicial. The Court held:

[Gantt], the Fourth Amendment, and Article I, section 7 do not compel suppression of evidence where a copy of the warrant and the items seized are not given to the defendant resident before commencing an otherwise lawful search. Even assuming [the police] “deliberately” violated CrR

2.3(d), Aase does not argue that he was prejudiced by the several-minute delay or that the search would have somehow been less intrusive had he been able to immediately see the warrant. Suppression is not required.

Aase, 121 Wn.App. at 567. This holding merely restates the Gantt rule and applies it to a case where the violation was neither deliberate nor prejudicial. None of the cases cited in Aase support the trial court's misinterpretation.²⁸ The Court recognized that Ettenhofer, the only post-Gantt decision, suggests suppression is required. Id. at 568.

Secondly, the trial court's interpretation of Aase is illogical in light of the established principle that article 1, section 7 provides broader protections than the Fourth Amendment. This is so axiomatic that a Gunwall analysis is no longer required. State v. Surge, 160 Wn.2d 65, 71, 156 P.3d 208 (2007). It logically follows that a government act which violates the Fourth Amendment also violates article 1, section 7. But here, the court found an error which invalidates a warrant under the Fourth

²⁸ See Kern, 81 Wn.App. at 311-12; State v. Parker, 28 Wn.App. 425, 427, 626 P.2d 508 (1981); State v. Bowman, 8 Wn.App. 148, 150, 504 P.2d 1148 (1972); City of Tacoma v. Mundell, 6 Wn.App. 673, 677-78, 495 P.2d 682 (1972) (all holding defendants must show prejudice from violation of rule in order to invalidate warrant, and finding no constitutional error). All of these cases were decided before Gantt and do not discuss deliberateness at all, and are therefore no longer useful. In two of these cases, the defendants at least learned the substance of the warrant at the time of the search, even if the rule was not strictly followed. In Parker, the police gave the defendants a copy of the nonconformed warrant; in Bowman, the police read the warrant to the defendant and served it on the homeowner in the defendant's presence. Here, Mr. Ollivier could not know what the warrant said until after the police departed.

Amendment if it is deliberate or prejudicial must be both deliberate and prejudicial under article 1, section 7. If this Court upholds that ruling, it would be the first time a Washington Court has found the Fourth Amendment more protective of privacy rights than article 1 section 7.

c. Because the violation was deliberate, reversal is required. The trial court specifically found the failure to serve Mr. Ollivier was deliberate. CP 230 (CL 4(d)). This was not an inadvertent and reasonable delay of a few minutes, as in Aase. Instead, as in Gantt, Mr. Ollivier sat outside his apartment for hours while the police searched through it and, although he repeatedly asked to read the warrant, was only shown the face of it and not given a copy until after the search ended. As in Gantt, the deliberate failure to serve Mr. Ollivier with the warrant requires suppression of all fruits of the search.

Furthermore, the violation in this case is particularly critical because of the overbreadth of the warrant, discussed above. If the police did show Mr. Ollivier the face of the warrant, that act was useless because the warrant lack sufficient particularity on its face. The two errors are intertwined: both the particularity requirement and CrR 2.3(d) are necessary to “assure[] the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the

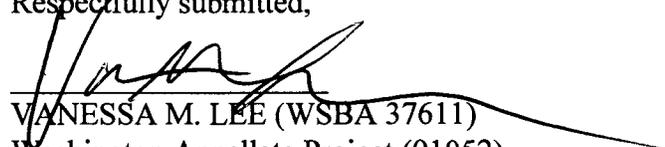
limits of his power to search.” Groh, 540 U.S. at 561. For three hours, Mr. Ollivier was denied that assurance; the officers refused to provide it and the warrant was unable to do so. The conviction should therefore be reversed and the case remanded for a new trial.

E. CONCLUSION.

For the reasons stated above, Mr. Ollivier respectfully requests this Court dismiss his conviction with prejudice for the violation of his speedy trial rights. In the alternative, because of the multiple errors in the preparation, service, and execution of the search warrant, this Court should reverse the conviction and remand for further proceedings.

DATED this 3rd day of June, 2010.

Respectfully submitted,



VANESSA M. LEE (WSBA 37611)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A

FILED
KING COUNTY, WASHINGTON

MAY 21 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

STATE OF WASHINGTON,
Plaintiff,

vs
Brandon G. Ollivier
Defendant

No.: 071-09006-8KNT

SCHEDULING ORDER- TRIAL AND OTHER
HEARINGS - WAIVER
(ORST; ORSTD)

The following court dates are set based on a commencement date of 4-30-07

- a) Case Scheduling Hearing: _____ at 1 p.m in courtroom GA
- b) Plea/Sentencing Date: _____ at _____ a.m./p.m. in courtroom GA
- c) Omnibus Hearing: June 15, 2007 at 8:30 a.m. in courtroom GA
- d) Trial date: June 27, 2007 at 9 a.m.

The expiration date is June 29, 2007.

YOU MUST BE PRESENT OR A WARRANT WILL BE ISSUED FOR YOUR ARREST AND YOUR FAILURE TO APPEAR MAY RESULT IN ADDITIONAL CRIMINAL CHARGES BEING FILED.

DATED this 21st day of May, 2007

[Signature]
Deputy Prosecutor WSBA No. 25116

[Signature]
Judge
[Signature]
Attorney for Defendant WSBA No. _____

Waiver: I understand that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or 90 days of the commencement date if I am not in jail on this case. I am voluntarily and knowingly giving up this right for a specific period of time to allow my attorney to negotiate with the prosecuting attorney and/or to investigate and/or prepare my case. I agree that the new commencement date is _____ and that the expiration date is _____.

[This waiver must be signed if a new case scheduling hearing date is set or if a trial date is set outside the time for trial provisions of CrR 3.3.]

I have read and discussed this waiver with the defendant and believe that the defendant fully understands it.
[Signature]
Attorney for Defendant

[Signature]
Defendant

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

FILED
KING COUNTY, WASHINGTON

JUN 15 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ENT'D.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)		
	)	Plaintiff,)
v.))
<i>Brandon Goltvier</i>	)	Defendant.)
CCN))

NO. *071090068* KNT
ORDER CONTINUING TRIAL
 (ORCTD)
 (Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for *6/27/07* is continued to *July 24 '07*
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: *ongoing investigation*

It is further ORDERED:

Omnibus hearing date is *July 13 '07*
 Expiration date is *Aug 23 '07*

DONE IN OPEN COURT this *15* day of *June*, 2007.

Approved for entry:

[Signature] *31600*
 Deputy Prosecuting Attorney WSBA No.

[Signature]
 JUDGE
[Signature] *16449*
 Attorney for Defendant WSBA No.

I agree to the continuance:

[Signature]
 * Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter
 King County, Washington

Trial Continuance
(Effective 1 September 2003)

ENT'D.

FILED

KING COUNTY, WASHINGTON

JUL 13 2007

SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 Brandon Olivier Defendant.)
)
 CCN)

NO. 071090068 KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for July 24 '07 is continued to Sept. 20 '07
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense
vacation, prosecutor jury duty, defense time preparation

It is further ORDERED:

- Omnibus hearing date is Sept 13 '07.
- Expiration date is Oct 20 '07.

DONE IN OPEN COURT this 13 day of July, 2007.

Thomas A. Thomas
JUDGE

Approved for entry:

[Signature]
Deputy Prosecuting Attorney WSBA No. 31600

[Signature]
Attorney for Defendant WSBA No. 16449

I agree to the continuance:

[Signature]
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington
Interpreter

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY WASH

SEP 11 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ENT'D.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. <u>07-1-09006-8</u> <small>KNT</small>
Plaintiff,	)	ORDER CONTINUING TRIAL
v.	)	(ORCTD)
<i>Brandon Gene Oliva</i>	)	(Clerk's Action Required)
Defendant.)	
CCN)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 9-20-07 is continued to October 30, 2007
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other:
State's witnesses not available for current date; Defense expert appointed, but

It is further ORDERED:

Omnibus hearing date is September 28, 2007 *examination not started*
 Expiration date is November 29, 2007

DONE IN OPEN COURT this 11th day of September, 2007.

[Signature]

JUDGE

Approved for entry:

[Signature] 31600
 Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
 Attorney for Defendant WSBA No.

I agree to the continuance:

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington

Trial Continuance
 (Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

OCT 19 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ENT'D.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. <u>07-1-09006-8</u> KNT
Plaintiff,	)	ORDER CONTINUING TRIAL
	)	(ORCTD)
v.	)	(Clerk's Action Required)
<u>Brandon Gene Allin</u>)	
Defendant,)	
CCN)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 10/30/07 is continued to 11/30/2007
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defenses need time to have their experts do work before trial

It is further ORDERED:
 Omnibus hearing date is November 14, 2007
 Expiration date is December 30, 2007

DONE IN OPEN COURT this 19th day of October, 2007

[Signature]
 JUDGE

Approved for entry:
[Signature]
 Deputy Prosecuting Attorney WSBA No. 7160

[Signature]
 Attorney for Defendant WSBA No. 16449

I agree to the continuance:
[Signature]
 * Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter
 Trial Continuance
 (Effective 1 September 2003)

ENT'D.

FILED
KING COUNTY, WASHINGTON

NOV 2 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 07-1-09006-8 KNT

ORDER CONTINUING TRIAL

(ORCTD)

(Clerk's Action Required)

Brandon Gene Olivier

Defendant.

CCN 1696029

This matter came before the court for consideration of a motion for continuance brought by

plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for November 30 is continued to December 5, 2007

*Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense investigation is ongoing, defense report hasn't completed yet.
neither defense counsel nor prosecutor are here 11-09 or 11-16 respectively.

is further ORDERED:

Omnibus hearing date is November 30, 2007

Expiration date is 11/1/08

DONE IN OPEN COURT this 2nd day of November, 2007.

Donald Thomas
JUDGE

Approved for entry:

[Signature]
Deputy Prosecuting Attorney WSBA No. 316000

Donald Thomas
Attorney for Defendant WSBA No. 16449

I agree to the continuance:

[Signature]
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter
Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON
NOV 30 2007
SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

ENT'D.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
) Plaintiff,) NO. 07-1-09006-8 KNT
)
) v.) **ORDER CONTINUING TRIAL**
) *Brandon Gene Olivier*) (ORCTD)
) Defendant.) (Clerk's Action Required)
)
)
) CCN 1696029)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 12-05-07 is continued to January 10, 2008
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: additional discovery is sought in the hands of third parties

It is further ORDERED:

Omnibus hearing date is ~~February 11, 2008~~ December 28, 2007
 Expiration date is February 11, 2008

DONE IN OPEN COURT this 30th day of November, 2007

Rhonda
JUDGE

Approved for entry:

[Signature] 216000
Deputy Prosecuting Attorney WSBA No.

Leon A. Thomas 16449
Attorney for Defendant WSBA No.

I agree to the continuance:

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter
Trial Continuance
(Effective 1 September 2003)

ENT'D.

FILED
KING COUNTY, WASHINGTON

DEC 28 2007

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

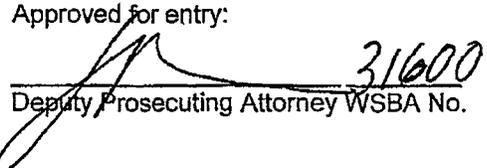
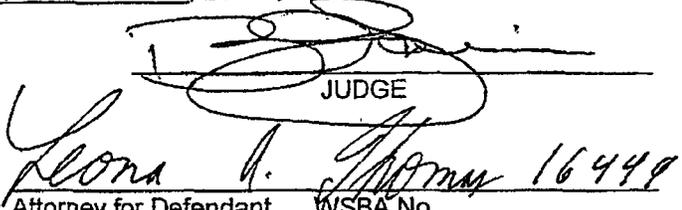
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	Plaintiff,	) NO. 07-1-09006-8 KNT
v.	)	ORDER CONTINUING TRIAL
Brandon Gene Ollivia	)	(ORCTD)
	Defendant,	) (Clerk's Action Required)
CCN 1696029)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 1-10-08 is continued to 1-29-08
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: Defense investigation incomplete

It is further ORDERED:
 Omnibus hearing date is 1-11-2008
 Expiration date is 2-28-08

DONE IN OPEN COURT this 28th day of December, 2008.

Approved for entry:
 31600 Deputy Prosecuting Attorney WSBA No.
 JUDGE
 Attorney for Defendant WSBA No. 16448

I agree to the continuance:
 * Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington
 Trial Continuance
 (Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

ENT'D.

JAN 18 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

NO. 07-1-19016-8 KNT

v.)

ORDER CONTINUING TRIAL

Brandon Gene Ollivier)
Defendant.)

(ORCTD)

(Clerk's Action Required)

CCN 1696029)

This matter came before the court for consideration of a motion for continuance brought by

plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 1-29-08 is continued to February 28, 2008

*Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense side materials held in hands of third party;

It is further ORDERED:

Omnibus hearing date is February 15, 2008

Expiration date is March 29, 2008

DONE IN OPEN COURT this 18th day of January 2008.

Approved for entry:

[Signature]
Deputy Prosecuting Attorney WSBA No. 31600

[Signature]
JUDGE
[Signature]
Attorney for Defendant WSBA No. 169449

I agree to the continuance:

[Signature]
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

FEB 15 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. 07-1-09006-8
	)	KNT
v.	)	ORDER CONTINUING TRIAL
	)	(ORCTD)
Brandon Ollivier	)	(Clerk's Action Required)
Defendant.)	
CCN)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 2/28/08 is continued to 3/19/08
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: continuing
discovery

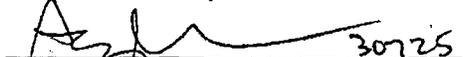
It is further ORDERED:

Omnibus hearing date is 3/7/08
 Expiration date is 4/18/08

DONE IN OPEN COURT this 15th day of February, 2008.


 JUDGE

Approved for entry:


 Deputy Prosecuting Attorney WSBA No. 30725


 Attorney for Defendant WSBA No. 16449

I agree to the continuance:

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington

Trial Continuance
 (Effective 1 September 2003)

ENT'D.

FILED

KING COUNTY, WASHINGTON

MAR 7 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
 Brandon Gene Ollivier)
 Defendant.)
)
 CCN *BA 207015883*)

NO. *07-1-09006-8*
KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

Defense counsel is gone 4/25 & 3/28

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 3/19/08 is continued to May 6, 2008
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: investigation incomplete. bench hearing set for 3/20/2008

It is further ORDERED:

Omnibus hearing date is March 21, 2008
 Expiration date is 6/5/08

DONE IN OPEN COURT this 7th day of March, 2008.

Approved for entry:

[Signature]
30726
Deputy Prosecuting Attorney WSBA No.

[Signature]
JUDGE
[Signature]
Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted for record
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

MAY 6 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. <u>07-1-09006-8</u> KNT
Plaintiff,	)	ORDER CONTINUING TRIAL
	)	(ORCTD)
v.	)	(Clerk's Action Required)
<u>Brandon Gene Ollivier</u> ,)	
Defendant,)	
CCN)	

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for May 6, 2008 is continued to May 28, 2008
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense needs materials held in hands of others - discovery issues

It is further ORDERED:

Omnibus hearing date is May 16, 2008
 Expiration date is 6/27/08

DONE IN OPEN COURT this 6th day of May, 2008.


 JUDGE

Approved for entry:
[Signature] 30229
 Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
 Attorney for Defendant WSBA No.

I agree to the continuance:

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

MAY 16 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. <u>07-1-09006-8</u> KNT
	)	ORDER CONTINUING TRIAL
	)	(ORCTD)
	)	(Clerk's Action Required)
Plaintiff,)	
<i>Brandon Gene Ollivier</i>)	
Defendant,)	
CCN <u>169602</u>)	

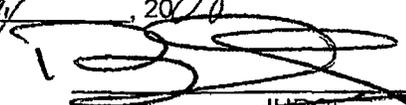
This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 5/28/08 is continued to 6.12.08
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: Def counsel
has set motion to show cause for doc records

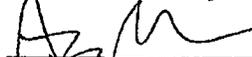
It is further ORDERED:

Omnibus hearing date is 6.06.08
 Expiration date is 7.12.08

DONE IN OPEN COURT this 16th day of May, 2008


 JUDGE

Approved for entry:


30725
 Deputy Prosecuting Attorney WSBA No.


16449
 Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted
 * Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington

Trial Continuance
 (Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

JUN 4 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO 07-1-09006-8 KNT

ORDER CONTINUING TRIAL

(ORCTD)

(Clerk's Action Required)

v.

Brandon Gene Allivier

Defendant.

CCN

This matter came before the court for consideration of a motion for continuance brought by

plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 6-12-08 is continued to July 23, 2008

*upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: investigation

incomplete

It is further ORDERED:

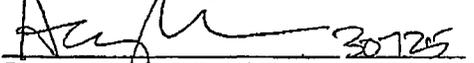
Omnibus hearing date is July 3, 2008

Expiration date is August 22, 2008

DONE IN OPEN COURT this 9th day of June, 2008


JUDGE

Approved for entry:


Deputy Prosecuting Attorney WSBA No. 30725


Attorney for Defendant WSBA No. 16444

I agree to the continuance:


* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

JUL 3 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	NO. 07-1-09006-8 KNT
Plaintiff,	)	ORDER CONTINUING TRIAL
	)	(ORCTD)
v.	)	(Clerk's Action Required)
<i>Brandon Olivier</i>)	
Defendant.)	
CCN)	

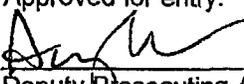
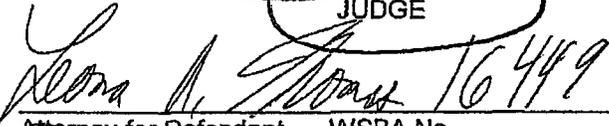
This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 7/23/08 is continued to 8/19/08
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

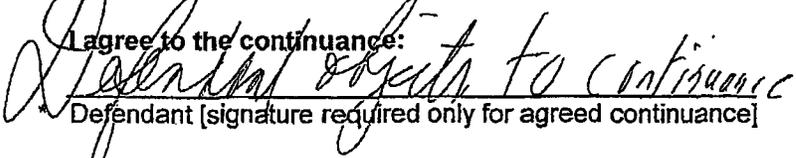
plaintiff's counsel in trial; defense counsel in trial; other: new investigator returns 7/14/08. Defense vacation is 7-18-7/21

It is further ORDERED:
 Omnibus hearing date is 7/25/08 & ~~7/29~~ through 8-12-08
 Expiration date is 9/18/08

DONE IN OPEN COURT this 3rd day of July, 2008

 JUDGE

Approved for entry:
 30726
 Deputy Prosecuting Attorney WSBA No. 30726
 16449
 Attorney for Defendant WSBA No. 16449

I agree to the continuance:

 Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Interpreter King County, Washington

Trial Continuance
 (Effective 1 September 2003)

FILED

KING COUNTY, WASHINGTON

JUL 25 2008

SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

v.)

Brandon Gene Oliveira

Defendant.)

CCN)

NO. *07-1-090068* KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for *August 19* is continued to *September 18, 2008*
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: *defense investigation ongoing, Detective vacation 8/13-9/1/08.*

It is further ORDERED:

Omnibus hearing date is *September 5, 2008*
 Expiration date is *October 15, 2008*

DONE IN OPEN COURT this *24th* day of *July*, 20


JUDGE

Approved for entry:

[Signature] *30225*
Deputy Prosecuting Attorney WSBA No.

[Signature] *16449*
Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted for record
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington

Interpreter

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

SEP 5 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 Brandon Gene Ollivier)
)
 Defendant.)
)
 CCN *1696029*)

NO. *07-1-09006-8* KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for *09-18-2008* is continued to *October 28, 2008*
 *upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR
3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: *defense seeks OJD payment of records*
Discovery matters (internal motion investigation) needs to be set
It is further ORDERED: *Vacation 10/14 - 10/23/08*
 Omnibus hearing date is *10/10/08*
 Expiration date is *November 27, 2008*

DONE IN OPEN COURT this *5th* day of *September*, 2008.

[Signature]
JUDGE

Approved for entry:
[Signature] *30725*
Deputy Prosecuting Attorney WSBA No.

[Signature] *16444*
Attorney for Defendant WSBA No.

I agree to the continuance:
[Signature]
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington
Interpreter
Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

OCT 10 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 07-1-09006-8 KNT

v.
Brandon Gene Allivier

Defendant.

ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

CCN 1696029

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 10/28/08 is continued to 11/12/08
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:
 plaintiff's counsel in trial; defense counsel in trial; other: 3rd party materials regarding Def. Saario not received

It is further ORDERED:

Omnibus hearing date is November 7, 2008
 Expiration date is 12-12-08

DONE IN OPEN COURT this 10th day of October, 2008



JUDGE

Approved for entry:

[Signature] 30726
Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

NOV 7 6 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
Plaintiff,)
v. Brandon Gene Olivier)
Defendant.)
CCN 1696029)

NO. 07-1-89006-8-KNT
ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
ORDERED that the trial, currently set for 11-12-08 is continued to
11-19-08 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the
administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense counsel is still digesting records request outstanding from DOC voluntarily delaying for motion to set 36 hearing & 11-19-08

It is further ORDERED:
 Omnibus hearing date is 11-19-08
 Expiration date is 12-19-08

DONE IN OPEN COURT this 7th day of November, 2008

Approved for entry:
[Signature] 30725
Deputy Prosecuting Attorney WSBA No.

[Signature]
JUDGE
Reona A. Thomas
Attorney for Defendant WSBA No.

I agree to the continuance:
objection noted
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington
Interpreter
Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

NOV 13 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 07-1-09606-8_{KNT}

ORDER CONTINUING TRIAL

(ORCTD)

(Clerk's Action Required)

Brandon Olivier

Defendant.

CCN

This matter came before the court for consideration of a motion for continuance brought by

plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 11-19-08 is continued to ~~11-26-08~~ 12-15-08

*Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense voluminous discovery still
vacation set for Ms Kaake on Dec 4 -> Dec 11. parties fully

It is further ORDERED:

Omnibus hearing date is 11-21-08

Expiration date is ~~12-26-08~~ 1-14-09

DONE IN OPEN COURT this 12th day of November, 2008

[Signature]
JUDGE

Approved for entry:

[Signature] 30725
Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

NOV 20 2008

KNT
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 07-1-09006-8 KNT

v.
Brandon Olivier

Defendant.

ORDER CONTINUING TRIAL
(ORCTD)
(Clerk's Action Required)

CCN

This matter came before the court for consideration of a motion for continuance brought by 23-

plaintiff, defendant the court. It is hereby

ORDERED that the trial, currently set for 12-15-2008 is continued to 12-30-08

*Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: Defense counsel cannot brief issues fast enough to give Ms. Kaake adequate time to respond

It is further ORDERED: before her vacation 12-14-08 to 12-11-08

Omnibus hearing date is 12-18-08

Expiration date is 1-28-09

3.6. brief date 12-08 and Ms. Thomas may ask for extension to 12-19-08

DONE IN OPEN COURT this 21st day of November, 2008.


JUDGE

Approved for entry:


Deputy Prosecuting Attorney WSBA No. 35725


Attorney for Defendant WSBA No. 16449

I agree to the continuance:

objection noted

* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON

DEC 23 2008

SUPERIOR COURT CLERK
LESLIE J. KEITH
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 071-09006-8 KNT

v.

ORDER CONTINUING TRIAL

Brandon Ollivier

Defendant.

(ORCTD)

(Clerk's Action Required)

CCN 1696029

This matter came before the court for consideration of a motion for continuance brought by
 plaintiff defendant the court. It is hereby
 ORDERED that the trial, currently set for 12-23-08 is continued to 1-22-09
 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense counsel
needs to brief request for Franks hearing & supplement. Aguilar - Spicelli issue.

It is further ORDERED:

Omnibus hearing date is 1-09-09
 Expiration date is 2-23-09

defense counsel has
"no hot" v. King case with
Mr. Keake & Mr. Anderson
set for early January

DONE IN OPEN COURT this 23rd day of December, 2008.

[Signature]
JUDGE

Approved for entry:

[Signature] 30725
Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
Attorney for Defendant WSBA No.

I agree to the continuance:

objection noted
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter King County, Washington

Trial Continuance
(Effective 1 September 2003)

FILED
KING COUNTY, WASHINGTON
DEC 30 2008
SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

BRANDON OLLIVIER

Defendant.

No. 07-1-09006-8 KNT

ORDER OF PREASSIGNMENT

Clerk's Action Required

CCN:1696029

SCOMIS CODE: OR

By direction of the Chief Judge, Regional Justice Center, this case is pre-assigned to the Honorable Deborah Fleck, Dept. 47 .

Trial Date: 1/21/09
Expiration Date: 2/22/09

Counsel are as follows: .

Angel Kaake, Deputy Prosecuting Attorney
Leona Thomas, Defense Attorney

Contact the Judge's bailiff for dates for all discovery motions. If there are any motions pending, including motions for continuance, please strike them and reschedule with Judge Fleck .

DATED this 23rd day of December, 2008.


Brian Gain, Chief Judge, MRJC

Brian Gain, Chief Judge, MRJC
King County Superior Court
401 4th Avenue North, #4G
Kent, WA 98032
206-296-9170

ORDER

FILED

KING COUNTY, WASHINGTON

JAN 21 2009

SUPERIOR COURT CLERK
BY **KELLI C. NORTHROP**
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
Plaintiff,	)	NO. 07-1-09006-8 KNT
v.	)	ORDER CONTINUING TRIAL
<u>Brandon Olivier</u>	)	(ORCTD)
Defendant.	)	(Clerk's Action Required)
CCN)	

This matter came before the court for consideration of a motion for continuance brought by plaintiff defendant the court. It is hereby

ORDERED that the trial, currently set for 1/22/09 is continued to 3/10/09 *Upon agreement of the parties [CrR 3.3(f)(1)] or required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

plaintiff's counsel in trial; defense counsel in trial; other: defense investigation, motions - Def. brief due 2/12/09, state's response due 2/18/09.

It is further ORDERED: Motion date is 2/23/09 at 8:00 am Additional motion date, if necessary 3/9/09, 1:30pm
 Omnibus hearing date is 4/9/09
 Expiration date is 4/9/09

DONE IN OPEN COURT this 21st day of January, 2009. Defense reply due 2/20/09.

Andrew S. Hick
JUDGE

Approved for entry:
[Signature] 30725
Deputy Prosecuting Attorney WSBA No.

[Signature] 16449
Attorney for Defendant WSBA No.

I agree to the continuance:
objection noted for record
* Defendant [signature required only for agreed continuance]

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington
Interpreter
Trial Continuance
(Effective 1 September 2003)

APPENDIX B

FILED
KING COUNTY, WASHINGTON

OCT 23 2007

BEST IMAGE POSSIBLE

**SUPERIOR COURT CLERK
GENEE JAMES
DEPUTY**

**IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY**

State of Washington
Plaintiff / Petitioner,

v.s.

Oliver, Brandon
Defendant / Respondent.

No. 07-1-09006-8 KNT

Correspondence

17 October 201

Day 188 in jail

Brandon G. Ollivier

With all due respect to the court, and its Functionaries, I have prepared this statement in order to make clear my thoughts and feelings concerning any proposed continuance of my case. I will especially address the consideration of anything which would prolong my incarceration prior to my trial. Please excuse the length of this document, but it has been my experience in the past that any and every angle must be explored and discussed. I have objected to things in the past only to have the first or briefest argument brushed aside, and to have no further attention given to other relative points. I have tried to frame my discussion here to address specific concerns of the court, as I have heard them, or to otherwise assist the court in performing its full and complete functions, with the most correct information available provided.

To make my position clear, I object to any continuance in this matter whatsoever. I protest the prolonged invasion of my personal freedoms and rights. More specifically, I believe sincerely that at this time a continuance does not serve the purposes of justice. It would unduly infringe upon my constitutional rights, and it would create and unnecessarily prolong severe negative conditions which directly affect me on a daily basis. It would also bear a distinctly negative impact on free citizens in the community, especially those close to me.

In the review of these matters, the court should feel free to seek clarification from me concerning any question or vagueness that may arise. I am ready and available to assist the court in any ethical manner possible, especially in this particular matter. Please ask any question freely.

It has been brought to my attention that courts, and more specifically judges, are likely to be concerned with three things:

- Doing justice between the parties. (This usually brings an question of fact.)
- Correctly applying existing law.
- Creating good precedents.

With these three focuses in mind, I have tried to place myself in the shoes of a magistrate, and as such I have tried to best determine the relevant information that would assist me in making an educated decision.

I initially argued that a continuance would not serve the purposes of justice. It is my understanding that justice encompasses many considerations and tries to find a balance amongst all of them. Justice includes my rights as an individual citizen, and the rights of all the people in our society as a whole. Justice also takes a strong stand

2

on my individual responsibility towards society, and towards the responsibility of society towards each individual, to include me.

The court becomes involved as it acts as the force which defines, determines, and delivers the balance of justice between all of the points previously mentioned. To assist the court, our society has clearly defined a set of rules which are held to constitute both the realistic idea, as well as to the practical application of justice. These rules are our laws, the most fundamental of which originate in the United States Constitution. These laws include the guarantee to each citizen of many rights. Among these rights are the rights to a speedy trial, to reasonable bail, to be presumed innocent until proven guilty, to be represented by competent counsel, to be entitled to a trial by jury, to be given the benefit of reasonable doubt, to life, to liberty, and to the unhindered pursuit of happiness.

Bearing these rights in mind, I assert strongly that many of mine have already suffered grievous wounds from the chain of events which have led us here today. My right to a speedy trial has already been greatly violated, and justice should permit no further trespass upon it. My appointed counsel has not been competent solely because she has been unable to act in my best interests at all times. My best interests include the preservation of every single right I possess, at all times. Due to almost severe caseload, my attorney has not been able to act with promptness or haste in many matters, thereby infringing upon my speedy trial rights. This hearing should mark the event of my FIFTH Omnibus hearing. This lies completely outside of any acceptable due process framework, especially when considering the timeline of events as they have occurred in this case. I have prepared a brief timeline, separate from this document, but included by this reference, in order to clearly illustrate my point.

My attorney's predicament is easily understandable, especially when taking her burdensome caseload into account. However, such understanding does not equate to acceptability, by any measure. A privately retained attorney and investigator would likely have resulted in the resolution of this case some months ago, with all avenues of evidence and investigatory materials having thoroughly been explored. As I cannot afford a private attorney, I must rely on my right to a publicly appointed counsel, and I must trust that I will receive from that counsel the zealous representation to which I am entitled by law.

The burdens of my attorney have directly interfered with the quality of representation I have been able to receive from her. She has made it very clear to me that any other particular public defender would have been likely to perform equally, once again largely

(Continued from page 2)

due to caseload demands. This clearly indicates to me that my right to a speedy trial would not have been preserved. Subsequently, I find it plain to see that my right to a speedy trial and my right to a publicly appointed attorney are mutually exclusive. I assert that I am guaranteed BOTH of these rights, under the protection of justice and due process, and I must hereby insist that these rights be preserved by this court.

I am completely innocent thus far of any wrong actions in this case, and I have completely cooperated with the courts and law enforcement officials at every step. At each turn, I am meeting my responsibility to society, as a person who stands accused of a crime. Thus far, the return responsibilities of society towards me, via the forms of justice and due process defined by law, have largely gone unmet or have been abandoned.

Our country is founded on one ideal. One thing forms the basis of the entire society to which we belong. The greatest men and women of our history have fought, sacrificed, and even died to uphold this idea. This belief is that each and every single individual has an inviolable guarantee to dignity and freedom. No mitigating circumstances can ever exist which would allow for the disregard or abuse of the rights of even a single individual citizen. This is the dream, the foundation, and the mission of our great nation, and everything it stands for. Our Forefathers fought to become independent from a nation that put the rights of the many in front of the rights of the individual. The thought was that if you guarantee the rights of each separate person, then the rights of the whole are therefore assured, as the whole is comprised of nothing more than a group of such individuals.

When a state or nation begins to allow the rights of the individual with "thoughts and conditions designed for the good of the public", what it is actually doing is recreating the very conditions from which our Founding Fathers ran. Different classes of individuals are thus developed; each class being subject to different laws, rights, and levels of protection. This leads to an aristocratic or communist society, which is either based on the rights of those who have not in some way been eliminated, excluded, or ostracized by the accepted community, or is based on the supposed benefit of the whole by the sacrifice of the many. What follows are times of increased legislation, leading to bills of attainder, laws which serve to separate or criminalize a larger and larger percentage of the population, and other methods designed to separate a smaller and smaller group of "elite" individuals

4

From the common "chuff" of the masses. The rights and privileges of the "deserving elite" are increased at the expense of the "unworthy" individuals who have been deemed unwelcome. This is the ever famous formula of history repeating itself, and I see it happening at this very moment in our nation, in our state, and even in this courtroom today. Only the rich can afford rights and freedoms, while the average individual must suffer injustice. I beg you to ask me for an example of this.

My freedom is jeopardized and my rights are under assault in such a way that it endangers the very foundations on which this state, and our country, are built. Failure to preserve my rights is a failure to uphold the rights of every other citizen who may find themselves in a similar situation one day. This court has the opportunity to set the precedent for future decisions, and as such, the ability to uphold justice and freedom for all.

A continuance now not only lies counter to the definition of justice, it violates my rights as I have detailed. It would also have other effects. It would cause me direct harm, and damage people in society directly. Every additional day I am incarcerated increases my personal financial debt to my bank and my creditors. It emotionally disturbs me by depriving me of my social support system. It robs me of critical physical contact with others, and deprives me of emotional contact with my loved ones. Imagine a six month period of your life where the only physical contact you have with others is when someone puts handcuffs on you or Frisk searches you.

Each day delayed further atrophies my connection with society, disassociating me with friends and family. The longer I am locked up, the fewer friends and ties to the community I have, and those things are more than critical to my success as an individual.

The diet and volatile environment I am daily subjected to have had a severe impact upon my physical and mental health. The stress of these past months shows most plainly in the fact that I have begun to swiftly lose my hair. I have potentially major medical issues, such as possibly developing glaucoma, that the jail is unequipped to deal with, and as such, my problems get ignored. I am refused treatment that is time-critical in nature. I am not permitted to care for my physical long-term ailments, such as my disabled knee, in the proper manners that have been prescribed to me by my physician.

My spirit and personal relationship with God cannot do anything other than shield,

⑤

(Continued from page 4.)

because there are no religious services available to me other than Muslim, Catholic, or Orthodox Christian groups, which are not compatible with my religious beliefs and practices. The preceding reasons are just some of the more major examples of damage actually done to my person that would be increased by a continuance of my case.

Society at large is also a victim of damage due to my incarceration, and every day I serve behind walls increases the harm done. My employer is deprived of a valuable employee. The government loses a tax paying citizen, and is further burdened with the cost of an additional dependent individual. My creditors are deprived of the money they are rightfully entitled to, and that damages their business to some degree. The stores where I tend to shop are deprived of a customer and the subsequent business I bring them.

My Friends are without a valued companion and a trusted support person in their times of need. My Family is deprived of my presence and contributions, and I would beseech any doubting individual to ask my grandmother how much my incarceration has affected her. Acquaintances of mine are lacking the association of a wise and good-humored individual who is known to be generous and helpful beyond what is normally common.

All of these reasons and more are why I object to a continuance of my case. It would damage the purposes of justice. It would deprive me of my rights and freedom. Lastly, it would harm both me, as well as a measurable portion of society in numerous ways.

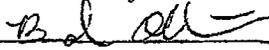
If this court, in weighing all of the information, still somehow sees a continuance as being necessary, I would be inclined to withdraw most of my objections based on a single condition. That condition being that I be ordered immediately released from custody, and be allowed to continue the trial procedure free from incarceration. I have never failed to appear at a scheduled court appearance. I have no greater sign to indicate my desire to cooperate than the one shown by the fact that I chose to meet with the police immediately and voluntarily, fully knowing that I was to be arrested. I could provide witnesses to that effect. Releasing me creates no harm, prevents much, and would provide the justice system with the additional time it seems to need in order to fully serve its purpose.

The last time I came before the court for a continuance, I objected, and the request was granted anyway. The explanation given was that it served the purposes

6

if I were to be found guilty. I believe the court erred, in that it did not act in accordance with my right to be presumed innocent thus far. Subsequently, as a presumably innocent person, I am being unduly damaged and burdened with unnecessary debt. If I were to be found guilty, then such consequences would be justified and deserved, but until such a time may occur, I am to be presumed innocent. I expect this court will act accordingly based on that information from this point forward, and will take action to preserve and repair my already damaged rights, as I have asked.

Thank you most sincerely for your time and consideration.



Brandon Ollivier

10-17-07

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
	)	NO. 63559-0-I
v.)	
)	
BRANDON OLLIVIER,)	
)	
Appellant.)	

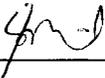
DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF JUNE, 2010, I CAUSED THE ORIGINAL **OPENING 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:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> BRANDON OLLIVIER 772696 WASHINGTON CC PO BOX 900 SHELTON, WA 98584	(X) () ()	U.S. MAIL HAND DELIVERY _____

2010 JUN -3 PM 4:41

SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF JUNE, 2010.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710