

68041-2

68041-2

NO. 68041-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,  
Respondent,  
v.  
TONY REM,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE JOAN DUBUQUE

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**BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED

1. Absent a showing of manifest error affecting a constitutional right, RAP 2.5 requires that trial objections be made to preserve an issue for appellate review. Rem joined in a request for a trial recess and did not object to the duration of the recess. Should this court refuse to consider his claim raised for the first time on appeal?

2. CrR 3.3 requires that defendants detained in custody be brought to trial within 60 days of their commencement date. Rem's trial started 7 days before expiration of the time for trial period. The trial was thereafter recessed to accommodate pre-assigned trial schedules, counsel vacations, witness availability and sick leave schedules. Did the trial court exercise appropriate discretion in recessing trial in light of counsels' scheduling conflicts?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Rem was charged by way of second amended information with six domestic violence charges; four felonies (Assault 2, Unlawful Possession of a Motor Vehicle, Witness Tampering) and

two misdemeanors (Violations of No Contact Orders). He was assigned to trial on September 1, 2010 with an expiration date of September 7, 2010.<sup>1</sup> 1RP 5.<sup>2</sup> Trial began on September 1, 2010 and pretrial motions concluded on September 2, 2010. 1RP 1. An agreed recess was then granted. On January 27, 2011, trial resumed and on February 10, 2011, the jury returned verdicts of guilty in Counts I, IV, V, and VI. The jury returned not guilty verdicts in Counts II and III. 10RP 3.

On September 23, 2011, after numerous continuances to accommodate negotiations regarding the defendant's other pending charges, the defendant was sentenced to 43 months on Count I, 22 months on count IV, and an additional 12 months of consecutive time on the misdemeanor violations. 14RP 6.

## 2. SUBSTANTIVE FACTS

On June 17, 2010, the defendant beat his girlfriend, Karla Diocales, with his fists. She reluctantly reported the incident to

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<sup>1</sup> The expiration date was September 4, 2010. Because September 4, 2010 was a Saturday, and September 6, 2010 was the Labor Day holiday, the actual expiration date was September 7, 2010. General Rules, 3.

<sup>2</sup> The Verbatim Report of Proceedings at trial consists of 14 volumes, which will be referred to in this brief as follows: 1RP (9/1/10-9/2/10); 2RP 1/27/11; 3RP (1/31/11); 4RP (1/1/2011); 5RP (2/2/11); 6RP (2/3/11); 7RP (2/7/11); 8RP (2/8/11); 9RP (2/9/11); 10RP (2/10/11); 11RP (5/27/11); 12RP (6/8/11); 13RP 8/5/11); 14RP 9/23/11).

police, who photographed her bruised face and limbs. Diocales spoke with the firefighters on scene, who treated her injuries, including two severely swollen eyes. Her right eye was swollen completely shut and her left eye was a small slit peering out from the myriad bruises that covered her face. Diocales stated that the defendant stole her car after the beating and that he carried a gun. Following his arrest, the defendant made calls to Diocales from jail, aggressively asking her to help him with the case. These calls were in violation of a no contact order entered by King County Superior Court. CP 200.

### 3. FACTS REGARDING TRIAL RECESS<sup>3</sup>

On September 1, 2010, the prosecutor set a motion to continue the case before the presiding court because she believed that a substantive witness was not going to be available. 1RP 7. That witness, however, became available prior to the hearing, and the prosecutor withdrew her request, as all State witnesses were now available for trial. 1RP 7. Both parties were assigned to trial by the presiding court before the Honorable Judge Rietschel on

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<sup>3</sup> Rem has provided virtually no discussion of the facts leading to the recess or the reasons for the duration of the recess. Those facts are summarized below.

September 1, 2010.<sup>4</sup> Just a few minutes into the record, the prosecutor told the trial court that she believed the trial would take only “three to maybe four days to put on,” adding that she was pre-assigned to a murder trial “hard set” for September 14, 2010.<sup>5</sup> 1RP 5. September 1, 2010 was a Wednesday, meaning six full trial days (Fridays, weekends, and the Labor Day holiday excluded) were available before the start of the prosecutor’s murder case. The prosecutor also stated that she had a scheduled training on September 9, 2010, but said, “if I need to skip the 9<sup>th</sup> in order to get this accomplished I will make arrangements to do that.” 1RP 5.

The prosecutor added

...it's gonna be really tight to get it all in. I understand that. My alternative suggestion would be, um, to put this matter on the record, deal with some pretrial issues, um and recess the case to be the first that I pick up when I come back from that homicide.

1RP 5.

As part of this discussion, defense counsel told the trial court that he was not available for trial the entire day of September 8,

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<sup>4</sup> An order signed by the presiding judge on September 1, 2010, appears to continue the trial to September 2, 2010 and assigns the trial to “Judge Rietschel 9/1/10 to complete pretrials.” CP 237. Once assigned to Judge Rietschel, however, the parties intend to attempt to complete the trial, as the record reveals.

<sup>5</sup> The pre-assigned murder trial mentioned by the prosecutor was not, as Rem contends in his briefing, set for “the following week,” but was instead two weeks away. Brief of Appellant, 5; 1RP 5.

2010 due to a “prescheduled plan,” and requested a full day’s recess on September 8. 1RP 5, 7. When asked by the trial court if the parties had addressed the scheduling issue with the presiding court, defense counsel said that he had told the court coordinator about his scheduling issue, but not the presiding judge. 1RP 7. In response to the trial court’s same question, the prosecutor replied,

...When I ...had initially put this on for a motion to continue this morning because I thought I had an officer availability issue, which it’s sort of miraculous. I got this case about a week and half ago from, uh, a colleague of mine. Um, in that week and a half I’ve managed to get all of the witnesses available for this week which almost never happens in the middle of summer, um, on such short notice. So, I really – my plan was to try to push ahead, um, and then I spoke with [the defense counsel] this morning and the issue of the 8<sup>th</sup> came up.

1RP 7. It was the unavailability of defense counsel on September 8<sup>th</sup>, 2010 that created the biggest obstacle to completing the trial before September 14, 2010, but the parties agreed to move forward with pretrial issues and reassess as they went. Judge Rietschel ruled that the

best way to proceed would be why don’t we do all those issues and then see where we are in terms of timeliness and then make the call as to whether we could finish the trial in the amount of time we have available.

1RP 8. When notified of the imminent expiration date, the court concurred that the case had to "start" and that they should do "the pretrial matters," with the defense counsel agreeing, but adding, "I don't think even if we start, we finish." 1RP 10. Fully aware of the limitations but eager to make use of the time, all parties agreed to continue with the pretrial motions. 1RP 10.

Between the morning of September 1, 2010 and the afternoon of September 2, 2010, the parties completed all of their pretrial motions. Both parties covered the entirety of the prosecutor's trial memorandum (the defense had not submitted one), including the direct, cross, and redirect examination of witness Christopher Muhs for a 3.5 hearing, the playing of an entire 911 call, arguments and rulings regarding severance, admissibility of statements, admissibility of the 911 call, redactions in the transcript of that call, exclusion of witnesses and discussed the jury instructions. 1RP 11-113.

On the afternoon of September 2, 2010, because of scheduling issues raised by the court and both lawyers limiting the time available to conclude the entire trial, the trial was recessed. Both parties presented an agreed order before the presiding court

on the afternoon of September 2, 2010 to secure a date to reconvene. CP 132. The italicized portion is handwritten:

*✕ Plaintiff ✕ Defendant moves the Court for an order recessing trial. Prosecutor and Defense Counsel have scheduled days off next week and DPA is preassigned to start a homicide trial on September 14, 2010. The defendant is also being held and is on standby for trial in another matter. The Court orders this case to be in recess until October 4, 2010 or until DPA finishes her case at the RJC.<sup>6</sup> Trial has commenced in this matter for purposes of speedy trial.*

CP 132. The order is presented as a mutual order, signed by both parties and the presiding judge and dated September 2, 2010.

From October 4, 2010 until January 27, 2011, the case was in extended recess but monitored by the presiding court. While the defense has not provided on appeal any court documents or verbatim reports of proceedings pertaining to the lengthy recess, the supplemental clerk's papers reveal sound rulings for each extension, including both counsels being assigned to trial, witness unavailability, medical leave, and vacation of counsel. See Appendix 1, summarizing CP 132-90. As those documents reveal, the mutually requested recess was extended to accommodate scheduling issues on both sides until trial was reconvened on

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<sup>6</sup> Referring to the Norm Maleng Regional Justice Center, the location of the preassigned homicide case.

January 27, 2011 before the Honorable Judge Dubuque.

Appendix 1.

The parties resumed trial by submitting mutually agreed upon Findings of Fact and Conclusions of Law regarding Judge Rietschel's pretrial rulings. 2RP 3. In those agreed findings, the parties memorialized the first two days of trial in these findings.

CP 155. The findings begin with the following:

On September 1, 2010, this case was assigned for trial before the Honorable Judge Jean Rietschel. Due to scheduling issues with both the State and Defense pretrial motions were heard in this matter and it was recessed for trial until defense counsel and the assigned trial DPA became available for trial.

CP 155. After the pretrial findings were handed forward, defense counsel told Judge Dubuque that if she had to sign the pretrial findings in lieu of Judge Rietschel, who ruled on them, he would have no objection. 2RP 3. After similarly waiving any objection to the State's amended information, and taking no exception "to the authority of the Court to permit an amendment at this stage," defense counsel said:

I would renew my – the Court doesn't know as a renewal, but it is, a renewal of my objection<sup>7</sup> to the matter proceeding to trial not to Judge Rietschel, but

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<sup>7</sup> Defense on appeal has not submitted any verbatim reports of proceedings nor designated clerk's papers that capture any such objections.

to another court, because we had commenced trial with Judge Rietschel. There's not been an order entered that says she is unavailable or the trial may not proceed with her.

2RP 5. Upon hearing his objection, Judge Dubuque offered the defense attorney an opportunity to make the objection before the presiding judge, to which the defense attorney said,

I don't have any basis other than that we started trial and we were in recess. And for a long period of time we were in recess without being assigned. There are various reasons why that may have been permitted, but that is the status of the record.

2RP 5, 6. The trial court then asked defense counsel for some legal authority, to which he replied, "I think that at this stage probably is not going to be well made, and if Judge Rietschel is not available, and it appears she's not ..." 2RP 6. After Judge Dubuque confirmed Rietschel's unavailability – she was either on vacation or some sort of leave – the defense responded as follows: "...I don't have any objection to Your Honor taking the case except for the fact that it's been several months that we have been in a state of recess." 2RP 6. Having heard no legal authority from the defense counsel, the trial court elected to continue with the trial and the issue was never readdressed by counsel. No CrR 3.3 motion was ever raised.

During the pendency of this trial, Rem was also being held on pending robbery charges in an unrelated matter. 12RP 5. These charges were dismissed prior to sentencing in this case pursuant to negotiations, but remained active during the trial and created a separate hold on his custody status. The record is not clear what role these charges played in the case at hand.

C. ARGUMENT

1. REVIEW IS BARRED BY RAP 2.5(a).

Rem argues that he was not brought to trial within the time required by CrR 3.3 and therefore seeks reversal of his conviction and dismissal of charges. Review is barred by RAP 2.5(a) because no constitutional claim is raised, CrR 3.3 was never cited or argued below and the defense attorney's oblique argument upon assignment to Judge Dubuque was insufficient to present an argument for appeal.

Superior Court Criminal Rule 3.3 states that it is the "responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime." CrR 3.3(1). Section (b), the Time for Trial provision, says that a defendant who is detained in jail shall be brought to trial within 90 days, absent any excluded

periods. Superior Court Criminal Rules, CrR 3.3. Once a trial date is set, the defense has the responsibility to object in a timely manner to a perceived violation of CrR 3.3. *State v. Carson*, 128 Wn.2d 805, 912 P.2d 1016 (1996); *State v. Chenoweth*, 115 Wn. App. 726, 63 P.3d 834 (2003).

Rule of Appellate Procedure 2.5(a) reads as follows:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.  
RAP 2.5(a).

The general rule requires that a party must raise an issue at trial to preserve it for appeal unless the party shows that the issue was an error affecting a constitutional right. *State v. Fenwick* 164 Wn. App. 392, 398, 264 P.3d 284, 287 (2011), citing *State v. Robinson*, 171 Wn.2d 292, 301, 304-06, 253 P.3d 84 (2011). The purpose of the rule is to "encourage 'the efficient use of judicial resources' ... by

ensuring that the trial court has the opportunity to correct any errors, thereby avoiding unnecessary appeals.” *Robinson*, 171 Wn.2d at 304-05, (quoting *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)). See also *State v. Fenwick*, 164 Wn. App. 392, 398, 264 P.3d 284, 287 (2011).

Rem is not raising a constitutional claim and does not contend that his defense counsel objected at the initial recess. Rem’s trial counsel did, however, make an objection to the assignment of a new judge on January 27, 2011, but he never made an objection under CrR 3.3, and only obliquely referred to the recess or its length. 2RP 5. Further, when invited by Judge Dubuque to make any motion regarding his objection to before the presiding court, defense counsel appeared to withdraw his objection, saying that he did not believe the objection “was well made,” adding that if the original judge was not available, he has “no objection to [Judge Dubuque] taking the case except for the fact that it’s been several months ... in a state of recess.” 2RP 6. This vague, rescinded objection can hardly be interpreted as a time for trial objection, particularly within the context of the many extensions of the recess filed with the Clerk. Appendix 1. The record is clear that the recess was not a one-sided request and that it was

necessitated by the defense counsel's and the prosecutor's trial schedules, witness availability, sick leave, and vacation.

Rem not only never objected, he joined in the request for the initial recess, and subsequent recesses were required because of availability issues presented by both parties. Appendix 1. Absent a trial objection, defense should be barred from raising the issue for first time on appeal under RAP 2.5. *Id.* and RAP 2.5. Rem's claim is not timely and should not be the basis for consideration, much less reversal and dismissal.

2. TRIAL BEGAN IN ACCORDANCE WITH CrR 3.3.

Even if considered, the claim is baseless. Rem argues that his trial was untimely under CrR. 3.3. He is mistaken. His trial began within the period required by the rule.

Trial begins for time for trial purposes when a case is called for trial and any necessary part of trial begins. *State v. Raschka*, 124 Wn. App. 103, 100 P.3d 339 (2004); *State v. Estabrook*, 68 Wn. App. 309, 842 P.2d 1001 (1993). This is true even where the only motion heard is a preliminary motion, such as a motion to exclude witnesses or a court's ruling on a motion to continue. *State v. Vermillion*, 112 Wn. App. 844, 51 P.3d 742 (2006);

*State v. Torres*, 111 Wn. App. 323, 44 P.3d 903 (2002). Rem was assigned to a trial judge 6 days before his time for trial expiration and 2 days of substantive pretrial motions followed. Trial had begun for CrR 3.3 purposes.

In *State v. Andrews*, 66 Wn. App. 804, 832 P.2d 1373 (1992), a multi-defendant case relied upon by Rem, each defendant's speedy trial expiration had been preserved by a single preliminary motion just before the expiration of each case. *Id.* at 809. The Court found that short preliminary motions start trial for purposes of time for trial, "otherwise appellate courts would be in the position of having to decide what kinds of motions are 'substantive' or 'important' and which ones are 'pro forma.'" *Id.* at 811. *Andrews* does warn that, "had the State taken advantage of the rule to justify an undue delay of the remainder of the trial, a different case might be presented." *Id.* at 811. This admonition is not applicable to the current case, where the pretrial motions went well beyond a simple motion to exclude witnesses, and reflected a genuine interest in commencing trial. 1RP 10-111 and CP 155. The prosecutor and the court began the trial hoping to finish in the available time.

Rem claims that the prosecutor “took cynical advantage of the rule to justify an unreasonable five-month delay” and concludes that the pretrial motions on September 1 and September 2, 2010 before Judge Rietschel were merely a “charade” created by the prosecutor and acquiesced in by the trial court. Brief of Appellant, 4. Rem argues that the prosecutor never had any intention of bringing the case to trial “in a short period after the motions were heard” because the “deputy prosecutor made clear she was going to begin a murder trial the following week and would not have time for Mr. Rem’s case.” Brief of Appellant, 4.

The facts leading to the recess vary importantly from the assertions in Rem’s brief. The prosecutor believed she had 6 days of trial to complete the case, and was eager to proceed.<sup>8</sup> Ultimately, the recess was granted at the urging of *both* parties and was necessitated by their own legitimate scheduling issues. 1RP 5-10 and CP 32.

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<sup>8</sup> The deputy prosecutor told the trial court, on September 1, 2010,

I got this case about a week and a half ago from, uh, a colleague of mine. Um, in that week and a half I’ve managed to get all of the witnesses available for this week which almost never happens in the middle of the summer, um, on such short notice. So I really—my plan was to try to push ahead, um, and then I spoke with Mr. Peale this morning and the issue of the 8th came up...

(1RP 7).

Rem's brief suggests the question, what possible advantage would the prosecutor have in delaying the case, and using the alleged "charade" of pretrial motions to effectuate the delay? The only answer alluded to in Rem's briefing is that the trial finally took place "after nearly five months, and then before a different judge, and after the deputy prosecutor filed a second amended information." Brief of Appellant, 4. What Rem's brief fails to point out, however, is that Rem at trial indicated to the court that he knew the amended information was coming, was in no way surprised by it, had no objection<sup>9</sup> and that the amended information actually contained *fewer* charges than the one presented at pretrial motions.<sup>10</sup> The delay in reconvening was of no benefit to the State's case any more than the second amended information was prejudicial to Rem. After all, the prosecutor was prepared to start trial on day one of trial: on September 1, 2010, the deputy

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<sup>9</sup> After the prosecutor's motion to amend, the defense said, "I take no exception to the authority of the Court to permit an amendment at this stage or the State to request an amendment. I have no objection to the amendment of the information, to which I have previously noted an objection. But, procedurally, I don't raise a surprise to the request."

<sup>10</sup> The deputy prosecutor's Motion to Amend was made orally, as follows: "When we were assigned out to trial last, I moved to amend the Information and the judge allowed it, to add multiple counts of misdemeanor violation of the no contact order. In the interest of clarity and ease of instruction to the jury what I'd like to do is move to make a second amendment of the Information so that there is (sic) just two counts of misdemeanor violation." RP 2, 4.

prosecutor told the court that all of its witnesses were ready and available. 1RP 5. These delays created potential witness availability issues that manifested themselves in December (see Appendix 1) but were not an issue at the start of the case on September 1, 2010, when the prosecutor was prepared to press forward. There can be no legitimate argument that any advantage was gained by the prosecutor with the delay in reconvening the trial; in fact, given the unavailability of a crucial witness as the recess was extended, the delay could have prejudiced the State. Appendix 1, *December entries*.

Following the initial recess, court records reveal ongoing extensions of the recess, all for one of the following reasons: Plaintiff in trial, Defense Counsel in trial, Defense counsel on medical leave, witness unavailability, Plaintiff on vacation, Defense Counsel on vacation. Appendix 1. These recesses continued until the first available trial day where all parties were available, January 27, 2011.

Rem argues that the five-month delay was unreasonable, thereby urging the Court to “conclude the trial in this case did not commence on” the day of the first pretrial hearing. Brief of Appellant, 4. This argument should be rejected. *Andrews*

discusses the basis for a delay following a recess. Like the case at hand, in *Andrews*, the “delay appealed from was based at least in part on the unavailability or request of defense counsel,” and the Court went on to acknowledge the practical reality of criminal law:

the primary cause of the delay was a lack of resources available in the trial courts which makes it necessary for trial judges and counsel in criminal cases to attend to more than one matter at a time.

66 Wn. App. at 811. Thus, a recess may be extended at the court’s discretion for legitimate reasons.

Here, following the initial recess, it was extended for legitimate reasons. Appendix 1. These included counsel being in trial, the unavailability of a witness, defense counsel’s sick leave and both counsel’s pre-scheduled vacations.<sup>11</sup> The presiding court found that the extension of each recess was necessary for the administration of justice and extended the recess until the parties were available. Appendix 1. This is consistent with the reasoning in *Andrews*. Because the trial had already begun, the extension of the recess in the administration of justice (an extension never objected to by defense and frequently necessitated by defense’s

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<sup>11</sup> *State v. Williams*, 104 Wn. App. 516, 17 P.3d 648 (2001) (holding that counsel in trial is good cause for a continuance); *State v. Torres*, 111 Wn. App. 323, 44 P.3d 903 (2002) (holding that the unavailability of a witness is good cause for a continuance); *State v. Heredia-Juarez*, 119 Wn. App. 150, 79 P.3d 987 (2003) (holding that counsel vacation is good cause for a continuance).

own scheduling issues), was appropriate and there is no CrR 3.3 argument under *Andrews*, or any other analysis.

Rem's brief also cites *State v. Kenyon*, 167 Wn.2d 130, 216 P.3d 1024 (2009), in his argument that the procedure employed by the court in this case "eliminated the protections of CrR 3.3." Brief of Appellant, 5. *Kenyon* however does not apply here because *Kenyon* did not start trial within the period required by CrR. 3.3, and the only reason posited for the delay in the actual start of trial under the rule was the unavailability of a judge. The Court found that before it would consider a judge's unavailability good cause for the continuance of a trial date, there must be a careful "record of the unavailability of judges and courtrooms and of the availability of judges pro tempore." *State v. Kenyon*, 167 Wn.2d at 135, citing *State v. Silva*, 72 Wn. App. 80, 84-85, 863 P.2d 597 (1993). Because no such record was made, and trial had never begun, the Washington Supreme Court reversed. This is not comparable to the case at hand, where trial had actually begun with nearly two days of pretrial argument, testimony and rulings and subsequent legitimate scheduling issues from both parties, extended the delay.

Rem further argues that this case should be reversed based on two Federal cases: *United States v. Scaife*, 749 F.2d 338, 343 (C.A.Tenn.,1984), and *United States v. Richmond*, 735 F.2d 208, 211-12 (C.A.Tenn.,1984), which hold that a trial court cannot engage in subterfuge<sup>12</sup> to bypass the Speedy Trial Act. There was no such manipulation here and each case supports the State's position rather than Rem's.

In *Scaife*, the trial court began jury selection and then recessed to allow for the trial judge to attend a judicial conference, reconvening the recessed trial 11 days outside of the case's expiration date under the Speedy Trial Act. *Id.* Because the judge was required by "statute and court rule to attend that conference (see 28 U.S.C. § 333; Rule 16(a) of the Rules of the Sixth Circuit)," the Federal Court ruled that the district court's "decision to select the jury and then recess...cannot be said to have been made with an intent to evade the requirements of the Act." *Scaife*, 749 F.2d at 343. In *United States v. Richmond*, the recommencement of the trial after pretrial motions and jury selection outside of the Act's expiration date was delayed by the defense counsel, who informed

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<sup>12</sup> The *Scaife* court said that "district court may not attempt to evade the spirit of the [Speedy Trial Act] by conducting voir dire within the statutory time limits and then ordering prolonged recess with an intent to pay mere 'lip service' to the Act's requirements." *Scaife*, at 343.

the trial court that he was not prepared to proceed and needed the recess to be ready. *Richmond*, 735 F.2d at 211-12. The district court “informed Richmond's counsel that once the jury was picked, the trial would be adjourned until counsel was ready.” *Id.* Because the delay was to accommodate defense counsel, the Court could not find that the district court attempted to “evade the requirements imposed by the Speedy Trial Act...” *Richmond*, 735 F.2d 208, 211-12.

Similarly, in the case at hand, the reasons for the extended recess were all for good cause and in the administration of justice and were necessitated by both parties involved. None of the cases cited by Rem support the argument that the prosecutor, the trial court and the presiding court attempted to evade the requirements of CrR 3.3 by recessing the case until all parties were available for trial.

In order to effectively manage cases, courts have the authority to manage trial dates as long as the delay is not undue or prejudicial. The primary cause of delays between the start and the conclusion of the trial here were legally appropriate requests by both defense and the prosecutor. The delays were mutually necessitated recesses, accompanied by findings from the presiding

court that each extension of the recess was “in the interest of justice” to accommodate valid scheduling issues on both sides, and were never the result of the prosecutor taking advantage of CrR 3.3.

D. CONCLUSION

For the foregoing reasons, the defendant’s convictions should be affirmed.

DATED this 20 day of September, 2012.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory C. Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT , in STATE V. TONY REM, Cause No. 682014-2-I, in the Court of Appeals, Division I, for the State of Washington.

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



\_\_\_\_\_  
Name  
Done in Seattle, Washington

09-20-12  
\_\_\_\_\_  
Date