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STATE'S ARGUMENT IN REPLY TO RESPONSE BRIEF

I. The Trial Court Had a Duty To Consider Reasonable Alternatives to Dismissal Even If the State Did Not Suggest Them.

The Defendants complain that "[t]he state--having failed in the trial court to suggest release of the accused, suppression of the evidence, or issuance of subpoenas to recalcitrant officers--cannot complain for the first time on appeal that the court did not consider such motions." Brief of Respondent 13, citing *Chichester*. The Respondents go on to state that, "[t]he trial court is not required to consider options [to dismissal] not suggested by the parties." Response Brief 13, *citing Chichester*. The Respondents are wrong, as pointed out by the dissent in the *Chichester* case itself:

I agree that the State does have such a responsibility. But that does not relieve the trial court of its duty to consider reasonable alternatives that the parties do not. After all, it is the trial court that has the primary duty to ensure that the extraordinary remedy of dismissal is not imposed except where it is truly warranted.

State v. Chichester, 141 Wn.App. 446, 465, 70 P.3d 583 (2007) (dissent)(emphasis added). Thus, even if the State in this case did not suggest some alternative remedies to dismissal, the trial court certainly in the name of justice and fairness could have done so

sua sponte. More to the point, a trial court abuses its discretion if it dismisses criminal charges without considering intermediate remedial steps. State v. Koerber, 85 Wn.App. 1, 3-4, 931 P.2d 904 (1996).

II. It is A Fact, Not an "Insinuation" That Continuances Can Be Granted Past the Rule-Created Speedy Trial Time Frame.

The Respondent's state "Appellant's repeated insinuations that the speedy trial rule is not binding suggest an unfortunate lack of respect for the rule. Delay beyond the expiration date is intended to result in dismissal; the rule does not contemplate that a cure period will be applied as the norm to routinely excuse prosecutorial mismanagement." Response Brief 13 n.9. Respondent misrepresents the point the State was trying to make. The State stands by its claim that continuances past the rule-created speedy trial time period can occur for good cause or extraordinary reasons--even over the objection of the defendant. Indeed, these types of continuances have earned a nickname and are commonly referred to in some courts as "Campbell continuances." See e.g., State v. Thomas, 142 Wn.App. 589, 598, 174 P.3d 1264 (2008). So, despite Respondent's swipe at the integrity of the prosecutor, the fact of the matter is that our law still

holds that a strict number of "speedy trial days" such as that set out in our criminal rules is not a "constitutional mandate" and remains a time period which has been extended for good cause--and over the defendant's objection. See e.g., State v. Campbell, 103 Wn.2d 1, 15, 691 P.2d 929 (1984); State v. Schaffer, 63 Wn.App. 761, 767, 822 P.2s 292 (1991); State v. Coleman, 54 Wn.App. 742, 750, 775 P.2d 986 (1989); State v. Smith, 67 Wn.App. 847, 841 P.2d 65 (1992) rev. denied, 121 Wn.2d 1019, 854,)2d 41 (1993); State v. Nguyen, 68 Wn.App. 906, 914, 847 P.2d 936 (1993); State v. Fladebo, 113 Wn.2d 388, 393, 779 P.2d 707 (1989); Barker v. Wingo, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972); State v. White, 94 Wn.2d 498, 501, 617 P.2d 998 (1980); Flora v. State, 925 So. 2d 797, 814 (Miss. 2006); Beavers v. State, 498 So.2d 788, 790 (Miss 1986); Griffith v. State, 976 S.W. 2d 686, 692 (Tex.App. 1997). The State stands by its suggestion that the trial court could have granted a "Campbell continuance" in the instant case in order to give the parties more time to gather the additional discovery.

III. Part of the Problem in Getting Discovery Distributed in This Case Was the Beyond The State's Control Fact that The Prosecutor Handling the Case Abruptly Left the Office for Employment Elsewhere and Another Prosecutor Had To Pick up the Case "Cold."

In another unnecessarily mean spirited swipe at the State in this case, the Respondents commented about some missing discovery that "[t]his was due, in part, to the inaction of the deputy prosecuting attorney initially assigned to the case, who *apparently spent two weeks sitting at his desk without working, before departing the office for greener pastures.*" Response Brief 15 (emphasis added). The Respondents do not cite any portion of the record in support of this wisecrack and this remark should be stricken from the record. The fact of the matter is that prosecutors come and prosecutors go, and sometimes when they go it happens to be in the middle of a big case. This is unfortunate, but that is what happened here, and the remaining prosecutors picked up the pieces as best they could. They simply needed more time and the State believes the trial court could have, and should have, addressed any number of less drastic remedies than outright dismissal in resolving this case. A trial court's dismissal of a case without considering intermediate remedial steps may itself constitute an abuse of discretion. State v. Koerber, 85 Wn.App. 1,

4, 931 P.2d 904 (1996). But here, the trial court did not do so, and the State believes it erred by failing to address any alternative remedies to dismissal, and requests that this Court reverse the trial court's order dismissing this case so that these cases can be set for trial.

RESPECTFULLY SUBMITTED THIS 14 day of May, 2008.

L. MICHAEL GOLDEN
PROSECUTOR

By:


LORI SMITH, WSBA 27961

