

NO. 40221-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

PONZI B. WILLIAM, JR., Appellant

Appeal from the Superior Court of Pierce County
Pierce County Superior Court Cause No. 08-1-04333-1

BRIEF OF APPELLANT

By:

Barbara Corey
Attorney for Appellant
WSB #11778
902 S. 10th Street
Tacoma, WA 98405
(253) 779-0844

FILED
COURT OF APPEALS
DIVISION II
10 OCT 11 PM 3:33
STATE OF WASHINGTON
BY  JPH/PLJ

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RULES

CrJCR 3.3 2
CrRLJ 10

A. ASSIGNMENTS OF ERROR:

1. The superior court erred when it entered the order on RALJ¹ appeal affirming the appellant's district court convictions where trial was held in violation of the speedy trial rule (Finding of Fact No. 1).

2. The superior court erred when it affirmed the appellant's convictions "under CrRLJ 3.3 because the appellant did not object to the setting of a trial date outside the time limits of CrR 3.3 and then failed to appear for the pretrial hearing". (Findings of Fact Nos. 2, 2(a)).

3. The superior court erred when it held that "the defendant waived the speedy trial issue because he failed to object within the period of time prescribed by CrRLJ 3.3." (Finding of Fact No. 2(b)).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR:

1. Under CrRLJ 3.3 a criminal defendant was not required to object to the setting of a trial date after the time for speedy trial expired without the setting of a trial date.

¹ RALJ = Rules of appeal from courts of limited jurisdiction.

2. The State after the expiration of a criminal case thereafter cannot set a trial date and require the defendant to object to this invalid date.

C. STATEMENT OF THE CASE:

This appeal addresses one issue: that is, the misapplication of CrJCR 3.3 to Mr. William, who then was wrongfully convicted of communication with a minor.

On July 23, 2001, BERNARD PONZI WILLIAM, hereinafter defendant, was arraigned in Tacoma Municipal Court on three counts of harassment and three counts of sexual assault for the acts ultimately alleged in the Pierce County District Court case from which this RALJ appeal is taken. That case was dismissed on September 12, 2001. Appendices A and B. At that time, 51 days of the 90 days of speedy trial time had been consumed.

The matter then was sent to Pierce County District Court, where nearly two years later on April 2, 2003, the defendant, was arraigned on three counts of communication with a minor for immoral purposes. RP 3, 14. Appendix C. Defense counsel did not object to the date of arraignment as there was no meritorious objection that could have been interposed. Defense counsel also did not object to the next scheduled hearing, a pretrial conference. RP

14-15. At that time in Pierce County District Court, the court did not set a trial date at arraignment. Thus no trial date was ever set in this case in 2003.

At arraignment, the court ordered the defendant to appear on May 27, 2003 for a pretrial hearing. That pretrial hearing date was set 48 days after arraignment. $51 + 54 = 105$ days. The matter thus was set, without a speedy trial waiver, beyond the speedy trial, and in violation of CrRLJ 3.3² which mandates dismissal under such circumstances. Appendix D.

The defendant thereafter failed to appear at the pretrial hearing (which had been set beyond the 90 day requirement of CrRLJ 3.3). The court issued a bench warrant for the defendant although the district court already had exceeded the time for trial under CrRLJ 3.3.

The state subsequently arrested the defendant on the warrant in February 2008. After the proceedings were re-instituted the

² CrRLJ 3.3 (d) provides in pertinent part: (1) *Initial Setting of Trial Date*. The court shall, within 15 days of the defendant's actual arraignment in the trial court or at the pretrial hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. . . . (3) *Objection to Trial Setting*. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule, must, within ten days after the notice is mailed or given, move the court to set a trial within those time limits. . . A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

defendant queried whether this case was the same case that previously had been dismissed. RP 9.

On May 9, 2008, the defendant then moved to dismiss this case for violation of CrRLJ 3.3. RP 10. This case previously had been filed in Tacoma Municipal Court and then dismissed on the 51st day. RP 12. Almost two years later the matter was charged in Pierce County District Court. RP 19. 54 days of the 90 day period had expired in the Pierce County District Court case in 2003.

The court denied the defendant's motion, finding that the defendant had failed to make a timely motion to dismiss as well as that the defendant should have made that motion during the period of April 2, 2003 and May 27, 2003. RP 20-21. The state conceded at that argument that the time for trial had expired in 2003. RP 13. The state argued that the new rule applied to the proceedings in 2008 and apparently believed that a case which should have been dismissed with prejudice for violation of CrRLJ 3.3 in 2003 somehow could be revived. RP 13. The superior court denied the defendant's RALJ appeal. CP 92 - 94.

The defendant thereafter timely filed a motion for discretionary review. CP 95-98. This court entered the order accepting review on April 23, 2010.

This case is timely before this court.

D. LAW AND ARGUMENT:

1. THIS COURT MUST REVERSE THE SUPERIOR COURT'S AFFIRMANCE OF THE DISTRICT COURT HOLDING THAT THE DEFENDANT HAD THE LEGAL OBLIGATION UNDER CrRLJ 3.3 TO TIMELY OBJECT TO A TRIAL DATE SET OUT THE TIME FOR TRIAL PERIOD.

This case raises a single issue. That is, when the state has allowed a case to expire under the applicable speedy trial rule and the defendant fails to appear after that expiration date, may the state re-initiate a prosecution despite the lack of any remaining speedy trial time? Put another way, when a defendant fails to appear *after* the expiration of speedy trial time, does speedy trial time restart?

The answer to both of these questions is “no”. The history of this case in the context of CrRLJ 3.3 compels the conclusion that the trial court should have dismissed this prosecution.

A Division I case, *State v. Jenkins*, 76 Wn. App. 378, 383, 884 P.2d 1356 (1995) controls this case. In that case, the court held that CrR 3.3 does not compel defense counsel to object to the failure of the state to bring the defendant to trial nor to object to the date of a trial setting hearing scheduled after the expiration date. 76 Wn.App. 383-84. Under the rule, it is only after a trial date is *set*

that the responsibility shifts to the defendant to object in a timely matter. Because no trial date was ever set, the trial court in *Jenkins* properly dismissed the charges for violation of the defendant's speedy trial rights.

In *Jenkins*, the court considered when, if ever, a defendant was required to raise an objection to the time of trial under former CrR 3.3(f)³. In that case, the court affirmed the superior's court dismissal of a manslaughter case where the case had been set beyond the speedy trial time limits. In that case the trial had expired due to the state's miscalculation of the time for trial expiration date. The appellate court held that because a trial date was never set in compliance with CrR 3.3, there could be no trial date set after the expiration of the case.

In that case, as in the instant case, the state argued that the defendant had a duty to raise the speedy trial issue. However the appellate court held that the duty to object under CrR 3.3(f) never came into play because the state never set a trial date to which the defendant was required to object.

³ As this court noted in the ruling granting review, *Jenkins* addressed an earlier version of the superior court criminal rule wherein the relevant provisions were not materially different from the current rule. The superior court criminal rules and the criminal rules for courts of limited jurisdiction contain the same language. Commissioner's ruling pages 2-3.

In Jenkins, the appellate court declined to stretch the court rule to impose upon the defendant the duty to object to a nonexistent trial date.

The court resorted to the well established rules of statutory construction, reiterating that a court rule must be construed so that no word, clause or sentence is superfluous, void or insignificant. Jenkins, 76 Wn.App. at 382, citing State v. Raper, 47 Wn. App. 530, 536, 736 P.2d 680, *review denied*, 108 Wn.2d 1023 (1987).

The language in *CrR 3.3(d)(8)* is clear; the trial court is not empowered to exercise its discretion to grant an extension until an initial trial date is set. Only then does the trial court have discretion to grant a 5-day extension under certain circumstances. In Jenkins, the State had miscalculated the expiration date of the trial and readily agreed that any other trial date had been set. When the state then asked the court to set a trial date in an expired case, the state's motion properly was denied.

Moreover the Jenkins court rejected the argument that the defendant had waived his speedy trial objection because he did not object to the trial date until after the expiration date had passed. Although the court held that the defendant had a duty to protect his client's speedy trial rights consistent with *CrR 3.3(f)*, the appellate

court emphasized that the trial court bears the ultimate responsibility to ensure a trial is held within the speedy trial period. *E.g.*, *State v. Malone*, 72 Wn. App. 429, 433, 864 P.2d 990 (1994); *State v. Lemley*, 64 Wn. App. 724, 729, 828 P.2d 587, *review denied*, 119 Wn.2d 1025, 838 P.2d 690 (1992). Under CrR 3.3(d)(3), after a mistrial, the trial court is responsible for ensuring that a defendant is retried within 90 days.

The *Jenkins* case controls this case. As in *Jenkins*, the state argued that the defendant had the obligation to object to the trial date where the state failed to set a timely trial date. Under the rule of *Jenkins*, the defendant had no such obligation. Under the plain language of the rule, the defendant's duty to object does not extend to actions taken after the time for trial has expired.

In the instant case, the Superior Court's findings of fact/order dated September 25, 2009, are contrary to the rule of *Jenkins* and the plain rules of statutory construction.

In this case, the government arraigned the defendant on charges arising from this incident in Tacoma Municipal Court on July 23, 2001. On September 21, 2001, that court dismissed the charged after determining that Pierce County District Court had

jurisdiction. Between July 23 and September 12, 2001, 51 days of the 90 days speedy trial time were consumed.

The prosecutor did not re-file the matter in district court until March 18, 2003. The defendant was arraigned on April 2, 2003. At that time, the state had 39 days within which to bring the matter for trial. However, as the record bears out, the state did not set a trial date for the defendant within this 39 day window. Rather, the court set the defendant's pretrial date for May 27, 2003. 55 days lapsed between April 2 and May 27, 2003.

Unfortunately for the prosecution, 110 days had expired on the case prior to the pretrial. Dismissal therefore was required under the rule.

At no time did the defendant execute a waiver of speedy trial. The state was required to bring the defendant to trial no later than May 11, 2003.

After Mr. William failed to appear on May 27, 2003, the court issued a bench warrant. However, because the case already had expired under CrRLJ 3.3, the court lacked the authority even to issue a bench warrant. Further Mr. William had no duty to interpose an objection to the setting of a trial date after the expiration date of the case.

In this case, the state, the Pierce County District Court and the Superior Court all misapplied CrRLJ. These errors resulted in the defendant's wrongful convictions. For these reasons this court must reverse the order of the Pierce County Superior Court affirming his conviction and to remand this case to the Pierce County District County District Court for entry of the order of dismissal.

E. CONCLUSION:

For the foregoing reasons, the appellant respectfully asks this court to reverse the order of the Pierce County Superior Court affirming his conviction and to remand this case to the Pierce County District County District Court for entry of the order of dismissal.

DATED: October 11, 2010.

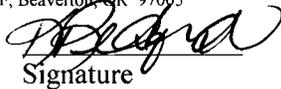
Respectfully submitted,


BARBARA COREY, WSBA#11778
Attorney for Appellant

CERTIFICATE OF SERVICE:

I declare under penalty of perjury under the laws of the State of Washington that the following is a true and correct: That on this date, I delivered via ABC- Legal Messenger, a copy of this Document to: Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Ave So, Room 946 Tacoma, Washington 98402 and to Ponzi William, US Mail, Postage Pre-paid to 14185 SW Teal Blvd. #F, Beaverton, OR 97005

10-11-10
Date


Signature

FILED
COURT OF APPEALS
10 OCT 11 PM 3:33
STATE OF WASHINGTON
BY _____ DEPUTY

APPENDICES A & B

Tacoma Municipal Court
 930 Tacoma Avenue S., Room 841
 Tacoma, Washington 98402-2181
 (253) 591-5357 FAX (253) 591-5301

18719 9/22/2008 00088

COURT ORDER

DEPT # _____ TAPE # _____
 RA Monnett
 ATTY. _____
 OFF FORD, RANDOLPH M.

DEFENDANT PONZI, BERNARD WILLIAM	AKA
ADDRESS	BIRTHDATE 09/24/1957
CITY, STATE, ZIP	TELEPHONE NUMBER
I will notify the Court of any change of address: _____ Defendant's initials: _____	

CASE NO.	CHARGE(S)	AMENDED TO	DISPOSITION	JAIL TIME IMPOSED	JAIL TIME SUSPENDED	CREDIT FOR TIME SERVED	PAY OF SERVICE	FINES COST	BAR
B00148367	HARASSMENT-THREATEN BODILY INJURY		D						
B00148367	HARASSMENT-THREATEN BODILY INJURY		D						
B00148367	HARASSMENT-THREATEN BODILY INJURY		D						

YOU MUST PAY Fine/Costs by _____ If not paid, the Defendant shall appear and request an extension, community service or show cause why payment cannot be made. Failure to appear or pay by the due date will result in the issuance of a bench warrant for Defendant's arrest.

Credit time served to fine/costs
YOUR JAIL STATUS Report to jail on _____ at _____ Flat Time Good Time Electronic monitoring Detox
 Authorized Bail Cash only Cash/bond Defendant PR'd to _____
 PR Terminated Bail Bond exonerated/reinstated Cash bail refunded to poster Retain \$ _____ cash bail as _____
 Jail sentence to run (consecutively) (concurrently) with other: Tacoma Municipal charges Charges with _____
 Appeal Bond \$ _____ cash/bond.

THIS CASE CONTINUED with/without stipulation to facts sufficient and with/without finding until _____
 Upon compliance: Dismissal Need Not Appear Amended to _____
 Upon non-compliance: Reading of Record and Sentencing

YOU MUST SURRENDER your driver's license immediately to the court. Surrendered: Yes No Affidavit of Non-Surrender

YOU ARE ORDERED TO DO THE FOLLOWING:
 Do not drive without valid license and insurance
 Have law abiding behavior
 No mood altering substances without a prescription
 Comply with terms and conditions of deferred prosecution
 Have no similar incidents
 Have no alcohol/drug related offenses
 Have no criminal traffic convictions
 Notice of ineligibility to possess a firearm

YOU MUST COMPLETE THE FOLLOWING WITH WRITTEN PROOF TO THE COURT BY _____
 Obtain a valid driver's license
 Obtain valid insurance
 Defensive driving school
 Alcohol/Drug Assessment and any recommended treatment
 Anger management evaluation and any recommended treatment
 Batterer's assessment and any recommended treatment
 Alcohol information school (AIS)
 Consumer awareness program
 HIV testing at Health Department
 Mental health evaluation, treatment & follow up
 10.05 evaluation
 Psychosexual evaluation and program
 Presentence Report
 Attend a DUI Victim Impact Panel (VIP)
 DV Impact Panel

YOU MUST REPORT IN PERSON TO PRE-TRIAL SERVICES, 955 Tacoma Avenue South, Suite 202, Tacoma, WA 98402, (253) 798-3478 Today for screening to qualify for: Public defender

YOU MUST RETURN TO COURT ON _____ AT _____ FOR _____ ROOM _____

I have read the above order and understand that if I fail to do exactly what is ordered, the Court will issue a warrant for my arrest and additional costs and/or jail time will be imposed. Failure to respond, appear for any hearing or failure to pay a monetary assessment on a traffic offense will result in the suspension of my driver's license or privilege to drive until I have paid all penalties required by law. A conviction of a moving traffic violation is reported to the Department of Licensing in Olympia and becomes a part of your driving record.

DONE IN OPEN COURT: September 12, 2001

[Signature]
 Judge/Commissioner/Pro-Tem

FOR OFFICE USE ONLY

<input type="checkbox"/> DAG required	<input type="checkbox"/> DAG already assigned	<input type="checkbox"/> Mail Court date
<input type="checkbox"/> Cal	<input type="checkbox"/> Trial	<input type="checkbox"/> @ 09:00 AM water exp
<input type="checkbox"/> Jury waiver	<input type="checkbox"/> No waiver	

Tacoma Municipal Court
 930 Tacoma Avenue S., Room 841
 Tacoma, Washington 98402-2181
 (253) 591-5357 FAX (253) 591-5301

COURT ORDER

DEPT # _____ TAPE # _____
 RA Monnet
 ATTY. DAC / WJH
 OFF FORD, RANDOLPH M.

DEFENDANT PONZI, BERNARD WILLIAM	AKA:
ADDRESS	BIRTHDATE 09/24/1957
CITY, STATE, ZIP	TELEPHONE NUMBER

I will notify the Court of any change of address: _____ Defendant's Initials: _____

CASE NO.	CHARGE(S)	AMENDED TO	DISPOSITION	ALL TIME IMPOSED	JAIL TIME SUSPENDED	CREDIT FOR TIME SERVED	PAY OR SERVE \$	FINES COST	BAIL
B00148366	SEXUAL ASSAULT		D						
B00148366	SEXUAL ASSAULT		D						no jurisdiction (per city motion) please file in S/B County (X)
B00148366	SEXUAL ASSAULT		D						

YOU MUST PAY Fine/Costs by _____ If not paid, the Defendant shall appear and request an extension, community service or show cause why payment cannot be made. Failure to appear or pay by the due date will result in the issuance of a bench warrant for Defendant's arrest.

Credit time served to fine/costs

YOUR JAIL STATUS Report to jail on _____ at _____ Flat Time Good Time Electronic monitoring Detox

Authorized Bail Cash only Cash/bond Defendant PR'd to _____

PR Terminated Bail Bond exonerated/reinstated Cash bail refunded to poster Retain \$ _____ cash bail as _____

Jail sentence to run (consecutively) (concurrently) with other: Tacoma Municipal charges Charges with _____

Appeal Bond \$ _____ cash/bond.

THIS CASE CONTINUED with/without stipulation to facts sufficient and with/without finding until _____

Upon compliance: Dismissal Need Not Appear Amended to _____

Upon non-compliance: Reading of Record and Sentencing

YOU MUST SURRENDER your driver's license immediately to the court. Surrendered: Yes No Affidavit of Non-Surrender

YOU ARE ORDERED TO DO THE FOLLOWING:

Do not drive without valid license and insurance

Have law abiding behavior

No mood altering substances without a prescription

Comply with terms and conditions of deferred prosecution

Have no similar incidents

Have no alcohol/drug related offenses

Have no criminal traffic convictions

Notice of ineligibility to possess a firearm

Comply with attached:
 No Contact Order
 SOAP Order
 SODA Order

Have no hostile contact with _____

YOU MUST COMPLETE THE FOLLOWING WITH WRITTEN PROOF TO THE COURT BY _____

Obtain a valid driver's license

Obtain valid insurance

Defensive driving school

Alcohol/Drug Assessment and any recommended treatment

Anger management evaluation and any recommended treatment

Batterer's assessment and any recommended treatment

Alcohol information school (AIS)

Consumer awareness program

HIV testing at Health Department

Mental health evaluation; treatment & follow up

10.05 evaluation

Psychosexual evaluation and program

Presentence Report

Attend a DUI Victim Impact Panel (VIP)

DV Impact Panel

Community service (CS) in lieu of \$ _____ fine/costs by _____

Pay restitution:
 Amount to be determined
 \$ _____ to _____

Attend Alcoholics/Narcotics Anonymous meetings _____ times week

Work Crew in lieu of jail time

Work Crew in lieu of \$ _____

Ignition Interlock for _____

Monitor: Monthly Bi-Monthly Quarterly

Treatment Reports: Monthly Bi-Monthly Quarterly

Defendant Assistance Program (D.A.P.)

Other conditions _____

YOU MUST REPORT IN PERSON TO PRE-TRIAL SERVICES 955 Tacoma Avenue South, Suite 202, Tacoma, WA 98402, (253) 798-3478 Today for screening to qualify for: Public defender

YOU MUST RETURN TO COURT ON _____ AT _____ FOR _____ ROOM _____

I have read the above order and understand that if I fail to do exactly what is ordered, the Court will issue a warrant for my arrest and additional costs and/or jail time will be imposed. Failure to respond, appear for any hearing or failure to pay a monetary assessment on a traffic offense will result in the suspension of my driver's license or privilege to drive until I have paid all penalties required by law. A conviction of a moving traffic violation is reported to the Department of Licensing in Olympia and becomes a part of your driving record.

DONE IN OPEN COURT: September 12, 2001

 Judge/Commissioner/Pro-Tem

FOR OFFICE USE ONLY

<input type="checkbox"/> DAC required	<input type="checkbox"/> DAC already assigned	<input type="checkbox"/> Mail Court date
<input type="checkbox"/> Set Trial	<input type="checkbox"/> 60/90 day waiver exp.	
<input type="checkbox"/> Jury waiver	<input type="checkbox"/> No waiver	

21 _____
 Defendant

APPENDICES C

RECEIVED
BY DISTRICT #1
JUN 20 2008
PIERCE COUNTY WASHINGTON
CRIMINAL DEPARTMENT

WASHINGTON UNIFORM CRIMINAL COMPLAINT DOCKET
IN THE DISTRICT COURT 1 (TACOMA) OF THE STATE OF WASHINGTON
COUNTY OF PIERCE, TACOMA

THE STATE OF WASHINGTON,

CIT. NO: N/A
CAUSE NO: 3YC001278

Plaintiff,

AGENCY: OTHER AGENCY
AG ID: OTH
GRAHAM #419 32285

vs.

PONZI BERNARD WILLIAM, JR.
14185 SW TEAL BLVD APT F
BEAVERTON, OR 97008

INCID #:

CRIMINAL COMPLAINT(CORRECTED
AS TO DEFENDANT'S NAME)

Defendant.

SEX: MALE RACE: DOB: 9/24/1957 DOL#: CA U6016651 Exp:
HT: 5'11" WT: 170 EYES: BROWN HAIR: BROWN PCN#:

COUNT I COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES CITE: RCW 9.68A.011(4) and 9.68A.090

AMENDED: _____

COUNT II COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES CITE: RCW 9.68A.011(4) and 9.68A.090

AMENDED: _____

COUNT III COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES CITE: RCW 9.68A.011(4) and 9.68A.090

AMENDED: _____

<u>FINDING</u> G NG D BF	DATE	JAIL TIME	DAYS SUSP.	CTS	FINE	SUSP.
-----------------------------	------	--------------	---------------	-----	------	-------

(1)

(2)

(3)

CRIMINAL COMPLAINT - 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 109
Tacoma, WA 98402-2171
Misdemeanors (253) 798-7446

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse PONZI BERNARD WILLIAM, JR. of the crime of COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, committed as follows:

That PONZI BERNARD WILLIAM, JR., in Pierce County, on or between the 14th day of July, 201 and the 16th day of July, 2001, commit the following offense at : RCW 9.68A.011(4) and 9.68A.090, COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, [GROSS MISDEMEANOR] did unlawfully communicate with Jessica P., a minor, for immoral purposes, contrary to RCW 9.68A.011(4) and 9.68A.090, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse PONZI BERNARD WILLIAM, JR. of the crime of COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That PONZI BERNARD WILLIAM, JR., in Pierce County, on or between the 14th day of July, 2001 and the 16th day of July, 2001, commit the following offense at : RCW 9.68A.011(4) and 9.68A.090, COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, [GROSS MISDEMEANOR] did unlawfully communicate with Jessica P., a minor, for immoral purposes, contrary to RCW 9.68A.011(4) and 9.68A.090, and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse PONZI BERNARD WILLIAM, JR. of the crime of COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That PONZI BERNARD WILLIAM, JR., in Pierce County, on or between the 14th day of July, 2001 and the 16th day of July, 2001, commit the following offense at : RCW 9.68A.011(4) and 9.68A.090, COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, [GROSS MISDEMEANOR] did unlawfully communicate with Jessica P., a minor, for immoral purposes, contrary to RCW 9.68A.011(4) and 9.68A.090, and against the peace and dignity of the State of Washington.

I, KEVIN S. BENTON, Deputy Prosecuting Attorney, certify/declare under penalty of perjury under the laws of the State of Washington that I have reasonable grounds to believe, and do believe, the above person committed the above offenses contrary to law.

Author: ksb

DATED this 14th day of May, 2008.

By: Kevin S. Benton
KEVIN S. BENTON
Deputy Prosecuting Attorney
WSB#: 16891

1 NO. 3YC001278
 2 DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

3 KENNETH LYNN NICHOLS, declares under penalty of perjury:

4 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police
 5 report and/or investigation conducted by the OTHER AGENCY, incident # N/A & TPD 01-201-0859;

6 That the police report and/or investigation provided me the following information;

7 That in Pierce County, Washington, during the period between the 14th day of July, 2001 and the
 8 16th day of July, 2001, the defendant, BERNARD WILLIAM PONZI, did commit the following
 9 crime(s): COMMUNICATING WITH A MINOR FOR IMMORAL PURPOSES.

10 On July 14, 2001, at 11:18 p.m., Jessica P. (DOB of 1-30-88) took the Pierce Transit Bus # 46
 11 from downtown to the area of 112th Street. She was returning home after visiting friends. At 25th Street,
 12 a black male boarded the bus and sat next to her at the back of the bus. He then scooted over and sat
 13 directly alongside her. He then placed his hand on her leg and began rubbing it. His hand then moved up
 14 and he began rubbing her privates. He said his name was Bernard. She told him to stop and moved seats.
 15 At her bus stop, he got off as well. He had a bicycle with a basket on the bus with him. She walked to
 16 her apartment and he followed her. He was walking behind her saying things like "I want you to be my
 17 girlfriend", "I want to have sex with you", "I'll do anything to get you", and "I'm going to rape you."

18 On July 15, 2001, she once again got on the #46 at 11:18 p.m. and the same black man got on at
 19 25th street. He once again sat down next to her and rubbed her legs. She moved seats. He got off at her
 20 stop and said, "I'm going to rape you."

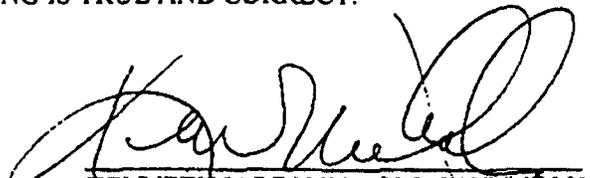
21 On July 16, 2001, she again rode the #46 bus at the same time. Again, "Bernard" got on at 25th
 22 Street and sat next to her. He again rubbed her legs and rubbed her privates." She contacted the female
 23 bus driver and told her what the man was doing. The driver asked if she was ok and then did nothing else.
 24 Jessica got off near her apartment and he got off with his bike and walked behind her. He said, "I'm
 going to rape you", and "I know where you live."

She told her mother about the incidents and gave her a description of "Bernard."

On July 20, 2001, Jessica and her mother were on the bus and saw "Bernard" on board as well.
 They contacted the driver who arranged for police to meet the bus. "Bernard" was taken into custody by
 TPD and identified as the defendant, BERNARD WILLIAM PONZI.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: March 3, 2003
 PLACE: TACOMA, WA


 KENNETH LYNN NICHOLS, WSB# 12053

APPENDICES D

DD7020SX WIR
09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

PAGE: 1

DEFENDANT
WILLIAM, PONZI BERNARD JR
14185 SW TEAL BLVD APT F
BEAVERTON OR 98007

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

Home Phone: 5035241057

AKA PONZI, BERNANRD WILLIAM
AKA PONZI, BERNARD WILLIAM

CHARGES

Violation Date:		DV Plea	Finding
1 9.68A.090	COMMUNICATE WITH MINOR FO N	Not Guilty	Guilty
2 9.68A.090	COMMUNICATE WITH MINOR FO N	Not Guilty	Guilty
3 9.68A.090	COMMUNICATE WITH MINOR FO N	Not Guilty	Guilty

TEXT

S 03/18/2003 Case Filed on 03/18/2003 AML
DEF 1 PONZI, BERNANRD WILLIAM Added as Participant

U ***VIOLATION DATES 7/14/01 THRU 7/16/01***
CHARGE 3 - COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES.
SUMMONS ALSO MAILED TO ALTERNATE ADDRESSES ON COMPLAINT

S ARR NOTIC Set for 04/02/2003 08:45 AM
in Room 741 with Judge 741
Notice Issued for ARR NOTIC on 04/02/2003 08:45 AM CAH

U 03/28/2003 SUMMONS MAILED TO ALTERNATE ADDRESS RETURNED. UNABLE TO FORWARD. MAF

03/31/2003 SUMMONS MAILED TO 2ND ALTERNATE ADDRESS RETURNED. UNABLE TO FORWARD.

S 04/02/2003 ARR NOTIC: Held CXH
Proceedings Recorded on Tape No. PT BAILEY
PTR Set for 05/27/2003 08:45 AM
in Room 935 with Judge DMK

U JURY DEMAND FILED BY STATE, DAC SCREENING REFERRAL
NO CONTACT W/VICTIM
ARR/PT BAILEY DPA/NELSON ** PC FOUND **

04/14/2003 DAC NOA FILED ELECTRONICALLY. KMS

S 04/15/2003 ATY 1 HILL, JOHN HENRY III Added as Participant
DEF 1 PONZI, BERNANRD WILLIAM Represented by:
ATY 1 HILL, JOHN HENRY III

05/27/2003 PTR: Not Held, Wt/FTA Ordered JUL
BENCH Warrant Ordered
Print on or after 05/27/2003
Warrant expires on 05/27/2008
BENCH Warrant Issued for SYS
Fail To Comply
Fail To Appear For Hearing

U 05/29/2003 DEFENDANT'S MOTION FOR HEARING TO QUASH BENCH WARRANT REC'D KMS
AND ROUTED TO DMKK
Bail: 12,000.00 + 0.00 Warrant Fee; Total Bail 12,000.00

06/03/2003 ***** THIS MATTER WAS SET BEFORE DMK IN ERROR; SHOULD ACH *****
***** BE JRH (JRH HAS DEFTS OTHER CHRGS).
PULLED MOTION TO RECONSIDER AND ROUTED TO 603/JRH FOR REVIEW.
MOT TO QUASH WARRANT NOTED; HRG. SCHEDULED; BW TO REMAIN AAK

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09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

PAGE: 2

DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YCO01278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

U 06/03/2003 OUTSTANDING UNTIL NEXT HRG. AAK
S OTH WARNO Set for 06/20/2003 08:45 AM
in Room 603 with Judge JRH
Notice Issued for OTH WARNO on 06/20/2003 08:45 AM CAH
06/20/2003 OTH WARNO: Not Held, Wt/FTA Ordered AAK
Proceedings Recorded on Tape No. 603-JRH/K
U PER JUDGE HELLER, SUMMONS FOR PTC W/ WARRANT TO REMAIN
OUTSTANDING
S 06/24/2003 OTH WARNO Set for 08/01/2003 08:45 AM
in Room 603 with Judge JRH
Notice Issued for OTH WARNO on 08/01/2003 08:45 AM AML
U 07/14/2003 SUMMONS RETURNED; NO SUCH NUMBER. MAF
S 08/01/2003 OTH WARNO: Not Held, Wt/FTA Ordered WIR
Proceedings Recorded on Tape No. JUDGE JRH
U ***** WARRANT REMAINS *****
S 11/29/2006 ATY 1 HILL, JOHN HENRY III Wthdrw as Atty for: CDM
DEF 1 PONZI, BERNANRD WILLIAM
ATY 1 HILL, JOHN HENRY III Removed
ATY 2 PIERCE CO, DEPT ASSIGNED COUNSEL Added as Participant
DEF 1 PONZI, BERNANRD WILLIAM Represented by:
ATY 2 PIERCE CO, DEPT ASSIGNED COUNSEL
02/18/2008 Warrant Served SXN
02/19/2008 PCN added to case KRH
U ** DEF BOOKED UNDER TN: WILLIAMS, PONZI BERNARD JR
BOOKING # 2008049012
S Warrant Returned SXN
OTH INCUS Set for 02/19/2008 01:30 PM KRH
in Room 741 with Judge 741
OTH INCUS: Held KIM
Proceedings Recorded on Tape No. ROSS
PTR Set for 03/18/2008 08:45 AM
in Room 936 with Judge 936
U DEFT APPEARED I/C WITH DAC ATY UTTERMAN; STATE BY DPA CURTIS. ZLS
S Defendant Arraigned on Charge 1
Plea/Response of Not Guilty Entered on Charge 1
Defendant Arraigned on Charge 2
Plea/Response of Not Guilty Entered on Charge 2
Defendant Arraigned on Charge 3
Plea/Response of Not Guilty Entered on Charge 3
U BAIL FIXED AT: 7YCO04532 - RELEASED; 3YCO01278 - \$3000 C/B;
1YCO01583 - RELEASED; CONDITIONS: HAVE NO CONTACT WITH
VICTIM.
S 02/25/2008 BON 1 SIGNATURE BAIL BONDS Added as Participant AML
08056101361 Appearance Bond Posted for DEF 1 3,000.00
Posted by: SIGNATURE BAIL BONDS
U 03/13/2008 DAC NOA FILED ELECTRONICALLY. TDR
[[29357250]] LINX_DOC_ID
S 03/18/2008 PTR: Held MHS
Proceedings Recorded on Tape No. DACCA

Docket continued on next page

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PIERCE COUNTY DISTRICT COURT
D O C K E T

PAGE: 3

DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

U 03/18/2008 DEFT W/DAC OWEN-EVANS BEFORE JUDGE DACCA, DPA ORBITS MHS
1YCO01583 AND 7YCO04532 TRACKING
BOND REMAINS
MOTION TO DISMISS SCHEDULED FOR 4-14-08 AT 10:00 AM; MOTION
AND ANY MEMORANDUM DUE F/DEFENSE BY 4-4-08; DEFT'S PRESENCE
IS WAIVED AT MOTION (4-14-08)
CONDITIONS:
LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
NO CONTACT W/VICTIM
S MOT Set for 04/14/2008 10:00 AM
in Room 936 with Judge 936
OTH READY Set for 05/09/2008 01:30 PM
in Room 936 with Judge 936
JTR Set for 05/14/2008 09:00 AM
in Room 936 with Judge 936
04/14/2008 MOT: Held
U Proceedings Recorded on Tape No. PTSUSSMAN
DAC OWEN-EVANS BEFORE JUDGE PT SUSSMAN, DPA NOHAVEC
COUNSEL PRESENT FOR DEFENSE MOTION TO DISMISS; DEFT'S
PRESENCE WAIVED.
DAC OWEN-EVANS ADVISED THE COURT THAT HE IS WAITING FOR
INFORMATION FROM TACOMA MUNICIPAL COURT; CONTINUANCE GRANTED.
MOTION TO BE HEARD AT READINESS 5-9-08 W/BRIEF DUE FROM
DEFENSE BY 4-28-08 AND RESPONSE FROM STATE BY 5-5-08.
1YCO01583 AND 7YCO04532 CONTINUE TO TRACK.
04/15/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS GRAHAM, KLC
BRADLEY 565359 JT 05/14/2008 09:00 AM
[[29563143]] LINX_DOC_ID
05/02/2008 MOTION TO DISMISS PURSUANT TO CRRLJ 3.3 RECV'D FROM DAC, MMB
ROUTED TO 936
COURT REVIEWS MOTION; MOTION WILL BE HEARD AT READINESS - MHS
PER JUDGE DACCA
05/08/2008 RESPONSE TO MOTION TO DISMISS RECV'D FROM DPA MMB
S 05/09/2008 OTH READY: Held MHS
Proceedings Recorded on Tape No. DACCA
U DEFT W/DAC OWEN-EVANS BEFORE JUDGE DACCA, DPA NOHAVEC
PARTIES DECLARE READY FOR TRIAL; DECLARATION OF TRIAL
READINESS FILED
CONDITIONS:
LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
CONSUME NO ALC/MOOD ALT DRUGS W/O PRESCRIPTION
NO BAC/BLOOD TEST REFUSAL
NO DRIVING W/O VALID LICENSE AND INSURANCE
NO CONTACT W/VICTIM
BOND REMAINS
05/14/2008 DEFT W/DAC OWEN-EVANS BEFORE JUDGE DACCA, DPA NOHAVEC
PROPOSED JURY INSTRUCTIONS SUBMITTED BY DPA WARD
PARTIES PRESENT FOR TRIAL; NO 3.5 OR 3.6 HEARINGS; MOTION IN
LIMINE TO EXCUSE WITNESSES F/CRTRM DURING TESTIMONY GRANTED.

Docket continued on next page

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09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

PAGE: 4

DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YCO01278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

U 05/14/2008 DEFT CONFIRMS WITH COURT HIS TRUE NAME OF: MHS
 PONZI BERNARD WILLIAM JR.
 STATE MOVES TO HAVE VICTIM'S MOTHER TESTIFY AS TO STATEMENTS
 MADE BY VICTIM; TESTIMONY HEARD FROM VICTIM'S MOTHER; DEFENSE
 DOES NOT OBJECT TO TESTIMONY; COURT FINDS TESTIMONY ALLOWABLE
 PER "EXCITED UTTERANCE".
 DEFENSE MOVES FOR CONTINUANCE FOR FURTHER DISCOVERY.
 CONTINUANCE GRANTED; PRIORITY SETTING AT NEXT READINESS/TRIAL
 COURT FINDS EXCLUDED PERIOD FOR SPEEDY TRIAL PER RULE 3.3(F)
 AND SPEEDY TRIAL DATE IS EXTENDED TO 7-9-08.
 CONDITIONS:
 LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
 NO CONTACT W/VICTIM
 1YCO01583 AND 7YCO04532 CONTINUE TO TRACK FOR VIOLATIONS AND
 COMPLIANCE.

S JTR: Not Held, Hearing Canceled
 OTH: Held
 Proceedings Recorded on Tape No. DACCA
 OTH READY Set for 06/20/2008 08:45 AM
 in Room 936 with Judge 936
 JTR Set for 06/25/2008 09:00 AM
 in Room 936 with Judge 936

U BOND REMAINS
 06/03/2008 STATE'S LIST OF WITNESSES FILED ELECTRONICALLY MMB
 [[29875483]] LINX_DOC_ID
 06/18/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS GRAHAM,
 BRADLEY 572554 JT 06/25/2008 09:00 AM
 [[29975840]] LINX_DOC_ID

S 06/20/2008 OTH READY: Held MHS
 Proceedings Recorded on Tape No. DACCA
 Proceedings Recorded on Tape No. NEVIN

U CRIMINAL COMPLAINT (CORRECTED AS TO DEFENDANT'S NAME) FILED
 BY DPA NOHAVEC
 DEFENSE WITNESS LIST FILED BY DAC OWEN-EVANS
 DEFT W/DAC OWEN-EVANS BEFORE JUDGE NEVIN, DPA NOHAVEC
 PARTIES DECLARE READY FOR TRIAL; DECLARATION OF TRIAL
 READINESS FILED
 CONDITIONS:
 LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
 NO CONTACT W/VICTIM
 1YCO01583 AND 7YCO04532 CONTINUE TO TRACK FOR VIOLATIONS AND
 COMPLIANCE.
 BOND REMAINS
 LIST OF WITNESSES FILED BY DPA NOHAVEC

S 06/25/2008 JTR: Not Held, Hearing Canceled EDU
 OTH: Held
 Proceedings Recorded on Tape No. DACCA
 REV Set for 07/03/2008 01:30 PM
 in Room 936 with Judge 936

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09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

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DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YCO01278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

S 06/25/2008 REV Set for 07/09/2008 09:00 AM EDU
in Room 936 with Judge 936
REV on 07/03/2008 01:30 PM
in Room 936 with Judge 936 Canceled
REV on 07/09/2008 09:00 AM
in Room 936 with Judge 936 Canceled
OTH READY Set for 07/03/2008 01:30 PM
in Room 936 with Judge 936
JTR Set for 07/09/2008 09:00 AM
in Room 936 with Judge 936

U DEFT APPEARED WITH DAC SICKLES. STATE BY DPA NOHAVEC.
DEFENSE MOTION TO CONTINUE DUE TO ATTY BEING ILL - GRANTED.
STW THROUGH 07/25/08
CONDITIONS: HAVE NO CONTACT WITH VICTIM AND ABIDE BY ALL
WRITTEN NO CONTACT/PROTECTION ORDERS.
STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS MMB
[[30024126]] LINX_DOC_ID

06/26/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS
[[30025851]] LINX_DOC_ID

06/27/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS
[[30033614]] LINX_DOC_ID
STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS
[[30033619]] LINX_DOC_ID

S 07/02/2008 Name changed for DEF 1 AXP
From: IN 296 36222 PONZI, BERNANRD WILLIAM
To: IN 653 96224 WILLIAM, PONZI BERNARD JR

U PER MHS, TRUE NAME RECORD: WILLIAM, PONZI B JR; FILES UPDATED

S 07/03/2008 OTH READY: Held MHS
Proceedings Recorded on Tape No. DACCA

U DEFT W/DAC OWEN-EVANS BEFORE JUDGE DACCA, DPA NOHAVEC
DECLARATION OF TRIAL READINESS FILED
1YCO01583 AND 7YCO04532 TRACKING
CONDITIONS:
LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
BOND REMAINS

07/08/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS GRAHAM, SSR
BRADLEY 575979 JT 07/09/2008 09:00 AM
[[30093909]] LINX_DOC_ID

S 07/09/2008 JTR: Not Held, Hearing Canceled MHS
OTH: Held
Proceedings Recorded on Tape No. DACCA

U DEFT W/DAC OWEN-EVANS BEFORE JUDGE DACCA, DPA NOHAVEC
CONTINUED ON STATE'S MOTION (WITNES UNAVAILABLE); DEFENSE
OBJECTS; SPEEDY TRIAL RECALCULATED TO 9-19-08 PER EXCLUDED
PERIOD; AMENDED COMPLAINT FILED BY STATE; DEFT CONFIRMED
PLEA OF NOT GUILTY; BOND REMAINS
1YCO01583 AND 7YCO04532 CONTINUE TO TRACK
CONDITIONS:
LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS

Docket continued on next page.

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PIERCE COUNTY DISTRICT COURT
D O C K E T

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DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

S 07/10/2008 OTH READY Set for 08/15/2008 01:30 PM MHS
in Room 936 with Judge 936
JTR Set for 08/20/2008 09:00 AM
in Room 936 with Judge 936

U 08/05/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS MARTIN, SSR
CHRISTOPHER 579785 JT 08/20/2008 09:00 AM
[[30268480]] LINX_DOC_ID

08/07/2008 STATE'S SUBPOENA FILED ELECTRONICALLY FOR WITNESS GRAHAM,
BRADLEY 579784 JT 08/20/2008 09:00 AM
[[30287991]] LINX_DOC_ID

S 08/15/2008 OTH READY: Held EDU
Proceedings Recorded on Tape No. SUSSMAN

U DEFT APPEARED WITH DAC DIXON. STATE BY DPA NOHAVEC.
PARTIES ARE READY TO PROCEED TO TRIAL. DECLARATION OF
TRIAL READINESS FILED.

08/20/2008 DEFT W/DAC DIXON AND OWEN-EVANS BEFORE JG DACCA, DPA NOHAVEC MHS
1YC001583 AND 7YC004532 TRACKING
PROPOSED JURY INSTRUCTIONS SUBMITTED BY DPA NOHAVEC
MOTIONS IN LIMINE HELD
JURY SWORN AND IMPANELED:
PATRICIA ANN BRISTOW, PHILLIP L. ROGERS, ALLEN J. MUNOZ,
KRISTINA A. MERRIMAN, HANNAH L. CHESHIER,
JENNIFER D. KAMMERZELL AND AARON A. GRIGAL.
JURY EXCUSED FOR LUNCH
PARTIES DIRECTED TO RETURN FOR MOTIONS/TRIAL AT 1:00 PM.
DEFENSE 3.5 AND 3.6 MOTIONS HELD:
STATE'S WITNESS SWORN/TESTIFIED: RET. TPD OFFICER RANDY FORD
JURORS RETURN TO COURTROOM
STATE'S OPENING STATEMENT
DEFENSE RESERVES OPENING STATEMENT
WITNESSES SWORN FOR STATE:
1PW RANDY FORD, RETIRED TPD OFFICER
2PW JESSICA POWERS
3PW MARY POWERS
STATE RESTS
OPENING STATEMENT BY DEFENSE
WITNESSES SWORN FOR DEFENSE:
1DW PONZI BERNARD WILLIAM JR.
JURY RELEASED FOR THE DAY AT 4:15 PM; ALL PARTIES ARE
INSTRUCTED TO RETURN FOR DAY 2 OF TRIAL AT 8:45 AM ON
THURSDAY, 8-21-08.

S JTR: Not Held, Court Continued
Proceedings Recorded on Tape No. DACCA
JTR Set for 08/21/2008 08:45 AM
in Room 936 with Judge 936

U 08/21/2008 DEFT W/DAC DIXON AND OWEN-EVANS AND DPA NOHAVEC RETURN BEFORE
JUDGE DACCA FOR DAY 2 OF TRIAL
DEFENSE MOVES TO ADMIT EXHIBIT 1; NO OBJECTION BY STATE.
STATE'S EXHIBIT (ADMITTED):

Docket continued on next page

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PIERCE COUNTY DISTRICT COURT
D O C K E T

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DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

U 08/21/2008 1) HANDWRITTEN NOTE/DESCRIPTION BY JESSICA POWERS MHS
STATE'S REBUTTAL WITNESS SWORN AND TESTIFIED:
2PW JESSICA POWERS
DEFENSE REBUTTAL WITNESS SWORN AND TESTIFIED:
1DW PONZI BERNARD WILLIAM JR.
S JTR: Held
Proceedings Recorded on Tape No. DACCA
U JURY INSTRUCTIONS READ TO JURY
CLOSING ARGUMENTS BY STATE AND DEFENSE
ALTERNATE JUROR SELECTED - PATRICIA ANN BRISTOW. JURY
COMMENCED DELIBERATIONS.
JURY REACHED A VERDICT AT 11:50 AM OF GUILTY ON ALL 3 COUNTS.
JURY EXCUSED
S Finding/Judgment of Guilty for Charge 1
Case Heard Before Judge DACCA, FRANKLIN L
Judge DACCA, FRANKLIN L Imposed Sentence
Court Imposes Jail Time of 365 Days on Charge 1
with 105 Days Suspended, and
5 Days Credit for time served
Total Imposed on Charge 1: 300.00
with 0.00 Suspended
And 150.00 Other Amount Ordered
Finding/Judgment of Guilty for Charge 2
Case Heard Before Judge DACCA, FRANKLIN L
Judge DACCA, FRANKLIN L Imposed Sentence
Court Imposes Jail Time of 365 Days on Charge 2
with 365 Days Suspended, and
0 Days Credit for time served
Charge 2: Def. complied with Jail Sentence
Finding/Judgment of Guilty for Charge 3
Case Heard Before Judge DACCA, FRANKLIN L
Judge DACCA, FRANKLIN L Imposed Sentence
Court Imposes Jail Time of 365 Days on Charge 3
with 365 Days Suspended, and
0 Days Credit for time served
Charge 3: Def. complied with Jail Sentence
Total Imposed on Charge 3: 300.00
with 0.00 Suspended
And 0.00 Other Amount Ordered
Total Imposed on Charge 2: 300.00
with 0.00 Suspended
And 0.00 Other Amount Ordered
Probation : 2 Y
PRO Review Set for 08/21/2010
TPR : Time Pay Review
TPR Review Set for 08/21/2009
NCV : No Contact with Victim
OT1 : Other
OT1 Review Set for 09/21/2008

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09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

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DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

TEXT - Continued

U 08/21/2008 OT1 = DEFT TO FILE PROOF OF DNA SAMPLE MHS
S OT2 : Other
OT2 Review Set for 09/21/2008
U OT2 = DEFT TO FILE PROOF OF SEX OFFENDER REGISTRATION
S Accounts Receivable Created 1,050.00
Case Scheduled on Time Pay Agreement 2 for: 1,050.00
U CONDITIONS:
LAW-ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS
NO CONTACT W/VICTIMS
NO ALCOHOL RELATED OFFENSES
COMPLY W/TREATMENT ON TRACKING FILES 1YC001583 AND 7YC004532
FILE PROOF OF DNA SAMPLE BY 9-21-08
FILE PROOF OF SEX OFFENDER REGISTRATION BY 9-21-08
COURT RESERVES IMPOSITION OF MENTAL HEALTH COUNSELING
DEFT TAKEN INTO CUSTODY FROM COURTROOM
DEFT TO REPORT TO PROBATION W/I 24 HOURS OF RELEASE
DEF SIGNED RECORD OF ADVICE OF RIGHT OF APPEAL;
DEF SIGNED ADVICE OF COLLATERAL ATTACK TIME LIMIT
COURT SET APPEAL BOND AT \$10000 C/B.
SET TO TRACK FOR REVIEW AT MOTION HEARING W/7YC004532
S REV Set for 09/22/2008 02:00 PM
in Room 936 with Judge 936
U BOND REMAINS
S 08234102159 Appeal Bond Posted 10,000.00 KRH
Posted by: SIGNATURE BAIL BONDS
U 09/12/2008 NOTICE OF APPEAL TO SUPERIOR COURT & CERTIFICATION OF FILING MMB
STATUS; DESIGNATION OF RECORD; & MOTION/DECLARATION & ORDER
TO PROCEED IN FORMA PAUPERIS REC'D FROM DAC DIXON. ROUTED TO
WIR TO PROCESS.
09/17/2008 NOTICE OF APPEAL FILED IN SUPERIOR COURT SC NO: 08-1-04333-1 WIR
S Case Set on Appeal Tracking
U 09/19/2008 DESIGNATED RECORD TRANSMITTED TO SUPERIOR COURT

ACCOUNTING SUMMARY

	Total Due	Paid	Credit	Balance
Timepay: Y	1,050.00			1,050.00
Trust Account: (Non-Cash)	Bail Amount 13,000.00			

ADDITIONAL CASE DATA

Case Disposition
Disposition: OPEN

Parties

Attorney PIERCE CO, DEPT ASSIGNED COUNSEL
Bondsman SIGNATURE BAIL BONDS

Docket continued on next page

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09/19/2008 9:42 AM

PIERCE COUNTY DISTRICT COURT
D O C K E T

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DEFENDANT
WILLIAM, PONZI BERNARD JR

CASE: 3YC001278 TAP
Criminal Non-Traffic
Agency No. 012010859

ADDITIONAL CASE DATA - Continued

Personal Description

Sex: M Race: B DOB: 09/24/1967
Dr.Lic.No.: WILLIPB33104 State: WA Expires: 2007
Employer:
Height: 6 Weight: 190 Eyes: BRO Hair: BLK
Identifying Information: HAIR ALSO BALD
DOB ALSO 9-24-1957
OR DR LIC 6930005 - 2015

Hearing Summary

Held	ARRAIGNMENT	ON 04/02/2003 AT 08:45 AM IN ROOM 741 WITH 741
Held	IN CUSTODY HEARING	ON 02/19/2008 AT 01:30 PM IN ROOM 741 WITH 741
Held	PRE-TRIAL CONFERENCE	ON 03/18/2008 AT 08:45 AM IN ROOM 936 WITH 936
Held	HEARING ON MOTION	ON 04/14/2008 AT 10:00 AM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 05/09/2008 AT 01:30 PM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 05/14/2008 AT 09:00 AM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 06/20/2008 AT 08:45 AM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 06/25/2008 AT 09:00 AM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 07/03/2008 AT 01:30 PM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 07/09/2008 AT 09:00 AM IN ROOM 936 WITH 936
Held	JURY READINESS HRNG	ON 08/15/2008 AT 01:30 PM IN ROOM 936 WITH 936
Held	JURY TRIAL	ON 08/21/2008 AT 08:45 AM IN ROOM 936 WITH 936
Schedule	REVIEW HEARING	ON 09/22/2008 AT 02:00 PM IN ROOM 936 WITH 936

Case Review Status
(ON APPEAL)

Case Review Status	Review Date	Complied
CHARGE 50 - Other	09/17/2008	
CHARGE 50 - Other	09/21/2008	N
CHARGE 50 - Other	09/21/2008	N
CHARGE 50 - Probation	08/21/2010	N
CHARGE 50 - Time Pay Review	08/21/2009	N

End of docket report for this case

APPENDICES E

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,
v.
PONZI BERNARD WILLIAM, JR.,
Appellant.

No. 40221-1-II

RULING GRANTING REVIEW

FILED
COURT OF APPEALS
DIVISION II
10 APR 23 PM 3:04
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

Ponzi Bernard William seeks review of a Pierce County Superior Court decision on RALJ appeal affirming his district court convictions of three counts of communicating with a minor for immoral purposes. He contends that the court violated his CrRLJ 3.3 right to a speedy trial.

FACTS

This case has a long history. William was first arraigned in municipal court on July 23, 2001. The charges were three counts of harassment and three counts of sexual assault. The municipal court determined that it did not have jurisdiction and dismissed the case on September 12, 2001. At that point, 51 days of the speedy trial time had run.

The State refiled charges on the same incidents in district court, and William was arraigned on April 2, 2003. This time the charges were three counts of communication with a minor for immoral purposes. The court did not set a trial

date, but did order William to appear for the pretrial hearing on May 27, 2003. That would have been 99 days after William's initial arraignment

William did not appear for the pre-trial hearing. The court issued a bench warrant, but William did not appear before the court again until February 19, 2008. The court set a pre-trial hearing on March 18, 2008. At that hearing, William advised the court that he was going to seek dismissal for violation of his speedy trial rights. The court heard his motion on May 9, 2008, and denied it. A jury convicted him of all charges, and the superior court affirmed.

ANALYSIS

CrRLJ 3.3(d) provides in pertinent part:

(1) *Initial Setting of Trial Date.* The court shall, within 15 days of the defendant's actual arraignment in the trial court or at the pre-trial hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set

(3) *Objection to Trial Setting.* A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. . . . A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

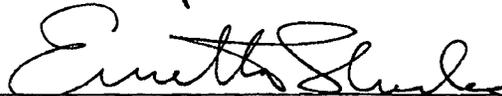
The district and superior courts found that William did not preserve the speedy trial issue because he failed to object to the pre-trial hearing date in 2003. William argues that his duty to object did not arise until a trial date was set. He appears to be correct. At least one court has held that the rule in CrRLJ 3.3(d)(3) does not come into play until a trial date is set. See *State v. Jenkins*, 76 Wn.

App. 378, 383, 884 P.2d 1356 (1994), *review denied*, 126 Wn.2d 1025 (1995).¹

Specifically, the *Jenkins* court held that the defendant was not required to make a speedy trial objection when the trial setting hearing was scheduled beyond the speedy trial deadline. 76 Wn. App. at 380-83. The district and superior court decisions appear to be in conflict with *Jenkins*, warranting review under RAP 2.3(d)(1). Accordingly, it is hereby

ORDERED that review is granted.

DATED this 23rd day of April, 2010.



Ernetta G. Skerlec
Court Commissioner

cc: Barbara L. Corey
Kathleen Proctor
Hon. Frank Cuthbertson

¹ The *Jenkins* court addressed an earlier version of the superior court criminal rule. The provisions quoted above were formally located at CrR 3.3(f)(1), but they are not materially different from the current rule. Likewise, the superior court criminal rules, and the criminal rules for courts of limited jurisdiction contain the same language.