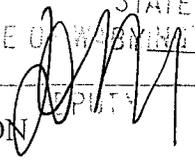


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STATE OF WASHINGTON
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No. 41309-4 - II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SCOTT P. LESHOWITZ

Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PACIFIC COUNTY
THE HONORABLE MICHAEL J. SULLIVAN, JUDGE

REPLY BRIEF OF APPELLANT

ANTHONY SAVAGE
615 Second Avenue, Suite 340
Seattle, WA 98104-2200
(206) 682-1882

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REPLY TO STATE’S ARGUMENT RE VIOLATION OF
SPEEDY TRIAL RIGHTS

Appellant merely wishes to re-emphasize that the delay in this case was caused by the sua sponte declaration of a mistrial by the trial court. This was not merely a continuance of the trial date.

The principles of granting mistrials over the defendant’s objection are spelled out in State v. Melton, 97 Wa App. 327, 332-333, 983 P. 2d. 699 (1999) as follows:

Several guiding principles have emerged for determining whether a judge exercised sound discretion in granting a mistrial for “manifest necessity.” They include (1) whether the court act[ed] precipitately . . . [or] gave both defense counsel and the prosecutor full opportunity to explain their positions”;⁸ (2) whether it “accorded careful consideration to [the defendant’s] interest in having the trial concluded in a single proceeding”;⁹ and (3) whether it considered alternatives to declaring a mistrial.¹⁰

In accord: State v. Browning, 38 Wa App 772, 689 P.2d 1108 (1984).

It is conceded that Melton and Browning, supra, are not precisely in point because in those cases jeopardy had attached prior to the mistrial being declared. The “guiding principles” of those cases should prove

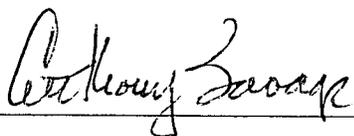
instructive.

Here the decision to grant a mistrial was made before the jury panel was, in fact, exhausted and the alternative to allowing this case to continue into the following week was rejected because of the problems it might raise with the other previously set trials. It is urged that both reasons for the mistrial did not properly consider alternatives to the trial's abortion.

REPLY TO THE STATES ASSIGNMENT OF ERROR

It is uncertain why the State seeks the relief requested. If Appellant is correct, this court should reverse the trial court, remanding the case with instructions to dismiss. If the Appellant is not correct he must serve his sentence without further proceedings. Under either circumstance Appellant feels that further briefing on this issue would be immaterial.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anthony Savage", is written over a horizontal line.

ANTHONY SAVAGE, WSBA #2208

