

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY                       
DEPUTY

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

STATE OF WASHINGTON,	)	
	)	COA No. 41885-1-II
Plaintiff,	)	
	)	ADDITIONAL AUTHORITIES
VS.	)	PERTAINING TO
	)	SPEEDY TRIAL ISSUE
	)	
	)	
DENNIS McDANIEL	)	
	)	
Appellant,	)	
_____	)	

A. IDENTITY OF OFFERING PARTY

Pursuant to this court Rule 10.8, appellant Dennis McDaniel, offer the following authorities for this court's consideration in deciding whether a seven (7) month delay in arraignment violated appellants Six Amendment right to a Speedy Trial.

B. ADDITIONAL AUTHORITIES

1. United States v. Drake, 543 F.3d 1080 (9th Cir. 2008) (held) "The Sixth Amendment guarantees that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. Amend VI:
2. Hockenbarger v. Schisseur, 1998 U.S. Dist. LEXIS 20565, 1998 WL 918846 \*3 (D. Kan.1998) (held) "Because the Sixth Amendment guarantees a speedy trial, and not a speedy arraignment, any delay in arraignment is constitutionally relevant under the Sixth Amendment only as it bears on a defendant's right to a speedy trial."

3. Holmes v. Barlett, 810 F.Supp. 550, (S.D.N.Y. 1993).  
("analyzing claim by habeas petitioner of delay between arrest and arraignment as an alleged violation of the Sixth Amendment right to a Speedy Trial.")
4. Barker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101 (1972)  
("four factor balancing test.")
5. Doggert v. United States, 505 U.S. 647, 120 L.Ed.2d 520  
(Hold) "Length of the delay is to some extent a triggering mechanism for the speedy trial analysis. Unless the length of delay is long enough to be considered "presumptively prejudicial," there is no necessity for inquiry into the other factors." 505 at 651-52;
6. Doggert, 505 U.S. at 652 n.1;  
("one year delay "presumptively prejudicial.")
7. United States v. Valentine, 783 F.2d 1413, (9th Cir. 1986)  
(held) "six month delay sufficient to trigger an inquiry into the remaining three Barker factors.")

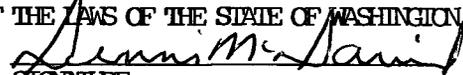
In the instant case the delay was seven months (7).

Dated this 2nd day of June, 2012.

  
DENNIS MCDANIEL

**CERTIFICATE OF SERVICE:**

THE UNDERSIGNED DECLARES AND CERTIFIES THAT ON THE DATE BELOW I CAUSED TO BE MAILED TO THE RESPONDENT ATTORNEY OF RECORD VIA U.S. MAIL TRUE AND CORRECT COPIES OF THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED. THIS CERTIFICATION IS MADE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON.

6-2-12   
DATE SIGNATURE

### C. Argument

In the present case Mr McDaniel argues that he was not brought to trial in a Timely manner. The defendant will show that he was amendable to Process and at no fault Of his own was available for trial. The 4.1 rule for arraignment says that a defendant who Is detained in jail shall have an arraigned no later than 14 days after the date the information Or indictment is file in the adult division of the superior court.

CrR 3.3 and striker rule.

**This Court in *State v. Striker 20* held that where the defendant is amenable to process and there is a long delay between filing of the information and the defendant's first appearance before the court "through no fault or connivance" by the defendant, the speedy trial period in CrR 3.3 commences on the date the information is filed, and not when the defendant first appears to answer the charge. The Court observed the rules did not authorize delay between filing of an information or indictment and arrest or summoning of a defendant who is amenable to process. This Court reversed the trial court and dismissed the cases with prejudice because of violation of the "speedy trial" rule under CrR 3.3 which required that criminal charges "shall be brought to trial within 60 days following the preliminary appearance."**

### *D. Application of State v. Striker.*

**Under *State v. Carpenter*, four questions must be answered to determine whether *Striker* applies in this case: (1) whether Petitioner was amenable to process; (2) whether the delay was sufficient to come under *Striker*; (3) whether Petitioner connived to cause the delay; and (4) whether Petitioner was at fault in causing the delay.**

Here the defendant can show these four prongs. 1 Is whether the defendant was amendable to process? Yes the defendant was Mr McDaniel was already in jail an had been there from 12-30-09 until 1-25-11 the day trial was brought before the court. The 2 is whether the delay was sufficient This would apply in favor of the defendant as well Mr McDaniel was in the jail on the date that the amended information was filed and the state had 14 days to arraign Mr McDaniel instead the defendant was arraigned 220 days later clearly sufficient time for this rule to apply. The 3 prong is did the defendant connive to cause this delay Mr McDaniel was trying

to get his trial started in a timely manner as a matter of fact he objected to every continuance from the time the state amended the charges until the day of trial so here the defendant would win this prong as well. Now the 4 prong whether the petitioner was at fault in causing the delay the defendant would win this argument as well there is nothing the state or the record can show that this delay was any fault of the defendant as well, so therefore the defendant would win this 4 prong test of the striker rule and because of that the state violated the defendants rights to due process and the case should be dismissed.

The record will show that the state failed to arraign Mr McDaniel (9-14 VRP) and that the state can't show neither good faith nor due diligence the state can only say that they assumed that defendant had been arraigned. The prosecutor like all lawyers has a duty of candor to the tribunal. A prosecutor also has a duty to ensure that an accused person receives a fair trial. A prosecutor serves two important functions. A prosecutor must enforce the law by prosecuting those who have violated the peace and dignity of the state by breaking the law. A prosecutor also functions as a representative of the people in a quasijudicial capacity in a search for justice... Defendant is among the people the prosecutor represents. The prosecutor owes a duty to defendants to see that their rights to a constitutional fair trial are not violated. A prosecutor's misuse of the law constitutes misconduct and denies an accused person his or her rights to a fair trial

Here in the present case the prosecutor new the law the 4.1 rule she knew that she lost her right to try this case by law and did so anyway. The remedy to count 2 is dismissal with prejudice and the state lost that right to try this count under the 4.1 rule the record shows this violation and this case should be dismissed.