

NO. 47138-8-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

PATRICK FICK,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court's failure to enter findings of fact and conclusions of law under CrR 6.3 following a bench trial requires remand to the trial court for compliance with the rule.

2. The defendant's conviction should be reversed and the charges dismissed with prejudice because the trial court violated the defendant's statutory right to speedy trial.

3. Substantial evidence does not support the defendant's conviction for possession of a stolen motor vehicle because the evidence does not support the conclusion that the defendant drove the vehicle in question or knew it was stolen if he did drive it.

Issues Pertaining to Assignment of Error

1. Does a trial court's failure to enter findings of fact and conclusions of law under CrR 6.3 following a bench trial require remand to the trial court for compliance with the rule prior to the adjudication of the defendant's claims on appeal?

2. Should a defendant's conviction be reversed and the charges dismissed with prejudice if the trial court abuses its discretion by setting the defendant's trial outside the time for trial under CrR 3.3 when there is an alternative method for setting the trial within the requirements of the rule?

3. Does substantial evidence support a defendant's conviction for possession of a stolen motor vehicle when the evidence presented at trial does not support the conclusion that the defendant drove the vehicle in question or knew it was stolen if he did drive it?

STATEMENT OF THE CASE

Factual History

On September 26, 2014, Skamania County Deputy Sheriff Jeremy Schultz was on patrol in city of Carson when he saw a vehicle drive by at a high rate of speed westbound on Metzger Road near the intersection with Wind River Road. RP 10-11. Although Deputy Schultz attempted to catch up to the vehicle he was unsuccessful. RP 11. A little while later dispatch sent Deputy Schultz to an address on Monahan Road upon the report that a suspicious looking male had been seen walking away from a vehicle in that area at a brisk pace. RP 9. Deputy Schultz found the vehicle on Monahan Road about one and one-half miles from the location where he last saw the previous speeding vehicle. RP 11.

Upon finding the reported vehicle Deputy Schultz ran its plates and determined that it had been reported stolen a few weeks previous in Skamania County. RP 9-10. He also determined that the license plates were from another vehicle. *Id.* Deputy Schultz then called Jose Santillan, the registered owner of the vehicle, who stated that he wanted to meet the Deputy at the scene. RP 12. Once he did both he and Deputy Schultz searched the vehicle and took out a number of items that did not belong to Mr. Santillan. *Id.* These items included clothing for a large man, clothing for a small girl, a Washington fishing license issued to Patrick Fick listing an address in Port

Orchard, fishing equipment, and a duffel bag in the truck with a court document from a Wasco County Oregon Circuit Court case entitled *State of Oregon v. Patrick Fick*. RP 12-19. Although the fishing license had the defendant's correct date of birth on it, the listed height and weight were not consistent with the defendant's statute. RP 16.

A few days later Deputy Schultz went to the defendant's address on Eyman Road in Carson to arrest him on a warrant. RP 20-22. This location was only a few hundred feet from where Deputy Schultz had originally seen the speeding vehicle. RP 20-21. Once at that location he knocked on the door, which a three-year old girl opened. *Id.* At the Deputy's request the young girl went and got the defendant, who told the deputy that he was the girl's father. *Id.* Once at the jail Deputy Schultz spoke with the defendant about the stolen vehicle. *Id.* The defendant denied any knowledge of it. *Id.* Deputy Schultz later got a search warrant and retrieved a "spoiler" that he had seen partially under a tarp in front of the residence where he arrested the defendant. RP 25-26. The owner of the stolen vehicle later claimed that the spoiler had come off of his car, although at the time he retrieved his vehicle he did not claim that it had been missing. RP 29. However, Deputy Schultz did remember seeing holes drilled in the trunk lid of the car where a spoiler could be attached. RP 24.

Procedural History

By information filed October 3, 2014, and amended on January 12, 2015, the Skamania County Prosecutor charged the defendant Patrick Fick with one count of possession of a stolen vehicle under RCW 9A.56.068(1). CP 1-2. 81-82. The defendant, who remained in custody during the pendency of this case, was arraigned on October 16, 2014. CP 3. In fact, at the same time the court also arraigned the defendant on charges of possession of methamphetamine, possession of oxycodone, possession of explosives without a license and use of drug paraphernalia under Skamania County Cause No. 14-1-00060-8. This case is also currently on appeal. *See* CP 1-3, 12 in *State v. Fick*, No. 47135-3-II.

Apparently the trial court set the same trial date in both the case at bar as well as the cause set out in No. 14-1-00060-8 because on December 8, 2014, the trial court informed the parties that it was continuing the trial in this case because the defendant's second case was set for trial on the same day. RP 12/18/14 1-3. The defense objected that this would put the current case outside the time for speedy trial. *Id.* In order to keep the case within the time for trial under CrR 3.3, the defense attorney indicated that he was prepared to try both cases at the same time to two different juries in the same court room if necessary. *Id.* The trial court refused to even consider the defendant's argument, did not consider consolidating the matters, and did not

state why it couldn't reschedule the defendant within the time for speedy trial. *Id.* Instead, the court simply set the trial for January 12, 2015, almost a month after speedy trial expired. *Id.*

The defendant appeared before the court on January 8, 2015, and entered a waiver of his right to jury trial. CP 74. Four days later the parties appeared for trial before the bench. RP 1. During that trial the state called two witnesses: Deputy Sheriff Jeremy Schultz and Jose Santillan, the owner of the stolen vehicle. RP 8-32, 33-57. They testified to the facts set out in the preceding factual history. *See Factual History, supra.* Following argument the court found the defendant guilty of the crime charged. RP 59-64. Three days later the defendant appeared for sentencing in both of his cases and received a term of incarceration at the top end of the standard range. CP 89-103; RP 1/5/15 1-3. The defendant thereafter filed timely Notice of Appeal. CP 104-117. As of the date of this brief the trial court has not entered Findings of Fact or Conclusions of Law. CP 1-117.

ARGUMENT

I. THE TRIAL COURT'S FAILURE TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER CrR 6.3 FOLLOWING A BENCH TRIAL REQUIRES REMAND TO THE TRIAL COURT FOR COMPLIANCE WITH THE RULE.

Under CrR 6.1(d) the trial court following a bench trial must prepare findings of fact and conclusions of law. This rule states:

(d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

CrR 6.1(d).

The appropriate remedy upon the court's failure to enter these required findings is remand of the case with an order to enter findings in compliance with the rule. *State v. Head*, 136 Wn.2d 619, 964 P.2d 1187 (1998). For example, in *State v. Head, supra*, the court found the defendant guilty of eight counts of first degree theft following a trial to the bench. The defendant thereafter appealed. In spite of the appeal, the trial court never did enter written findings of fact as required under CrR 6.1(d). The defendant argued on appeal that the trial court's failure to comply with CrR 6.1(d) required vacation of the convictions and dismissal. The state argued that the error was harmless under the facts of the case. However, the Washington Supreme Court determined that the appropriate remedy was to vacate the

conviction and remand for entry of the findings. The court stated:

CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial. The purpose of CrR 6.1(d)'s requirement of written findings of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal.

Remand for entry of written findings and conclusions is the proper course. A trial court's oral opinion and memorandum opinion are no more than oral expressions of the court's informal opinion at the time rendered. An oral opinion "has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment."

State v. Head, 136 Wn.2d at 621-22 (footnote and citations omitted).

As these cases indicate, the absence of findings in the case at bar precludes appellate review. As a result, this court should remand this case for entry of findings as required under CrR 6.1(d).

II. THE DEFENDANT'S CONVICTION SHOULD BE REVERSED AND THE CHARGES DISMISSED WITH PREJUDICE BECAUSE THE TRIAL COURT VIOLATED THE DEFENDANT'S STATUTORY RIGHT TO SPEEDY TRIAL.

Under CrR 3.3(b), the time for trial for a person held in jail is "60 days after the commencement date specified in this rule," or "the time specified under subsection (b)(5)." CrR 3.3(b)(1)(i)&(ii). "initial commencement date" under CrR 3.3(c)(1) is "the date of arraignment as determined under CrR 4.1." Under CrR 3.3(h), "[a] criminal charge not brought to trial within the time period provided by this rule shall be dismissed with prejudice." CrR 3.3(h). The purpose of CrR 3.3 is to prevent undue and

oppressive incarceration prior to trial. *State v. Kingen*, 39 Wn.App. 124, 692 P.2d 215 (1984).

Under CrR 3.3(f)(2), the trial court may grant a motion to continue a trial to a specific date outside of the time limits for speedy trial upon a showing of good cause if such continuance is “required in the administration of justice” and it will not prejudice the defendant. This section states:

(f) Continuances. Continuances or other delays may be granted as follows:

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party’s objection to the requested delay.

CrR 3.3(f)(2).

While the trial court bears the responsibility for assuring a defendant’s right to speedy trial under this rule, the decision whether or not to grant a continuance beyond the time required under CrR 3.3 lies within the sound discretion of the trial court and will only be overruled upon an abuse of that discretion. *State v. Nguyen*, 131 Wn.App. 815, 129 P.3d 821 (2006). An abuse of discretion occurs “when the trial court’s decision is arbitrary or rests on untenable grounds or untenable reasons.” *State v. Lawrence*, 108

Wn.App. 226, 31 P.3d 1198 (2001).

For example, in *State v. Nguyen, supra*, a defendant was convicted of a home invasion robbery following a trial outside the time for speedy trial. The court set the trial outside the speedy trial rule upon the state's motion that it needed more time to gather more information about some "related" home invasion robberies. In fact the state had no evidence linking the defendant or his offense to the other defendants and the other cases. Rather, the state believed that further investigation might potentially link the cases. Following conviction the defendant appealed, arguing that the trial court had abused its discretion when it granted the state's motion to continue.

In addressing the defendant's arguments the Court of Appeals first acknowledged that separate trials for multiple defendant's charged with the same offenses were not favored at the law. Thus, it would well be within the trial court's discretion to exceed one defendant's speedy trial rights in order to facilitate a joint trial. However, the court went on to note that where the various defendants were not charged jointly and where there was no evidence to link the various similar offenses, it would be an abuse of discretion to exceed one defendant's speedy trial rights to allow the police more time to search for "potential" connections among the cases. The court held:

The suspicion that a link will "potentially" be discovered between the case that is scheduled for trial, and other crimes not yet charged, is not like other reasons that our courts have recognized as

justifying delay of trial as “required in the administration of justice.” The continuance in this case was not required to allow the State to prepare its case. The State could have proceeded to trial on December 29 on the charge for which Nguyen had already been arraigned. If forensic testing later provided evidence that Nguyen was responsible for other crimes, the State could have filed the additional charges at that time. Alternatively, if trying all the home invasion robberies together was a higher priority, the State could have waited to charge Nguyen until the testing of evidence was completed. The State has not explained why it is just to detain a defendant longer than 60 days after arraignment solely on the suspicion that he might be linked to some other crime.

State v. Nguyen, 131 Wn.App. at 820-821.

In the case at bar, the defendant was arraigned on October 16, 2014, and remained in custody thereafter, being unable to make the bail set by the court in this case. Under CrR 3.3 this set the last date for trial within the applicable 60 day rule at December 16, 2014. On December 8, 2014, the parties appeared for review in this case. At that time the court informed the defense that it was continuing the trial because the defendant had a second case set for trial on the same day. RP 12/18/14 1-3. The defense objected that this would put the current case outside the time for speedy trial. *Id.* In addition, in order to keep the case within the time for trial under CrR 3.3, the defense attorney indicated that he was prepared to try both cases at the same time to two different juries in the same court room if necessary. The trial court refused to even consider the defendant’s argument and simply set the trial for almost a month after speedy trial expired. Neither did the court

consider consolidating the cases or explain why the case could not be reset within the time period required under the speedy trial rule. In so acting the court abused its discretion and violated the defendant's right to speedy trial under CrR 3.3. As a result, the court should vacate the defendant's conviction and remand with instructions to dismiss with prejudice.

III. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE DEFENDANT'S CONVICTION FOR POSSESSION OF A STOLEN MOTOR VEHICLE BECAUSE THE EVIDENCE DOES NOT SUPPORT THE CONCLUSION THAT THE DEFENDANT DROVE THE VEHICLE OR KNEW IT WAS STOLEN.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: "[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law." *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence

may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). The test for determining the sufficiency of the evidence is whether “after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979).

In the case at bar the state charged the defendant in the amended information with one count of possession of a stolen vehicle under RCW 9A.56.068, which simply holds that “[a] person is guilty of possession of a stolen vehicle if he or she possesses a stolen motor vehicle.” In RCW 9A.56.140 the legislature has provided the following definition for the term “possess” in the context of possessing stolen property. This statute states:

“Possessing stolen property” means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any

person other than the true owner or person entitled thereto.

RCW 9A.56.140.

Given this definition of “possession,” the state has to prove the following elements beyond a reasonable doubt in order to sustain a conviction for possession of a stolen motor vehicle: (1) that the defendant received, retained, possessed, concealed or disposed of a motor vehicle, (2) that the vehicle was stolen, and (3) that the defendant knew that the vehicle was stolen at the time of the possession. As the following examination of the evidence presented at trial explains, as well as the lack of evidence, the only element the state proved beyond a reasonable doubt in this case was that the vehicle was stolen.

In this case the state did not call any witness to identify the defendant as the driver of the vehicle. Although the police officer who was the state’s first witness testified that he saw the vehicle drive by he did not identify the defendant as that driver of the vehicle. Neither did he claim that he was not able to identify the driver of the vehicle. Second, the state did not call the original reporting party who claimed he or she saw a “suspicious” person walking away from the vehicle. Neither did the state claim that this person could not identify the driver. Certainly the state did prove that the vehicle had property belonging to the defendant inside it. However, as the court itself noted in part, this fact itself led to a number of possible conclusions: (1) that

the defendant was driving the vehicle and knew it was stolen, (2) that the defendant was driving the vehicle but didn't know it was stolen, (3) that the defendant was not driving the vehicle and had left his possessions in it, either knowing or not knowing that the vehicle was stolen, and (4) that the defendant was not driving the vehicle and his possessions had been stolen from him.

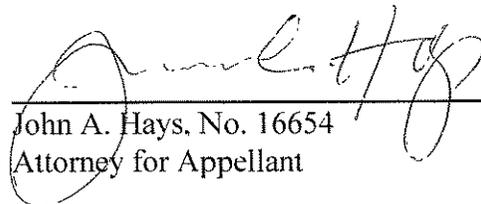
Given that each of these possibilities are equally as likely, the conclusion that the first was correct was mere speculation. As a result, the trial court erred when it found the defendant guilty because the evidence presented at trial does not prove each and every element of the crime charged beyond a reasonable doubt even looking at that evidence in the light most favorable to the state. Consequently, this court should reverse the defendant's conviction and remand with instructions to dismiss with prejudice.

CONCLUSION

This court could should vacate the conviction and remand with instructions to dismiss because substantial evidence does not support each and every element of the crime charged, and because the trial court violated the defendant's statutory right to speedy trial. In the alternative, this court should remand the defendant's case for entry of Findings of Fact and Conclusions of Law under CrR 6.1.

DATED this 6th day of July, 2015.

Respectfully submitted,



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APPENDIX

RCW 9A.56.068 Possession of Stolen Vehicle

(1) A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

(2) Possession of a stolen motor vehicle is a class B felony.

RCW 9A.56.140 Possessing stolen property – Definition – Presumption

(1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, as defined under RCW 9A.56.010, he or she is presumed to know that they are stolen.

(4) The presumption in subsection (3) of this section is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

(5) In any prosecution for possessing stolen property, it is a sufficient defense that the property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

CrR 3.3

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) 'Pending charge' means the charge for which the allowable time for trial is being computed.

(ii) 'Related charge' means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) 'Appearance' means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) 'Arraignment' means the date determined under CrR 4.1(b).

(v) 'Detained in jail' means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Trial Settings and Notice--Objections--Loss of Right to Object.

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court or at the omnibus 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. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or 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. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. 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.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the refiling of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties.

which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

CrR 6.1
TRIAL BY JURY OR BY THE COURT

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

(b) Number of Jurors. Unless otherwise provided by these rules, the number of persons serving on a jury shall be 12, not including alternates. If prior to trial on a noncapital case all defendants so elect, the case shall be tried by a jury of not less than six, or by the court.

(c) Juror Unable to Continue. If a case has not yet been submitted to the jury and a juror is unable to continue and no alternate jurors were selected or none are available, or if a case has been submitted to the jury and a juror is unable to continue, all defendants may elect to continue with the remaining jurors. The court shall declare a mistrial for any defendant who does not elect to continue with the remaining jurors. If some, but not all, defendants elect to continue with the trial, the court shall proceed with the trial for those defendants unless the court determines manifest necessity requires a mistrial.

(d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

vs.

PATRICK FICK,
Appellant.

NO. 47138-8-II

**AFFIRMATION
OF SERVICE**

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Adam Kick
Skamania County Prosecuting Attorney
P.O. Box 790
Stevenson, WA 98648
kick@co.skamania.wa.us
2. Patrick Fick, No.309594
Stafford Creek Corrections Center
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Aberdeen, WA 98520

Dated this 6th day of July, 2015, at Longview, WA.



Donna Baker

HAYS LAW OFFICE

July 06, 2015 - 10:07 AM

Transmittal Letter

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Court of Appeals Case Number: 47138-8

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- Brief: Appellant's
- Statement of Additional Authorities
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- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
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- Other: _____

Comments:

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Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:

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donnabaker@qwestoffice.net