NO. 288927-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

THE STATE OF WASHINGTON, Appellant,

v.

WALLACE JOSEPH GRIFFITH, Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 288927

REPLY BRIEF OF APPELLANT

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I. STATE'S REPLY TO DEFENDANT'S SPEEDY TRIAL ARGUMENT:

A. THE STATE MISUNDERSTOOD ITS SIXTH AMENDMENT OBLIGATION!

Defendant argues in his brief that, "The State misunderstands its obligation under the Sixth Amendment. The Constitution 'requires the State to make a diligent and good faith effort to secure the presence of an accused from another jurisdiction if a mechanism is available to do so.'" (Respondent's Brief, 10). In support of this argument, the defendant cites *State v. Anderson*, 121 Wn.2d 852, 855 P.2d 671 (1993); *United States v. Mendoza*, 530 F.3d 758 (9th Cir. 2008); *Doggett v. U.S.*, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992); *United States v. Rowbotham*, 430 F.Supp. 1254 (D. Mass 1977); *United State v. Pomeroy*, 822 F.2d 718 (8th Cir. 1987); *United States v. Raffone*, 405 F. Supp. 549 (S.D.Fla. 1975).

I. STATE'S REPLY TO DEFENDANT'S SPEEDY TRIAL ARGUMENT:

A. THE STATE MISUNDERSTOOD ITS SIXTH AMENDMENT OBLIGATION!

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1. **Because of the difference in amenability to process, comparing state and federal law on the duty to extradite is like comparing apples to oranges.**

The defendant cites numerous federal cases for the proposition that the government has a duty to extradite a defendant from a foreign jurisdiction. However, under federal law, a defendant is amenable to process virtually anywhere on earth, while under state law, a defendant is amenable to process only within the State. That explains the difference between the federal cases cited by the defendant and the Washington State case law.

Under CrR 2.2(d)(1) and (2), a criminal warrant can be served only by peace officers in the State, and a summons can be served only within the State. Therefore, a criminal defendant outside the State, is not amenable to process.

In contrast to CrR 2.2(d)(1) and (2) cited above, the Federal Rules of Criminal Procedure[1] is much different. FRCP 4(c)(2) provides: "A warrant may be executed or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest."

Thus, an Indictment issued by the Eastern District of Washington State can be executed whether the defendant is in New York, Florida, Canada, Mexico, Guam, Australia, or any other country with which there is an extradition treaty. A defendant living outside the United States, or anywhere inside the United States, **is** amenable to process.

2. **The defendant's citation of *State v. Anderson* is not only inapposite, that case is no longer good law.**

   a. ***Anderson dealt with CrR 3.3, the time for trial rule, not the defendant's constitutional speedy trial right.***

[1] Federal Rules of Criminal Procedure hereinafter referred to as "FRCP."

The defendant misquoted the case to make it appear *Anderson* dealt with the constitutional right to a speedy trial, when it only discussed the time for trial rule. In discussing CrR 3.3, the *Anderson* court stated:

> Prior to the 1980 amendment, this court had read into the speedy trial rule a requirement that the State demonstrate "good faith and diligent efforts to obtain the availability of the defendant" for trial before the "unavailability" extension of speedy trial limits under CrR 3.3 could be used.

State v. Anderson, 121 Wn.2d at 857.

The *Anderson* Court further discussed the due diligence requirement under CrR 3.3 as follows:

> **The due diligence requirement** is also consistent with federal authority, which requires the State to make a diligent and good faith effort to secure the presence of an accused from another jurisdiction if a mechanism is available to do so. (Emphasis added).

State v. Anderson, 121 Wn.2d at 858.

The defendant quotes this portion as follows:

> **The Constitution** "requires the State to make a diligent and good faith effort

> to secure the presence of an accused from another jurisdiction if a mechanism is available to do so." (Emphasis added).

(Respondent's brief, 10).

b. *In any event, with the 2003 amendment to CrR 3.3, State v. Anderson is no longer good law.*

There is no due diligence requirement in the current version of CrR 3.3. *State v. George*, 160 Wn.2d 727, 158 P.3d 1169 (2007) cited *Anderson* as an example of a case imposing a due diligence requirement, which is no longer present under the current time for trial rule.

The State discussed this issue in more depth in its 09/09/10, opening brief, pages 22-27.

B. UNDER WASHINGTON LAW, THERE IS NO DUTY TO EXTRADITE.

Since a defendant living outside Washington State is not amenable to process, the State has no duty to extradite. *State v. Hudson*, 130 Wn.2d 48, 57, 921 P.2d 538 (1996); *State v. Stewart*, 130 Wn.2d 351, 363-365, 922 P.2d 1356 (1996).

How does the "no duty to extradite" holding impact a defendant's constitutional speedy trial right? *State v. Monson*, 84 Wn. App. 703, 929 P.2d 1186 (1997) answered this question. *Monson* dealt with a 13-year gap between the filing of the Information and the defendant's extradition. The State in *Monson* knew that the defendant had moved to his father's resort in New York State and that at one point he was later detained by United States Customs agents at the Canada/New York border. The *Monson* Court held that the lengthy delay in bringing the defendant to arraignment was due in part to his unamenability to arrest. *Id.* at 711.

C. DEFENDANT'S ARGUMENT:

"To Mr. Griffith's knowledge, no Washington case has ever held that the State has no obligation under the Sixth Amendment to seek to extradite an out-of-state accused, or at least try to contact him and seek his voluntary return,

if the accused's whereabouts are known." (Respondent's Brief, 14).

STATE'S REPLY:

***Monson* is on point and answers this statement.**

Indeed, the *Monson* case seems very comparable to the present case. Both defendants were charged with sex offenses. Both cases dealt with a 13-year gap between charging and extradition. *Monson* actually presents a better argument for the defense because the United States Customs agents held him on the outstanding warrant from Spokane County. Mr. Griffith was never arrested in California specifically so that Benton County, Washington could pursue extradition.

If the *Monson* court found no constitutional violation of speedy trial, neither should this Court.

D. DEFENDANT'S ARGUMENT:

"Here, the record contains no evidence that the defendant was aware of the pending charge… ." (Respondent's Brief, 15).

STATE'S REPLY:

Ignoring the contradiction in these two statements, the record shows the defendant was fully aware of the Washington State warrant and fled from California authorities continuously.

The record is as follows:

- The defendant fled Washington State after allegedly committing the crime.
- The defendant repeatedly changed locations while in California. In 1996, he was in Riverside, California. In 2002, he was living in Truckee, California. In 2006, he was in Orange County, California. After his 2006 Orange County sentencing, the defendant went AWOL. A judge in Orange County, California noted in 2009, "Mr. Griffith

disappeared from us in '06." (CP 52).

- The defendant was well aware of the outstanding warrant. His attorney at a hearing in 2009 stated, "[H]e was never even remanded on the warrant from Washington for an extradition warrant which has typically happened to him many times in the past prior to '06." (CP 54-55).
- That Orange County, California judge noted, "[E]very time he gets books on that Washington warrant they don't extradite him." (CP 45).

E. DEFENDANT'S ARGUMENT:

"Applying the four-factor *Barker*[2] test, Mr. Griffith's constitutional right to a speedy trial was violated." (Respondent's Brief, 7).

STATE'S REPLY:

Let us examine those four factors.

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[2] *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

1. **FIRST FACTOR (Length of Delay)**:

The defendant argues, "The thirteen-year delay between the filing of the information and arraignment was extraordinary." (Respondent's Brief, 7).

Yes, the delay was long. However, it is not unprecedented. *Monson*, supra, dealt with the same delay and held that there was no speedy trial violation. Additionally, *U.S.* v. *Sandoval*, 990 F.2d 481 (C.A. 9th 1993) dealt with a 21-year delay, and found there was no constitutional speedy trial violation.

2. **SECOND FACTOR (Reason for Delay)**:

The defendant argues, "The State deliberately delayed the trial." (Respondent's Brief, 8). "Again, the prosecutor did not withdraw the warrant but brazenly asked California authorities to inform Mr. Griffith that the 'warrant was unextraditable' so that he

would 'keep away' from Washington." (Respondent's Brief, 9).

a. *The defendant contradicts himself.*

Here, the defendant argues that by informing him of the warrant, Washington prevented him from returning to the State. (Respondent's Brief, 9). Later, the defendant argues that he had no idea that there was a Washington State warrant. (Respondent's Brief, 15).

b. *The State did not delay the trial.*

What could the State have done? The defendant was never arrested to the State's knowledge on the outstanding warrant. In fact, the only involvement the defendant had with the criminal justice system in California before 2009 that the State of Washington was aware of, was an arrest in 2002 for which the defendant served a grand total of one day in jail. (CP 100, No. 11; CP 39).

c. *The delay was due to the defendant's flight.*

The defendant fled Washington, lived in a variety of places in California and went AWOL for about three years in that state. He delayed the trial by staying in California, staying away from the northern part of the state so Washington could not economically extradite him, moving frequently, and staying away from California authorities. The record shows:

- The defendant fled Washington State after allegedly committing the crime.
- The defendant repeatedly changed locations while in California. In 1996, the defendant was in Riverside, California. (CP 99, No. 3). In 2002, the defendant was living in Truckee, California. (CP 100, No. 9). In 2006, the defendant was in Orange County, California. (CP 63).
- After his 2006 Orange County sentencing, the

defendant went AWOL. A judge in Orange County, California noted in 2009, "[M]r. Griffith disappeared from us in '06." (CP 52).

These are the types of evasive acts that the *Monson* Court cited in denying that defendant's speedy trial claim.

3. **THIRD FACTOR (Defendant's Assertion of Rights)**:

The defendant argues, "Mr. Griffith was not at fault for the delay." (Respondent's Brief, 15). "Here, the record contains no evidence that the defendant was aware of the pending charge… ." (Respondent's Brief, 15).

a. ***The record shows the defendant was fully aware of the pending charge.***

Again, the defendant's argument is contradictory. Here, he argues that he was not aware of the pending charge. (Respondent's Brief, 15). Just above, he argued that the State delayed

the trial by informing him of the charge, thereby preventing his return to Washington. (Respondent's Brief, 9).

In any event, the record is as follows:

- The defendant fled Washington State after allegedly committing the crime.
- The defendant was well aware of the outstanding warrant. At a hearing in 2009, his attorney stated, "[H]e was never even remanded on the warrant from Washington for an extradition warrant which has typically happened to him many times in the past prior to '06." (CP 54-55).
- That Orange County, California judge noted, "[E]very time he gets booked on that Washington warrant they don't extradite him." (CP 45).

b. *The defendant has not only misstated the facts, he waived any speedy trial right by failing to assert it.*

The third *Barker* factor is "the defendant's assertion of his right to a speedy trial." *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). *Barker* emphasized that the failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial. If the delay is attributable to the defendant, then his failure to assert his speedy trial right is treated under standard waiver doctrine. *Barker v. Wingo*, 407 U.S. at 529; and *U.S. v. Sandoval*, 990 F.2d 481 (C.A. 9th 1993). See also *State v. Sterling*, 23 Wn. App. 171, 596 P.2d 1082 (1979) which held that a teletype from California stating the defendant wanted to make "A DEMAND FOR TRIAL ON YOUR CHARGE" was vague and not sufficient to satisfy his responsibility in asserting the right to a speedy trial. *Id.* at 177.

Here, as stated above, the defendant fled the State, was AWOL from California authorities for about three years (2006-2009), and continuously

moved. His own attorney in California stated the defendant dealt with the warrant herein "many times" prior to 2006. At no time did the defendant want to face the charges herein, and his failure to assert a right to a speedy trial should be viewed as a waiver of that right.

4. **FOURTH FACTOR (Prejudice)**:

The defendant asserts, "The defendant was presumptively prejudiced by the delay." (Respondent's Brief, 16). "[T]he principal prejudice that resulted from the 13-year delay is impairment to his defense." (not pretrial incarceration or anxiety of the accused). (Respondent's Brief, 17).

State's Reply: The defendant and the trial court made the mistake of assuming that if a delay crosses a threshold, the inquiry is over: prejudice is presumed. However, this overlooks three points.

First, even if prejudice is presumed, it is only part of the mix of relevant facts. *Doggett v. U.S.,* 505 U.S. 647. Second, the presumption is not rebuttable. In this case, the defendant has not suggested any way his defense could be prejudiced. Third, speculation or possibility is insufficient to show prejudice, *State v. Wieman,* 19 Wn. App. 641, 645, 577 P.2d 154 (1978); *State v. Sterling*, 23 Wn. App. at 177-178. Here, the defendant has not suggested any way, either before the trial court or in this Court, in which his defense has been impaired.

The trial court concluded that because there was a delay, the defendant was prejudiced. That conclusion is unwarranted and is not consistent with case law.

The State has no duty to extradite a defendant. Here, the defendant kept himself away from Washington State after learning of the warrant. The defendant has himself to blame for the delay. The defendant has suffered no

prejudice and there is no reason to dismiss the case on this basis.

II. STATE'S REPLY TO DEFENDANT'S ARGUMENT REGARDING THE INTERSTATE DETAINER ACT:

The State relies on its initial brief to answer the points raised by the defendant concerning the Interstate Detainer Act.

CONCLUSION

The trial court's dismissal should be reversed.

RESPECTFULLY SUBMITTED this 15th day of December 2010.

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ORIGINAL

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, vs. WALLACE JOSEPH GRIFFITH, Respondent.	NO. 288927 DECLARATION OF SERVICE

I, PAMELA BRADSHAW, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as a Legal Assistant in the office of the Benton County Prosecuting Attorney, served in the manner indicated below, a true and correct copy of the State's *Reply Brief of Appellant* and this *Declaration of Service*, on December 16, 2010.

David L. Donnan Maureen M. Cyr WA Appellate Project 1511 3rd Avenue Ste 701 Seattle, WA 98101-3635	☒ U.S. Regular Mail, Postage Prepaid ☐ Legal Messenger ☐ Facsimile
Wallace Joseph Griffith 2519 Houston Court Richland, WA 99354	☒ U.S. Regular Mail, Postage Prepaid ☐ Legal Messenger ☐ Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Kennewick, Washington, on December 16, 2010.

Pamela Bradshaw

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