

**FILED**

APRIL 27, 2015

Court of Appeals  
Division III  
State of Washington

NO. 329283

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

JOSHUA JAMES CLARK

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR STEVENS COUNTY  
The Honorable John Hotchkiss

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APPELLANT'S OPENING BRIEF

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## TABLE OF CONTENTS

I. <u>ASSIGNMENTS OF ERROR</u> .....	1
II. <u>ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u> .....	1
III. <u>STATEMENT OF THE CASE</u> .....	1
VI. <u>ARGUMENT</u> .....	3
1. THE TRIAL COURT VIOLATED MR. CLARK’S RIGHT TO A SPEEDY TRIAL WHEN IT FAILED TO DISMISS THE CHARGE AGAINST HIM BECAUSE THERE WAS NOT A COURT AVAILALE TO HEAR HIS CASE .....	3
2. THE TRIAL JUDGE WAS REQUIRED BY STATUTE TO DETERMINE WHETHER MR. CLARK HAD THE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS BEFORE HE IMPOSED THEM.....	5
V. <u>CONCLUSION</u> .....	7

## **TABLE OF AUTHORITIES**

### United States Constitution

<u>U.S. Const. amend VI</u> .....	3
-----------------------------------	---

### Washington State Constitution

<u>Wash. Const. art. 1 § 22</u> .....	3
---------------------------------------	---

### Washington State Supreme Court Decisions

<u>Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)</u> .....	3
<u>State v. Blazina, --- Wn.2d---, 344 P.3d 680 (2015)</u> .....	5, 6, 7
<u>State v. Campbell, 103 Wn.2d 1, 15, 691 P.2d 929 (1984)</u> .....	4
<u>State v. Cummings, 87 Wn.2d 612, 615, 555 P.2d 835 (1976)</u> .....	3
<u>State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004)</u> .....	3
<u>State v. Flinn, 154 Wn.2d 193, 199, 110 P.3d 748 (2005)</u> .....	3, 4
<u>State v. Kenyon, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009)</u> .....	3, 4
<u>State v. Mack, 89 Wn.2d 788, 791-92, 576 P.2d 44 (1978)</u> .....	3, 4
<u>State v. Russell, 171 Wn.2d 118, 122, 249 P.3d 604 (2011)</u> .....	5

### Washington State Court of Appeals Decisions

<u>State v. Carlyle, 84 Wn.App. 33, 35-36, 925 P.2d 635 (1996)</u> .....	3
<u>State v. Heredia-Juarez, 119 Wn.App 150, 153-55, 79 P.3d 987 (2003)</u> ....	4
<u>State v. Williams, 104 Wn.App. 516, 523, 17 P.3d 648 (2001)</u> .....	4

Revised Code of Washington

RCW 10.01.160(3).....6

Rules of Appellate Procedure

RAP 2.5(a) .....5

Criminal Court Rules

CrR 3.3.....3

CrR 3.3(d)(3) .....5

CrR 3.3(e)(8).....4

CrR 3.3(f).....4

CrR 3.3(h).....5

I. ASSIGNMENTS OF ERROR

1. The trial court violated Joshua James Clark's (Mr. Clark) right to a speedy trial.

2. The trial judge erred when he imposed legal financial obligations.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court violated Mr. Clark's right to a speedy trial when it failed to dismiss the charge because there was not a court available to hear his case?

2. Whether the trial judge erred when he imposed legal financial obligations against Mr. Clark without first considering his ability to pay?

III. STATEMENT OF THE CASE

An officer saw Mr. Clark and another man working on a 1994 Honda Civic in Mr. Clark's backyard. 11/6/14 RP 140. The car was parked up against the house and backed in towards the porch out of sight. 11/6/14 RP 143. The officer took a picture of the car, copied the car's license plate number and Vehicle Identification Number, and ran the information through a police database. 11/6/14 RP 143. The database revealed the vehicle had been reported stolen. 11/6/14 RP 144. The officer arrested Mr. Clark and notified detectives. 11/6/14 RP 143-144.

The state charged Mr. Clark with possessing a stolen vehicle. CP 1-2. He appeared for an arraignment hearing on August 4<sup>th</sup> and pleaded not guilty. CP 14; CP 15-16. The judge set trial for October 9<sup>th</sup>. 8/4/14 RP 5. Mr. Clark refused to sign the order setting trial. 8/4/ 14 RP 5; CP 24.

At a readiness hearing on October 6<sup>th</sup>, Mr. Clark's attorney moved the court for a continuance even though Mr. Clark did not agree. The judge alleged that court was not

available either and granted the continuance. The judge set trial for October 23<sup>rd</sup>.

10/6/14 RP 10.

On October 20<sup>th</sup>, the prosecutor moved the court for a continuance. He explained the state had elected to take another case on the 23<sup>rd</sup> because that defendant's speedy trial date was about to expire. 10/20/14 RP 15. The judge granted the continuance. Mr. Clark's attorney told the court that Mr. Clark wanted to keep his trial date. Again, Mr. Clark refused to sign the order setting trial. CP 37.

The court reconvened on October 27<sup>th</sup> and the judge set Mr. Clark's trial for November 6<sup>th</sup>. Mr. Clark did not address the court through his attorney. This time, he addressed the court directly. He complained that the court violated his right to a speedy trial and wanted to know why the court continued to delay his trial. 10/27/14 RP 19-21.

The judge explained that there were more defendants going trial than there were trial dates. So, to accommodate scheduling, the court had to stack trials. The judge went on to explain that the case that goes to trial first is the one that has the closest speedy trial date. 10/27/14 RP 20.

Mr. Clark finally went to trial on November 6<sup>th</sup>. A jury found him guilty of possessing a stolen vehicle. 11/6/14 RP 189; CP 117. The judge sentenced Mr. Clark to 38 months to run consecutively with a sentence he incurred from a trial just weeks before where he was convicted of attempting to elude a pursuing police vehicle and possessing a controlled substance. CP 120-129. Though, the facts and circumstances of that trial were not mentioned at trial here.

The judge also imposed \$1,846.62 in legal financial obligations, but Mr. Clark did not object. CP 120-129. Because Mr. Clark had legal financial obligations from the other trial, the prosecutor recommended for him to pay \$25.00 a month 11/10/14 RP 40.

The judge advised Mr. Clark of his rights to appeal the conviction. 11/10/14 RP 40. Mr. Clark filed a notice to appeal and this appeal followed. CP 134-144; CP 148-149; CP 150-151.

#### IV. ARGUMENT

1. THE TRIAL COURT VIOLATED MR. CLARK'S RIGHT TO SPEEDY TRIAL WHEN IT FAILED TO DISMISS THE CHARGE AGAINST HIM BECAUSE THERE WAS NOT A COURT AVAILABLE TO HEAR HIS CASE.

##### *Standard of review*

This court will review de novo whether the speedy trial rule was violated in this case. State v. Carlyle, 84 Wn.App. 33, 35–36, 925 P.2d 635 (1996). [T]he decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. However, this court must disturb the trial court's decision if there is a clear showing the decision is manifestly unreasonable, or exercised on untenable grounds, or for some untenable reasons. State v. Flinn, 154 Wn.2d 193, 199, 110 P.3d 748 (2005) (quoting State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004) and State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

##### *Analysis*

Superior court criminal rule (CrR) 3.3 governs speedy trial in our state. The rule's underlying purpose is to protect a defendant's constitutional right to speedy trial. U.S. Const. amend. VI; Const. art. I, sec. 22 (amend.10); State v. Kenyon, 167 Wn.2d 130, 136, 216 P.3d 1024 (2009) citing State v. Mack, 89 Wn.2d 788, 791–92, 576 P.2d

44 (1978); State v. Cummings, 87 Wn.2d 612, 615, 555 P.2d 835 (1976). It provides time limits for arraignment and trial to ensure criminal defendants are brought to trial in a timely manner. However, the rule provides courts some flexibility when computing speedy trial dates. Courts will exclude from the time for trial continuances for unavoidable or unforeseen circumstances. CrR 3.3(e)(8),(f); State v. Kenyon, 167 Wn.2d 137.

A defendant can be prejudiced by delay, no matter what the source. State v. Mack, 89 Wash.2d 793, 576 P.2d 44 (1978). Such delays are contrary to the public's interest in resolving cases promptly, and excusing such delays removes the inducement for the State to remedy congestion. Id.

Our Supreme Court has reaffirmed for courts essentially what constitutes valid reasons to delay trial. Allowing counsel time to prepare for trial is a valid basis for continuance. State v. Flinn, 154 Wn.2d 193, citing State v. Campbell, 103 Wn.2d 1, 15, 691 P.2d 929 (1984); State v. Williams, 104 Wn.App. 516, 523, 17 P.3d 648 (2001). Scheduling conflicts may be considered in granting continuances. State v. Flinn, 154 Wn.2d at 193 See State v. Heredia–Juarez, 119 Wn.App. 150, 153–55, 79 P.3d 987 (2003) (valid continuance granted to accommodate prosecutor's reasonably scheduled vacation). Although trial preparation and scheduling conflicts may be valid reasons to continue trial, court congestion is not. State v. Kenyon, 167 Wn.2d 137 citing State v. Mack, 89 Wn.2d at 788. "Courtroom unavailability is synonymous with court congestion." Id.

Here, the court delayed Mr. Clark's trial three times. CP 24; CP 37; CP 53. He essentially objected to each continuance by either refusing to sign the orders setting trial

or by voicing his concerns through his attorney. At least once, Mr. Clark addressed the court directly to ask the judge why he allowed the prosecutor to take another case over his. 10/27/14 RP 19-21. The judge responded that there were more defendants going trial than there were trial dates. So, to accommodate scheduling, the court had to stack trials. 10/27/14 RP 20.

Given the primary reason for the continuance was court congestion, the court was required to make a record of how many courtrooms were actually in use at the time of the continuance and whether there was a visiting judge available to hear the case in an unoccupied courtroom. Id. at 137. That did not happen here. Consequently, the judge should have dismissed the charge against Mr. Clark with prejudice because there was not a court available to hear Mr. Clark's case. CrR 3.3(d)(3), (h).

2. THE TRIAL JUDGE WAS REQUIRED BY STATUTE TO DETERMINE WHETHER MR. CLARK HAD THE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS BEFORE HE IMPOSED THEM.

*Standard of review*

Rule of Appellate Procedure (RAP) 2.5(a) gives this court discretion to review certain issues not raised in the trial court. RAP 2.5(a); State v. Russell, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). This court must make its own decision whether to accept discretionary review, particularly in light of the fact Mr. Clark neither raised the issue about legal financial obligations nor did he object to them at trial. However, national and local cries to reform broken legal financial obligation systems demand that this court exercise its discretion under RAP 2.5(a) and reach the merits of this case. State v. Blazina, ---Wn.2d --- 344 P.3d 683 (2015).

### *Analysis*

RCW 10.01.160(3) prohibits a court from imposing discretionary costs against a defendant unless the defendant is or will be able to pay them. To determine whether a defendant is or will be able to pay costs, the statute requires the court to consider the defendant's financial resources and whether the costs will pose a burden. Recently, our Supreme Court reminded courts of their duty under the statute in State v. Blazina, --- Wn.2d --- 344 P.3d 680 (2015).

In State v. Blazina, the Court reinforced the trial court's obligation to do more than just sign a judgment and sentence with boilerplate language that states it inquired whether the defendant would be able to pay. The court must actually inquire into the defendant's current and future ability to pay and make a record to reflect that it did so. Within this inquiry, the court must also consider important factors, such as incarceration and a defendant's other debts, including restitution. State v. Blazina, ---Wn.2d --- 344 P.3d 685 (2015).

Here, the court imposed \$1846.62 worth of legal financial obligations against Mr. Clark. The prosecutor considered Mr. Clark's legal financial obligations from the other trial and recommended Mr. Clark pay \$25.00 a month to satisfy the debt. The judge accepted the prosecutor's recommendation, but failed to examine, on the record, Mr. Clark's ability to pay these fees. Given the record shows the judge did not adhere to RCW 10.01.160(3), Mr. Clark asks this court to remand this case to the trial court for a new sentencing hearing. Id.

## V. CONCLUSION

If this court finds the trial court violated Mr. Clark's speedy trial rights, Mr. Clark asks this court to remand for dismissal. If this court affirms the conviction, Mr. Clark respectfully asks this court to remand for a new sentencing hearing under State v. Blazina.

Submitted this 27<sup>th</sup> day of April, 2015.

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## DECLARATION OF SERVICE

April 27, 2015

Court of Appeals Case No. 329283

Case Name: *State of Washington v. Joshua James Clark*

I declare under penalty and perjury of the laws of Washington State that on **Monday, April 27, 2015**, I filed an appellant's opening brief with Division Three Court of Appeals and served copies to:

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<sup>1</sup> Mr. Clem agreed to accept service by email.