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STATE OF WASHINGTON

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

NO. _____

COA No. 55335-6-I

King County Superior Court No. 03-1-04820-4 SEA
King County District Court No. C0434184

STATE OF WASHINGTON
Respondent,

v.

SARUN CHHOM,
Petitioner.

PETITION FOR REVIEW

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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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I. IDENTITY OF MOVING PARTY

Sarun Chhom, petitioner in the Court of Appeals, respondent in the King County Superior Court, and defendant in the King County District Court petitions for review.

II. DECISION BELOW

Mr. Chhom seeks review of the Court of Appeals decision reinstating the misdemeanor charges that were dismissed by the King County District Court for violation of his right to a speedy trial under CrRLJ 3.3. The published decision was filed on January 30, 2006 in State of Washington v. Chhom, COA No.55335-6-I. Appendix 1.

III. ISSUES PRESENTED FOR REVIEW

While this case was pending in King County District Court, arrest warrants were issued for Mr. Chhom in this case and by Judge Jacke of the King County District Court (East Division) for the City of Bellevue for an unserved sentence. When Mr. Chhom was arrested, the King County Jail booked him, held him for two days, and then sent him to Yakima County to serve the Bellevue sentence. The City of Bellevue is one of many King County cities that have contracted with Yakima County to jail some of its prisoners. But for this financial arrangement, Mr. Chhom would have been

jailed in King County. Under these circumstances, was Mr. Chhom incarcerated "outside the county" for purposes of the speedy trial tolling provision in former CrRLJ 3.3(g)(5)? For purposes of this rule, was he constructively held inside the county?

Does a fair and consistent application of the speedy trial rule require the time to be tolled in King County District Court where the accused is being held by a King County municipality in a jail outside the county regardless of whether there is formal mechanism for transporting prisoners? Does not the prosecution have the option of arranging for accused's transportation to court or dismissing without prejudice to refile which would not reset the time for trial and unnecessarily delay prosecution?

Should the Court of Appeals have considered the fact that Mr. Chhom was not brought to court, and appointed counsel, within one business day of being detained in jail in violation of CrRLJ 3.2.1(d)(1) where Mr. Chhom stated this fact several times in his opening brief –in the issue statement, the statement of facts, the district court's ruling and the argument– but did not include a citation to the rule until his reply brief? Because this argument does not present a separate and distinct issue, was implicitly and clearly raised in the opening brief, was potentially dispositive and caused no

prejudice to the State or inconvenience to the court, did the Court of Appeals abuse its discretion by failing to consider that argument in the resolution of Mr. Chhom's appeal? Should the Court of Appeals have affirmed the King County District Court on grounds fully supported by the record and the law?

IV. STATEMENT OF THE CASE

Mr. Chhom was charged in King County District Court with DWLS2nd. Mr. Chhom appeared for arraignment on February 13, 2003. He subsequently failed to appear at the pretrial hearing on March 14, 2003 and the district issued a warrant for his arrest. Ex. 2.

About this same time, Mr. Chhom appeared before Judge Jacke in King County District Court (East) on a DWLS2nd charge brought by the City of Bellevue. Ex. 1; Appendix 3 to Brief of Appellant. Judge Jacke sentenced Mr. Chhom and, when he did not report to jail, she issued a warrant for his arrest. Ex. 1.

Mr. Chhom was arrested on April 3, 2003 and booked into the King County Jail. Ex. 1; RP 2-3. Even though he was in the custody of King County for ***two days***, the jail served the Bellevue warrant and transported Mr. Chhom to Yakima County to serve that sentence. RP 3. The City of Bellevue, along with many other King County municipalities, contracts with

the Yakima County Department of Corrections to house some of its prisoners. RP 3.

On April 16, 2003, the attorney appointed to represent Mr. Chhom filed a letter with the district court. CP 60; Ex. 2. The letter informed the court of Mr. Chhom's location and requested a speedy resolution of this case. A copy of the letter was filed with the King County Prosecuting Attorney's Office that same day. Ex. 2 (docket entry 4/16/03). Neither the court nor the prosecutor took any action on Mr. Chhom's request.

On June 19, 2003, Mr. Chhom was transported back to the King County Jail and booked on the warrant issued in this case. RP 3. He was released to appear the in district court, which he did. RP 3. Mr. Chhom then moved to dismiss for violation of his right to a speedy trial. The motion was granted. RP 1-10.

The district court held that speedy trial was not tolled when Mr. Chhom was incarcerated in Yakima. The district court recognized the problems created now that some municipalities jail their prisoners in other counties.

> I think that under this rule, the new rule or the old rule that if the defendant is held uh through the jurisdiction of a court in this county, whether it's municipal, the district court or a superior court that the court and the prosecutor have to be

> responsible for the running of the statute of the ST trial period.
>
> I don't think its material that Bellevue sent him to Yakima. He's still in custody as I read the rule. I don't think that it's uh -if that were the case that he's out of county just because of his geographical location that means that any jurisdiction could send their defendants out of county for the declared trial and the statute was ever run.
>
> And I am convinced certainly that is not intended by the Supreme Court. Uh I say we made a mistake here. And the law it should I am certain Mr. Chhom as soon as he was booked on the Bellevue warrant. There's no question about that. Um and in fact in the case ***Bellevue would not have been able to send him to Yakima because of the local hold by another court.*** But the fact of the matter is the warrant was not and I think he has to be considered to have been held in this county uh for the purposes of the Speedy Trial Rule so I'm going to grant your motion, Mr. Johnson and dismiss the case.

RP 9-10. Thus, the district court found that the Washington Supreme Court's decision in City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003), was helpful, but not dispositive. CP 33-49.

The State appealed to the King County Superior Court which reversed. The superior court's two sentence ruling reads: The trial court abused its discretion when it dismissed the State's case. The rule CrRLJ 3.3(e)(6), explicitly states that the Defendant's time in Yakima was an excluded period, tolling speedy trial. CP 78.

The Court of Appeals granted discretionary review along with the companion case, State of Washington v. Steever, COA No. 54910-3-I. The Court of Appeals reversed the district courts and remanded for reinstatement of the charges. Appendix 1.

V. ARGUMENT

A. Review Is Warranted As This Case Presents An Issue Of Substantial Public Interest

This case qualifies for review under RAP 13.4(b)(4). This court has historically treated the interpretation of the speedy trial rules as matters of continuing and substantial public interest because the interests at stake are essential to the fair and expeditious operation of the criminal justice system. See e.g., City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003). The government's and accused's interests are detrimentally affected by uncertainty and delay in the application of speedy trial rule. The rule protects both the individual's right to the speedy resolution of criminal charges and the government's interest in prosecuting cases before evidence becomes stale.

Many King County municipalities have contracted with Yakima County to house some of its prisoners. The King County Jail can no longer accommodate the growing number of municipal prisoners. Thus, it is inevitable that more municipal prisoners will be detained in jails other than

the King County Jail. Review should be granted to address this question of continuing and substantial interest that is crucial to the smooth operation of the courts of limited jurisdiction throughout King County.

This court's decision in City of Seattle v. Guay, 150 Wn.2d 288, 76 P.3d 231 (2003) did not answer the question posed here. Neither the Court of Appeals nor district court found that case to be controlling, only instructive.

This case is related to two others in which petitions for review are pending: the companion case, State of Washington v. Steever. COA No. 54910-3-I and State of Washington v. George, COA No. 54805-1-I, 126 P.3d 93, 2006 Wash. App. LEXIS 39 (filed January 17, 2006), petition for review filed on February 16, 2006.

B. Speedy Trial Did Not Toll Because Mr. Chhom Was Constructively Held *Inside The County*

By shipping their prisoners to serve sentences in Yakima County, King County's municipalities have created a significant speedy trial question: how can the rule be fairly applied where cities are jailing some, but not all, of its prisoners outside the county? The only rational answer is that those persons are deemed to be held inside the county. This conclusion is supported by the language, structure and purpose of the rule.

Former CrRLJ 3.3(g)(5) authorized the tolling of the speedy trial period when the accused was jailed "outside the county." Appendix 2.[1] In this case, the district court correctly found that Mr. Chhom was in Yakima serving a sentence imposed by a political subdivision of King County, the City of Bellevue. CP 179-182.[2] But for the fact that Bellevue decided to house some of its prisoners in Yakima County, Mr. Chhom would have been jailed inside King County. CP 179-82. Thus, for purposes of the speedy trial rule, Mr. Chhom was constructively held within the county.

A rational reading of the speedy trial rule supports the district court's decision. The rules of statutory construction apply to court rules. State v. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993).

> General rules of statutory construction require that we interpret the statute in a manner that best advances the perceived legislative purpose. Unlikely, absurd or strained results are to be avoided. The spirit and intent of the statute should prevail over the literal letter of the law.

Morris v. Blaker, 118 Wn.2d 133, 142-43, 821 P.2d 482 (1992) (internal

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1 While the rule was broadly amended, effective September 1, 2003, the current tolling provision contains the same language as the former rule. CrRLJ 3.3(e)(6). Appendix 3.

2 The State did not assign error to any of the district court judge's specific factual findings, only to the conclusion that speedy trial had not been tolled. As such, the district court's findings are verities on appeal. State v. Stenson, 132 Wn.2d 668, 697, 940 P.2d 1239 (1997).

citations omitted).[3]

When read as a whole, the tolling provision applies only where the accused is outside the control of the charging county or its political subdivisions. Each part of the rule must be read in relation to the whole and harmonized. State v. Thorne, 129 Wn.2d 736, 762, 921 P.2d 514 (1996). The time for trial tolls in three circumstances. When the accused is 1) detained "outside the [charging] county" or 2) in federal lockup or 3) is subject to conditions of release imposed by a foreign jurisdiction's court. Former CrRLJ 3.3(g)(5), Appendix 1. The phrase "outside the county" must be read consistently with the remainder of the sentence. That language identifies circumstances where the accused is under the control of a foreign jurisdiction. Thus, the phrase "outside the county" includes those situations where the accused is detained by another county, not simply in another

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3 The goal of the speedy trial rule is to expedite criminal prosecutions.

> Delay in bringing a matter to trial can result in substantial prejudice to defendants, including lost opportunities to serve at least partially concurrent sentences, potential increased duration of imprisonment under the sentence the defendant is presently serving, and diminished ability to prepare for trial, including inability to consult with counsel and problems of stale evidence.

State v. Anderson, 121 Wn.2d 852, 862, 855 P.2d 671 (1993).

county.[4]

This distinction is illustrated by the consolidated cases in City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003). In the Akerman case, the time for trial was tolled for the King County DUI because Mr. Akerman was in the Clark County jail serving a sentence imposed by a Clark County district court. For this reason, the court held that the State had no obligation to bring Mr. Akerman to trial in King County. Guay, 150 Wn.2d at 303-04.

In contrast, Mr. Guay was imprisoned in a Washington State Department of Corrections facility located in Pierce County. A statute requires DOC to transport its prisoners to local jails for court proceedings. See Guay, 150 Wn.2d at 303, citing RCW 72.68.020(1)(b). Thus, the court ruled against Mr. Guay not because he was "detained . . . outside the county." Rather, the court ruled that Mr. Guay's right to a speedy was not violated because he did not make his location known and the City of Seattle did not have an obligation "when serving criminal process, to search the state's prisons and county jails to locate a defendant when he has left no forwarding

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4 The scope of the tolling provision is expressed in the title added to the current version of the rule: (e) Excluded Periods . . . . (6) Defendant Subject to Foreign or Federal Custody or Conditions. Appendix 2.

address." Guay, 150 Wn.2d at 303.

Here, the State knew that Mr. Chhom was in Yakima and that he was not serving a sentence imposed by another county. The State did not have to search for Mr. Chhom. Even when the district court and prosecutor were promptly notified of Mr. Chhom's location and status, nothing was done. The prosecutor refused to utilize the available options: to make arrangements for Mr. Chhom to appear in court or to dismiss the case without prejudice and refile at a later time. The State failed to exercise due diligence to bring Mr. Chhom before the court for trial ***or*** take other steps to preserve the case. The district court properly dismissed the case because speedy trial could not properly be tolled by Mr. Chhom's incarceration in Yakima.

The district court's position is consistent with the interplay between the speedy trial rule and the sentencing law. The speedy trial rule assumes that prisoners serving sentences are available for prosecution in another case. CrRLJ 3.3(e)(2). The rule further assumes that persons held within the charging county are similarly available. Former CrRLJ 3.3(g)(5); current CrRLJ 3.3(e)(6). With regard to sentencing, the law gives the judge imposing the second or subsequent sentence the authority to decide whether the punishments should run concurrently or consecutively. RCW 9.92.080. The

Court of Appeal's decision here effectively eliminates the possibility of concurrent sentences by creating a situation in which the first sentence is served before the accused even has an opportunity to resolve pending matters. This practice creates undue hardship for persons attempting to resolve legal matters, all arising in King County, in an expeditious manner.

In addition, the speedy rule has existed alongside the laws which authorize the county's cities to run municipal courts and jails. RCW 35.20, 3.46 (Municipal Department of District Courts), 3.58 (Municipal Courts); and RCW 70.48.190. The State's counties and municipalities have long coordinated the transfer of prisoners between local jails. See RCW 72.76.010 (Washington Intrastate Corrections Compact).

Finally, the language of the tolling provision acknowledges the well established law that counties and their political subdivisions are the same jurisdiction for purposes of criminal prosecutions. State v. Mason, 34 Wn.App. 514, 518, 663 P.2d 685 (1983).

But the rule clearly did not anticipate the recent practice of municipalities contracting with far away counties to house its prisoners.

The Court of Appeal's decision permits the time for trial to be tolled whenever the accused is incarcerated outside the county, regardless of the

reason. Enforcement of the rule will then turn on the vagaries of a municipality's jailing practices. At worst, this interpretation of the tolling provision suspends operation of the speedy trial rule and, at best, invites arbitrary enforcement.

The Court of Appeals's decision did not turn on a fair and reasonable interpretation of the rule. Rather, the court focused on the practical problems of transporting prisoners between municipal jails within and without the county. Appendix 1, at 4. The court also adopted, without any citation to authority, a novel concept of "jurisdiction." The court seemed to believe that King County municipalities are separate jurisdictions from each other and the county for purposes of criminal prosecution. Appendix 1, at 4-5.

A simple example illustrates the fatal flaw in the court's decision. If Mr Chhom had been detained in the Renton City Jail on a sentence imposed by the City of Renton (or some other municipality that contracts to use that facility), Mr. Chhom would have been jailed inside the county. The speedy trial period would not have tolled. The State conceded this below. Respondent's Brief at 22.

To avoid this anamoly, the Court of Appeals resorted to its recent decision in State v. George, COA No. 54805-1-I, 126 P.3d 93, 2006 Wash.

App. LEXIS 39 (filed January 17, 2006). Appendix 1 at 4. There the court held that a Renton Municipal Court properly issued bench warrants –and reset the speedy trial clock– when Mr. George was "in custody elsewhere on other municipal court charges (first in the Kent jail, then in the Regional Justice Center)." 2006 Wash. App. LEXIS 39 at 5. The court rejected George's argument that the failure to appear by a prisoner held within the county cannot restart the time for trial where the prosecution made no effort to secure the prisoner's appearance in court. In its decision in this case and George, the Court of Appeals focused solely on the problems of transportation and ignored the structure and purpose of the rule.

Also, the court's assertion that King County and its municipalities are different "jurisdictions" is unsupported by citation to authority. To the contrary, counties and their political subdivisions –municipalities– are a single sovereignty for purposes of criminal prosecutions. State v. Mason, 34 Wn.App. 514, 517-18, 663 P.2d 137 (1983) (to determine whether an equal protection violation arises when a municipal code and state law punish differently the same conduct, the State of Washington and the City of Seattle are the same entity).

> Political subdivisions of States –counties, cities, or whatever– never were and never have been considered as sovereign

> entities. Rather they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist the carrying out of state governmental functions.

Waller v. Florida, 397 U.S. 387, 392, 90 S.Ct. 1184, 25 L.Ed.2d 435 (1970) (State, counties, and municipalities are one sovereign for purposes of double jeopardy); Accord State v. Roybal, 82 Wn.2d 577, 579-80, 512 P.2d 718 (1973).

This court's decision in Guay does not support the Court of Appeals's novel theories. Guay did not announce a blanket rule that speedy trial was tolled when an accused was detained "outside the county" for any reason. Guay did not hold that the county and its municipalities are separate jurisdictional entities for purposes of the speedy trial rule. The supreme court was not faced with the situation here where the accused was detained in the county and would have remained there, but for the fiscal decision of the cities to jail some of its prisoners in Yakima county.

Transporting prisoners from one jail to another has always been a practical concern to the litigants in the criminal justice system. Mr. Chhom asked to be brought to court so that he could address this case. For the most part, both the accused and the State generally want to resolve all pending cases while the accused is in-custody. Both parties have an interest in

making arrangements for the accused to appear in court. This is also the intent of the time for trial rule. See CrRLJ 3.3(e)(2). Nonetheless, the rule provides for other measures when the accused's appearance cannot be obtained, such as excluding the time between dismissal and refiling of a charge. See former CrRLJ 3.3(g)(4) and current CrRLJ 3.3(e)(4).

The district court's decision below is based on the inherent unfairness of tolling speedy trial for some misdemeanor prisoners and not others solely based on where a King County municipality chooses to imprison them. There is no rational basis to distinguish the speedy trial rights of an accused person serving a Renton sentence in the Renton jail and someone serving a Bellevue sentence in the Yakima jail. Equal protection will not tolerate such irrational, disparate treatment of similarly situated persons. Compare State v. Anderson, 132 Wn.2d 203, 209, 937 P.2d 581 (1997) (court found "no practical, realistic or substantive difference" between pretrial detention for want of bail and detention pending an appeal of a conviction or sentence) with State v. Berry, 31 Wn.App. 408, 412, 641 P.2d 1213 (1982) (different speedy trial rule when complaint is first filed in district court is justified because the preliminary hearing requires some preparation time and provides incidental benefits to the accused).

C. The Court Of Appeals Should Not Have Ignored The Fact That Mr. Chhom Was Not Brought To Court When Detained In The King County Jail In Violation Of CrRLJ 3.2.1(d)(1).

The Court of Appeals refused to consider the fact that speedy trial would not have been tolled in this case if the State had not failed to bring Mr. Chhom to court when he was detained ***for two days*** in the King County Jail, before being shipped off to Yakima, in violation of CrRLJ 3.2.1(d)(1). This fact was relied upon by district court5 and was noted in Mr. Chhom's pleadings and argument in district court, and in his opening brief (the issue statement, statement of facts and argument). Nonetheless, because a citation to the rule was not included until his reply brief, the Court of Appeals refused to consider this fact in deciding Mr. Chhom's case. Rather, the court accused Mr. Chhom of raising an entirely new issue in his reply brief not supported by any assignment of error or citation to authority. Appendix 1 at 4.

The Court of Appeals is wrong. The fact that Mr. Chhom was in the King County's custody for ***two days*** before being sent to Yakima was cited in support of Mr. Chhom's argument that speedy trial did not toll because he

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5 The district court explained: I say we made a mistake here. And the law it should I am certain Mr. Chhom as soon as he was booked on the Bellevue warrant. There's no question about that. Um and in fact in the case ***Bellevue would not have been able to send him to Yakima because of the local hold by another court.*** VRP 9-10.

was in the county's control. There was no error to assign. The district court relied upon this fact to support its decision to dismiss the case6 and the superior court's ruling turned solely on the language in the rule. The citation to the court rule in the reply brief simply provide additional authority in support of Mr. Chhom's argument. It does not transform this fact into a new, separate issue.

In any event, this single citation to authority did not prejudice the State or inconvenience the court, and the fact that Mr. Chhom was not brought into court before being shipped off to Yakima is potentially dispositive. Clearly, if the rule had been followed, Mr. Chhom would have appeared in district court on this case and the matter resolved. Thus, the Court Of Appeals should have considered this fact in the disposition of the case. See State v. Yokley, 91 Wn.App. 773, 778, 959 P.2d 694 (1998) (where the State's brief in its own appeal contained no assignment of errors, lists issues that were not argued in the brief, and argues issues not listed in the issues section, the court decided the issues implicitly raised and potentially dispositive to provide guidance to the bench and bar); State v. Bonisisio, 92

6This court reviews the district court in the same manner as the superior court pursuant to RALJ 9.1. State v. Hodgson, 60 Wn.App. 12, 15, 802 P.2d 129 (1990).

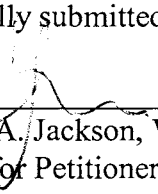
Wn.App. 783, 964 P.2d 1222 (1998) (the RAPs are interpreted liberally to promote justice and facilitate a decision on the merits, and court has authority to consider an issue not raised by either party if necessary to resolve the case).

Here, the district court's application of the speedy trial rule to this case was proper and supported by the law and the facts. The court construed the rule to avoid an absurd or strained result. Morris v. Blaker, 118 Wn.2d 133, 142-43, 821 P.2d 482 (1992). Under the facts of this case, it cannot be said that no reasonable jurist would not have ruled as the district court did here. State v. Smith, 118 Wn.App. 288, 294, 75 P.3d 986 (2003). Also, this court may affirm the trial court for any reason supported by the record. State v. Bobic, 140 Wn.2d 250, 258, 996 P.2d 610 (2000). The district court's decision to dismiss should have been affirmed for the reasons stated above.

IV. CONCLUSION

For the foregoing reasons, this court accept review of this case to provide guidance to the bench and bar with regard to a fair and consistent application of the speedy trial rule.

Respectfully submitted this 27th day of February, 2006



Christine A. Jackson, WSBA #17192
Attorney for Petitioner

APPENDIX 1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON Petitioner, v. DENNIS DEAN STEEVER, Respondent.	)	No. 54910-3-I
STATE OF WASHINGTON, Respondent, v. SARUN CHHOM, Petitioner.	)	No. 55335-6-I PUBLISHED OPINION FILED: January 30, 2006

ELLINGTON, J. These joined cases present a single issue: Is time for trial tolled on a pending King County district court charge while the defendant is incarcerated in the Yakima County jail serving a sentence imposed by a King County municipal court? We hold it is, and reinstate charges against Sarun Chhom and Daniel Steever.

BACKGROUND

Steever and Chhom were convicted of misdemeanor offenses by the municipal courts of Burien and Bellevue, respectively. In early 2003, both men were transported to Yakima County jail to serve their sentences pursuant to contracts each municipality

has with Yakima County. At the time of transport, both defendants had pending misdemeanor charges in King County district courts.[1]

Separate King County district courts dismissed those charges on speedy trial grounds, finding that time for trial did not toll while defendants were incarcerated in Yakima. The State appealed, arguing that periods where defendants are detained outside the county are excluded from the time for trial calculation under former CrRLJ 3.3(g)(5) (1995).[2] Interpreting this rule, one superior court affirmed (Steever) and the other reversed (Chhom). We granted discretionary review.

ANALYSIS

Standard of Review. Review on appeal, here and in the superior court, is governed by the standards contained in RALJ 9.1.[3] A trial court's order on a motion to dismiss for speedy trial purposes is reviewed for manifest abuse of discretion.[4] A court abuses its discretion where it applies the wrong legal principle, or where the decision is manifestly unreasonable, or is based on untenable grounds or reasons.[5]

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[1] Steever was charged in King County District Court (South Division) with driving while under the influence and hit and run unattended with property damage. Steever's cases were joined and transferred to King County District Court (West Division). Chhom was charged in King County District Court (Shoreline) with driving while license suspended (second degree).

[2] CrRLJ 3.3 was amended September 1, 2003. Subsection (g)(5) was renumbered (e)(6); no substantive changes were made. Steever and Chhom's cases occurred prior to the amendment, hence the former version of the rule is referenced in this opinion.

[3] State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988). "The superior court shall review the decision of the court of limited jurisdiction to determine whether that court has committed any errors of law." RALJ 9.1.

[4] City of Seattle v. Guay, 150 Wn.2d 288, 295, 76 P.3d 231 (2003).

[5] State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995).

Time for Trial. A defendant must be brought to trial within 60 days of arraignment if he is in detained in jail, and within 90 days if he is not.[6] When the time for trial rule is violated, the remedy is dismissal with prejudice.[7] Former CrRLJ 3.3(g)(5) excludes from the time for trial calculation those periods when a defendant is detained outside the county:

> Excluded Periods. The following periods shall be excluded in computing the time for arraignment and the time for trial:
>
> . . . .
>
> (5) The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged 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.

Under the plain language of the rule, the time for trial was properly excluded because Steever and Chhom were both detained outside the county.

Steever and Chhom argue, however, that because their detention was under the control and authority of King County municipalities, they were constructively held within King County, and thus the county had a duty of good faith and due diligence to bring them to court to adjudicate those pending charges. Under the circumstances presented, this argument is unavailing.

City of Seattle v. Guay[8] is instructive. There the court considered whether a municipality has a duty of due diligence like that imposed on the State in felony cases,[9] such that if the location of the defendant is known and he or she is amenable to service

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[6] Former CrRLJ 3.3(c)(1).

[7] Former CrRLJ 3.3(i).

[8] 150 Wn.2d 288, 76 P.3d 231 (2003).

[9] See State v. Anderson, 121 Wn.2d 852, 865, 855 P.2d 671(1993) (State must exercise due diligence to bring a defendant to superior court where a mechanism exists to do so such as the interstate agreement on detainers).

of a warrant, the municipality must exercise due diligence to obtain his or her presence.[10] The court refused to impose such a duty, holding that although courts of limited jurisdiction have inherent authority to issue transport orders, their authority does not extend to compelling the holding county to release the defendant.[11] The court noted that statutes exist to facilitate transfers of felony defendants, but the legislature has created no mechanism by which courts of limited jurisdiction may compel the transfer of a misdemeanant held by another jurisdiction:

> The absence of such a mechanism in the case of misdemeanors is also significant because it leaves no guidance as to the allocation of costs or burdens involved in the transport of misdemeanant defendants between the counties. This type of allocation is legislative in nature and exceeds the authority of this court.[12]

Under these circumstances, the court held that time spent in jail in another county was properly excluded from the speedy trial calculation under former CrRLJ 3.3(g)(5).[13]

As courts of limited jurisdiction, the King County district courts were similarly without power to require Steever and Chhom's transport, even had the defendants been held in jails *within* the county. In State v. George[14] we noted that "[i]n practice such transports are common, but they depend upon voluntary cooperation and uncertain resources, and are thus unreliable." We held that under CrRLJ 3.3(c)(2)(ii) (failure to appear), time for trial was properly tolled on a municipal court charge where the

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[10] Guay, 150 Wn.2d at 295.

[11] Id. at 304.

[12] Id. at 301.

[13] Id. at 304.

[14] No. 54805-1-I, slip op. at 6 (Wash. Ct. App. Jan. 17, 2006).

defendant was held on a separate offense by another jurisdiction in the same county.[15] Similarly here, the fact that Steever and Chhom were incarcerated in Yakima County was irrelevant because the district courts were powerless to compel the King County municipalities to release them for transport, wherever they were housed. There was no speedy trial violation.[16]

In his reply brief, Chhom argues that CrRLJ 3.2.1(d)(1) required that he be brought to court regarding the King County district court charge before being transported to Yakima. Chhom made no assignment of error on this issue, nor did he argue it in his opening brief. We therefore decline to address it.[17]

We reinstate the King County district court charges against Steever and Chhom and remand for trial.

Ellington, J.

WE CONCUR:

Appelwick, J.

Grosse, J.

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[15] Id.

[16] We express no opinion as to whether a duty of due diligence exists under CrRLJ 3.3 where a defendant is held by the same jurisdiction in which the charges were pending.

[17] Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issue raised for the first time in reply brief is too late for consideration).

APPENDIX 2

Former CrRLJ 3.3 (2003)

CrRLJ 3.3 TIME FOR TRIAL

(g) Excluded Periods. The following periods shall be excluded from computing the time for arraignment and the time for trial:

(5) The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged 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 . . . .

APPENDIX 3

Current CrRLJ 3.3 (Amended effective 9/1/03 and 11/25/03)

CrRLJ 3.3 TIME FOR TRIAL

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

(6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged 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 . . . .