

70638-1

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NO. 70638-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SILOAM SABIAN KAHLER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

APPELLANT'S OPENING BRIEF

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2019 FEB -3 PM 4:05

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A. ARGUMENT ON APPEAL.

Mr. Kahler contends that his constitutional right to speedy trial was violated by the considerable delay between his arrest in August and arraignment the following May, for which the State bore the primary responsibility. In light of the minimal justification for the delay and likely potential for prejudice which resulted, Mr. Kahler was entitled to dismissal of the case with prejudice.

B. ASSIGNMENTS OF ERROR.

The trial court erred in denying Mr. Kahler's motion to dismiss for violation of his constitutional right to a speedy trial.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

The right to a speedy trial is constitutionally guaranteed and violations are examined on a fact specific basis. In Mr. Kahler's case where the delay was significant, the reasons unavailing and the potential prejudice significant, did the trial court err in failing to dismiss the prosecution?

D. STATEMENT OF THE CASE.

On August 3, 2012, Burlington police responded to "a cold domestic assault" and during their investigation contacted Mr. Kahler, who initially provided a false name. CP 14. Mr. Kahler's

true identity was subsequently established and he was arrested on outstanding warrants. A search incident to his arrest uncovered a controlled substance. Id.

Mr. Kahler remained in custody thereafter, first on the warrants which resulted in convictions and his transfer to DOC custody to serve corresponding sentences. CP 20.

On December 5, 2013, Mr. Kahler was charged with possession of a controlled substance – buprenorphine – and making a false or misleading statement to a public servant, based on the August incident. CP 1-2. At the time the information was filed, Mr. Kahler was confined at the Monroe Correctional Center. CP 13-15.

On April 17, 2013, the Skagit County Prosecutor’s Office received Mr. Kahler’s request, pursuant to RCW 9.98.010, for final disposition or speedy trial. CP 7-9. Mr. Kahler objected to the timeliness of his arraignment citing to State v. Striker, 80 Wn.2d 870, 557 P.2d 847 (1976), CrR 3.3 and CrR 4.1. CP 3-6.

Mr. Kahler renewed his motion to dismiss based on WA Const Art 1, sec. 22,¹ the Sixth Amendment,² Barker v. Wingo, 407

¹ Article 1, sec. 22 of the Washington Constitution provides in pertinent part: “[i]n criminal prosecutions that accused shall have the right ... to have a

U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), and State v. Iniguez, 167 Wn.2d 273, 217 P.3d 768 (2009). CP 20-32. Judge Cook denied the motion to dismiss and confirmed the case for trial. CP 68.

Mr. Kahler thereafter waived his right to jury trial and stipulated to record upon which he was subsequently found guilty. CP 69-87. Mr. Kahler was sentenced within the standard range, at which time Judge Needy repeated the court's denial of the motion to dismiss based on the alleged speedy trial violation. CP 93-104. This appeal timely followed. CP 105-17.

E. ARGUMENT.

VIOLATION OF MR. KAHLER'S CONSTITUTIONAL
RIGHT TO A SPEEDY TRIAL REQUIRES REVERSAL OF
THE CONVICTIONS AND REMAND FOR DISMISSAL
WITH PREJUDICE

1. Mr. Kahler objected to the timeliness of his arraignment and trial setting on the current charges. Mr. Kahler challenged the timeliness of this prosecution in several ways. First, arguing the

speedy and public trial.”

² The Sixth Amendment to the United States Constitution provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a

court should establish a constructive arraignment date and not exclude the time spent in Monroe from the calculation of the time for trial. CP 3, 4-6. Because 153 days had passed since the information had been filed, at a time in which he was in State custody on another Skagit County matter, Mr. Kahler argued the case should be dismissed pursuant to CrR 3.3(h).³ CP 5 (citing State v. Weyland, 120 Wn.2d 585, 845 P.2d 971 (1993)).⁴

The prosecutor argued their obligations were governed by RCW 9.98.010, with which they had complied. The time lines governed by RCW 9.98.010(1) require defendants serving prison sentences

be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting

speedy and public trial.”

³ CrR 3.3(h) provides:

(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.

⁴ Weyland escaped from the Cedar Creek Corrections facility, but was recaptured and confined at the penitentiary in Walla Walla. Because the prosecution filed an information charging first degree escape, it took no action for 125 days the Supreme Court found that dismissal with prejudice was the proper remedy.

attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint....

The prosecutor's office received Mr. Kahler's request for final disposition or speedy trial on April 17, 2013, therefore, the prosecutor argued he was timely arraigned. CP 7-9.

Judge Needy agreed with the State and held that RCW 9.98.010 governed the time for trial and there had been no violation. CP 18 (ruling issued by letter dated May 17, 2013). Following Judge Needy's ruling, Mr. Kahler filed an Objection to Trial Date and Motion to Set the Trial Within the Limits Prescribed by CrR 3.3. CP 19 (filed May 20, 2013); 5/30/13RP 3 (noting the objection was necessary to preserve challenge).

Mr. Kahler further challenged the constitutionality of the delay, citing WA Const Art 1, sec. 22, the Sixth Amendment, Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), and State v. Iniguez, 167 Wn.2d 273, 217 P.3d 768 (2009).

2. The right to a speedy trial is fundamental. The right to a speedy trial “is as fundamental as any of the rights secured by the Sixth Amendment.” Barker, 407 U.S. at 515 n.2 (quoting Klopfer v. North Carolina, 386 U.S. 213, 223, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967)). Some pretrial delay is often “inevitable and wholly justifiable.” Doggett, 505 U.S. at 656. Nevertheless, there are plainly a number of other delays which constitutionally intolerable.

3. The delay in Mr. Kahler’s case violated the fundamental constitutional right to a speedy trial. Resolution of questions surrounding the constitutional right to speedy trial require an examination of the conduct of both the State and the defendant. Iniguez, 167 Wn.2d at 282.

The threshold question is whether the “length of the delay crossed a line from ordinary to presumptively prejudicial.” Id., at 283, citing Doggett, 505 U.S. at 651-52; Barker, 407 U.S. at 530. This determination is “necessarily dependent on the specific circumstances of each case.” Id. It is not, however, a search for statistical probability, “it simply marks the point at which courts deem the delay unreasonable enough to trigger the Barker enquiry.” Doggett, 505 U.S. at 652 n.1.

In Iniguez, the Washington Supreme Court found the eight month delay presumptively prejudicial after examining not only the length of the delay, but also the complexity of the charges and the potential reliance on eyewitness testimony. 167 Wn.2d at 292, citing Barker, 407 U.S. at 531 n.31. In Mr. Kahler's case, the delay from his arrest on August 3rd to his arraignment on May 8th was even longer and presented many of the same problems identified in Barker. Both charges were dependent on eyewitness testimony, including evidence supporting the allegations of surrounding possession as well as the nature, purpose and recipient of the alleged false statements. Finally, neither charge was particularly complex necessitating any unusual delay. Iniguez, 167 Wn.2d at 292-93. Mr. Kahler established that the delay below was presumptively prejudicial.

Once the defendant demonstrates a delay is "presumptively prejudicial," that showing triggers the remainder of the Barker inquiry. Iniguez, at 283. The factors relevant to the remaining examination are the length and reason for the delay, whether the defendant has asserted his right, and the ways in which the delay causes prejudice to the defendant. Barker, 407 U.S. at 530.

a. Length of the Delay. The analysis of the length of the delay focuses on the extent to which the delay stretches past the bare minimum needed to trigger the Barker analysis. Iniguez, 167 Wn.2d at 284, citing Doggett, 505 U.S. at 652. In Mr. Kahler's case the time stretches well beyond the minimum and is particularly significant because he was held in custody throughout that time. It therefore weighs heavily against the State.

b. Reason for the Delay. Reviewing courts look next at each party's level of responsibility for the delay and assign different weights to the reasons for delay. Iniguez, 167 Wn.2d at 294, citing Barker, 407 U.S. at 531. “[D]ifferent weights [are to be] assigned to different reasons' for delay.” Doggett, 505 U.S. at 657 (first alteration in original) (quoting Barker, 407 U.S. at 531). Where the defendant asks for the delay or agrees to the delay, then the defendant is deemed to have waived his speedy trial rights as long as the waiver is knowing and voluntary. Barker, 407 U.S. at 529. On the other hand, a deliberate delay caused by the government to frustrate the defense will be weighed heavily against the State. Id. at 531. If the State is merely negligent or the delay is due to

overcrowded courts, the delay will still be weighed against the State, though to a lesser extent. Id.

In Mr. Kahler's case there was no good reason for the delay in light of the State's knowledge of his location in DOC custody in the adjoining county where he was being held on Skagit County offenses. CP 33-51. This factor again ways against the State.

c. Defendant's Assertion of Speedy Trial Right. The defendant's assertion of his speedy trial right is entitled to "strong evidentiary weight." Barker, 407 U.S. at 531-32. The frequency and force of a defendant's objections should be taken into consideration, as well as the reasons why the defendant demands or does not demand a speedy trial. Id., at 529. Here, Mr. Kahler was specifically challenged in his ability to assert his right to speedy trial by his incarceration on the other Skagit County matters. Mr. Kahler, to the extent possible, however, repeatedly and consistently asserted his speedy trial rights. CP 28. Furthermore, to the extent the State should be required to establish a voluntary and knowing waiver of this constitutional right, the factor further weighs against the State.

d. Prejudice to the Defendant. Prejudice generally involves (1) "oppressive pretrial incarceration," (2) "anxiety and concern of the

accused,” and (3) “the possibility that the [accused's] defense will be impaired’ by dimming memories and loss of exculpatory evidence.” Doggett, 505 U.S. at 654 (quoting Barker, 407 U.S. at 532). Impairment of the ability to present a defense is the most serious form of prejudice.

Mr. Kahler’s incarceration before the matter was brought to trial had the practical effect of hampering the preparation of his defense because he could not gather evidence or contact witnesses on his own behalf. Barker, 407 U.S. at 533. Here the record established that Mr. Kahler’s memory of the incident was poor. CP 30. Furthermore, defense interviews with the subject of the initial police call indicated her recollection of Mr. Kahler at the time were also fading. CP 67. This factor weighed heavily against the State as well.

On balance, therefore, the totality of the circumstances in Mr. Kahler’s case supported finding a speedy trial violation of constitutional magnitude and justify the extreme remedy of dismissal.

4. The remedy is dismissal with prejudice. If the constitutional right to a speedy trial is violated, the remedy is

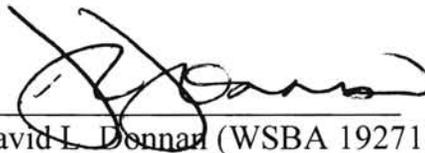
dismissal with prejudice. Barker, 407 U.S. at 522. In Mr. Kahler's case, the fading memories of crucial witnesses in particular are difficult, if not impossible, to restore and thus dismissal is the only logical remedy.

F. CONCLUSION.

For the reasons outlined here, Mr. Kahler requests this Court find his constitutional right to a speedy trial was violated by the delay between his arrest and later arraignment, and order the conviction reversed and the case dismissed with prejudice.

DATED this 3rd day of February 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Donnan", written over a horizontal line.

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STATE OF WASHINGTON,)	
)	
Respondent,)	
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v.)	NO. 70638-1-I
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SILOAM KAHLER,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF FEBRUARY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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