

FILED
November 18, 2015
Court of Appeals
Division III
State of Washington

33158-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

SCOTT M. WILLIAMS, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

REPLY BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY

Dismissal under CrR 8.3(b) is an extraordinary remedy used only in truly egregious cases. *State v. Wilson*, 149 Wn.2d 1, 9, 65 P.3d 657 (2003). This remedy was improperly applied in this case. The trial court stated that the change of jurisdiction created “too much of an *ambiguity* in the charges, the evidence and the discovery and rendered it impossible to prepare for trial within the confines of the speedy trial right.” The State charged the defendant by *information* with felony driving while under the influence, attempt to elude a police vehicle, and driving while revoked as being a habitual traffic offender. CP 2. There was and is nothing inscrutable about those charges.

What was ambiguous about the evidence? Where did that finding come from? No evidentiary hearing was had. The case involved an intoxicated driver, with existing prior similar offenses, attempting to elude law enforcement attempts to stop him in a chase that started in Spokane and continued west to Adams County. CP 3. In fact, the evidence contained in Trooper Weberling’s one page affidavit of facts lists the evidence and witnesses involved.¹

¹ The affidavit reads as follows:

On 9-17-14, 1335 hours, I was on duty in Spokane County on a traffic stop at 5th and Browne. WSP Communications advised of an erratic white, Chevrolet pickup traveling westbound I-90 milepost 286. After I cleared the traffic stop, a second reporting party advised the erratic Chevrolet was now westbound at

milepost 281. The erratic driving was reported as excessive speed near 100+ mph in the posted 60 mph zone. I was unable to locate the Chevrolet.

At approximately 1342 hours, Trooper R. Snowden, #410, observed the Chevrolet westbound I-90 milepost 276. Sergeant D. Jacobs, #255 caught up to the Chevrolet, WA license B38090T and attempted to stop the vehicle. Sgt. Jacobs was operating an unmarked WSP patrol vehicle with emergency lights and siren. The driver of the Chevrolet failed to stop and Sgt. Jacobs initiated a pursuit. Trooper Snowden took over as the primary pursuing unit and was operating a fully marked WSP patrol vehicle with emergency lights and siren. After I caught up to the pursuit and was now the tertiary unit, the driver of the Chevrolet made several lane changes to pass slower traffic and drifted across the skip line on numerous occasions. The pursuit entered Lincoln County, then Adams County where the driver crossed the median and traveled westbound in the eastbound lanes of I-90, narrowly missing oncoming traffic. The driver crossed the median again and reentered the westbound lanes. Trooper R. Raymond deployed a spike strip at approximate milepost 204, successfully puncturing the Chevrolet's tires. At milepost 201, the driver stopped on the outside shoulder and we placed him in custody without incident.

The driver was positively identified with a Washington identification card as Scott M. Williams, 5-2-62 (wallet in vehicle). I advised Williams he was under arrest for felony eluding and searched him incident to arrest. I noted a strong odor of intoxicants on his breath, bloodshot/watery eyes. I noted he was slightly swaying from side to side while standing. He was sweating and his face was flushed.

I advised him of his constitutional rights. I asked him if he consumed alcohol and he commented I knew the answer to that. Williams' speech was slurred as he answered some questions up to the point he commented about an attorney. I arrested Williams for DUI. A driver's check revealed Williams' Washington license was suspended/revoked 1st degree with 4 prior convictions for DUI within the last 10 years. Ignition interlock was also required, but not installed in the Chevrolet.

I transported Williams to the East Adams Rural Hospital (EARH) in Ritzville. I applied for and was granted a search warrant for Williams blood (felony DUI) by Judge Adalia Hille (Adams Co.). At 1654 hours, I witnessed EARH technician Joel Williams draw blood from Scott Williams' arm. The blood was transferred into vials, which I later placed into evidence.

Scott Williams was transported and booked into the Adams Co. Jail by Trooper M. Shepard, #589.

CP 3-4.

There is nothing ambiguous about the discovery; indeed, the defendant never outlined what discovery he had received from prior counsel, what, if anything, was missing, or what was needed. Nor did the trial court have a hearing on the matter, or determine on its own what discovery had or had not been provided, was or was not necessary, or was or was not missing.

There was never a finding regarding what defense trial preparation had been done or not done, why it had been done or not done, or what preparation was necessary that could not be accomplished by the three attorneys from the Public Defenders Office that passed the defendant back and forth.² The trial court found that it would be impossible to prepare for trial within the *remaining* time for speedy trial without conducting a hearing on what had or had not been done and why it had or had not been done in the previous month. The defendant and his three attorneys had, at a minimum, from October 31, 2014, to December 5, 2014, by their own calculations to prepare for trial. Why three attorneys could not prepare for a simple DUI trial and eluding chase within that period of time was neither inquired into by the trial court, nor explained by the defense attorneys.

² John H. Whaley, WSBA# 14644 (CP 11-13) Derek Reid (CP 14; VRP 3-5); and David Loebach WSBA #38125 (CP 13, *et. seq.*).

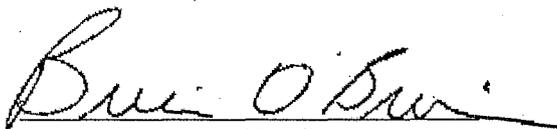
That is the only enigma³ in this case. Is it to be presumed that three attorneys could not prepare for such a case within five weeks? The trial court's use of the term "ambiguous" is at best vexing. It is the trial court's order that is puzzling and "ambiguous."

II. CONCLUSION

For the reasons stated above, this court should reverse the trial court's dismissal of the State's case and remand for further proceedings.

Dated this 18 day of November, 2015.

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³ A synonym for an ambiguity.