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State v. Jacobson Appellant's Reply Brief Dckt. 39094

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff/Respondent vs. BRETT J. JACOBSON, Defendant/Appellant	)	Case No. CR-2010-0000316 Supreme Court No. 39094

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Seventh Judicial District for the County of Custer
Honorable Dane H. Watkins, District Judge, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

The State's Respondent's Brief argues that the District Court correctly applied I.C. § 19-3501(4) to the facts of this case. Noticeably, however, none of the arguments presented really address the specific points made by Appellant Brett J. Jacobson ("Jacobson") in his brief. In any event, the State's position is that Jacobson's statutory speedy trial rights were not violated because: (a) the cause of the over six month delay was "neutral";[1] (b) Jacobson did not object to the late jury trial setting;[2] and (c) Jacobson did not show that he was prejudiced by the delay.[3]

As a matter of policy, the State's position effectively eviscerates statutory speedy trial law in Idaho. Here, Jacobson twice demanded a speedy trial, never engaged in any waiver of his rights, and the State and Court offered no reason as to why they could not fulfill their **obligation and duty** to bring Jacobson to trial within six months. *State v. Livas*, *infra* ("The duty to bring a defendant to trial lies with the State, not the defendant. The prosecution and the trial court have the primary burden to ensure that cases are brought to trial in a timely manner"); *See also State v. Stuart*, *infra* ("Trial courts must be diligent in securing compliance with time restraints. It is the court's duty to arrange for trial"). Instead, the State attempts to shift the blame for the delay to Jacobson for not objecting to the late trial setting, despite twice requesting a speedy trial. Under the State's theory, the Court and prosecution could fail to bring a suspect to trial in a criminal case within six months of his or her not guilty plea, have literally no excuse as to why they could

[1] Respondent's Brief, P. 8.

[2] Respondent's Brief, P. 9.

[3] Respondent's Brief, P. 9.

not try the suspect in six months, and avoid I.C. § 19-3501(4) by relying on such malleable concepts as "negligence" and "lack of prejudice."

In short, when a suspect demands a speedy trial on two (2) occasions at the outset of a case, and no acts are on record by the suspect that contribute to the delay, only the most compelling set of factual circumstances should create the legal justification required to establish "good cause." This is especially the case given the rule that when a suspect demands a speedy trial, a "**stronger reason** is necessary to constitute good cause." *State v. Clark*, 135 Idaho 255, 260, 16 P.3d 931, 936 (2000) (citations omitted). The facts here are far from compelling. If there is no speedy trial violation in this case, there are no speedy trial rights in Idaho.

II. ARGUMENT

A. The reason for the delay was not neutral and even if it was, the Court's error weighs in favor of dismissal

The State argues that the Memorandum Decision Re: Appeal entered by Judge Dane H. Watkins should be affirmed, in part, because the reason for the delay was due to an error by the Court clerk who entered the trial date from the time of the sworn complaint and not Jacobson's first or even second not guilty plea.[4] The State's position is that a "data entry error, is a 'neutral' reason for delay ..."[5] This argument lacks merit.

First, as conceded by the State, even if the reason for the delay is "neutral," this still weighs in favor of dismissal. A "neutral" reason does not connote that the reason for delay will weigh in neither party's favor. It weighs in favor of the defendant, albeit, to a lesser degree.

[4] Respondent's Brief, P. 8.

[5] Respondent's Brief, P. 8.

This issue was thoroughly discussed in *State v. Lopez*, 144 Idaho 349, 160 P.3d 1284 (Ct. App. 2007). In *Lopez*, the defendant Lopez was charged with three felonies. Lopez moved the District Court for dismissal on constitutional speedy trial grounds. The motion was denied. Lopez entered a conditional guilty plea and appealed.

On appeal, the issue before this Court was whether the trial court correctly applied the *Barker* factors. In addressing this issue, the Court looked to the reason for the delay. *Id.* at 353-44, 160 P.3d at 1288-89. The reason proffered was the Court's "overcrowded calendar." *Id.* at 354, 160 P.3d at 1289. The lower court found that this reason "was a neutral factor that would not be weighed against either party." Our Idaho Court of Appeals disagreed:

> In opposing the motion, the State argued that it was not to blame for any of the delay. The district court apparently accepted the State's position, holding that the court's overcrowded calendar was a neutral factor that would not be weighed against either party. The district court erred in this conclusion of law. **The duty to bring a defendant to trial lies with the State, not the defendant. The prosecution and the trial court have the primary burden to ensure that cases are brought to trial in a timely manner. The United States Supreme Court noted in *Barker* that although an overcrowded court calendar is a 'more neutral' reason for trial delay than is a deliberate attempt by the State to delay the trial in order to hamper the defense, and therefore should be weighed less heavily, it nevertheless should be considered because the ultimate responsibility for such circumstances must rest with the State rather than with the defendant.**
>
> ***
>
> [B]ecause it is the responsibility of the prosecution and the trial court, together viewed as the State, to try a defendant in a timely manner, some of the responsibility for the delay in bringing the case to trial must rest with the State.

Id. (emphasis added) (citations omitted).

Second, the facts in *State v. Livas*, 144 Idaho 349, 160 P.3d 1284 (Ct. App. 2007), are distinguishable from the case at bar. The State's briefing cites extensively to *State v. Livas*. Reliance thereon is unavailing. In *Livas*, the Court of Appeals ruled that Livas' speedy trial rights were not violated because Livas himself was responsible for the delay. This was evidenced by the fact that Livas' counsel represented that Livas would be willing to waive speedy trial and the Court twice reset the trial date, presumably, to accommodate Livas' motion to suppress, supplemental briefing, and motion to reconsider. The same cannot be said of the circumstances in this case. Jacobson did nothing to cause the delay and the trial was never reset.[6] The responsibility to bring Jacobson to trial in a timely fashion rested with the Court and the prosecution. Each failed in that regard. The consequences for such error fall squarely on the State. The only question is the degree to which this factor favors Jacobson.

Third, as argued in Jacobson's Opening Brief, the degree to which the reason for the delay weighs in favor of Jacobson is significant. The facts here are somewhat peculiar since this is not a case where any justification has been offered as to why Jacobson could not be tried in six months. In such instances where court congestion and witness availability are non-factors, and against the backdrop of a defendant that twice demanded a speedy trial, the State's failure to

[6] To be sure, Jacobson filed a motion to suppress, but it had no effect on the trial date and the trial was never reset as a result. Accordingly, the facts of this case are less like *Livas* and more like *State v. Stuart*, 113 Idaho 494, 745 P.2d 1115 (Ct. App. 1987) (cited with approval in *Clark*, *supra*), wherein the Court stated that "The six month time limitation for speedy trial under I.C. § 19-3501 does not represent a whimsical timeframe. It is designed to accommodate a reasonable number of pretrial motions ... " 113 Idaho at 496, 745 P.2d at 1117.

timely bring this case to adjudication is not slight, and should be weighed heavily against the State.[7]

B. The State's argument regarding the timing of Jacobson's assertion of speedy trial rights is factually and legally incorrect

The State further argues that dismissal is not warranted because Jacobson failed to object to the late trial setting "despite an opportunity to do so."[8]

First, the State's position is not supported by case law. The State's argument is a reference to the rulings in *Lopez*, *Moore*, and *Rodriguez-Perez*, in which the Court of Appeals stated that the invocation of speedy trial in those cases did not weigh in favor of the accused because the invocation suggested that the suspect wanted a dismissal and had no interest in having a speedy trial. The specific factual context in the above cases was a delayed and belated demand for a speedy trial. The facts in those cases are nothing like those in the instant matter. For example, in *Lopez*, the Court of Appeals stated:

> Lopez did not assert his right to speedy trial until he filed his motion to dismiss on October 4, 2005, two days before the date ultimately set for trial. He at no time requested a more expeditious trial. The lateness of Lopez's assertion of his speedy trial right weighs heavily against his contention that the right was violated. That is, the timing of a defendant's assertion of the right tends to disclose whether a defendant actually desired a speedy trial, and is closely related to and affects other *Barker* factors, including prejudice and reasons for the delay. Here, the late assertion of the right weighs significantly against Lopez in balancing the speedy trial factors.

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[7] Considering the factual circumstances under which the delay occurred is appropriate as this Court has itself stated that "[T]he reason for the delay cannot be evaluated entirely in a vacuum ..." *State v. Moore*, 148 Idaho 887, 899, 231 P.3d 532, 544 (Ct. App. 2010).

[8] Respondent Brief, P. 9.

State v. Lopez, 144 Idaho 349, 353, 160 P.3d 1284, 1288 (Ct. App. 2007). Similarly, in *Moore*, the Court of Appeals stated the following:

> Here, Moore did not assert his speedy trial rights until approximately sixteen months after he was arrested for misdemeanor DUI-and even after that he took nearly four months to file his brief on the motion and later requested that a scheduled trial date be vacated ... Thus, we must conclude here that Moore's failure to assert his speedy trial rights until sixteen months after his arrest is a factor that weighs against dismissal on speedy trial grounds.

State v. Moore, 148 Idaho 887, 902-03, 231 P.3d 532, 547-48 (Ct. App. 2010). Likewise, in *State v. Rodriguez-Perez*, 129 Idaho 29, 921 P.2d 206 (Ct. App. 1996), this Court again reached the same conclusion:

> Defense counsel's first expression of concern about the trial date was Mr. Morris's February 11, 1994, oral request for an early trial setting. This was more than ten months after Rodriquez–Perez's arrest. Rodriquez–Perez's first unequivocal invocation of speedy trial guarantees occurred when he filed his motion to dismiss on April 28, 1994, some eleven days before the scheduled trial. The defendant's assertion of his rights at a relatively late point in the proceedings does not weigh in favor of dismissal under the *Barker* balancing process.

129 Idaho at 37, 921 P.2d at 214.

In stark contrast to the above cases, here, Jacobson demanded a speedy trial at the earliest possible moment and again demanded a speedy trial soon thereafter. Based on the foregoing excerpts, the State has cited a rule outside of the factual context in which it has been applied by this Court. The State's admonition that Jacobson is to blame for the delay to which he was subjected is not supported by the law.

Second, it is highly improper to attempt to shift the blame for the delay to Jacobson. Our appellate courts have made it crystal clear that the Court and prosecution have an explicit duty to bring defendants to trial in a timely fashion. *See e.g. Livas*, 144 Idaho at 354, 160 P.3d at 1289 ("The duty to bring a defendant to trial lies with the State, not the defendant. **The prosecution and the trial court have the primary burden to ensure that cases are brought to trial in a timely manner**") (emphasis added); *See also Stuart*, 113 Idaho at 497, 745 P.2d at 1117 ("**Trial courts must be diligent in securing compliance with time restraints. It is the court's duty to arrange for trial**") (emphasis added).

While Jacobson did not formally object to the late trial setting, it seems somewhat absurd to argue that Jacobson is somehow at fault for, *inter alia*, not demanding a third speedy trial after the State was twice put on notice of the demand. Additionally, and as stated, it is the State's duty to bring Jacobson to trial - not Jacobson's to repeatedly ensure that the State is acting in accordance with the law. It is hard to conceive that Jacobson could have made the State more aware of Jacobson's desire to be tried in a timely fashion. The error rests with the State and the consequences therefor must likewise be borne by the State. In short, because it is the State's duty to bring the Defendant to trial in a timely fashion, and not Jacobson's responsibility to ensure that the government is doing its job, the State must bear the blame, especially when Jacobson twice requested a speedy trial.

C. It is the State's burden to prove prejudice and, in any event, any lack of prejudice suffered by Jacobson is insufficient to get around the additional factors the Court is to consider

The State argues that Jacobson was not prejudiced by the "two and one-half week jury trial delay."[9] The State further asserts that "Jacobson has not asserted any other specific prejudice from the short delay."[10] These arguments lack merit.

First, the State's position ignores the fact that under I.C. § 19-3501, the State bears the burden of proving "good cause" and the factual underpinnings that comprise such a finding. *Moore*, 148 Idaho at 899, 231 at 544 ("When a defendant who invokes his statutory speedy trial rights is not brought to trial within six months and shows that trial was not postponed at his request, **the burden then shifts to the state to demonstrate good cause for the court to decline to dismiss an action**") (emphasis added). Here, the State has not proven a lack of prejudice. As stated in Jacobson's Opening Appellant Brief:

> The burden of proving good cause is on the State and the State did not prove that Jacobson was not prejudiced. It is the State's burden to prove prejudice – not Jacobson's burden to disprove the same ... Because it is the State's burden to prove good cause, the State should be forced to point to specific facts indicating lack of prejudice. It should thus not matter that a defendant initially did not come forward with evidence of actual prejudice. If the law were otherwise, defendants seeking to dismiss a case under I.C. § 19-3501(4) would effectively have the burden of disproving that which it was never their burden to prove in the first place.[11]

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[9] Respondent's Brief, P. 9.

[10] Respondent's Brief, P. 9.

[11] Appellant's Opening Brief, P. 15-16.

Second, even assuming Jacobson was not prejudiced to a significant degree and that the reason for the delay was neutral, this should not change the outcome of the case. The crucial facts of this matter compel reversal of Judge Watkins, irrespective of where this Court falls on the prejudice issue. By way of recall:

(a) Jacobson twice invoked his speedy trial rights (*Clark*, 135 Idaho at 260, 16 P.3d at 936 ("[I]f the defendant has demanded a speedy trial ... a stronger reason is necessary to constitute good cause"); *See also Moore*, 148 Idaho at 902, 231 P.3d at 547 (A defendant's assertion of his or her right to a speedy trial is "entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right") (citations omitted);

(b) Jacobson invoked his speedy trial rights at the earliest possible moment in the proceedings (*State v. Lopez*, 144 Idaho 349, 353, 160 P.3d 1284, 1288 (Ct. App. 2007)) ("[T]he timing of a defendant's assertion of the right tends to disclose whether a defendant actually desired a speedy trial, and is closely related to and affects other *Barker* factors, including prejudice and reasons for the delay");

(c) the reason for the delay was Court error, as admitted thereby, and Jacobson did nothing to cause or precipitate any delay in the proceedings (*State v. McKeeth*, 136 Idaho 619, 627, 38 P.3d 1275, 1287 (Ct. App. 2001)) ("The ultimate responsibility for the delay must rest with the government rather than with the defendant");

(d) no continuances were requested and no speedy trial waivers were executed; and

(e) the prosecution offered no excuse or justification, whether legitimate or not, as to why it was unable to bring Jacobson to trial in Custer County within six months of his first not guilty plea or even within six months of Jacobson's second not guilty plea, via counsel.

Against this backdrop, an alleged lack of prejudice or Court negligence should not be enough to tip the balance of this case in favor of the State.

III. CONCLUSION

Jacobson respectfully requests that this Court AFFIRM Judge Roos's Order of Dismissal and REVERSE Judge Watkins' Memorandum Decision Re: Appeal and Order Re: Appeal.

DATED this 10th day of February, 2012.

GIVENS PURSLEY LLP

Alexander P. McLaughlin
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of February, 2012, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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