

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA



DIVISION ONE
FILED: 03/20/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

BRIAN STRAIT and JOSEPH DAMIANO,) No. 1 CA-SA 12-0051
) 1 CA-SA 12-0054
Petitioners,) (Consolidated)
)
v.) DEPARTMENT C
)
THE HONORABLE WARREN GRANVILLE,) Maricopa County
Judge of the SUPERIOR COURT OF) Superior Court
THE STATE OF ARIZONA, in and for) No. CR 2011-007464-002
the County of MARICOPA,) CR 2011-007464-001
)
Respondent Judge,)
) **DECISION ORDER**
STATE OF ARIZONA, ex rel.,)
WILLIAM MONTGOMERY, the Maricopa)
County Attorney,)
)
Real Party in Interest.)
_____)

In this special action, petitioners Brian Strait and Joseph Damiano essentially argue the superior court violated their Arizona Rule of Criminal Procedure 8 speedy trial rights when it granted the State's motion to continue trial to March 7, 2012 -- two days past the "last day" of March 5, 2012. Because a special action is an "appropriate procedural vehicle" to seek relief in connection with an alleged speedy trial violation, see *State v. Vasko*, 193 Ariz. 142, 147, ¶ 23, 971 P.2d 189, 194 (App. 1998), the court, Presiding Judge Patricia K. Norris and Judges Margaret H. Downie and John C. Gemmill participating,

accepts special action jurisdiction, but as discussed below, denies the relief requested.

The record before us reflects that on February 28, 2012, the day scheduled for trial, the State requested a continuance to at least March 7, 2012 -- two days after the "last day" -- because a critical witness for the State was scheduled to be out of state between February 29 and March 7, 2012. Although the State had previously been in contact with this witness, the State had lost contact with the witness when the witness retired from "the victim company." The State ultimately located the witness using an investigator and then, evidently, learned of the witness' travel schedule. Although petitioners objected to the State's request for a continuance, they made no showing they would suffer any actual prejudice by the continuance.

We review a superior court's decision to grant a continuance for an abuse of discretion. *Vasko*, 193 Ariz. at 144, ¶ 8, 971 P.2d at 191. Further, we will not reverse such a decision unless the abuse of discretion is "clear" and results in prejudice. *Id.*; see also *id.* at 147, ¶ 22, 971 P.2d at 194 (to prove prejudice, defendant must show defense harmed by delay). Here, the State remained in contact with the witness, and exercised appropriate diligence in locating the witness when it discovered the witness had retired. Unlike the situation in

State v. Heise, 117 Ariz. 524, 573 P.2d 924 (App. 1977), the record before us does not show the State failed to "keep track of its trial schedule and availability of witnesses." *Id.* at 526, 573 P.2d at 926. Accordingly, under the circumstances presented here, petitioners have failed to persuade us that the superior court's decision granting the State a continuance to two days past the "last day" constituted clear abuse or caused them any prejudice.

Therefore, for the foregoing reasons, we deny the relief requested by petitioners and remand this matter to the superior court for further proceedings consistent with this order.

/s/
PATRICIA K. NORRIS, Presiding Judge