IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29952-0-III
Respondent,	)	
v.	)	
PEDRO AROUSA,	)	UNPUBLISHED OPINION
Appellant.	)	

Sweeney, J. — This appeal follows a successful prosecution for possession of methamphetamine. The defendant assigns error to the court's refusal to dismiss the case for violation of his statutory right to a speedy trial and to the court's refusal to suppress the drug evidence seized from his person following his arrest on an outstanding warrant. We conclude that the court's reasons for continuing the trial amply support the decision to continue the trial date. We conclude that the defendant had authority to allow police to enter the home where he was seized, searched and arrested. We then affirm the conviction.

FACTS

Police arrested Pedro Arousa on a warrant and found methamphetamine in a search incident to that arrest. The State charged him with possession of a controlled substance, methamphetamine. Mr. Arousa moved to dismiss the case for speedy trial violations and moved to suppress the methamphetamine evidence. The court denied both motions and convicted Mr. Arousa following a bench trial. Mr. Arousa argues on appeal that the court violated his CrR 3.3 speedy trial right and that the court should have suppressed the methamphetamine.

Speedy Trial

Mr. Arousa was arraigned on March 4, 2011. At that time, the court set a trial date for April 26, 2011. The speedy trial deadline was May 9, 2011.

Defense counsel noted a suppression hearing for April 18, 2011. The prosecutor assigned to the case, Carole Highland, was unavailable and requested a continuance to April 20, 2011. The April 20 suppression hearing did not occur because Ms. Highland was again in trial.

Neither party was ready for trial on April 26, 2011, nor had the suppression hearing taken place. Ms. Highland told the court that she learned that two U.S. Marshals saw Mr. Arousa's arrest. She advised that she wanted to call them as witnesses in the

suppression hearing, but did not yet know their names. She also advised that she had not received the lab results on the substance alleged to be methamphetamine. The parties agreed to have the suppression hearing the next day, April 27, 2011. The court set the suppression hearing for April 27, continued the trial to May 3, and reset the speedy trial deadline to June 2, 2011, and explained:

> [I]f we have to continue in order to conduct the 3.6 hearing, and unless it would do prejudice to the defendant in the presentation of a defense, then we should—it should result in a continuance of the outside date—under the rule.
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> . . . .
>
> . . . I am going to continue this to tomorrow for—a hearing under Rule 3.6. . . .
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> The next issue is what to do in regard to trial date. I think because we're in need of that hearing I think we have to continue trial a week to May 3rd. But unless there is a—unless there is some—
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> . . . .
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> . . . prejudice to the defendant, his outside date would become—June 2nd.

Report of Proceedings (RP) (April 26, 2011) at 8-9. Mr. Arousa objected to moving the speedy trial deadline, but did not urge that the move would prejudice his defense.

After another series of continuances, Mr. Arousa argued that his speedy trial right had been violated and moved to dismiss. The court denied the motion:

> April 27th is a Wednesday. In Grant County we have trials that start, we call the jury in every Wednesday. We also have 3.5/3.6 hearings that begin every Wednesday. Monday and Tuesday we have docket dates. We call our juries in on—Wednesdays. Tuesdays we call the matters for trial.

> . . . .
> A one-week continuance of the 3.5/3.6 hearing would—would necessitate a continuance of the trial date, then, since we are calling our trials on Wednesdays and always have—or at least as long as I've been here—We could not have that hearing unless we had a trial date continued.
> . . . .
> . . . .
> So it appears what the court did was, at the parties' request, to continue the 3.5/3.6 hearing one week—recognized the 3.5/3.6 hearing has to come before trial, case law does state that it's contemplated that the hearing will actually be on a different date, so that you don't have people not knowing at the time of trial what will be heard, that the court was actually required to continue the trial date to that date.

RP (May 17, 2011) at 141-43.

The suppression motion was eventually heard on May 11, 2011. The court refused to suppress the drug evidence. A bench trial took place on May 18, 2011.

Suppression Hearing

Detective Joe Harris, Deputy U.S. Marshal Ryan Johnsen, Cherri Roberts, and Mr. Arousa testified at the suppression hearing.

Detective Harris, Deputy Johnsen, and Deputy Scott Hershey were members of the Pacific Northwest Violent Offender Task Force in March 2011. Part of their job was to arrest people on felony warrants. They were looking to arrest Anna Chavez on March 2, 2011. They believed that she lived at 306 East Fifth Street in Warden. They conducted surveillance of that address and saw people walking between a house and a small travel

trailer on the same lot.

Detective Harris testified that he knocked on the trailer door, but nobody answered. He then knocked on the house's front door and Mr. Arousa answered. Detective Harris told Mr. Arousa that they were looking for Anna Chavez and asked if she lived there. Mr. Arousa said, "yes," but that she was not home. RP (May 11, 2011) at 50. Detective Harris then asked if he could come in to look for Ms. Chavez. Mr. Arousa said that he needed to ask "the boss" if it was okay. The boss was Ms. Roberts. According to Detective Harris, he then asked, "'Do you mind if we come in and I can talk to her[?]'" and Mr. Arousa replied, "'Sure.'" RP (May 11, 2011) at 53. He then led Detective Harris to the door of Ms. Roberts' bedroom.

Detective Harris talked to Ms. Roberts. He asked her who had answered the door. Ms. Roberts told him that it was Pedro Arousa. She told Detective Harris that Mr. Arousa "stays" in the trailer. RP (May 11, 2011) at 81. She explained that she lived in the house with Mr. Arousa's father. She further explained that Mr. Arousa slept in the trailer and had a television, Nintendo game console, and a VCR in the trailer. She said that there were no laundry or bathroom facilities in the trailer, so Mr. Arousa used the facilities at the house. She also said that he occasionally ate meals at the house.

Mr. Arousa seemed familiar to Detective Harris, so he called dispatch and

confirmed that Mr. Arousa had an arrest warrant. The officers then abandoned their search for Ms. Chavez. They had manpower to arrest only one person and decided to arrest Mr. Arousa.

Deputy Johnsen's testimony bolstered that of Detective Harris. He testified that Detective Harris asked if they could go inside and Mr. Arousa said that he had to check with "the boss." RP (May 11, 2011) at 97. Deputy Johnsen said that Detective Harris again asked if they could come inside and Mr. Arousa said, "'Sure, I guess,'" and then walked to the back bedroom. RP (May 11, 2011) at 97. Deputy Johnsen testified that he and Deputy Hershey waited in the living room while Detective Harris talked to Ms. Roberts.

Mr. Arousa testified that he came to the house to make something to eat and use the bathroom when he heard the knock on the door. He said that Detective Harris asked to come in the house and Mr. Arousa said, "'Yes, sure, but let me check with my stepmother first.'" RP (May 11, 2011) at 90. According to Mr. Arousa, Detective Harris followed him into the house anyway.

The trial court found:

> The defendant, Pedro Arousa, slept in the travel trailer but came to the residence to cook meals and use the toilet facilities. When Anna Chavez was at the residence she would similarly sleep in the travel trailer but would come to the residence to cook and use the toilet facilities. Anna Chavez and Pedro Arousa came and went freely to the travel trailer without needing

permission from Cherri Roberts.

Clerk's Papers at 75 (Finding of Fact 2.5). The court concluded that Mr. Arousa had actual authority to let the officers in to speak to Ms. Roberts because he was Ms. Roberts' joint tenant. The court denied Mr. Arousa's motion to suppress.

DISCUSSION

Speedy Trial

Whether a court correctly applied CrR 3.3 is a question of law that we will review de novo. *State v. Lackey*, 153 Wn. App. 791, 798, 223 P.3d 1215 (2009). We will not disturb an order granting a CrR 3.3 motion for continuance "absent a showing of a manifest abuse of discretion." *State v. Cannon*, 130 Wn.2d 313, 326, 922 P.2d 1293 (1996).

Mr. Arousa contends that the court erred by extending the speedy trial deadline from May 9 to June 2, 2011.

A defendant being detained in jail must be brought to trial within 60 days after the "commencement date," which is usually the date of arraignment. CrR 3.3(b)(1). Periods of time excluded from this 60-day limit include those required by the administration of justice so long as the continuance will not prejudice the defendant's presentation of his case. CrR 3.3(e)(3), (f)(2). If a period is excluded, then "the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period." CrR 3.3(b)(5). So each excluded period brings

with it a 30-day extension of the speedy trial deadline. *See* CrR 3.3(b)(5).

The court concluded that continuing the trial date here created an excluded period which then required a 30-day extension of the speedy trial deadline. *See* CrR 3.3(b)(5), (e)(3), (f)(2). Mr. Arousa was therefore tried within the speedy trial deadline if the court correctly concluded that the April 26 continuance created an excluded period.

Ruling on a motion to continue is discretionary with a judge because it involves "such disparate elements as surprise, diligence, materiality, redundancy, due process, and the maintenance of orderly procedures." *State v. Eller*, 84 Wn.2d 90, 95, 524 P.2d 242 (1974). Courtroom unavailability and court congestion are not valid reasons for continuing a trial beyond a speedy trial deadline under CrR 3.3. *State v. Kenyon*, 167 Wn.2d 130, 137, 216 P.3d 1024 (2009). But waiting for lab analysis of physical evidence is. *State v. Osborne*, 18 Wn. App. 318, 321, 569 P.2d 1176 (1977).

The court then properly continued the trial because the maintenance of orderly procedures and the need for lab results on physical evidence required a continuance. *See Eller*, 84 Wn.2d at 95; *Osborne*, 18 Wn. App. at 321. On the date set for trial, Tuesday, April 26, there had been no suppression hearing. The State was not ready for the suppression hearing because it had recently learned of two witnesses and was working to identify them. And, of course, without the suppression hearing, neither party would

know what evidence the fact finder would be allowed to consider. The parties also had not received lab reports analyzing the methamphetamine found on Mr. Arousa. Neither party was ready for trial. We conclude that the judge had tenable grounds to continue the trial date and did not therefore abuse his discretion.

Mr. Arousa also contends that the court continued the trial one week because it mistakenly believed that Local Rule (LR) 9 and case law required it. Br. of Appellant at 14, 16. Grant County LR 9 provides that:

> (b) *CrR 3.6.* At least one week prior to the date set in the scheduling order to hear motions, the defendant shall serve on the prosecutor and file with the court a written motion for suppression, identifying the item(s) to be suppressed and briefly stating the grounds. The defendant shall serve and file with the motion a memorandum of authorities upon which the defendant relies for suppression.
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> The prosecution shall file a memorandum of authorities upon which it relies for admission not later than 24 hours before the motion is scheduled to be heard.
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> (c) *Time limits.* See LR 4(c).

LR 9. LR 4(c) requires that hearings lasting longer than 10 minutes per side cannot be heard on the motions docket and must be specially set. The court here made no mention of LR 9 and its decisions on various continuances do not appear to implicate that rule.

The court's conclusion that the continuance created an excluded period was also correct. A continuance creates an excluded period if the administration of justice requires a continuance and the continuance will not prejudice the defendant's presentation of his case. CrR 3.3(e)(3), (f)(2). Mr. Arousa has

made no showing of prejudice and the administration of justice required the continuance here. *See* CrR 3.3(f)(2). The continuance in turn required a 30-day extension of the speedy trial period. Mr. Arousa's CrR 3.3 right to a speedy trial was not violated. *See* CrR 3.3(b)(5).

Suppression—Authority To Allow Entry Into the House

We review a court's order on a suppression motion to determine whether substantial evidence supports the challenged findings of fact and whether the findings support the court's conclusions of law. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Unchallenged findings are verities on appeal. *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008). We review the court's conclusions of law de novo. *Id.*

"No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, § 7. A warrantless search is then per se unreasonable under our state constitution. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). The few exceptions to the warrant requirement are "jealously and carefully drawn." *Id.* at 72 (internal quotation marks omitted) (quoting *State v. Bradley*, 105 Wn.2d 898, 902, 719 P.2d 546 (1986). Those exceptions are consent, exigent circumstances, plain view, inventory searches, investigatory *Terry*[1] stops, and searches incident to arrest. *Id.* at 71. Police found the methamphetamine on Mr. Arousa in a

[1] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

search incident to his arrest. He contends, nonetheless, that it was the "fruit" of an illegal search because the police entered the house based on Mr. Arousa's consent and he did not have the authority to consent to the search because he did not live there. Br. of Appellant at 20-21.

He contends that finding 2.5, which generally supports Mr. Arousa's use and occupancy of the house is unsupported by the evidence. As an aside, Mr. Arousa may not have had standing to challenge the police entry into the house, in the first place, if he did not live at the house. We address the essence of his complaint nonetheless.

The testimony of Mr. Arousa and Ms. Roberts supports finding 2.5. Mr. Arousa testified that he had come into the house to make himself a sandwich and use the bathroom just before he answered the front door. Ms. Roberts testified that Mr. Arousa slept, watched television, and played video games in the travel trailer, but that he used the bathroom, laundry room, and ate meals at the house. From this, the court could easily infer that the travel trailer was more akin to Mr. Arousa's bedroom than his separate residence. And that Mr. Arousa had authority to let the police into his home and their entry was therefore lawful. *See State v. Hastings*, 119 Wn.2d 229, 830 P.2d 658 (1992).

A search conducted by consent is proper so long as the defendant consented and the search did not exceed the scope of the consent. *Id.* at 234. Here, Mr. Arousa

consented to the police entry into the house so they could talk to Ms. Roberts. Once he let the officers in, he led Detective Harris to Ms. Roberts. Detective Harris spoke to Ms. Roberts as the other officers waited in the living room. The officers' actions did not exceed the scope of Mr. Arousa's consent. Mr. Arousa contends that the court's conclusion that he had "actual authority" to let officers into the house was incorrect because it was logically inconsistent with the conclusion that Mr. Arousa did not have "apparent authority." Br. of Appellant at 20-21. But the court's conclusion on apparent authority does not bear upon Mr. Arousa's actual authority. *See State v. Morse*, 156 Wn.2d 1, 9-12, 123 P.3d 832 (2005) (rejecting the application of apparent authority theory to the exclusionary rule for article I, section 7 violations).

In the end, Mr. Arousa consented to officers entering his home to talk to Ms. Roberts. *See Hastings*, 119 Wn.2d at 234. They learned Mr. Arousa's identity from Ms. Roberts and then confirmed that Mr. Arousa had an arrest warrant. Once the police learned that Mr. Arousa had an arrest warrant, they could arrest him. *See State v. Hatchie*, 161 Wn.2d 390, 396, 166 P.3d 698 (2007). And, once they lawfully arrested him, they were entitled to search him. *See State v. Williams*, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). The methamphetamine recovered from Mr. Arousa was therefore lawfully obtained and the court correctly denied his motion to suppress.

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the

Washington Appellate Reports but it will be filed for public record pursuant to

RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Brown, J.

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Kulik, J.