**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>SAMUEL E. FERGUSON, III<br><br>Appellant. | No. 39810-9-II<br><br><br><br><br><br>OPINION PUBLISHED IN PART |

Penoyar, C.J. — Samuel E. Ferguson III appeals his convictions from two trials for one count of first degree robbery with a firearm enhancement, two counts of first degree kidnapping with firearm enhancements, and one count of attempting to elude a pursuing police vehicle. He argues that the trial court gave an erroneous accomplice liability instruction and that the accomplice liability statute is unconstitutionally overbroad. He also asserts that the trial court violated his right to a timely trial under CrR 3.3 when it granted his codefendant's continuance motion and denied Ferguson's motion to sever his trial. Further, he argues that the evidence is insufficient to support his first degree kidnapping convictions. Finally, in his statement of additional grounds (SAG),[1] Ferguson argues that his right to a speedy trial under the Sixth Amendment of the United States Constitution was violated. We affirm.

[1] RAP 10.10.

## FACTS

### I. Background

On May 21, 2008, between 4:00 and 5:00 a.m., two men, wearing dark clothing and stocking hats with cutout eyeholes over their faces, entered a Shari's restaurant in Vancouver. One of the men pointed a gun at the chef, Javier Rivera, and directed him and the baker, Roberta Damewood, into the mop closet. The man told Damewood to lie face down on the floor. He then instructed Rivera to exit the mop closet and lie on the floor. Damewood estimated that she was in the mop closet between five and ten minutes.

The second man approached Regina Bridges, who was working as a waitress and hostess. He pointed a semi-automatic handgun at Bridges, grabbed the back of her shirt, and directed her to the kitchen. Bridges used her "mag card" to open the cash register, and the man reached in, took bills and rolls of coins from the machine, and stuffed the money into his pocket. 3B Report of Proceedings (RP) at 374. Bridges saw brown skin between the man's shirt and hat, leading her to believe that he was African American. Bridges also noted that the man wore white cotton gloves with blue piping. The two men then ran out of the building and entered an idling black Lincoln Town Car. The car left the parking lot at a normal speed. Bridges called 911.

Dispatch notified the police of the incident and reported that the suspects had departed in a black Town Car. Police officers located a Town Car and followed it as it merged onto northbound I-5. Clark County Deputy Sheriff Thomas Yoder turned on his patrol vehicle's sirens and lights and followed the Town Car as it exited I-5 and drove through a stripmall parking lot. The Town Car passed a detective, who saw the driver and later identified him as Ferguson. An occupant of the vehicle threw a grey stocking cap and a loaded handgun out of the Town Car.

The Town Car then merged back onto I-5 and drove north at speeds of around 100 miles per hour.

Cowlitz County Sheriff's deputies placed a spike strip on the highway. The Town Car struck the spike strip and, with deflated tires, exited the Interstate and crashed into a median in Longview. Three African American men ran from the vehicle.

Officers followed the men. The officers first located John Lanell Fitzpatrick and took him into custody. One of the men, later identified as Albert Jamaal Youngblood, slipped and fell as he ran from the police officers. Officers pinned Youngblood, who was wearing a dark hooded sweatshirt and black jeans, to the ground, handcuffed him, and found a black ski mask and roll of nickels on the ground underneath him. Youngblood also had a wad of cash stuffed in his pocket. Officers located Ferguson hiding behind a couch on a nearby porch and took him into custody.

Officers found a roll of dimes on the sidewalk outside of the Lincoln Town Car. The police searched the vehicle and found a pair of white gloves and a roll of pennies. DNA (deoxyribonucleic acid) testing linked Youngblood to the black cap found underneath him at the time of his arrest.

II. Procedural History

On May 27, 2008, the State jointly charged Ferguson, Youngblood, and Fitzpatrick with one count of first degree robbery with a firearm enhancement,[2] two counts of first degree kidnapping with firearm enhancements,[3] and attempting to elude a pursuing police vehicle.[4] The

[2] RCW 9A.08.020(3); RCW 9A.56.190, .200; RCW 9.94A.533(3); former RCW 9.94A.602 (1983).

[3] RCW 9A.08.020(3); RCW 9A.40.020; RCW 9.94A.533(3), former RCW 9.94A.602.

information identified Bridges as the victim of the robbery charge and identified Damewood and Rivera as the victims of the first degree kidnapping charges.

On June 5, the trial court arraigned Ferguson and scheduled trial for July 28. On July 10, Ferguson signed a speedy trial waiver and agreed to a new commencement date of September 4. The trial court rescheduled trial for November 3, 2008.

According to Ferguson,[5] on October 27, over Ferguson's objection, Ferguson's defense counsel requested another continuance to allow additional time for preparation. The trial court granted the continuance and scheduled a new trial date for December 15.

On December 11, Ferguson's codefendant, Youngblood, requested a continuance.[6] Ferguson and Fitzpatrick objected to the continuance and moved to sever their trials from Youngblood's. Ferguson's counsel indicated that, if the trial court granted the continuance, he would not be available for trial until the beginning of February 2009. Citing judicial economy, the State's position, and the fact that Youngblood faced life imprisonment, the trial court granted a continuance, denied the motion to sever, and rescheduled trial for February 9, 2009.[7] Further, the trial court also noted that due to the facts and circumstances indicated by the probable cause

[4] RCW 9A.08.020(3); RCW 46.61.024(1).

[5] Ferguson cites Appendix A for the facts relating to the October 27 request for a continuance. The record does not contain the transcript from this hearing; however, the State "accepts the statement of facts as set forth by the defendant." Resp't's Br. at 1.

[6] Youngblood requested the continuance in order to review the results of DNA testing. His defense counsel argued, "I think it would be highly prejudicial at this point in time for Mr. Youngblood to proceed to trial without at least having an opportunity to examine and look at that DNA to see if there's a possible suppression motion, whether we need an expert statistician." 2 RP at 132.

[7] The trial court rescheduled the trial for this date due to holidays and scheduling conflicts.

statements and police reports, "this is something that cries out to be tried together." 2 RP at 152. Joint trial for the three codefendants began on February 9. After the State rested its case, Fitzpatrick's counsel renewed his motion to sever.

The jury found all three codefendants guilty of the first degree robbery of Bridges, with a firearm enhancement, and attempting to elude a pursuing police vehicle; however, the jury was hung on the first degree kidnapping charges. On retrial, a second jury found Ferguson guilty of two counts of first degree kidnapping, with firearm enhancements. The jury instructions and verdict forms named Rivera and Damewood as the victims of the kidnappings. Ferguson appeals.

## ANALYSIS

### Accomplice Liability Statute

Ferguson argues that the accomplice liability statute, RCW 9A.08.020, is unconstitutionally overbroad because it criminalizes constitutionally protected speech in violation of the First and Fourteenth Amendments to the United States Constitution. We disagree.

Under RCW 9A.08.020(3)(a), a person is guilty as an accomplice if "[w]ith knowledge that it will promote or facilitate the commission of the crime," he "[s]olicits, commands, encourages, or requests [another] person to commit [the crime]" or "[a]ids or agrees to aid such other person in planning or committing [the crime]." The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The First Amendment applies to the states through the Fourteenth Amendment. *Kitsap County v. Mattress Outlet*, 153 Wn.2d 506, 511, 104 P.3d 1280 (2005).

A statute is unconstitutionally overbroad if it prohibits a substantial amount of protected speech and conduct. *City of Seattle v. Huff*, 111 Wn.2d 923, 925, 767 P.2d 572 (1989). A statute that regulates behavior, not pure speech, will not be overturned "unless the overbreadth is 'both real and substantial in relation to the ordinance's plainly legitimate sweep.'" *City of Seattle v. Eze*, 111 Wn.2d 22, 31, 759 P.2d 366 (1988) (quoting *O'Day v. King County*, 109 Wn.2d 796, 804, 749 P.2d 142 (1988)). The constitutional guarantee of free speech does not allow a State to forbid the advocacy of a law violation "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969).

In *State v. Coleman*, 155 Wn. App. 951, 961, 231 P.3d 212 (2010), *review denied*, 170 Wn.2d 1016 (2011), Division One of this court held that Washington's accomplice liability statute is not unconstitutionally overbroad. The court reasoned:

> [T]he accomplice liability statute Coleman challenges here requires the criminal mens rea to aid or agree to aid the commission of a specific crime with knowledge the aid will further the crime. Therefore, by the statute's text, its sweep avoids protected speech activities that are not performed in aid of a crime and that only consequentially further the crime.

*Coleman*, 155 Wn. App. at 960-61. Because the statute's language forbids advocacy directed at and likely to incite or produce imminent lawless action, it does not forbid the mere advocacy of law violation that is protected under the holding of *Brandenburg*. Agreeing with and adopting Division One's rationale in *Coleman*, we also hold that the accomplice liability statute is not unconstitutionally overbroad.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

I. Accomplice Liability Instruction

Ferguson argues that the accomplice liability instruction that the jury received at both of his trials relieved the State of its burden to prove that he committed an overt act. Because Ferguson proposed the accomplice liability instruction for the second trial, his challenge is limited, under the invited error doctrine, to the first trial's accomplice liability instruction.[8] *See State v. Henderson*, 114 Wn.2d 867, 868, 792 P.2d 514 (1990).

We review jury instructions de novo. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995). Jury instructions are flawed if they, as a whole, fail to properly inform the jury of applicable law, are misleading, or prohibit the defendant from arguing his theory of the case. *State v. Tili*, 139 Wn.2d 107, 126, 985 P.2d 365 (1999).

Mere presence at the scene of the crime, even if the defendant assented to the crime, is not enough to prove accomplice liability. *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993). An accomplice is criminally liable when he intended to facilitate another in committing the crime by providing assistance through his presence and actions. *State v. Trout*, 125 Wn. App. 403, 410, 105 P.3d 69 (2005).

The trial court instructed the jury:

> A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.
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> A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:
>
> (1) solicits, commands, encourages, or requests another person to commit the crime; or
>
> (2) aids or agrees to aid another person in planning or committing the

[8] It is unclear from the record who proposed the accomplice liability instruction for Ferguson's first trial.

> crime.
>
> The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.
>
> A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

Clerk's Papers (CP) at 15; Instr. 9. This instruction is identical to the language from the Washington Pattern Jury Instructions. 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 10.51, at 217 (3d ed. 2008).

Ferguson cites *State v. Peasley*, 80 Wash. 99, 141 P. 316 (1914), and *State v. Renneberg*, 83 Wn.2d 735, 522 P.2d 835 (1974). In *Peasley*, the Supreme Court concluded that "[t]o assent to an act implies neither contribution nor an expressed concurrence. It is merely a mental attitude which, however culpable from a moral standpoint, does not constitute a crime, since the law cannot reach opinion or sentiment however harmonious it may be with a criminal act." 80 Wash. at 100. But here, the instruction reflects the rule stated in *Peasley*, as it explicitly states that "more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice." CP at 15; Instr. 9.

In *Renneberg*, the defendant assigned error to the trial court's instruction on aiding and abetting. 83 Wn.2d at 739. Our Supreme Court held that the trial court properly instructed the jury, concluding that "assent to the crime alone is not aiding and abetting, but the instruction correctly required a specific criminal intent, not merely passive assent, and the state of being ready to assist or actually assisting by his presence." *Renneberg*, 83 Wn.2d at 739. The court quoted *State v. Redden*, 71 Wn.2d 147, 150, 426 P.2d 854 (1967), concluding:

> A separate instruction, requiring the finding of an overt act, was

> unnecessary; since the instruction, as given, details what acts constitute aiding and abetting under the statute; which acts themselves signify some form of overt act in the doing or saying of something that either directly or indirectly contributes to the criminal offense.

*Renneberg*, 83 Wn.2d at 740.

Similarly, the accomplice liability instruction required the jury to find that Ferguson had acted "with knowledge that it [would] promote or facilitate the commission of the crime." CP at 64; Instr. 9. This language required the jury to find that Ferguson had done more than passively assent to the crime. Further, the accomplice liability instruction details what overt acts constitute aiding under the accomplice liability statute, RCW 9A.08.020. The instruction also properly informed the jury that mere presence and knowledge of the criminal activity does not satisfy the requirements of accomplice liability. Accordingly, we hold that the jury instruction properly informed the jury of accomplice liability.

II. Criminal Rule 3.3

A. Continuance Motion

Next, Ferguson asserts that the trial court violated his CrR 3.3 right to a timely trial when it granted Youngblood's motion for a continuance. We disagree.

We review the trial court's decision to grant or deny a continuance to determine if the decision is manifestly unreasonable, exercised on untenable grounds, or based on untenable reasons. *State v. Iniguez*, 167 Wn.2d 273, 280, 217 P.3d 768 (2009); *State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009).

A defendant detained in jail shall be brought to trial within 60 days after the commencement date; the initial commencement date is the date of arraignment. CrR 3.3(b)(l)(i);

CrR 3.3(c)(1). A new commencement date is established, and the elapsed time is reset to zero, if the defendant files a written waiver of his CrR 3.3 rights. CrR 3.3(c)(2)(i). Then, the new commencement date is the date specified in the waiver. CrR 3.3(c)(2)(i).

The trial court may continue the trial date when

> such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. . . . The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

CrR 3.3(f)(2). A trial court may continue a joint trial at one defendant's request past the timely trial period of an objecting codefendant, where such continuance does not substantially prejudice the objecting codefendant's presentation of his defense. *State v. Guloy*, 104 Wn.2d 412, 428, 705 P.2d 1182 (1985).

The trial court properly stated on the record the reasons for the continuance and continued the trial date to allow Ferguson's codefendant, Youngblood, who faced life imprisonment, to review the results of DNA testing.[9] Ferguson does not allege that continuing his trial past his timely trial period substantially prejudiced the presentation of his defense. The trial court did not err in continuing the joint trial.

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[9] The trial court stated, "[Youngblood is] looking at a severe—the most severe penalty is, you know, life imprisonment. And so he's entitled to all the benefits as far as preparation and confrontation and all of that." 2 RP at 148.

B. Severance Motion

Ferguson also argues that the trial court erred by denying his motion to sever.[10] Again, we disagree.

We review the denial of a motion to sever to determine if the decision is manifestly unreasonable, exercised on untenable grounds, or based on untenable reasons. *McCormick*, 166 Wn.2d at 706; *State v. Bythrow*, 114 Wn.2d 713, 717-18, 790 P.2d 154 (1990). Separate trials are not favored in Washington. *State v. Torres*, 111 Wn. App. 323, 332, 44 P.3d 903 (2002). A trial court should grant a severance of defendants when,

> before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or . . . if during trial . . . it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

CrR 4.4(c)(2) "When defendants are jointly charged, severance to protect the speedy trial right of one of the defendants is not mandatory." *State v. Nguyen*, 131 Wn. App. 815, 820, 129 P.3d 821 (2006).

The defendant seeking severance has the burden of demonstrating that a joint trial would be "so manifestly prejudicial as to outweigh the concern for judicial economy." *State v. Hoffman*, 116 Wn.2d 51, 74, 804 P.2d 577 (1991). A defendant may demonstrate prejudice by showing:

> (1) antagonistic defenses conflicting to the point of being irreconcilable and mutually exclusive; (2) a massive and complex quantity of evidence making it almost impossible for the jury to separate evidence as it related to each defendant when determining each defendant's innocence or guilt; (3) a codefendant's

[10] We note that Ferguson's counsel did not renew his motion to sever, as required by CrR 4.4(a)(2). However, severance was not waived by his failure to renew the motion, because Fitzpatrick's counsel renewed his motion. Under RAP 2.5(a), "[a] party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court." Accordingly, Ferguson's failure to join in the renewal does not preclude review.

> statement inculpating the moving defendant; (4) or gross disparity in the weight of the evidence against the defendants.

*State v. Larry*, 108 Wn. App. 894, 911, 34 P.3d 241 (2001) (quoting *State v. Canedo-Astorga*, 79 Wn. App. 518, 528, 903 P.2d 500 (1995) (footnote omitted)).

The trial court denied Ferguson's motion to sever, citing judicial economy and the State's position against severing the case. Further, the trial court noted that due to the facts and circumstances indicated by the probable cause statements and police reports, "this is something that cries out to be tried together." 2 RP at 152. Ferguson does not argue, and the record does not show, that the defendants had antagonistic defenses, that the quantity of evidence prevented the jury from separating evidence as it related to each defendant, that Youngblood made a statement inculpating Ferguson, or that there was a gross disparity in the weight of the evidence against the defendants. The trial court granted a continuance to allow Youngblood to review DNA testing results, which did not prejudice Ferguson, as it connected only Youngblood to the incident. Ferguson fails to demonstrate that a joint trial was so prejudicial as to outweigh the trial court's concerns for judicial economy. The trial court did not violate Ferguson's right to a timely trial under CrR 3.3 when it denied his severance motion.

III. Sufficiency of the Evidence

Next, Ferguson argues that insufficient evidence supports his kidnapping convictions because the "kidnappings were merely incidental to the robberies." Appellant's Br. at 17. We disagree.

Ferguson argues, "Even when kidnapping and robbery convictions do not violate double jeopardy, there may be insufficient evidence to prove a separate kidnapping offense." Appellant's

Br. at 21. In reviewing a claim of insufficient evidence, we review the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). We weigh all reasonable inferences from the evidence in the State's favor and most strongly against the defendant. *State v. Gregory*, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006) (quoting *State v. Clark*, 143 Wn.2d 731, 769, 24 P.3d 1006 (2001)).

Ferguson relies on *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980) and *State v. Korum*, 120 Wn. App. 686, 86 P.3d 166 (2004), *rev'd on other grounds*, 157 Wn.2d 614 (2006). In *Green*, the Supreme Court held that that there was insufficient evidence of kidnapping by means of secreting or holding the victim in a place where she was not likely to be found when "the mere incidental restraint and movement" of the victim was "actually an integral part of and not independent of the underlying homicide." 94 Wn.2d at 227 (emphasis omitted). "While movement of the victim occurred, the mere incidental restraint and movement of a victim which might occur during the course of a homicide are not, standing alone, indicia of a true kidnapping." *Green*, 94 Wn.2d at 227 (emphasis omitted). To determine whether a crime is incidental to the "actual crime charged," the court must look to "the facts and circumstances surrounding the crime and the nature of the acts and their relation to the crime." *State v. Harris*, 36 Wn. App. 746, 752-53, 677 P.2d 202 (1984).

In *Korum*, we held that the defendant's convictions were incidental to the robberies because the jury received insufficient evidence to prove kidnappings independent of and with a different purpose than the robberies. 120 Wn. App. at 703. But in *Korum*, the State charged the defendant with robbing and kidnapping the same victims. *See* 120 Wn. App. at 704 n.14.

A kidnapping is not incidental to a robbery when the victim of the kidnapping was different from the victim of the robbery. In *State v. Vladovic*, 99 Wn.2d 413, 415, 662 P.2d 853 (1983), robbers entered a university's chemistry department, gathered five employees from various offices into one room, forced them to lie on the floor, bound their hands and taped their eyes, and removed the employees' wallets from their pockets. The robbers left the wallets at the scene, and after the incident, one of the victims, "Mr. Jensen," discovered $12 missing from his wallet. *Vladovic*, 99 Wn.2d at 416. The jury found Vladovic guilty of one count of first degree robbery for stealing money from Jensen's wallet and four counts of first degree kidnapping for restraining the chemistry department employees by using or threatening to use deadly force. *Vladovic*, 99 Wn.2d at 416. On appeal, Vladovic cited *Green* and argued that there was insufficient evidence he committed kidnapping because "the acts did not bear the indicia of a true kidnapping." 99 Wn.2d at 424. The Supreme Court concluded that "*Green* is inapposite in the instant case since . . . the restraint of the four employees was a separate act from the robbery of Mr. Jensen. Therefore the robbery of Mr. Jensen could not supply the restraint element of the kidnappings." *Vladovic*, 99 Wn.2d at 424.

Here the restraint of Damewood and Rivera was a separate act from the robbery of Bridges. Like *Vladovic*, the State charged one crime per victim and each incident involved different victims. We hold that the evidence was sufficient to support Ferguson's first degree kidnapping convictions.[11]

IV. Statement of Additional Grounds

Finally, Ferguson asserts that the trial court violated his Sixth Amendment right to a speedy trial. We disagree.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. When a defendant's constitutional speedy trial right is violated, the remedy is to dismiss the charges with prejudice. *Iniguez*, 167 Wn.2d at 282. The constitutional right to a speedy trial is not violated by passage of fixed time; it is violated by expiration of a reasonable time. *State v. Monson*, 84 Wn. App. 703, 711, 929 P.2d 1186 (1997).

Courts examine the four *Barker*[12] factors to determine whether a delay in bringing a defendant to trial impairs his constitutional right to a speedy trial. *Iniguez*, 167 Wn.2d at 282-84. As a threshold matter, however, a defendant must show that the length of delay "crossed a line

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[11] To the extent Ferguson is arguing that the merger doctrine applies, we hold that he may be punished separately for robbery and kidnapping. The merger doctrine applies only where the legislature

> has clearly indicated that in order to prove a particular degree of crime (*e.g.*, first degree rape) the State must prove not only that a defendant committed that crime (*e.g.*, rape) but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes (*e.g.*, assault or kidnapping).

*State v. Louis*, 155 Wn.2d 563, 571, 120 P.3d 936 (2005) (quoting *Vladovic*, 99 Wn.2d at 421). Because the legislature has not indicated that a defendant must commit kidnapping before he can be found guilty of first degree robbery or must commit robbery before he can be convicted of first degree kidnapping, a defendant can be punished separately for robbery and kidnapping. *Louis*, 155 Wn.2d at 571.

[12] *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

from ordinary to presumptively prejudicial." *Iniguez*, 167 Wn.2d at 283. Without deciding whether the eight-month delay was presumptively prejudicial, we analyze the *Barker* factors and conclude that the trial court did not violate Ferguson's Sixth Amendment right to a speedy trial.

If the delay is presumptively prejudicial, we then determine whether a constitutional violation occurred by examining the following factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant. *Iniguez*, 167 Wn.2d at 283-84; *see also Barker*, 407 U.S. at 530). None of the factors alone is necessary or sufficient. *Iniguez*, 167 Wn.2d at 283 (citing *Barker*, 407 U.S. at 533).

Under the first factor, we consider the extent to which the length of the delay stretches beyond the bare minimum required to trigger the inquiry. *Iniguez*, 167 Wn.2d at 293 (quoting *Doggett v. United States*, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992)). While Ferguson remained in custody for approximately eight months, this was not necessarily an undue delay in a multiple defendant case; thus, the first factor does not weigh against the State.

Under the second factor, we look to each party's responsibilities for the delay and assign weights to those reasons. *Iniguez*, 167 Wn.2d at 294. Defense counsel, not the State, requested continuances to allow for more time to prepare for trial. The final continuance, requested by Youngblood, was granted so that Youngblood could evaluate the results of DNA testing. On December 11, 2008, because of scheduling conflicts among the four attorneys, the trial court rescheduled trial for February 9, 2009. This factor does not weigh against the State.

The third factor requires us to consider the extent to which a defendant asserts his speedy trial right. *Iniguez*, 167 Wn.2d at 294-95. Here, the trial court granted three continuances. Ferguson objected to two of the continuances. Thus, this factor weighs in favor of Ferguson and against the State.

Under the fourth and final factor, we examine whether prejudice resulted from the delay. *Iniguez*, 167 Wn.2d at 295. We assess prejudice in light of the interests protected by the right to speedy trial: (1) preventing oppressive pretrial incarceration, (2) minimizing the defendant's anxiety and worry, and (3) limiting impairment to the defense. *Iniguez*, 167 Wn.2d at 295. A defendant makes a stronger case for a speedy trial violation if he can demonstrate prejudice. *Iniguez*, 167 Wn.2d at 295. Ferguson does not demonstrate prejudice to his ability to present his defense or the weaknesses in the State's case. Additionally, other cases have not found speedy trial violations for similar, and lengthier, delays. *See Barker*, 407 U.S. at 534 (concluding that a 10-month pretrial incarceration was not prejudicial); *see Iniguez*, 167 Wn.2d at 295-96 (holding that the defendant failed to demonstrate prejudice resulting from his 8-month pretrial incarceration). Here, the trial court granted each continuance to accommodate trial preparation and scheduling conflicts. This factor does not weigh against the State. Considering the totality of the circumstances, we hold that Ferguson suffered no violation of his right to a speedy trial under the United States Constitution.

Affirmed.

Penoyar, C.J.

We concur:

Hunt, J.

Worswick, J.