

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

CLINT WEBB,

Appellant.

No. 40253-0-II

UNPUBLISHED OPINION

Hunt, J. — Clint Webb appeals his bench trial convictions for bail jumping and failure to register as a sex offender. He argues that his CrR 3.3 time-for-trial rights were violated. We affirm.<sup>1</sup>

**FACTS**

On March 24, 2009, the State charged Webb with failure to register as a sex offender. On April 7, the trial court released him on his personal recognizance. He twice failed to return to court as instructed, resulting in the issuance of two bench warrants. After his arrest on the second warrant, on August 18, 2009, the trial court set Webb’s trial date for October 13, 2009. After notifying the court of a possible mental defense to the “intent” element of the registration charge, the court ordered an examination, and on September 17, the trial court found Webb competent to

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<sup>1</sup> A commissioner of this court initially considered Webb’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

stand trial and changed his trial date to October 15.<sup>2</sup>

On October 15, the State moved to continue the trial date because (1) the prosecutor had received the file just one week prior; (2) the investigation had uncovered additional information, witnesses, and possibly documents that the State needed time to obtain; and (3) one of the State's witnesses, Kenneth Troy, was in Arizona and would not return for four to six weeks. Webb objected. The trial court continued the trial date to December 3. At that time, there were 32 days remaining in Webb's CrR 3.3 time-for-trial period. On November 5, the State amended Webb's information to add a charge of bail jumping.

On December 3, the trial court continued Webb's trial date to December 7 because no courtrooms were available. There were several additional continuances when no courtrooms were available.<sup>3</sup> The final trial date resulting from these continuances, December 14, was still 21 days before the end of Webb's CrR 3.3 time-for-trial period. On December 14, Webb's trial began. He waived his right to a jury. The trial court found him guilty of both bail jumping and failure to register as a sex offender. Webb appeals.

#### ANALYSIS

Webb first argues that the trial court abused its discretion in continuing his trial date from October 15 to December 3. He contends that, because the State did not subpoena its witness (Troy), it failed to exercise the due diligence necessary for a continuance under CrR 3.3(f)(2).

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<sup>2</sup> The record is silent about the reason for changing the trial date from October 13 to October 15.

<sup>3</sup> On December 7, the trial court continued Webb's trial date to December 9; on December 9, the trial court continued Webb's trial date to December 10; and, on December 10, the trial court continued Webb's trial date to December 14. Troy did return to Washington in time for Webb's trial, but he failed to appear to testify despite two efforts by the State to procure his testimony.

NO. 40253-0-II

*State v. Adamski*, 111 Wn.2d 574, 579, 761 P.2d 621 (1988); *State v. Nguyen*, 68 Wn. App. 906, 914, 847 P.2d 936, *review denied*, 122 Wn.2d 1008 (1993). We disagree.

A trial court may grant the State's motion for a continuance when “required in the administration of justice” so long as the continuance will not substantially prejudice the defendant in the presentation of his defense. *State v. Saunders*, 153 Wn. App. 209, 217, 220 P.3d 1238 (2009) (quoting CrR 3.3(f)(2)). Continuances granted under CrR 3.3 are excluded from the time-for-trial period. CrR 3.3(e), (f). A trial court does not abuse its discretion in granting a continuance to permit the State time to prepare for the case<sup>4</sup> or to permit the State time to obtain new evidence.<sup>5</sup> Here, the trial court granted the continuance so the State could obtain potential newly discovered evidence and prepare for the case where the deputy prosecutor had been assigned only one week earlier. This continuance neither harmed nor prejudiced the defendant; nor did it violate Webb’s right to a “speedy trial” under CrR 3.3.<sup>6</sup>

Webb also argues that the trial court erred by continuing his trial date on December 3, December 7, December 9, and December 10 without making a record as to the possible use of a judge pro tempore. *State v. Kenyon*, 167 Wn.2d 130, 138-39, 216 P.3d 1024 (2009). But

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<sup>4</sup> *State v. Flinn*, 154 Wn.2d 193, 200-01, 110 P.3d 748 (2005) (trial court did not abuse discretion in granting continuance for State to prepare for diminished capacity defense).

<sup>5</sup> *State v. Cauthron*, 120 Wn.2d 879, 910, 846 P.2d 502 (1993).

<sup>6</sup> An appellate court may affirm a trial court on any correct ground. *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986). Because we hold that the trial court did not abuse its discretion in granting the continuance so that the State could obtain potential new evidence and prepare its case, we do not address Webb’s additional argument that the trial court should have denied the State’s motion for a continuance to obtain the presence of an out-of-state witness whom the State had failed to subpoena.

NO. 40253-0-II

*Kenyon* applies only when continuing the trial date would put it beyond the end of the CrR 3.3 time-for-trial period. None of the December continuances put Webb's trial date beyond the end of the applicable time-for-trial period.<sup>7</sup> Thus, the trial court was not required to create the record described in *Kenyon*.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Penoyar, C.J.

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Johanson, J.

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<sup>7</sup> See also *Kenyon*, 167 Wn.2d at 138, n.3.