

## Not One in the Same

By: Wayne C. Fricke; July 2003

On June 5, 2003, the Supreme Court clarified just what is subject to a speedy trial violation when two charges that could have been charged together are not. See State v. Kindsvogel, #72541-1 (June 5, 2003). In Kindsvogel the Supreme Court reversed Division III of the Court of Appeals and reinstated the conviction of a defendant who had been previously convicted of domestic violence. The defendant was then charged with possession of marijuana eight months after his arrest date and four months after he entered into a plea agreement on the domestic violence charge.

The Court of Appeals had held that the two charges, since they arose out of the same criminal event, had to have been charged together and because they were not, the speedy trial began to run on the initial arraignment date resulting in the dismissal. After analyzing the ABA standards for criminal justice, as well as the commentary thereto, the Supreme Court relied on State v. Lee, 132 Wn.2d 498, 939 P2d 1223 (1997) in reversing the appellate court and reinstating the conviction.

The Supreme Court held this situation simply was not a close case because “fourth degree assault and possession of marijuana do not involve the same physical acts or actions.” The court consequently held that the cases were not required to be mandatorily joined since they involved different intent, victims and physical acts or actions. It was not relevant for purposes of the speedy trial rights and mandatory joinder rules that the defendant was arrested for the two offenses occurring at the same time.

The thrust of this decision appears to be the state can seek the charge of a defendant on multiple occasions on different types of charges even though all the information was gathered during one investigation. Consequently, in negotiating a plea agreement counsel should have all potential charges contained within the plea to prevent this type of charging from occurring. Otherwise, look forward to a potential malpractice suit.

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