

NO. 44026-1-II

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

DIVISION II

STATE OF WASHINGTON,

Appellant/Cross Respondent,

vs.

TERESA LYNN CLINE,

Respondent, Cross Appellant.

OPENING BRIEF OF APPELLANT

**SEAN BRITTAIN
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for Appellant**

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I. ASSIGNMENT OF ERROR

1. The trial court erred in granting the Teresa Cline's motion to dismiss under *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. To prevail on a *Knapstad* motion, a defendant must file an affidavit stating there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. Is a *Knapstad* motion defeated when the State files an affidavit which specifically denies the material facts alleged in the defendant's affidavit?

III. STATEMENT OF FACTS AND PRIOR PROCEEDINGS

On June 15, 2012, Joel Galvino was meeting with CPS worker Tarassa Wiper at his residence, located at 137 Williams Ave, Kelso, Washington. During this meeting, Ranee Cline and Teresa Cline arrived at Mr. Galvino's residence. CP 16. Mr. Galvino and Ranee Cline are the biological parents of B.G., the child in this case. CP 16. While Ranee Cline and Teresa Cline were at Mr. Galvino's residence, Parent Child Assistance Program (PCAP) worker Jamie Nance arrived. Ms. Nance overheard Ranee Cline tell the Teresa Cline to take the child and leave Mr. Galvino's residence. CP 11.

While Mr. Galvino, Ranee Cline, and Ms. Wiper were speaking, Haleigh Grasser, a neighbor, observed the Teresa Cline move her vehicle to a parking spot down the street from Mr. Galvino's residence. CP 16. Approximately three minutes later, Ms. Grasser observed Teresa Cline

running towards her vehicle while carrying the child like a football. CP 16. Ms. Grasser then observed Teresa Cline drive away with the child. CP 16. Mr. Galvino and Ranee Cline attempted to locate Teresa Cline and the child at CPS and PCAP. CP 16. After failing to do so, Mr. Galvino contacted 911. CP 16.

Cowlitz County Sheriff Deputy Dan Sheridan arrived at Mr. Galvino's residence. Deputy Sheridan interviewed Ranee Cline, who stated that she had not given permission to Teresa Cline to take the child from Mr. Galvino's residence. CP 16. Ranee Cline also stated that her grandmother, Rosemary Cline, had requested visitation with the child for the entire Father's Day weekend. CP 16. According to Ranee Cline, they would be camping at Silver Lake. CP 16.

Deputy Sheridan interviewed Mr. Galvino, who stated that there had been an ongoing dispute between himself, Teresa Cline, and Rosemary Cline about visitation with the child. CP 16 at 88. Mr. Galvino told Deputy Sheridan that Rosemary Cline had previously requested to have the child for the entire Father's Day weekend for a camping trip to Silver Lake. CP 16.

Deputy Sheridan interviewed Diane Waadevig, Mr. Galvino's aunt. Ms. Waadevig showed Deputy Sheridan a text message conversation she had with Rosemary Cline. CP 16. The text messages

show that on June 13, 2012, Rosemary Cline had requested to have the child for the entire Father's Day weekend. CP 16. After Teresa Cline took the child from Mr. Galvino's residence, Ms. Waadevig told Rosemary Cline, through a text message, that she should call the Teresa Cline and tell her to return the child. CP 16. Rosemary Cline responded with a text message that said "this would not come to this if you would of just let ranee and the family see him once in a while." CP 16.

Cowlitz County Sheriff Deputy Kim Moore located Teresa Cline and the child at the Silver Cove RV campground. Deputy Sheridan arrived shortly and interviewed Teresa Cline. CP 16. After being informed of her rights, Teresa Cline told Deputy Sheridan that Ranee Cline had asked her to take the child. CP 16. Deputy Sheridan re-interviewed Ranee Cline, who was also at the campground. Ranee Cline told Deputy Sheridan that she had given Teresa Cline permission to take the child. CP 16.

On June 19, 2012, the Cowlitz County Prosecutor's Office filed an information charging Teresa Cline with Custodial Interference in the First Degree. CP 5. Teresa Cline's attorney filed a *Knapstad* motion on August 7, 2012. CP 10. Included within the *Knapstad* motion were affidavits signed by Ranee Cline and Rosemary Cline. CP 12 and CP 13.

On August 16, 2012, the State filed a motion to amend the information. CP 19. The court deferred ruling on the State's motion until the *Knapstad* motion was ready to be heard. On August 30, 2012, despite an objection from Teresa Cline's attorney, the trial court granted the State's motion to amend the information. CP 19; RP at 2-6. On that same date, the trial court heard Teresa Cline's *Knapstad* motion. RP at 7-19. On September 20, 2012, the trial court granted the *Knapstad* motion, dismissed the charge without prejudiced and entered its findings. CP 22. The State filed a timely notice of appeal. CP 23.

IV. ARGUMENTS

A. Standard of Review

A trial court's decision to dismiss under *Knapstad* is reviewed de novo. *State v. Missieur*, 140 Wn. App. 181, 184, 165 P.3d 381 (2007). All the facts and all reasonable inferences are viewed in the light most favorable to the State. *Id.* On review, the trial court's decision to dismiss under *Knapstad* will be affirmed if no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *State v. O'Meara*, 143 Wn. App. 638, 641, 180 P.3d 196 (2008) (*following State v. Wilhelm*, 78 Wn. App. 188, 191, 896 P.2d 105 (1995)).

To prevail on a *Knapstad* motion, the defendant must establish that "there are no material disputed facts and the undisputed facts do not

establish a prima facie case of guilt.” *Knapstad*, 107 Wn.2d at 356, 729 P.2d 48. A *Knapstad* motion can be defeated if the State files an affidavit which specifically denies the material facts alleged in the defendant’s affidavit. *State v. Groom*, 133 Wn.2d 679, 684, 947 P.2d 240 (1997). “If material factual allegations in the motion are denied or disputed by the State, denial of the motion to dismiss is mandatory.” *Id.* (quoting *Knapstad*, 107 Wn.2d at 356, 729 P.2d 48).

B. There Was a Material Dispute in the Facts Alleged by Teresa Cline’s Attorney’s Affidavit; Therefore, the Trial Court Erred in Granting the *Knapstad* Motion.

In pursuing the *Knapstad* motion, the Teresa Cline filed an affidavit alleging that there was no dispute in the material facts. CP 10. Within that affidavit, Teresa Cline’s attorney asserted that the intention of the Teresa Cline, Ranee Cline, and Rosemary Cline was to have the child attend a family picnic for a few hours at Silver Lake Cove. CP 10 at 4. This assertion was supported by the affidavit of Rosemary Cline. CP 13. Both of these affidavits contradicted the allegations contained within the police reports, which were included in the *Knapstad* motion. CP 10.

Within those reports, as stated in the State’s Affidavit, Teresa Cline, Ranee Cline, and Rosemary Cline intended on keeping the child from Mr. Galvino for the entire Father’s Day weekend, not a mere few

hours. CP 16. This is a material dispute in the facts. The difference between a few hours and an entire weekend is significant, especially when considering the fact that it was Father's Day weekend. The State pointed out this discrepancy to the trial court and requested the *Knapstad* motion be denied. RP at 12-13. The trial court ignored this this discrepancy, stating "No, it – for the purposes of this motion, it's agreed to. You don't have to agree to it from here on out." RP at 14.

The record does not contain a single instance in which Teresa Cline affirmatively agrees with the State's rendition of the facts. Instead, we have "assuming, for the sake of argument..." This does not support the basic principles of a *Knapstad* motion – the facts must be agreed upon. Teresa Cline failed to do this. In fact, as stated above, Teresa Cline's attorney went so far as to file two affidavits which contradicted the police reports. Based upon this alone, the trial court should have denied the *Knapstad* motion.

C. The State Presented a Prima Facie Case of Guilt; Therefore, the Trial Court Erred in Granting the *Knapstad* Motion.

Custodial Interference in the First Degree requires the State to prove beyond a reasonable doubt that:

A parent or other person acting under the directions of the parent...intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order or parenting plan has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period of time.

RCW 9A.40.060(3). The trial court concluded that there are four essential elements to this crime: (1) a lack of a parenting plan; (2) Teresa Cline took the child at the direction of a parent; (3) with an intent to deprive Mr. Galvino of access to the child; and (4) for a protracted period of time. RP at 17-18.

The trial court determined that the State could not meet its burden in proving the fourth factor – the protracted period of time. In its written findings, the trial court stated “I would find as a matter of law that two days, in the factual circumstances presented by the prosecuting attorney, and taking those facts in the light most favorable to the State, cannot constitute a ‘protracted period’” CP 22 at 93.

There is no legal definition of “protracted period of time.” The Custodial Interference statute does not contain a definitional section. Merriam-Webster dictionary defines “protracted” as “to prolong in time or space” and “to extend forward or outward.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/protracted> (last visited February 12, 2013). Based upon the facts specific to this case, it was improper of the court to determine, as a matter of law, that “protracted period of time” does not include an entire weekend. When viewing the evidence in the light most favorable to the State, a jury could have found a protracted period of time when Teresa Cline carried the child like a football as she ran from Mr. Galvino’s home, took the child to a location unbeknownst to Mr. Galvino, and with the intent to keep the child away from Mr. Galvino for the entire Father’s Day weekend. Thus, the granting of the *Knapstad* motion was improper.

V. CONCLUSION

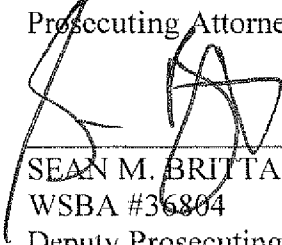
Because there was a material dispute in the facts, the trial court erred in granting the *Knapstad* motion. Furthermore, it was improper for the trial court to grant the *Knapstad* motion when the State was able to

present a prima facie case of guilty. Therefore, this Court should reverse the ruling of the trial court and remand for further proceedings.

Respectfully submitted this 14 day of February, 2013

SUSAN I. BAUR
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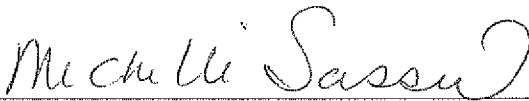
CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on February 14th, 2013.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

February 14, 2013 - 11:31 AM

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