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**Case # 329275**

**Statement of Additional Grounds  
for Review**

**State of Washington**

**v.**

**Travis Lee Padgett**

**COPY**



COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

**FILED**

DEC 28 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 Travis Lee Padgett )  
 (your name) )  
 )  
 Appellant. )

No. 329275  
Yakima County Superior Court no. 131001107  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Travis Padgett, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

If the trial court would've granted defences motion to continue, we (the defence) could have gathered more evidence like a drug/hair follicle test which we (the defence) was supposed to do, to show I was not using or doing drugs, with anyone. Which would have showed the alleged victims were lying.  
Please see attached, thank you.

Additional Ground 2

Also, the trial courts failure to grant defences continuance motion made it impossible to have independent DNA testing done. The Washington state Crime Lab has had several instances where there was improper DNA testing done and WSP staff also have been caught lying before. We (the defence) should have been allowed the right to confirm/unconfirm the crime labs reports.  
Please see attached, thank you.

If there are additional grounds, a brief summary is attached to this statement.

Date: 12-22-2015  
Form 23

Signature: Travis J. Padgett

## ARGUMENT

**1. The trial court erroneously denied Mr. Padgett's motion for a continuance, when the State failed to conduct DNA testing in a timely manner and provided the test results less than two weeks prior to trial.**

a. A trial court has authority to continue a trial as a sanction and a remedy for untimely discovery.

A criminal defendant cannot be deprived of liberty without due process of law. U.S. Const. amend. XIV; Art. I, § 3. Due process requires that criminal proceedings comport with "prevailing notions of fundamental fairness such that [the defendant] was afforded a meaningful opportunity to present a complete defense." *State v. Greiff*, 141 Wn.2d 910, 920, 10 P.3d 390 (2000) (quoting *State v. Lord*, 117 Wn.2d 829, 867, 822 P.2d 177 (1991)). The State's violation of a discovery rule may infringe on a defendant's right to due process. *Greiff*, 141 Wn.2d at 920; *State v. Barry*, 184 Wn. App. 790, 796, 339 P.3d 200 (2014).

CrR 4.7(a) governs discovery and provides in pertinent part:

(2) The prosecuting attorney shall disclose to the defendant:

...  
(ii) any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

The rule imposes a continuing duty to disclose and authorizes a continuance as a sanction for violation of that duty. CrR 4.7(h)(2),<sup>1</sup> 4.7(h)(7)(i).<sup>2</sup> The rule is liberally construed “to serve the purposes underlying CrR 4.7, which are ‘to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process....’” *State v. Dunivin*, 65 Wn. App. 728, 733, 829 P.2d 799 (1992) (internal citations omitted); *see also State v. Smith*, 67 Wn. App. 847, 851, 841 P.2d 65 (1992) (“The purpose of the rule is to protect against surprise that might prejudice the defense.”).

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<sup>1</sup> CrR 4.7(h)(2) provides:

(2) *Continuing Duty to Disclose.* If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

<sup>2</sup> CrR 4.7(h)(7)(i) provides:

(7) *Sanctions.*  
(i) if at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

In addition, CrR 3.3(f)(2)<sup>3</sup> provides a trial court may continue a trial when a continuance is required in the administration of justice, the defendant will not be prejudiced, and the motion is made before the expiration of the time for trial. "Relevant considerations include whether the motion is for delay, and whether prior continuances have been granted." *State v. Honton*, 85 Wn. App. 415, 423, 932 P.2d 1276 (1997). A trial court's decision regarding granting a continuance is reviewed for abuse of discretion.

- b. A continuance was necessary as a sanction for the prosecutor's untimely discovery and in the administration of justice to allow Mr. Padgett time to review the State-generated DNA test results with a defense expert.

On February 19, 2013, Kenneth Raber, Mr. Padgett's attorney, filed a Motion to Compel Discovery, specifically demanding disclosure of all evidentiary items the State intended to have scientifically tested and the results of such tests. Supp. CP \_\_\_, sub no. 21. Over the following five months, Mr. Raber made repeated requests for discovery. On March 15,

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<sup>3</sup> CrR 3.3(f)(2) provides:

(2) *Motion by the Court or a Party.* On motion of the court or a party, the court may continue the trial date to a specified 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 motion must be made before the time for trial has expired. 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.

2013, the court granted a defense motion for a continuance on the grounds discovery was not complete and witnesses needed to be interviewed. CP 5. In April 3, 2013, the court granted an second defense motion for a continuance, ordered the prosecutor "double check with law enforcement" regarding discovery, and noted the defense request for a list of "property which is intended to be sent to lab." CP 6. On May 29, 2013, the court granted a joint motion for a continuance for witness interviews, and noted "no material has yet been sent to [Washington State Patrol Crime Laboratory], parties working on this issue." CP 7. On July 18, 2013, the court granted another defense motion for a continuance on the grounds discovery was not complete and witnesses needed to be interviewed, and noted the prosecutor was to check the "status of crime lab investigation." CP 8. On August 2, 2013, over defense objection due to untimeliness, the court granted the prosecutor's motion to compel Mr. Padgett to provide a saliva sample. CP 40, 46. On August 27, 2013, the court granted the prosecutor's motion for the crime laboratory to test "an item described as a plastic shower sheet." CP 21.

Trial was scheduled to begin on October 7, 2013, with an expiration date of November 11, 2013. Supp CP \_\_\_, sub nos. 53, 59. At an omnibus hearing held on September 25, 2013, twelve days prior to trial, the court entered an order that noted the prosecutor had provided all

discovery in its possession but “DNA material not returned from state crime lab (lab report received).” Supp CP \_\_\_, sub no. 56.

On October 4, 2013, the Friday before trial was to commence, the defense moved for a continuance due to the untimely production of the DNA test results. Mr. Raber stated:

We mentioned the scientific evidence, the crime lab. Specifically, knowing that they would be wanting to obtain DNA evidence. In March we asked about it, May - - April, and May, and June, has anything been sent to the crime lab? No. In August, we finally get a motion to take a DNA sample from my client which was obtained over my objection which was based upon the tardiness of the request and the fact that it takes time to process the DNA and it would impact our trial date. Last week we received the results of the DNA on a two-page report. From that report I'm unable to discern whether or not they followed the established protocols in performing these tests. Certainly, we would want to have an independent examination and testing done. We can't do that at this point if the trial date is maintained.

10/4/13 RP 49-50.

The prosecutor responded:

The crime lab provided reports to us on September 23<sup>rd</sup>, and I believe they were provided to Mr. Raber on September 24<sup>th</sup>, and apparently there was no effort undertaken upon receipt to ask the State to schedule an interview with the forensic scientists. If that request would have been made, we would have done so. And we still can do so if that's counsel's request.

10/4/13 RP 54. Alluding to an apparent disagreement with a crime laboratory policy, the prosecutor continued:



The items of evidentiary import were sent to the crime lab after asking the crime lab and asking them to take on these items to review. Policy statements were earlier made known to [Yakima Police Department] that there were certain items and certain aspects of work that the crime lab would no longer do.

As I advised the Court at a previous hearing, Detective Oja and I spoke with the supervisor at the Washington State Patrol Crime Lab in that unit to ask them if they would please do this work. So this was done after they had considered and reconsidered doing the work that we requested them to do.

We asked them to do this work as soon as they could. That report I believe was returned to us on September 23<sup>rd</sup>; it would have been provided to Mr. Raber the best - - at the next day which is my best information at this point.

He has had since that time to ask us for an interview or to engage in an effort to try to determine another expert to review it. To the best of my knowledge, neither of those have been done.

10/4/13 RP 56-57. The motion for a continuance was denied.

10/4/13 RP 58.

Although the prosecutor appeared to blame the crime laboratory for the dilatory test results, she did not indicate why she did not request a DNA sample from Mr. Padgett until two months prior to trial or why she did not request a test of the shower curtain until August 27, 2013, more than eight months after the item was taken into evidence. Supp CP \_\_, sub no. 48. In addition, the conduct of employees of the crime laboratory constitutes conduct by the State, and does not relieve the prosecutor of her

discovery obligations. *State v. Woods*, 143 Wn.2d 561, 583, 23 P.3d 1046 (2001).

In *Woods*, over the defendant's objection, the trial court granted defense counsel's two motions to continue the trial date due to the State's delay in conducting DNA testing. 143 Wn.2d at 573-77. On appeal, the defendant argued the continuances violated the time for trial rule. *Id.* at 579. The Court disagreed, and noted the first continuance was appropriate because:

It is clear to us that the trial court did not wield its discretion in an abusive manner when it continued the trial from October 21, 1996, to March 17, 1997. If it had required Woods to go to trial in October, justice could well have been thwarted because the results of the State's DNA testing were not due to be handed over to the defense until October 1 - a mere three weeks before the trial was set to commence. Based on the information the trial court had before it, it was reasonable for the court to conclude that a mere 21 days would not have been enough time for the defense to review the State's test results or obtain an independent analysis of the DNA evidence. We are satisfied, in short, that it was reasonable for the trial court to conclude that an October trial would have prevented Woods's counsel from being fully prepared to deal with the DNA evidence amassed by the State.

*Id.* at 580. The Court noted the second continuance was similarly appropriate:

This [second] continuance was necessitated by the State's "significant delay" in its handling of the DNA evidence as well as the heavy "caseloads" being handled by Woods's counsel. CP at 178, 173. When looking at the events

through the same prism as the trial court, we are satisfied that it was reasonable for the court to grant the requested continuance. We reach that conclusion because Woods could have been confronted with damaging DNA evidence and his attorneys would neither have had an opportunity to conduct their own inquiry with respect to the State's tests nor would they have had time to engage in their own testing. Moreover, had the trial commenced in March, Woods would have been placed in the difficult position of having representation from counsel all of whom indicated that "adequate representation" could not be provided if the trial commenced on March 17, 1997.

*Id.* at 581.

Similarly here, justice was "thwarted" when the trial court denied the motion for a continuance as a sanction for the State's lack of due diligence which prevented defense counsel from being able to meaningfully review the scientific evidence introduced by the State and to prepare a defense and as a remedy to ameliorate the resulting prejudice to Mr. Padgett. At the time the motion was made, the time for trial did not expire for five weeks and he would not be prejudiced by any continuance.

c. The proper remedy is reversal of the convictions for felony sexual offenses.

Discovery violations based on untimely production of evidence are "appropriately remedied" by a continuance to give the other party an opportunity to address the new evidence. *State v. Hutchinson*, 135 Wn.2d 863, 881, 959 P.2d 1061 (1998). A trial court's denial of sanctions is reviewed for abuse of discretion and requires reversal where the defendant

makes “some showing of actual prejudice.” *State v. Berry*, 184 Wn. App. 790, 796, 339 P.3d 200 (2014); *State v. Bradfield*, 29 Wn. App. 679, 682, 630 P.2d 494 (1981).

The denial of a continuance was highly prejudicial to Mr. Padgett’s ability to present a complete defense. DNA evidence is afforded the imprimatur of infallibility. *See generally* Christine D. Salmon, *DNA Is Different: Implications of the Public Perception of DNA Evidence on Police Interrogation Methods*, 11 Richmond J.L. & Pub. Interest 51, 71-76 (2008) (public perceives DNA evidence as infallible). The eleventh-hour disclosure of the DNA test results precluded a meaningful opportunity for Mr. Padgett to review the test procedures and results or to conduct an independent test prior to the scheduled trial date. Accordingly, Mr. Padgett’s convictions for the felony sexual offenses based on the DNA evidence must be reversed. *Bradfield*, 29 Wn. App. at 682.

**FILED**

MAR 02 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

DIVISION THREE

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STATE OF WASHINGTON,	)	No. 32927-5-III
	)	
Respondent,	)	SUPPLEMENTAL
	)	GROUND FOR
v.	)	REVIEW AND
	)	ARGUMENT
TRAVIS L. PADGETT,	)	
	)	
Appellant.	)	

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Summarized below is a supplemental ground for review and argument.

Additional Ground 3

Please find a copy of my Prose Motion I filed with Superior Court which was denied in open court on July 18<sup>th</sup>, 2013. Please accept this motion to support my motion to file Supplemental Assignment of error signed Jan. 16<sup>th</sup>, 2016. Please grant me a new trial so I can submit the evidence I was previously denied which will prove I'm innocent Please.

Date: 2/26/2016

Signature: *Travis L. Padgett*

CA

DECLARATION SERVICE

I, the undersigned, declare under penalty of perjury, I did mail a copy of this pleading through the U.S. Mail, postage pre-paid, addressed to plaintiff at:

Prosecutor Office  
128 N. 2nd St., #328  
Yakima, WA 98901

~~Travis Padgett~~ 7-2-2013  
Sign and date

FILED

2013 JUL 10 P 12:19

KIM EATON  
EX OFFICIO CLERK OF  
SUPERIOR COURT

FILED

MAR 02 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By

YAKIMA SUPERIOR COURT  
STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff,

NO: 13-1-00110-7

-vs-

NOTICE OF MOTION

TRAVIS PADGETT,  
Defendant.

TO: CLERK of the Court; and  
State of Washington, Plaintiff.

On Thursday, July 11th, 2013, Defendant's pro se motion seeking to address the court shall be heard in the basement of the Yakima City Jail, 111 N. Front St, Yakima, WA 98901, at 9:00 A.M.

Defendant ask the Clerk to orchestrate the Court's calendar so that his motion may be heard on the date and time indicated.

SIGNED: July 2<sup>nd</sup>, 2013.

~~Travis Padgett~~ 7-2-2013

Travis Padgett  
Defendant - Pro Se  
111 N. Front St.  
Yakima, WA 98901

NOTICE OF MOTION

DECLARATION . . . . . REVICE

I, the undersigned, declare under penalty of perjury, I did mail a copy of this pleading through the U.S. Mail postage pre-paid, addressed to plaintiff at:

Prosecutor Office  
128 N. 2nd St., #328  
Yakima, WA 98901

FILED

2013 JUL 10 P 12:19

KIM EATON  
EX OFFICIO CLERK OF  
SUPERIOR COURT  
YAKIMA, WASHINGTON

Travis Padgett - 7/2/2013  
sign and date

YAKIMA SUPERIOR COURT  
STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff,  
-vs-  
TRAVIS PADGETT,  
Defendant.

NO: 13-1-00110-7  
DEFENDANT'S PRO SE  
MOTION AND DECLARATION  
TO ADDRESS THE  
COURT

This is defendant's pro se motion seeking to address the Court regarding matters which may potentially effect his constitutional rights in the above referenced Cause.

DECLARATION

I, the undersigned, declare under penalty of perjury, that I possess certain information which I believe compell's me to inform the Court regarding matters which potentially could effect my constitutional rights in the above referenced Cause.

DECLARED: July 2<sup>nd</sup>, 2013.

Travis Padgett

Travis Padgett  
Defendant - pro se  
111 N. Front St.  
Yakima, WA 98901

DEF. PRO SE  
MOTION ADDRESS  
THE COURT -1-