

FILED  
December 3, 2015  
Court of Appeals  
Division I  
State of Washington

No. 73306-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

NICOLE ALVIN SAND,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

---

APPELLANT'S OPENING BRIEF

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**TABLE OF CONTENTS**

A. ASSIGNMENTS OF ERROR ..... 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ..... 1

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT..... 10

**1. The prosecutor committed reversible misconduct during closing argument by referring to prejudicial facts implicating Mr. Sand that were not admitted into evidence** ..... 10

*a. Contrary to the trial court’s ruling, Mr. Sand’s challenge to the prosecutor’s misconduct was properly preserved* ..... 10

*b. The conviction must be reversed because the prosecutor made improper comments that likely affected the verdict...* 13

**2. The court erred in finding that Mr. Sand “used” a motor vehicle in committing the offense**..... 17

E. CONCLUSION ..... 22

**TABLE OF AUTHORITIES**

**Washington Cases**

State v. Alcantar-Maldonado, 184 Wn. App. 215, 340 P.3d 859  
(2014)..... 18, 19, 20, 22

State v. Batten, 140 Wn.2d 362, 997 P.2d 350 (2000) ..... 20, 21

State v. Dhaliwal, 150 Wn.2d 559, 79 P.3d 432 (2003)..... 13

State v. Dupuis, 168 Wn. App. 672, 278 P.3d 683 (2012) ..... 19

State v. Dykstra, 127 Wn. App. 1, 110 P.3d 758 (2005) ..... 19

State v. Emery, 174 Wn.2d 742, 279 P.3d 653 (2012) ..... 11, 15

State v. Griffin, 126 Wn. App. 700, 109 P.3d 870 (2005)..... 19

State v. Hearn, 131 Wn. App. 601, 128 P.3d 139 (2006)..... 18, 21

State v. Jones, 144 Wn. App. 284, 183 P.3d 307 (2008)..... 13

State v. Lindsay, 180 Wn.2d 423, 326 P.3d 125  
(2014) ..... 11, 12, 13, 14, 16, 17

State v. Quismundo, 164 Wn.2d 499, 192 P.3d 342 (2008)..... 11

**Statutes**

RCW 46.20.285(4)..... 2, 10, 18

A. ASSIGNMENTS OF ERROR

1. The deputy prosecutor committed misconduct, violating Nicole Sand's right to a fair trial, by referring to prejudicial facts not in evidence during closing argument.

2. The trial court abused its discretion in denying the motion for mistrial.

3. The trial court abused its discretion in denying the motion for new trial.

4. The trial court erred in finding Mr. Sand used a motor vehicle in committing the crime.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When a prosecutor commits misconduct during closing argument, a defendant must object in order to preserve a challenge for appeal. The objection need not be contemporaneous, however. If defense counsel moves for a mistrial directly after the prosecutor's argument, the challenge is preserved. Here, the deputy prosecutor committed misconduct during rebuttal closing argument and defense counsel moved for a mistrial directly after the prosecutor's argument concluded. Did the trial court err in ruling Mr. Sand waived his right to challenge the misconduct?

2. A prosecutor commits misconduct by referring to facts not in evidence during closing argument. Here, during closing argument, the prosecutor stated that a witness had told police that Mr. Sand went into the burgled house, but in fact no such evidence was ever admitted at trial. Did the prosecutor commit misconduct?

3. Under RCW 46.20.285(4), a trial court may order an offender's driver's license revoked for one year if the court finds the offender "used" a motor vehicle in commission of a felony. The statute does not apply if the offender merely "used" the vehicle to transport himself to the scene of the crime. Even if contraband is found inside the vehicle, the statute does not apply unless the vehicle is "used" to store and conceal the contraband. Here, Mr. Sand allegedly drove his truck to the scene of a burglary. Items from the burgled house were later found inside the truck but the truck was not "used" to store or conceal the items. Did the trial court err in finding Mr. Sand "used" his truck in commission of a burglary for purposes of RCW 46.20.285(4)?

#### C. STATEMENT OF THE CASE

Howard Gorlick owns a house in a rural, wooded area of Monroe. 3/03/15RP 104-05. On December 29, 2013, he drove home late at night, arriving at around 12:40 a.m. 3/03/15RP 106, 112. It was

very dark outside. 3/03/15RP 112. As Mr. Gorlick drove up his long driveway, he noticed a pickup truck parked in front of the house.

3/03/15RP 113-14. He did not recognize the truck and was not expecting visitors. 3/03/15RP 113-14.

Mr. Gorlick got out of his car, walked closer to the house and looked through the front window. 3/03/15RP 113, 134. He had left a light on in the kitchen and thought he could see people moving around inside the house, but he could not be sure of what he saw. 3/03/15RP 113, 134, 143-44. He was not able to identify anyone later. 3/03/15RP 113, 172. Mr. Gorlick noticed the front door had been forced open and the door jamb was damaged. 3/03/15RP 116. He walked down the driveway and called 911. 3/03/15RP 113. The police arrived within a few minutes. 3/03/15RP 118.

Police officers approached the house and heard crashing noises and voices inside. 3/04/15RP 95. They thought they saw three individuals with flashlights inside the house rummaging through some things. 3/04/15RP 95-96, 177, 239. But they could not see the individuals clearly and were not able to identify anyone later. 3/04/15RP 96, 133, 239.

The officers then saw flashlights behind the house and heard voices there. 3/04/15RP 98, 194. They ran around the house and pursued the individuals. 3/04/15RP 99, 240. The officers found Candy Mattila and Amanda Rockwell in bushes near the back of the house. 3/04/15RP 100, 195-96. Appellant Nicole Sand was also found in bushes nearby. 3/04/15RP 91, 196-97. All three were taken into custody. 3/04/15RP 7, 196-97.

Mr. Sand told the police that Ms. Rockwell had told him the house was abandoned. 3/04/15RP 88. The police searched Mr. Sand incident to arrest and found vehicle titles and registration documents with Mr. Gorlick's name on them. 3/04/15RP 87. Ms. Mattila later testified that she and Mr. Sand had found vehicle registrations and related documents in some of the vehicles Mr. Gorlick had parked outside the house. 3/05/15RP 85. Mr. Gorlick said he had stored the registration documents in a cupboard in the kitchen. 3/03/15RP 124.

The police found a backpack on the ground about 400 feet from where the suspects were taken into custody. 3/04/15RP 245; 3/05/15RP 57. Mr. Gorlick said the backpack was his and contained items taken from inside his house. 3/03/15RP 121; 3/05/15RP 20.

The truck parked in front of the house belonged to Mr. Sand and Ms. Mattila. 3/04/15RP 197; 3/05/15RP 92. The police searched the truck and found boxes containing some of Mr. Gorlick's things. 3/04/15RP 247.

Mr. Sand was charged with one count of residential burglary. CP 195; RCW 9A.52.025.

Ms. Mattila testified at the trial. Prior to her testimony, the court ruled that no portion of her police statement implicating Mr. Sand was admissible. 3/04/15RP 157.

Ms. Mattila testified that Mr. Sand was her boyfriend. 3/05/15RP 66. She said she and Mr. Sand met Ms. Rockwell for the first time that evening, at a friend's house. 3/05/15RP 66. They agreed to drive Ms. Rockwell home, as a favor. 3/05/15RP 66. On the way home, Ms. Rockwell asked them to stop at her uncle's house so that she could pick up some things. 3/05/15RP 67-68. Ms. Mattila and Mr. Sand waited out front while Ms. Rockwell went inside. 3/05/15RP 68. While they were waiting, Ms. Mattila and Mr. Sand looked around at several vehicles that were parked in front of the house. 3/05/15RP 69. The pickup truck was their only vehicle and they were thinking of

asking Ms. Rockwell if the owner of the cars in front might be willing to sell one of them. 3/05/15RP 69.

Ms. Mattila testified that she and Mr. Sand eventually found Ms. Rockwell in the backyard going through some boxes. 3/05/15RP 70. Ms. Mattila ran into the bushes because Ms. Rockwell told her to. 3/05/15RP 70-71. She did not know what was going on or why the police were after them. 3/05/15RP 71-73. Ms. Mattila testified that neither she nor Mr. Sand ever went inside the house. 3/05/15RP 70, 75, 81. She did not know how Mr. Gorlick's property got into the back of the truck. 3/05/15RP 82.

Consistent with Ms. Mattila's testimony, police officers testified that Ms. Mattila told police it was Ms. Rockwell's idea to go to the house. 3/04/15RP 229. Ms. Mattila told police Ms. Rockwell said the house belonged to a relative and she wanted to stop there to pick up some things. 3/04/15RP 229. Ms. Mattila initially told the police she stayed outside the house while Ms. Rockwell went inside. 3/04/15RP 230. According to the officers, Ms. Mattila later said she stepped inside the house through the back door. 3/04/15RP 105, 214. Ms. Mattila denied ever telling the police she went inside the house. 3/05/15RP 76.

Ms. Rockwell pled guilty to residential burglary pursuant to a plea agreement with the State. 3/03/15RP 177. The State agreed to recommend she receive drug treatment instead of a prison sentence, and not file additional charges, in exchange for Ms. Rockwell's agreement to testify against Mr. Sand and Ms. Mattila. 3/03/15RP 177, 189-91.

Pursuant to her plea agreement, Ms. Rockwell testified against Mr. Sand and Ms. Mattila at trial. She said it was Mr. Sand's idea to go to the house that night. 3/03/15RP 181. She said she had never been to the house before, even though she lived less than a mile away and was familiar with the church located at the bottom of Mr. Gorlick's driveway. 3/04/15RP 20-21, 37, 130, 180. Ms. Rockwell said all three of them went inside the house and rummaged through Mr. Gorlick's things. 3/03/15RP 183-84. Her trial testimony differed significantly from her statement to police, in which she claimed she had not gone inside the house. 3/03/15RP 193.

During closing argument, defense counsel emphasized the lack of evidence showing Mr. Sand had ever entered the house. 3/06/15RP 5-7, 16-7, 21-25. Counsel argued Ms. Rockwell's testimony was not credible because she had a motive to lie in order to take advantage of the State's plea bargain, and because she had changed her story.

3/06/15RP 6-13. Mr. Sand thought he had permission to be at the house and was not aware of Ms. Rockwell's intent to burglarize the house. 3/06/15RP 28-29.

In response, in rebuttal closing argument, the deputy prosecutor told the jury that Ms. Mattila's statement to police was direct evidence that Mr. Sand had entered the house. The prosecutor said that Ms. Mattila told the police that she, Mr. Sand, and Ms. Rockwell had all entered the house. 3/06/15RP 37.

After the prosecutor concluded his argument and the jury retired for deliberation, defense counsel moved for a mistrial. 3/06/15RP 44, 48. Counsel pointed out that the prosecutor committed misconduct by telling the jury that Ms. Mattila told the police that both she and Mr. Sand had been inside the house. 3/06/15RP 44-45. No evidence had been admitted to that effect, and the trial court had earlier ruled such evidence was inadmissible. 3/06/15RP 44-45. Counsel did not object during the prosecutor's argument because he did not want to highlight the issue for the jury. 3/06/15RP 44, 54-55. The prosecutor's argument had a substantial likelihood of affecting the jury's verdict because there was limited evidence showing that Mr. Sand ever entered

the house, and thus Mr. Sand's right to a fair trial was jeopardized.

3/06/15RP 52-53.

The court agreed that the prosecutor improperly referred to facts not in evidence when he said Ms. Mattila told police she and Mr. Sand had both been inside the house. 3/06/15RP 63-64. The court would have sustained an objection had one been made but concluded counsel's motion for mistrial was not sufficiently timely to preserve the objection. 3/06/15RP 64. The court found it could not grant the motion for mistrial without finding the prosecutor's conduct was flagrant and ill-intentioned. 3/06/15RP 65. Because the court could not make such a finding, it denied the motion. 3/06/15RP 65.

Highlighting the possible prejudicial effect of the prosecutor's improper statement during closing argument, during deliberations, the jury asked to see copies of the suspects' police statements. 3/06/15RP 69. The court denied the request, explaining that the statements had not been admitted into evidence. 3/06/15RP 69-70.

The jury found Mr. Sand guilty of residential burglary as charged. CP 53.

After the verdict, defense counsel moved for a new trial based on the prosecutor's misconduct in referring to facts not in evidence

during closing argument. CP 47-50; 3/24/15RP 18-22. Again the court found that the prosecutor “did make reference to facts which were not in evidence. If there had been an objection, I would have sustained it. Ms. Mattila never said what you [the prosecutor] thought she said, so there was a mistake.” 3/24/15RP 41. But the court denied the motion because counsel had not made a contemporaneous objection and the court could not find the prosecutor’s conduct was flagrant and ill-intentioned. 3/24/15RP 41-43.

At sentencing, the court found that Mr. Sand “used a motor vehicle” in commission of the crime. CP 4; 3/24/15RP 80. Therefore, the court ordered the Department of Licensing to suspend his driver’s license for one year pursuant to RCW 46.20.285(4). CP 4.

D. ARGUMENT

**1. The prosecutor committed reversible misconduct during closing argument by referring to prejudicial facts implicating Mr. Sand that were not admitted into evidence.**

*a. Contrary to the trial court’s ruling, Mr. Sand’s challenge to the prosecutor’s misconduct was properly preserved.*

In evaluating a claim of prosecutorial misconduct on appeal, the reviewing court must first determine whether the defendant lodged an

objection at trial.<sup>1</sup> State v. Lindsay, 180 Wn.2d 423, 430-31, 326 P.3d 125 (2014). If the defendant did not object or request a curative instruction, the claim is deemed waived unless the defendant can show the misconduct was so “flagrant and ill intentioned” that no jury instruction could have cured the resulting prejudice. Id.; State v. Emery, 174 Wn.2d 742, 762, 279 P.3d 653 (2012). If the defendant *did* object, however, he need only show that the prosecutor made improper comments and that the comments were prejudicial. Lindsay, 180 Wn.2d at 430-31.

In other words, if the defendant objected at trial, it is immaterial on appeal whether a jury instruction could have cured any prejudice. Id.

Here, Mr. Sand’s attorney did not object during the prosecutor’s closing argument but did move for a mistrial based upon prosecutorial misconduct directly after the argument concluded. 3/06/15RP 44-48. The trial court found the objection was untimely and thus required Mr. Sand to show the prosecutor’s conduct was “flagrant and ill

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<sup>1</sup> Generally, claims of prosecutorial misconduct are reviewed on appeal under the abuse of discretion standard. State v. Lindsay, 180 Wn.2d 423, 430, 326 P.3d 125 (2014) A trial court necessarily abuses its discretion if its decision is based on an erroneous view of the law. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

intentioned” in order to be entitled to relief. 3/06/15RP 64-65. The court then engaged in the virtually impossible task of trying to ascertain the prosecutor’s subjective motives in making the comments.

Unsurprisingly, the court could find no blatant evidence that the prosecutor’s motives were dishonest or that he had any evil intent.

Therefore, the court concluded that a mistrial was not warranted if an instruction could have cured the resulting prejudice. 3/06/15RP 63-65.

The court believed an instruction to the jury to disregard the comments would have cured any prejudice. Therefore, the court denied the motion for a mistrial. 3/06/15RP 65.

The trial court abused its discretion in concluding that Mr. Sand’s objection was untimely. The court’s decision was based on an erroneous view of the law. In Lindsay, our high court made clear that a defendant need not lodge an objection *during* a prosecutor’s closing argument in order to preserve an objection to improper comments. Lindsay, 180 Wn.2d at 430-31. If defense counsel moves for a mistrial directly following the prosecutor’s argument, the issue is preserved for appellate review. Id.

Here, defense counsel moved for a mistrial due to prosecutorial misconduct directly following the prosecutor’s argument. 3/06/15RP

44-48. Mr. Sand is therefore not required to show the prosecutor's comments were "flagrant and ill intentioned," or that an instruction could not have cured any prejudice. Lindsay, 180 Wn.2d at 430-31. Because the issue is preserved for appellate review, Mr. Sand need only show that the prosecutor made improper comments and that the comments were prejudicial. Id.

*b. The conviction must be reversed because the prosecutor made improper comments that likely affected the verdict.*

The questions in this case are whether (1) the prosecutor's comments were improper and (2) if so, whether the improper comments caused prejudice. Lindsay, 180 Wn.2d at 431.

As a quasi-judicial officer of the court, the prosecutor has the vital obligation to ensure that the accused receives a fair trial. State v. Jones, 144 Wn. App. 284, 290, 183 P.3d 307 (2008). Although the prosecutor is permitted latitude to argue the facts in evidence and reasonable inferences from those facts during closing argument, counsel may not make prejudicial statements that are not sustained by the record. State v. Dhaliwal, 150 Wn.2d 559, 577, 79 P.3d 432 (2003). A prosecutor who refers to prejudicial facts not in evidence

during closing argument contravenes his fundamental duty to ensure a fair trial. Id.; Jones, 144 Wn. App. at 290.

Here, there should be no question that the prosecutor made improper comments during closing argument by referring to facts not in evidence. In his rebuttal, the prosecutor insisted that Ms. Mattila had told police that both she *and* Mr. Sand entered the house that night. 3/06/15RP 37. But there was no evidence presented to the jury that Ms. Mattila ever made such a statement. The police officers testified that Ms. Mattila said she entered the house after initially denying it. 3/04/15RP 105, 214, 230. But they did not testify that Ms. Mattila ever said *Mr. Sand* entered the house. In fact, the court ruled that any statement by Ms. Mattila implicating Mr. Sand was inadmissible. 3/04/15RP 157. Ms. Mattila herself testified that neither she nor Mr. Sand entered the house. 3/05/15RP 70, 75, 81. She denied telling police that she had entered the house. 3/05/15RP 76.

The trial court specifically found the prosecutor “did make reference to facts which were not in evidence,” and “Ms. Mattila never said what [the prosecutor] thought she said.” 3/24/15RP 41. In short, Mr. Sand has met his burden to show the prosecutor made improper comments during closing argument. Lindsay, 180 Wn.2d at 431.

In order to establish prejudice, Mr. Sand must show there is a substantial likelihood that the prosecutor's improper comments affected the jury's verdict. Id. at 440. In analyzing prejudice, the Court views the improper comments in the context of the total argument, the issues in the case, the evidence, and the instructions given to the jury. Emery, 174 Wn.2d at 764 n.14.

The likely prejudice caused by the prosecutor's improper comments is apparent when viewed in the context of the total argument and the evidence and issues in the case. Presumably, the prosecutor made the improper comments in an attempt to rebut defense counsel's argument that the only direct evidence implicating Mr. Sand in the burglary was Ms. Rockwell's testimony, which could not be trusted because she had a motive to lie and had already made contradictory statements. See 3/06/15RP 5-13, 16-7, 21-25. Defense counsel argued Mr. Sand could not be found guilty as an accomplice because he thought he had permission to be at the house and was not aware of Ms. Rockwell's intent to burglarize it. 3/06/15RP 28-29. To rebut this argument, the prosecutor insisted to the jury that there was additional direct evidence of Mr. Sand's guilt, namely Ms. Mattila's statement to police that both she *and* Mr. Sand had entered the home. 3/06/15RP

37. By mischaracterizing the evidence in this way, the prosecutor severely undercut Mr. Sand's defense. If the jury believed, as the prosecutor urged, that Ms. Mattila had implicated Mr. Sand in her statement to police, they were much more likely to find that he had in fact entered the house and was guilty as a principal. The jury would also be more likely to find Mr. Sand had knowledge of the burglary and thus had assisted in it.

In addition, because the prosecutor's comments were made during rebuttal, they carried an extra potential for prejudice. Courts recognize that "comments at the end of a prosecutor's rebuttal closing are more likely to cause prejudice" because they are the last words from an attorney that the jury hears before deliberations. Lindsay, 180 Wn.2d at 443. Defense counsel had no opportunity to correct the jury's potential misunderstanding of the evidence which was created by the prosecutor's mischaracterization of the record.

Finally, the court provided no instruction to the jury that might have mitigated the potential prejudice. Although the jury was instructed that the attorneys' statements were not themselves evidence, CP 57, they were not instructed that the attorneys' statements purporting to characterize the actual testimony should be viewed with

skepticism. In this several-day-long trial, it is unlikely that the jury was able to remember all of the details of the testimony accurately. If the prosecutor said that a witness made a particular statement, it is likely the jury believed it. The jury might even have believed that the prosecutor was referring to information outside the record, and that the jury could properly rely on such information in reaching its verdict. The jury might have concluded that the prosecutor had access to additional information not presented at the trial which was relevant to its verdict. Given the prosecutor's status as a quasi-judicial officer, it is unlikely the jury accurately concluded that the prosecutor was mischaracterizing the record and that the jury should disregard the comments.

In sum, the prosecutor made improper comments during closing argument that had a substantial likelihood of affecting the jury's verdict. Thus, the conviction must be reversed. Lindsay, 180 Wn.2d at 430-31, 440.

**2. The court erred in finding that Mr. Sand "used" a motor vehicle in committing the offense.**

In Washington, a court may instruct the Department of Licensing to revoke an offender's driver's license for one year upon a

conviction of various crimes, including “[a]ny felony in the commission of which a motor vehicle is used.” RCW 46.20.285(4).

Here, the court found Mr. Sand “used” a motor vehicle in committing the crime and therefore ordered the Department of Licensing to revoke his driver’s license for one year pursuant to the statute. CP 4; 3/24/15RP 80. In doing so, the court erred because Mr. Sand’s truck was merely incidental to the crime.

This issue involves the application of the statute to a specific set of facts and review is *de novo*. State v. Hearn, 131 Wn. App. 601, 609, 128 P.3d 139 (2006).

RCW 46.20.285(4) does not define “use.” The courts have clarified that “used” in the statute means “employed in accomplishing something.” Hearn, 131 Wn. App. at 609-10. That is, the vehicle must contribute in some way to the accomplishment of the crime. State v. Alcantar-Maldonado, 184 Wn. App. 215, 227-28, 340 P.3d 859 (2014). There must be a significant relationship between the vehicle and the commission or accomplishment of the crime. Id. The statute does not apply if the vehicle was merely incidental to the commission of the crime. Id.

For instance, in State v. Dupuis, 168 Wn. App. 672, 278 P.3d 683 (2012), the Court held the defendant “used” a car while committing the offense of second degree taking or riding in a motor vehicle without the owner’s permission. Likewise, the Court found a sufficient connection between the car and the crime when the defendant was given cocaine in exchange for a ride in his car. State v. Griffin, 126 Wn. App. 700, 708, 109 P.3d 870 (2005). The Court also found the use of a vehicle was supported in State v. Dykstra, 127 Wn. App. 1, 110 P.3d 758 (2005), where the defendant and his accomplices to an auto theft ring drove around looking for cars to steal, drove stolen cars, posted someone in a lookout car during a theft, and drove away unwanted engine parts after disassembly.

On the other hand, if the defendant merely used a vehicle to transport himself to the scene of the crime, he did not “use” the vehicle to commit the crime for purposes of the statute. Alcantar-Maldonado, 184 Wn. App. at 228-30. In Alcantar-Maldonado, the defendant drove to his estranged wife’s house, where he assaulted her boyfriend. Id. at 219-21. Afterward, he left in his car. Id. The Court acknowledged that the car facilitated the assault to some degree because it transported the defendant to the scene. Id. at 228-29. But this was not sufficient to

trigger the statute because the defendant did not use the car to assault the boyfriend. Id. at 230. “The commission of the felony did not entail operation of a motor vehicle.” Id. at 229.

Here, as in Alcantar-Maldonado, Mr. Sand “used” his truck to transport himself to Mr. Gorlick’s house. But this was not sufficient to trigger the statute because he did not “use” the truck to commit a burglary. “The commission of the [burglary] did not entail operation of a motor vehicle.” Id. The truck was merely incidental to the crime and thus the statute did not apply. Id. at 228-30.

If a defendant uses a motor vehicle as a place to store and conceal contraband, this may be sufficient to trigger the statute. State v. Batten, 140 Wn.2d 362, 997 P.2d 350 (2000). In Batten, the defendant left a handgun in the car for several days in a spot where it would not be easily detected. Id. at 366. He also used a portion of the automobile, the console, as a repository for methamphetamine. Id. Under these circumstances, the Washington Supreme Court held there was a sufficient relationship between the use of the car and the crimes of unlawful possession of a firearm and unlawful possession of a controlled substance. Id.

On the other hand, if the vehicle is merely used incidentally as a means of transporting contraband, this does not create a sufficient relationship between the use of a vehicle and the crime. Hearn, 131 Wn. App. at 609-11. In Hearn, methamphetamine was found in the defendant's purse while she was driving the car and in clothing within a basket in the car. Id. But she did not use the structure or fixtures of the car to conceal or store the drugs. Id. Thus, the statute did not apply because "the drugs did not have a reasonable relation to the operation of the vehicle and the use of the vehicle did not contribute in some reasonable degree to the commission of the crime." Id. at 611.

Here, Mr. Sand was not charged with a possessory offense. Although the police found some items belonging to Mr. Gorlick in the truck, the truck was not used to store or conceal the items. Indeed, the defendants never drove the truck away from the scene. They did not use the structure or fixtures of the truck to conceal or store any of Mr. Gorlick's property. Therefore, the use of the truck was merely incidental to the commission of the crime. There was not a sufficient relationship between the use of the truck and the commission of the burglary to trigger the statute. Batten, 140 Wn.2d at 366; Hearn, 131 Wn. App. 609-11.

Because Mr. Sand did not “use” the truck to accomplish a burglary, the court’s finding to the contrary, and its order directing the Department of Licensing to revoke his driver’s license, must be vacated. Alcantar-Maldonado, 184 Wn. App. at 230.

E. CONCLUSION

The prosecutor committed prejudicial misconduct during closing argument, requiring that the conviction be reversed. In the alternative, Mr. Sand did not “use” a motor vehicle to commit a felony, and thus the court’s order directing the Department of Licensing to revoke his driver’s license must be vacated.

Respectfully submitted this 3rd day of December, 2015.

s/ Maureen M. Cyr

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 73306-1-I
	)	
NICOLE SAND,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3<sup>RD</sup> DAY OF DECEMBER, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON, THIS 3<sup>RD</sup> DAY OF DECEMBER, 2015.



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