

NO. 42675-7-II  
Cowlitz Co. Cause NO. 10-1-01257-2

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON,**

Respondent,

v.

**GINGER LEANNE CRANDALL,**

Appellant.

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**BRIEF OF RESPONDENT**

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## **I. STATEMENT OF THE CASE**

### **Procedural Facts**

On December 2, 2010, the appellant had a first appearance on charges of burglary in the second degree and theft in the second degree. Probable cause was found by the trial court and arraignment was set for December 15, 2010. On December 7, 2010, her assigned counsel made a motion to withdraw due to a conflict. CP 7. New counsel was assigned and arraignment was set over to December 14, 2010.

On December 14, 2010, the appellant entered pleas of not guilty to both charged crimes. Because she was in-custody, a jury trial was set for February 14, 2011, within the 60 day court rule. A pre-trial was also set for January 18, 2011.

On January 18, 2011, pre-trial was held and the appellant requested information on DNA samples from the State. She also suggested she would endorse her husband as a witness and informed the court she would need to request a temporary restraining order for his release from prison. A review was set for January 25, 2011, to determine whether defense was prepared for trial.

On January 25, 2011, the appellant endorsed her husband, Raymond Crandall as a witness. She then moved for a continuance. A

waiver of speedy trial was entered with a commencement date of February 1, 2011. CP 12. Because she was out of custody, trial dates were set within the 90-day court rule. Trial was set on April 18, 2011, and a continued pre-trial was set for March 22, 2011.

Following the March 22, 2011, pretrial, a trial readiness hearing was set for April 14, 2011. On April 14, 2011, the appellant moved for a continuance. At that time, the appellant entered another waiver of speedy trial, which had a commencement date of May 1, 2011. CP 16. A new trial date was set for July 25, 2011. Another pre-trial was set for July 5, 2011.

On May 25, 2011, the State filed a motion to compel the appellant to submit to DNA swabbing. CP 18. The basis of the motion is that while a DNA evidence existed, the comparison samples were neither sufficient nor were they admissible in court due to issues in chain of custody. Because obtaining DNA is a search under Article 1 § 7 and the fourth amendment, the State was required to either obtain a warrant or, as in this case, a court order from the trial judge.

On May 26, 2011, the appellant was not present when the motion to compel was set to be heard. The motion was set for June 2, 2011. The motion was heard on June 2, 2011. In a confusing ruling, the trial court held that it needed a statistical likelihood that the swab ordered would

likely return with a match to the current sample. The court overlooked the fact a match had been obtained with a prior sample. The trial court did rule the State could provide further information it would reconsider. On June 9, 2011, the State provided the court a letter regarding the statistical likelihood that the DNA would be from another person if a DNA match were to be made from the swab provided by the appellant. Yet again, the trial court denied the request, but allowed the State to renew its request. At the hearing, Crandall agreed that her name was Ginger Buck, the name of the sample at issue.

On July 5, 2011, the appellant filed a motion to dismiss under Knapstad. Prior to the motion being heard on July 14, 2011, the State renewed its motion to compel DNA, and filed a motion to reconsider. CP 23; RP 19-49. The court finally considered the issue of chain of custody. The trial court ruled that probable cause existed and there was a basis to issue an order to compel DNA. RP 44. It reasoned that the CODIS reference sample matched the DNA found at the scene of the charged burglary came back to Ginger Buck. Ginger Buck had the same date of birth as the appellant. RP 44. It further reasoned that the chain of custody with the CODIS sample was an issue of concern. RP 22-24; 43-44.

Based on the trial court's ruling and the issued order to compel, the State made a verbal motion to continue the trial based on newly obtained

DNA evidence as well as the availability of witnesses. RP 45-46. The appellant requested that the State file a written motion to continue. The trial court set the issue over to July 19, 2011, for a hearing on the State's motion.

A written motion was filed. CP 29. On July 19, 2011, a hearing on the State's motion to continue was heard by the trial court. The court ruled good cause existed for a continuance based on the newly obtained DNA swab and the time necessary for testing that swab. RP 44; 55. The trial court would not continue the trial out to the October date as proposed by the State. RP 55. Instead, the trial court felt continuing until August 29, 2011, would be sufficient to complete all efforts to test the DNA swab as well as make preparations for the State's witnesses to appear. RP 55. Trial began on August 29, 2011, and finished on August 30, 2011.

**Substantive facts**

On the morning of March 19, 2010, Marcus Taft discovered that his vehicle had been broken into and items he had purchased the previous day for his wife's birthday had been stolen.

The night prior, Mr. Taft pulled his vehicle, a Toyota Tacoma, into his built in garage. RP 91. He closed the garage, but evidently it did not completely shut. RP 93. Earlier that day, he had purchased some clothing items for his wife and left them in the vehicle to prevent her from finding

them. RP 91-2; 96. He spent between \$700 and \$800 on the items. RP 92.

When went into the garage the next day, Mr. Taft noticed that several of the bags and boxes that contained the items he had purchased had been disturbed and the contents removed. RP 99. He also noticed that his \$329 pair of Maui Jim sunglasses and the key fob to his Range Rover was missing. RP 100. The Key fob cost \$300 to \$400. RP 108. He made a report to police. RP 93-4.

Deputy Kelly Pattison arrived at the house, located at 319 Haggemon Road, Kelso, Washington. RP 113. He took photographs of the garage, the vehicles, and of a cigarette butt found behind the wheel of Mr. Taft's truck. The cigarette butt was 4-5 feet within the garage. RP 102. Deputy Pattison noticed the cigarette butt had not been run over, that it looked fresh and free of grime or imprints that might indicate it had been picked up by a tire tread. RP 117, 124. The cigarette butt was position behind a wheel, directly in its line of travel. RP124. It would have been impossible to avoid be run over if it had been there before Mr. Taft arrived home and appeared as if it had just been smoked and tossed away. RP 124-5. It was not flat, nor was it crushed. RP 133. When asked, Mr. Taft stated neither he nor his wife smoke, nor did they ever have anyone at their house that smoked. RP 94-5.

Deputy Pattison collected the cigarette butt as evidence. RP 117. The butt was sent to the Washington State Crime laboratory for DNA examination. RP 118; 123. A DNA profile was created by James Currie. That profile was compared to known profiles in the Washington State Combined DNA Index System (CODIS). A match was made with a known profile for a Ginger Buck, who had a date of birth of December, 25, 1974. Ginger Buck is an alias for Ginger Crandall, who also has a date of birth of December 25, 1974.

Before the DNA profile was created, and before a match was made with a known profile, Cowlitz County deputies served a search warrant on a U-haul storage unit in located on 364 Oregon Way, Kelso, Washington. RP 119-21. The storage unit was numbered 216, and was recorded as being leased to a Raymond Crandall. Frank White, the general manager of the Oregon Way U-haul location and custodian of records for the facility testified at trial. RP 175-82. He stated the appellant had permission to use and enter that storage unit. In fact, he had observed her entering the unit on a number of occasions with her husband, Raymond Crandall. RP 179-80. He identified the appellant as a person he observed going in and out of unit 216. RP 180. He also stated that the appellant and her husband had been current with their rental payments and were using the storage unit as of March 18, 2010. RP 181-82.

Found inside the unit were numerous items of stolen property. Included in that property were items taken from Mr. Taft's vehicle. Found inside the unit was the key fob for Mr. Taft's Range Rover. RP 122. Deputy Pattison requested that Mr. Taft show up to the U-haul unit and identify any items. RP 122. Mr. Taft identified the underwear as items he purchased. He also took the key fob and used it to start his Range Rover. RP 108. In addition to that evidence, there were other indicia that Crandall had used the U-haul unit. Deputy Pattison found a checkbook with the appellant's name and address. RP 121. Mr. Taft stated that he did not know the appellant Crandall and that she did not have permission be in his garage or take his belongings. RP 109.

Raymond Crandall stated that he had a habit of saving his wife's used cigarette butts. He did this to conserve tobacco. He stated the cigarette butt must have fallen out of his pocket when he entered the garage. DNA evidence indicated that only female DNA was present on the cigarette. Testimony from the crime lab witnesses indicated that it would be likely to find male DNA on the cigarette butt if handled by a male. RP 146-58.

At trial, several individuals testified regarding the DNA samples collected. Deputy Laura Thurman described taking the DNA swab from the appellant, packaging the swab, and sending to the crime lab. RP 135-

37. Stephanie Winter-Sermano described the quality control processes of the crime lab and also testified to clipping the paper end of the cigarette butt and preparing that piece of evidence for DNA testing. RP 138-43. She also testified about the many ways DNA can be transferred by human beings, whether by saliva, sweat, or body cells. RP 142-43. James Currie then testified about the creation of a DNA profile from DNA that was extracted from the cigarette butt. RP 146-58. He described what a DNA profile is, how the process of creating a profile is generally accepted by the scientific community, and the 13 regions scientist look at when developing a profile. He also described what a mixed DNA sample and how it may contain several contributors. RP 151. He testified that the profile created was female and contained no male DNA. RP 155-56. His work was peer reviewed for quality. RP 158. Finally, Theresa Shank testified about creating a DNA profile generally and creating the specific DNA profile from the compelled swab provided by appellant. RP 161-69. She testified that she performed the technical review of Mr. Currie's work. RP 162. She then matched that DNA profile with the profile created by James Currie. They were matches, with a likelihood that another profile would match calculated to be 1 in 1.2 quintillion. RP 167-68.

On cross examination, the appellant admitted to car prowling. RP 303-4. And she admitted to smoking the cigarette butt found inside the

Taft's garage. RP 305. Her husband testified he committed the theft, but also agreed he was untruthful and had committed numerous crimes of dishonesty.

## **II. ISSUES**

- I. Did the trial court abuse its discretion when it found good cause to grant the State a continuance outside the allotted time for trial in order to accommodate the testing of a DNA sample it had compelled the defendant to provide.
- II. Taken in the light most favorable the State was there sufficient evidence to convict Crandall of burglary in the second degree when all evidence suggested that she was at the scene of the burglary and possessed the stolen property?

## **III. ARGUMENT**

- I. **The trial court did not abuse its discretion when it found good cause to grant the State's motion to continue the trial date one month in order for newly obtained DNA evidence to be tested.**

Under CrR 3.3(f) (2) by motion of a party, the trial 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.” CrR 3.3 excludes properly granted continuances from the time-for-trial period. CrR 3.3(e)-(f). The decision to grant a continuance under CrR 3.3 rests in the sound discretion of the trial court and will not be disturbed absent a showing of manifest abuse of discretion. *State v. Campbell*, 103 Wash.2d 1, 14, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094, 105 S.Ct. 2169, 85 L.Ed.2d 526 (1985). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *State v. Torres*, 111 Wash. App. 323, 330, 44 P.3d 903 (2002); *State v. Flinn*, 154 Wash.2d 193, 199-200, 110 P.3d 748 (2005).

A trial court shall consider all relevant factors when exercising its discretion to grant or deny a continuance. *State v. Heredia-Juarez*, 119 Wash.app. 150, 155, 79 P.3d 987 (2003). Allowing counsel time to prepare for trial is a valid basis for continuance. *Campbell*, 103 Wash.2d 15, 691 P.2d 929; *State v. Williams*, 104 Wash.App. 516, 523, 17 P.3d 648 (2001). A trial court does not abuse its discretion in granting a continuance to permit either of the parties time to prepare for the case or to permit the parties time to obtain new evidence. *Flinn*, 154 Wn.2d at 200–01, 110 P.3d 748; *State v. Cauthron*, 120 Wn.2d 879, 910, 846 P.2d 502 (1993), *overruled in part on other grounds by State v. Buckner*, 133 Wn.2d 63, 65–67, 941 P.2d 667 (1997).

A trial court may grant either party'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)(1), (2)). While the appellant suggests the continuance prejudiced her ability to present a defense, she has not made a clear showing that the trial court's decision was manifestly unreasonable, or that it was exercised on untenable grounds, or for untenable reasons. *State v. Downing*, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004). The appellant's defense included one primary witness, her husband. His testimony indicated that he was the individual who committed the burglary. At the time of trial, he was incarcerated in the State penitentiary system. He was easily retrievable through a temporary restraining order. His presence at trial was in no way disturbed by the continuance. There is a point when a continuance would be unreasonable, but four weeks is not. A one month continuance did not prejudice the appellant.

In *State v. Flinn*, after his conviction of possession of an incendiary device, the defendant appealed on the sole basis that the court abused its discretion when it granted the State a continuance beyond the period for speedy trial. Division 1 of the Court of Appeals held the trial

court's decision to grant a continuance did not offend CrR 3.3. The Supreme Court agreed. 154 Wash.2d 193, 110 P.3d 748.

In that case, on three separate occasions the defendant requested a continuance outside the time for trial. At the latest time set for trial, the State learned that certain evidence it had requested did not exist. Because of that mistake, the State requested a continuance to prepare against the defendant's proffered defense. 154 Wash.2d at 197, 110 P.3d 748. The defendant objected, arguing the State had sufficient time to prepare its case. The trial court granted the motion to continue and set trial out an additional 5 weeks. *Id.*

The Supreme Court held that the trial court did not abuse its discretion when it granted a continuance past the time for trial in order to allow the State to prepare for the defendant's defense. 154 Wash.2d at 201. The Court stated it would not second guess the trial court's discretion to move the trial. It reasoned that prior to granting the State's motion to continue, the trial court had granted three continuances to the defendant. The judge wanted to give the State ample preparation time to prevent any further continuances. *Id.*

Similarly, in the case before the Court, the appellant made several requests for continuances, where the State made only one. The State made its first request to continue the trial date based on two issues. First, the

State had made several requests of the trial court to compel DNA swab of the Crandall's cheek due to chain of custody issues. The State required admissible DNA evidence other than DNA maintained in the State CODIS system in order to show identity, but also to rebut the claim the Appellant's husband committed the crime. That DNA evidence was finally ordered by the court on July 14, 2011, but would require a 3 week delay in trial in order to conduct testing and the creation of a profile. The second reason is due to the availability of the State's witness who performed that testing. The trial court did find good cause to continue the case, but denied the State's request to continue trial until October 3, 2011. Instead, the trial court set trial for August 29, 2011, a month after the third set trial date of July 25, 2011. In comparison, the appellant had set trial out a total of 6 months.

In *State v Howell*, 119 Wash. App. 644, 79 P.3d 451 (2003), another case similar to the one before the Court, the defendant's conviction was affirmed after appeal. There the defendant argued his right to a speedy trial was violated when the court granted the State's requested continuance beyond the time set for trial to allow a forensic or ballistic examination to be conducted. In that case, the defendant had also been granted a requested continuance. 119, Wash.App. at 647, 79 P.3d 451.

The defendant argued that *State v. Wake*, 56 Wash.App. at 475, 783 P.2d 1131(1989), was controlling. The Court of Appeals disagreed. It held the defendant's case was distinguishable because it did not involve an issue of congestion at the State Crime lab, but one of new evidence necessary for trial. 119 Wash. App. at 649.

The appellant argues that the State used this opportunity to gather new evidence to link her to new crimes. She argues that *State v. Nguyen*, 131 Wash.App. 815, 817, 129 P.3d 821 (2006) should be controlling. However, in that case the State made a request of the trial court to continue the case outside the time for speedy trial in order to track the defendant's case with other, non-related burglary cases. There the prosecutor informed the trial court evidence may be found to eventually create a link between the non-related burglary cases, but acknowledged no evidence existed at that time to connect the defendant with them. 131 Wash.App. at 818, 129 P.3d 821.

While the period of time needed to address a related charge is excluded under CrR 3.3, there must be a something to suggest a link exists. Because the State in that case failed to show anything other than a suspicion that evidence will potentially be discovered linking the cases, the Court found no tenable basis existed to justify the continuance. 131 Wash.App. at 821.

Contrary to appellant's contention, the State did not use the continuance as a fishing expedition to find evidence connecting her to the burglary. Evidence existed that placed her at the scene. An unblemished, used cigarette butt found within the burglarized garage contained her DNA. In fact, only her DNA was found on that cigarette butt. That DNA was compared to a known sample held within the State CODIS system and a match was made to a DNA sample previously taken from the appellant. Unfortunately, chain of custody of the CODIS sample could not be established. The issue was not finding evidence to prove she committed the crime, but obtaining evidence that satisfied the chain of custody. Consequently, the trial court found good cause to continue the case in order to avert any chain of custody issues.

In addition, the Appellant argues that the State was granted a continuance based on the unavailability of a State's witness. Claiming that *Wake*, 56 Wn.App.472, 783 P.2d 1131, prohibits a court from granting continuances based on witness availability due to preventable circumstances within the State's control. In *Wake*, the State requested a continuance based on a witness who was unavailable to testify because he was testifying in another case. The Court rejected this explanation, found the trial court abused its discretion, and reversed the conviction. 56 Wash.App. at 476.

Unlike *Wake*, the State was never granted a continuance based on witness availability. The trial court refused to continue the case to the State's proposed October 5, 2011 trial date. Instead, the court determined good cause existed to continue to August 29, 2011, well before the State's witness issues would have affected the trial date. Moreover, contrary to what appellant would lead the Court to believe, the State obtained special analysis on the DNA, shortening the time necessary to complete the testing. The appellant would have the Court believe crime lab congestion was a factor in the month continuance. It was not, and any issue was circumvented in order to assist the development of the DNA profile as swiftly as possible.

**II. Taken in the light most favorable to the State, substantial evidence existed to support the appellant's conviction for burglary in the second degree and theft in the second degree.**

There was sufficient evidence for a jury to convict the appellant of burglary in the second degree and theft in the second degree. At trial, the jury heard that a cigarette butt was found within the residential garage owned by Marcus Taft. That cigarette contained the appellant's DNA and only the appellant's DNA. Marcus Taft informed the jury that he did not

know the appellant. He informed the jury the appellant did not have permission to be within his garage.

Mr. Taft also described the how numerous gifts he had purchased for his wife's birthday had been removed from his Toyota Tacoma, parked within the garage. In addition to the birthday presents, Mr. Taft stated that his Maui Jim sunglasses had been taken from his truck and the keys to his Range Rover had also been taken. The Range Rover was also parked within the garage. Mr. Taft stated that the appellant did not have permission to take his belongings that amounted to over \$750 in value.

Items belonging to Mr. Taft were found within a U-haul storage unit rented by the appellant's husband. The appellant had permission to access the storage unit and was seen on multiple occasions entering the unit. A checkbook with the appellant's name was found within the unit. Evidence specific to the burglary of Mr. Taft's garage found within the U-haul storage unit included the Range Rover key fob that had been taken during the burglary. Mr. Taft tested the key fob and it started the vehicle.

When reviewing claims of insufficient evidence, the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). A claim of insufficient

evidence admits the truth of the State's evidence and all inferences that can be reasonably drawn from that evidence. 125 Wash.2d at 597, 888 P.2d 1105. All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. *Id.* The State may establish the elements of a crime either by direct or circumstantial evidence. *State v. Brooks*, 45 Wash.App. 824, 826, 727 P.2d 988 (1986). Direct and circumstantial evidence are equally reliable. *State v. Delmarter*, 94 Wash.2d 634, 638, 618 P.2d 99 (1980), *Brooks*, 45 Wash. App. at 826, 727 P.2d 988 (one type of evidence is not less worthy than the other).

The appellant was convicted by a jury of both theft in the second degree and burglary in the second degree for entering into an unattached garage belonging to Marcus Taft, and taking property that belonged to Mr. Taft. A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, she enters or remains unlawfully in a building other than a vehicle or a dwelling. RCW 9A.52.010(3).

A person is guilty of committing theft in the second degree if she wrongfully obtains or exerts unauthorized control over the property of another valued over \$750 but not more than \$5000, with the intent to deprive him of such property. RCW9A.56.020 and RCW 9A.56.040.

In this case taking the facts and circumstances in the light most favorable to the State, evidence exists to show that the appellant entered and remained unlawfully within Marcus Taft's garage with the intent to commit a crime inside of that garage. It is also clear that she committed a crime in that garage, by going through Mr. Taft's vehicles and taking the items that belonged to him, which he estimated paying in excess of an aggregate value of \$1000. Items were found in the appellant's possession, or in arrears she had access to. When a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction. *State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946) *abrogated on other grounds by Fong Foo v. United States*, 369 U.S. 141, 82 S.Ct. 671, 7 L.Ed.2d 629 (1962). For instance, evidence of possession combined with proof of entry could support a burglary conviction. *State v. Mace*, 97 Wash.2d 840, 843-45, 650 P.2d 217(1982). Based on the facts showing the appellant's presence at the scene of the burglary as well as her possession of items taken from Mr. Taft's vehicles, the State proved the charges brought against the appellant.

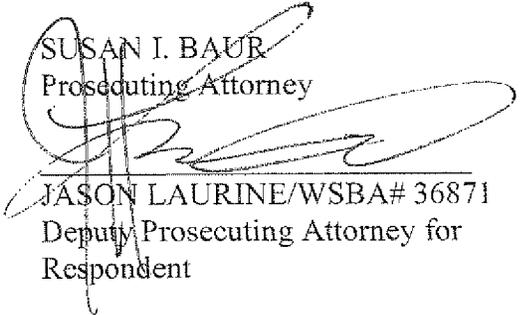
**IV. CONCLUSION**

Based on the above, this court should uphold the appellant's conviction for burglary in the second degree and her conviction for theft in the second degree, and deny her claim the trial exercised a manifest abuse of discretion when granting a one month continuance for the State.

Respectfully submitted this 3<sup>rd</sup> day of August, 2012.

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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 August 3<sup>rd</sup>, 2012.

Michelle Sasser  
Michelle Sasser

# COWLITZ COUNTY PROSECUTOR

**August 03, 2012 - 11:26 AM**

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