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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

SHERAYA JEANELLE TAYLOR,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 16-1-03295-0  
The Honorable Timothy Ashcraft, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The State failed to present sufficient evidence to support the conviction for conspiracy to commit burglary.
2. The trial court's refusal to provide the jury with an instruction on the lesser degree offense of first degree trespass in a prosecution for first degree burglary violated Sheraya Taylor's rights to due process of law and a fair trial by jury.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. Did the State fail to prove that Sheraya Taylor conspired to commit first degree burglary where the evidence at most showed a general plan to settle a debt by confronting the debtor outside of his home? (Assignment of Error 1)
2. Did the court improperly deny Sheraya Taylor's request to instruct the jury on the lesser offense of first degree criminal trespass, where the evidence viewed in the light most favorable to the defense shows that a rational juror could find that Taylor did not act as an accomplice to burglary but only entered the home when trying to flee arriving law enforcement officers? (Assignment of Error 2)

### **III. STATEMENT OF THE CASE**

#### **A. PROCEDURAL HISTORY**

The State charged Sheraya Jeanelle Taylor with six crimes relating to an incident that occurred at a Tacoma residence on August 14, 2016. (CP 38-41) The first three counts, charging first degree robbery, second degree assault, and attempted first degree robbery, related to activities that occurred outside of the home. (CP 38-39) The fourth, fifth and sixth counts, charging second degree assault, first degree burglary, and conspiracy to commit first degree burglary, related to activities that occurred within the home. (CP 39-41) The State alleged that Taylor or an accomplice was armed with a firearm during the commission of all six crimes. (RP 38-41)

The jury found Taylor not guilty of counts one, two and three (acts outside the home), but guilty of counts four, five and six (acts inside the home). (RP 940-42; CP 134-38) The jury also found that Taylor or an accomplice was armed with a deadly weapon during the commission of the crimes. (RP 940-42; CP 143-45)

The trial court imposed concurrent base sentences totaling 42 months, with three consecutive deadly weapon enhancements to follow, for a term of confinement totaling 90 months. (RP 1000; CP 179-80) Taylor timely appealed. (CP 150)

B. SUBSTANTIVE FACTS

Brandden McDonough and Brian McLeish both lived in a Tacoma area home owned by a woman named Martha. (RP 522-23, 678) McDonough's step-father, Ronald Goudge, and his friends Steve Napolitano and Katherine Koedinger, frequently visited and used methamphetamine and heroin with McDonough. (RP 305-06, 307, 522, 524, 589, 679-80, 757-58)

Around 7:00 PM on August 14, 2016, McDonough's neighbor tapped on his bedroom window and told him that some people were there to see him and wanted him to come outside to talk. (RP 531-32) McDonough looked outside his front-facing window and saw a gold Chevrolet parked across the street. (RP 531-32) McDonough walked outside and approached the car, and saw four unfamiliar people inside. (RP 535) A female occupant asked for drugs and indicated that she believed McDonough owed her money or drugs. (RP 536-37) McDonough did not know why she made that claim, and told her that he did not have any drugs. (RP 536-37) McDonough went back inside the house and the people in the Chevrolet drove away.

Later that evening, Napolitano and Koedinger drove Koedinger's Subaru to McDonough's house. (RP 308, 309, 537,

759) After they pulled into the driveway and parked, Goude approached the car and greeted them. (RP 309, 311) Goude got into the back seat of the car and the three began smoking methamphetamine together. (RP 311, 761)

A short time later, a gold Chevrolet pulled into the driveway and parked behind the Subaru. (RP 312, 604, 762) Two men and one woman exited the vehicle. (RP 313-14, 604-05, 611-12) These individuals were later identified as Pierre Cortez, a juvenile J.L., and Sheraya Taylor. (RP 200, 329,431-32, 435 612-13)

Witness accounts about exactly what occurred next vary. But Nepolitano, Koedinger and Goude were consistent in their testimony that Cortez and J.L. pointed guns at them and demanded money or drugs. (RP 288, 331, 335, 357, 351,-52, 766-67)

While this confrontation took place by the Subaru, Taylor approached the house and knocked on McDonough's bedroom window. (RP 335-36, 539-40) McDonough looked outside and saw that it was the same woman he spoke to earlier, and that the same gold Chevrolet was now parked in the driveway. (RP 539-40) Taylor told McDonough to come outside and give her drugs or money. (RP 541) McDonough assumed she was upset about a drug transaction from a few weeks earlier. (RP 541-42)

McDonough told Taylor to go away, but she said that if McDonough did not come outside there would be “trouble.” (RP 541, 543) Taylor continued to demand that McDonough come outside. (RP 545)

Cortez and J.L. then joined Taylor at the front of the house and began banging on the doors and windows and yelling for McDonough to come outside. (RP 335-36, 337, 614) Koedinger testified that the two men seemed more aggressive, and were going back and forth from the front door to the side door. (RP 344) It appeared that Cortez began trying to kick in one of the doors. (RP 337, 362-63) Taylor also began pushing against McDonough’s window air conditioning unit and knocked it out of the window and into his bedroom. (RP 340, 550) But it did not appear to Koedinger that Taylor was directing Cortez or J.L. (RP 365)

Koedinger and Goude then noticed Cortez and J.L. escorting another resident, Greg Hardy, at gunpoint around the side of the house to the side door. (RP 337, 341, 343, 620) Taylor followed them to the side door. (RP 614) Koedinger and Goude could not see what happened at the side door, but they heard some talk of wanting keys or of wanting Hardy to get them inside the house. (RP 342, 620-21, 623)

McDonough saw through the window that Cortez and J.L. were holding guns. (RP 546) He also heard yelling outside and noises that sounded like someone trying to kick in a door. (RP 547, 548) He pounded on McLeish's bedroom door and asked for help, then went to Martha's room and hid with her in a closet. (RP 555, 681, 682)

McLeish looked at their security camera monitor and saw J.L. standing outside holding a shotgun. (RP 682-83) McLeish also heard the sound of someone trying to kick open a door. (RP 683, 690) McLeish decided to open the door since he assumed they would force their way inside anyway. (RP 690, 692) Cortez walked into the house, grabbed the security monitor, and threw it outside. (RP 694) McLeish did not want Cortez to go to Martha's room, so he directed Cortez towards McDonough's room. (RP 695)

J.L. also walked inside and pointed his shotgun at McLeish. (RP 695) McLeish asked J.L. to put his gun down, and J.L. said something to the effect of, "I should smoke you." (RP 696)

Taylor did not enter the home, but stood outside the doorway and talked to McLeish. (RP 697, 699) According to McLeish, Taylor told him that McDonough sold her fake drugs and she wanted her money refunded or new drugs. (RP 698) McLeish

testified that J.L. kept the shotgun pointed at him during the entire conversation with Taylor. (RP 696, 698) McLeish asked Taylor to tell J.L. to stop pointing the gun, but Taylor did not respond. (RP 699)

Goude had called 911, and several Pierce County Sherriff's Deputies eventually responded. (RP 199, 397-98, 615) When the Deputies arrived, Cortez, J.L. and Taylor were outside in front of the home. At the sight of the Deputies, they all turned and ran into the house through the front door and back outside through the side door. (RP 199-200, 406, 697, 701, 703) Cortez continued running away and was not located, but the officers took Taylor and J.L. into custody. (RP 202, 209-10, 743)

In interviews with Deputies, Taylor explained that she had loaned a friend \$200.00 to buy heroin from McDonough, but the heroin he sold her was fake. (RP 444-45) Taylor went to the residence to speak to McDonough because she wanted a refund of the \$200.00 or some other compensation. (RP 212, 445) She brought Cortez and J.L. to assist her, but she did not know when they arrived that the men were going to try to rob anyone in the car or in the house. (RP 218, 261, 265, 466) When she saw Cortez and J.L. trying to rob the Subaru occupants, she went to the side

door in an effort to contact McDonough so she could settle the matter quickly and leave. (RP 215-17, 452-53, 454)

#### **IV. ARGUMENT & AUTHORITIES**

##### **A. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE THAT TAYLOR CONSPIRED TO COMMIT BURGLARY.**

“Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt.” City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)); U.S. Const. amend. 14. Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

While circumstantial evidence is no less reliable than direct evidence, State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. State v.

Baeza, 100 Wn.2d 487, 491, 670 P.2d 646 (1983).

The State charged Taylor with one count of conspiracy to commit first degree burglary. (CP 40-41)

A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

RCW 9A.28.040(1).

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

RCW 9A.52.020(1). Guilt to the crime of conspiracy requires agreement to the specific crime. State v. Stein, 144 Wn.2d 236, 238, 245-46, 27 P.3d 184 (2001). Accordingly, for Taylor's conspiracy conviction to stand, the evidence must establish that Taylor, Cortez and J.L made a plan or an agreement to enter or remain unlawfully in McDonough's house with intent to commit a crime there, either while armed with a deadly weapon or by assaulting an occupant. RCW 9A.28.040, 9A.52.020; State v. Williams, 131 Wn. App. 488, 495, 128 P.3d 98 (2006); Stein, 144

Wn.2d at 238.

Taylor explained to those present and later to investigating officers that she felt she was owed drugs or money and wanted to talk to McDonough and settle the debt. (RP 212, 442, 444-45, 536-37, 541, 698) She acknowledged that she brought Cortez and J.L. to help her. (RP 448) So the State's evidence indicated that there was a general plan to confront McDonough and obtain drugs or money. But there was absolutely no evidence indicating the participants planned to accomplish this goal by entering McDonough's home without permission and committing a crime while inside.

To the contrary, the evidence shows that Taylor's plan involved confronting McDonough outside of the home. When Taylor first attempted to settle the debt with McDonough, she waited in the Chevrolet for McDonough to come outside and talk to her. (RP 531-32) When Taylor later returned with Cortez and J.L., she repeatedly asked McDonough to come outside to talk. (RP 541, 543, 545) Cortez and J.L. escalated the incident into a burglary, but there is no evidence that Taylor planned or agreed to this escalation at any time before or during the incident.

There was simply no evidence that Taylor planned or

conspired with Cortez and J.L. to commit a burglary. Since there was no evidence of any conspiracy involving first degree burglary, the evidence is insufficient to support the conviction.

B. THE TRIAL COURT'S REFUSAL TO GIVE THE REQUESTED LESSER INCLUDED INSTRUCTIONS ON CRIMINAL TRESPASS DENIED TAYLOR A FAIR TRIAL.

Under RCW 10.61.006, "the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information." The right to a lesser included offense instruction stems from the "risk that a defendant might otherwise be convicted of a crime more serious than that which the jury believes he committed simply because the jury wishes to avoid setting him free." Vujosevic v. Rafferty, 844 F.2d 1023, 1027 (3rd Cir. 1988); U.S. Const. amends. 6, 14; Wash. Const. art. I, §§ 3, 22. Accordingly, "[w]hen the evidence supports an inference that the lesser included offense was committed, the defendant has a right to have the jury consider that lesser included offense." State v. Warden, 133 Wn.2d 559, 564, 947 P.2d 708 (1997).

Whether a defendant is entitled to a lesser included instruction is analyzed under the two-pronged test outlined in State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). First,

each element of the lesser offense must be a necessary element of the charged offense (legal prong). State v. Berlin, 133 Wn.2d 541, 545-46, 947 P.2d 700 (1997). Second, the evidence must raise an inference that only the lesser offense was committed to the exclusion of the charged offense (factual prong). State v. Fernandez-Medina, 141 Wn.2d 448, 455, 6 P.3d 1150 (2000).

Taylor proposed instructing the jury on the crime of first degree criminal trespass as a lesser offense of first degree burglary. (RP 810-11, 816-17) The legal prong of the Workman test is met because each of the elements of first degree criminal trespass is a necessary element of first degree burglary.<sup>1</sup> State v. Mounsey, 31 Wn. App. 511, 517-18, 643 P.2d 892 (1982); State v. Soto, 45 Wn. App. 839, 841, 727 P.2d 999 (1986).

The trial court refused to give the instruction because it believed that Taylor had not met the factual prong of the Workman test. (RP 823) “The factual prong of Workman is satisfied when, *viewing the evidence in the light most favorable to the party requesting the instruction*, substantial evidence supports a rational

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<sup>1</sup> First degree burglary is committed when a person enters or remains unlawfully in a dwelling, with intent to commit a crime, and is armed with a deadly weapon or commits an assault while in the dwelling. RCW 9A.52.020(1). A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building. RCW 9A.52.070(1).

inference that the defendant committed only the lesser included or inferior degree offense to the exclusion of the greater one.” State v. Smith, 154 Wn. App. 272, 278, 223 P.3d 1262 (2009) (emphasis added) (citing Fernandez–Medina, 141 Wn.2d at 461).

The defense argued that the instruction was justified in this case because there was evidence from which the jury could conclude that Taylor was not acting as an accomplice when Cortez and J.L. first entered the home (a burglary). But the jury might instead find that Taylor’s subsequent entry into the home, after the police arrived, was unlawful and criminal (a trespass).<sup>2</sup>

Viewing the evidence in the light most favorable to Taylor, there was ample evidence that she was not an accomplice to burglary and that she only trespassed. There was testimony that Taylor repeatedly urged McDonough to come outside instead of trying to gain entry into the home; that Cortez and J.L. were more aggressive and attempted to kick in the door; and that Taylor specifically remained outside the home when Cortez and J.L. went inside. (RP RP 337, 344, 362-63, 365, 531-32, 541, 543, 545, 697, 699) Additionally, Taylor told responding officers that she did not

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<sup>2</sup> The State represented to the court and argued to the jury that the burglary was an ongoing event, from the first entry by Cortez and J.L. to the last entry by Taylor and the men after the police arrived. (RP 822, 882-83)

know the men would try to rob anyone in the car or house and that, as soon as she realized what they were doing, she tried to conduct her business quickly so they could leave. (RP 217-18)

But the trial court ignored all of this evidence, and instead only viewed the evidence in the light most favorable to the State. This is made clear when, after the prosecutor gave a lengthy closing-argument-like recitation of all the facts she believed would secure a conviction (RP 821-22), the trial court states: “I don’t see the basis for [the instruction] given the evidence that has come in with -- as summarized by [the prosecutor], and so I will not be giving the lesser included.” (RP 823)

The trial court ignored the factual evidence in the case demonstrating that, when viewed in the light most favorable to the defense, a rational juror could find Taylor guilty of only trespass. Taylor was entitled to have the jury instructed on the lesser offense of first degree trespass.

A defendant has “an absolute right to have the jury consider the lesser-included offense on which there is evidence to support an inference it was committed.” State v. Parker, 102 Wn.2d 161, 166, 683 P.2d 189 (1984). The trial court’s refusal to give an instruction that prevents the defendant from presenting her defense

is reversible error. Warden, 133 Wn.2d at 564. The trial court's unwarranted refusal to instruct the jury on the lesser offense of trespass therefore violated Taylor's right to present her defense and requires reversal of her first degree burglary conviction.

#### V. CONCLUSION

There was no evidence presented of any conspiracy to commit first degree burglary. The only evidence presented indicated that there was a general plan to demand money or drugs from McDonough. This evidence cannot support a conviction for conspiracy to commit first degree burglary, and that conviction must be reversed. Furthermore, the trial court did not view the evidence in the light most favorable to Taylor, and incorrectly ruled that first degree criminal trespass failed the legal prong of Workman. If the court had viewed the evidence in the light most favorable to Taylor, it would have concluded that a rational jury could convict her only of criminal trespass. Therefore, Taylor's first degree burglary conviction must also be reversed.

DATED: February 21, 2018



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**CERTIFICATE OF MAILING**

I certify that on 02/21/2018, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Sheraya J. Taylor, DOC# 400652, Washington Corrections Center for Women, 9601 Bujacich Road NW, Gig Harbor, WA 98332-8300.

*Stephanie Cunningham*

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STEPHANIE C. CUNNINGHAM, WSBA #26436

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