

31909-1-III  
COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

**FILED**  
Oct 24, 2016  
Court of Appeals  
Division III  
State of Washington

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STATE OF WASHINGTON,

Respondent,

v.

TASHIA STUART,

Appellant.

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DIRECT APPEAL  
FROM THE SUPERIOR COURT  
OF FRANKLIN COUNTY

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RESPONDENT'S REPLY BRIEF  
ON CROSS APPEAL ISSUES

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Respectfully submitted:  
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## **I. IDENTITY OF RESPONDENT/CROSS-APPELLANT**

The State of Washington, represented by the Franklin County Prosecutor, is the Respondent and Cross-Appellant herein.

## **II. ARGUMENT IN REPLY**

### **A. THE COURT ERRED IN SUPPRESSING THE VICTIM'S PROPERTY FOUND IN HER SAFE.**

Defendant mischaracterizes the State's cross appeal as seeking review of a denial of a motion to reconsider a ruling excluding evidence. Appellant's Reply Brief and Cross-Respondent's Answer (CRA) at 7. In fact, the State's notice of cross appeal requested review of "every oral ruling suppressing evidence entered on November 1, 2012." The State has provided the proper standard of review for such a challenge to a legal ruling, i.e. de novo. Respondent's Brief and Cross Appeal (CA) at 32-33.

The Defendant attempts to distinguish *State v. Cantu*, 156 Wn.2d 819, 132 P.3d 725 (2006) by arguing that the "State does not contend that in entering her mother's safe [the Defendant] had, or could have, committed burglary." CRA at 9. The State charged the Defendant with premeditated murder with aggravating factors. In this

context, it is not surprising that the State would not bother with lesser offenses. But the State most definitely and explicitly contends and contended that that the Defendant had no business being in her mother's locked safe where her mother was keeping items and information away from the Defendant. The Defendant set up a phone camera to spy on her mother in order to learn the safe's combination. The Defendant tried to manipulate her father into giving her the safe's combination. Her lack of license to enter her mother's safe is patently apparent in the record.

The Defendant attempts to distinguish facts of a specific case, which was only cited by the State to provide the basic legal standards. CRA at 9-10 (discussing *State v. Carter*, 151 Wn.2d 118, 85 P.3d 887 (2004)). Because the State does not rely on those facts, but only the pure standard, the argument is ineffectual.

**B. THERE IS NO RECORD OF BAD FAITH TO SUPPORT THE IMPOSITION OF SANCTIONS ON THE PROSECUTOR.**

The State has requested this Court's review of the imposition of sanctions on the prosecutor where the lower court made no finding or record of bad faith action on the prosecutor's part. In response, the

Defendant only points to the court's comment that, although the prosecutor had not elicited the challenged testimony, the prosecutor could have better prepared the witness in regards to the court's rulings on motions in limine. CRA at 10-11.

This comment is not equivalent to a finding of bad faith, which is well defined in the State's brief as being more than bad judgment or negligence, but requiring actual dishonest intent. CA at 39. This requisite intent is impossible to make out in the court's comments or in the record. The sanction must be overturned.

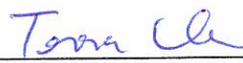
### **III. CONCLUSION**

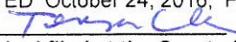
Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction, reverse the ruling suppressing the victim's property, and reverse the sanction against the prosecutor.

DATED: October 24, 2016.

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<p>Janet G. Gemberling &lt;jan@gemberlaw.com&gt; &lt;admin@gemberlaw.com&gt;</p>	<p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED October 24, 2016, Pasco, WA  <b>Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</b></p>
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