

ORIGINAL

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18-1-01670-31
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Trial Memorandum
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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO., WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,

Plaintiff,

vs.

TALBOTT II, WILLIAM EARL,

Defendant.

No. 18-1-01670-31

STATE'S TRIAL MEMORANDUM AND
MOTIONS IN LIMINE

I. CHARGES

The defendant is charged by Amended Information with two counts of Aggravated First Degree Murder based on allegations that in November of 1987 he killed a young Canadian couple, 18-year-old Tanya Van Cuylenborg and 20-year-old Jay Cook.

II. TIME ESTIMATE

The State anticipates this trial will last approximately 4 weeks.

III. POTENTIAL WITNESSES

The State may call any or all of the following witnesses to testify at trial:

1. Jim Scharf, Snohomish County Sheriff's Office
2. Scott Walker
3. Mike Walker, Washington State Patrol (retired)
4. Robert "Rick" Bart, Snohomish County Sheriff's Office (retired)
5. Joseph Ward, Snohomish County Sheriff's Office (retired)
6. Robert Rozzano, Snohomish County Sheriff's Office (retired)
7. Gaye Welliver
8. Dr. Eric Kiesel
9. George Smith, Skagit County Sheriff's Office (retired)
10. Kathleen Kralicek

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11. Kara Hopper (Ennis)
12. Judy Stone
13. Dave Willard, Skagit County Sheriff's Office (retired)
14. Ron Buckinger, Island County Sheriff's Office (retired)
15. Jim Coapstick, Skagit County Sheriff's Office (retired)
16. J.F. Mowrer, Skagit County Sheriff's Office (retired)
17. Bud Bowers, Skagit County Sheriff's Office (retired)
18. Jennifer Sheahan-Lee, Skagit County Sheriff's Office
19. David Richards, Bellingham Police Department (retired)
20. Craig Ambrose, Bellingham Police Department (retired)
21. Linda Cunningham, Saanich, BC Police Department (retired)
22. Ron Panzero, Skagit County Sheriff's Office (retired)
23. CeCe Moore
24. Andy Illyn, Mukilteo Police Department
25. Michael Grubb, Washington State Patrol Crime Laboratory (retired)
26. Lisa Collins, Washington State Crime Laboratory
27. Angela Hilliard, Washington State Crime Laboratory
28. Timothy McPherson
29. Greg Rinta, Snohomish County Sheriff's Office (retired)
30. Joseph Dunn, Snohomish County Sheriff's Office
31. Tobin Meyer, Skagit County Sheriff's Office
32. Duane Neufeld, Skagit County Sheriff's Office
33. Steven Armentrout
34. Alexander Axt
35. Sean Templeton, Washington State Patrol
36. John Van Cuylenborg
37. Laura Baanstra
38. Michael Seat

IV. FACTS

On November 18, 1987, 18-year-old Tanya Van Cuylenborg and her boyfriend, 20-year-old Jay Cook left their home town of Saanich, British Columbia heading for Seattle, Washington to pick up some furnace parts for Jay's father's business from a distributor just south of downtown. They were planning to arrive on the night of the 18th and spend the night in the Cook family van so that they could be at the business early in the morning and be home mid-day on the 19th. They never made it to their destination and when they did not return home the next day, their families reported them missing.

On November 24, 1987, Tanya's body was discovered about 25 feet down an embankment next to a rural road south of Alger in Skagit County. She had been shot once in the back of the head at point-blank range and appeared to have been sexually assaulted (based

1 on the fact that her pants and underwear had been removed). Investigators would later find a
2 .380 caliber shell casing and some interconnected plastic zip-ties at the top of the embankment
3 next to the road. During the autopsy the medical examiner confirmed the cause of death was a
4 single gunshot wound to the back of Tanya's head. He opined that it was from "point-blank"
5 range based on the appearance of the entry wound and resulting skull fractures and from the
6 condition of the surrounding scalp. The medical examiner recovered a small caliber bullet from
7 Tanya's brain. There were no other obvious signs of assault, but the medical examiner took
8 reference swabs from Tanya's vagina and rectum given the possibility that she had been
9 sexually assaulted.

10 The next day, November 25, 1987, their van was found abandoned in a parking lot in
11 downtown Bellingham. Tanya's pants and underwear were inside as were several plastic zip-
12 ties like the ones found near Tanya's body. Detectives also found a comforter with blood stains
13 on both sides. That same day a person cleaning up behind a nearby tavern found Tanya's
14 wallet and identification, the keys to the van, a partially-full box of .380 ammunition, and a pair of
15 surgical gloves.

16 On November 26, 1987 (Thanksgiving Day), a pair of hunters found Jay's body near a
17 river access area adjacent to a bridge over the Snoqualmie River southwest of Monroe.
18 Investigators found a ligature fashioned from a length of twine (later determined to have come
19 from Jay's van where it had been tied around a foam sleeping pad Jay brought on the trip to
20 Seattle) tied between two short dog leads wrapped tightly around Jay's neck. The medical
21 examiner determined that Jay had been strangled and beaten on the head with a blunt object.
22 He also found a pack of cigarettes and a tissue stuffed down Jay's throat. At the scene
23 investigators found interconnected plastic zip-ties near an access gate between the parking lot
24 and the adjacent field and several clumps of Jay's hair and a large rock with more hair in a line
25 between the gate and the place where Jay's body was found.

26 Investigators were able to determine that Jay and Tanya took the ferry from Victoria,
B.C. to Port Angeles on November 18th, traveled south to Shelton and then on to Bremerton
(stopping at a gas station in Allyn along the way) where they purchased a ferry ticket for the
11:35 p.m. sailing to Seattle. Who they encountered and what happened between the time they
got on the ferry and when their bodies were discovered almost a week later would remain a
mystery for more than 30 years.

Detectives from multiple jurisdictions worked diligently to determine who was responsible
for these brutal crimes. They collected evidence samples from the crime scenes, the victims'
bodies, and from the van. They also captured dozens of finger and palm prints from the interior

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1 and exterior of the van. And with advances in forensic science—particularly with the advent of
2 DNA testing—detectives resubmitted evidence to the Washington State Crime Laboratory for
analysis.

3 Initial DNA testing was conducted by the WSP lab in 1994. The vaginal and rectal swabs
4 obtained from Tanya's body at autopsy and an apparent semen stain on the leg of her pants
5 that were recovered from the van were microscopically examined and spermatozoa were
6 observed. Scientists were able to develop DNA profiles and determined that the profiles from
7 each evidence item (the vaginal and rectal swabs and the stain on Tanya's pants) matched
8 each other but did not match Jay Cook. Additional DNA testing was done in 2003. Once again,
9 the vaginal swabs and rectal swabs and various cuttings from the pants were examined.
10 Semen, as indicated by the presence of spermatozoa was identified in several of the vaginal
11 swabs and one of the rectal swabs. The DNA profile obtained from the cutting identified as the
12 "semen stained slacks cutting" was determined to be of mixed origin. The male component of
13 that mixture was determined to be from an unidentified male who was designated "Individual A".
14 Jay Cook was excluded as the source of the male component of this mixture. A partial DNA
15 profile obtained from one of the vaginal swabs was of mixed origin. Like the mixed DNA profile
16 obtained from the "semen stained slacks cutting", the male component of this mixed profile was
17 consistent with originating from "Individual A". Jay Cook was excluded as a possible contributor
18 to this mixed profile. In 2017 Y-STR DNA testing was performed on the DNA extract previously
19 prepared from a cutting from the pants. A Y-STR profile consistent with originating from a single
20 male source was obtained.

21 The DNA profile for "Individual A" was entered into both the CODIS¹ (2003) and Interpol
22 (2007) DNA databases and no matches were located. Over the years as individuals became
23 persons of interest in this investigation, their DNA profiles were compared to that of "Individual
24 A". None of them matched.

25 In 2017 Detective Jim Scharf learned about a new development in the field of forensic
science that was advertised as holding the potential for solving "cold" cases. A private DNA
laboratory called Parabon Nanolabs was using an alternative DNA processing method to
develop DNA profiles that were rich with genetic data as compared to the more focused profiles
traditionally used in the forensic science field. These more robust profiles could be used to
predict an individual's physical characteristics like hair, eye, and skin color or facial features and

26 ¹ The Combined DNA Index System or "CODIS" is the United States national DNA databased created
and maintained by the Federal Bureau of Investigation.

1 biogeographic ancestry through a process called DNA phenotyping. Parabon Nanolabs also
2 employed a genetic genealogist named CeCe Moore who could use the DNA profile to attempt
3 to identify the individual's ancestors or descendants by comparing it to other DNA profiles
4 uploaded to an open data DNA database and then use that information to essentially engineer a
5 family tree leading to the particular individual.

6 Detective Scharf contacted Parabon Nanolabs and arranged to have some of the DNA
7 evidence transferred to their laboratory for processing. Scientists developed a DNA profile and
8 CeCe Moore compared it to profiles in the GEDmatch database. She was able to identify
9 relatives in both the paternal and maternal lineages for the profile and ultimately determined that
10 the profile was that of a male child of [REDACTED] and [REDACTED]

11 Detectives learned that the [REDACTED] had four children—three girls and one boy. The boy
12 was the defendant, William Earl Talbott II. He was born on [REDACTED] (making him 24-
13 years-old when Jay and Tanya were murdered). In November of 1987 he was living with his
14 parents on NE Woodinville Duvall Road southwest of Monroe—just over six miles from where
15 Jay's body was discovered. Detectives learned that he had never married and had no children.
16 He worked at a number of different jobs over the years but for about six months in 1987 he
17 worked as a delivery driver for a manufacturing company. His regular route took him to several
18 businesses located in the industrial area south of downtown Seattle, only a couple blocks from
19 the business Jay and Tanya were intending to visit on November 19, 1987. Detectives also
20 determined that the defendant had no previous criminal history, so his DNA profile would not
21 have been entered into the CODIS database.

22 In May of 2018 Snohomish County law enforcement agents began conducting
23 surveillance of the defendant. One day when they were following him as he drove his work route
24 (as a truck driver) detectives saw a paper coffee cup fall from the cab of the truck the defendant
25 was driving when he stopped to adjust the load he was carrying. Detectives retrieved the cup
26 after he drove away and the delivered it to the Washington State Patrol Crime Laboratory for
27 DNA testing. The next day the crime lab confirmed that the DNA profile developed from the cup
28 matched the DNA profile of "Individual A." Police later were granted a search warrant to obtain a
29 DNA reference sample for the defendant when he was arrested. The results of that DNA testing
30 confirmed the lab's earlier determination: That "Individual A" was the defendant, William Earl
31 Talbott II.

32 After the defendant's arrest detectives interviewed several of the defendant's family
33 members and people who knew him back in 1987. One of those people was a man named
34 Michael S. He moved from Eastern Washington to the Woodinville area in 1980 and met the

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1 defendant then. They became friends and began spending time together. They discovered a
2 shared interest in photography and would take pictures and develop the film in a dark room the
3 defendant's mother had set up in their home. Michael recounted one particular outing in the
4 mid-80s when the defendant took them to a game access on the Snoqualmie River outside
5 Monroe. The defendant led Michael through some fields and to a point on the river where they
6 could see part of the Monroe Penitentiary complex which they photographed. (Detectives found
7 this story noteworthy because the area Michael was describing was near the location where
8 Jay's body was found). By the time the detectives interviewed him Michael had seen media
9 coverage of the defendant's arrest. Included in the media reports was a picture of the Cooks'
10 van. Michael told detectives that he remembered seeing that van parked at the defendant's
11 parents' house sometime in late 1987 as he drove by one morning on his way to work. Michael
12 explained that he was an automobile enthusiast (working for years as a mechanic at a car
13 dealership and building racecars as a hobby) and that he had a clear memory of seeing the van
14 because of its distinctive color and relatively rare wheel covers. He remembered thinking to
15 himself that the defendant must have purchased the van because he had never seen it at the
16 residence before. Michael told the detectives that he never saw the van at the residence again
17 after that.

18 With a suspect finally identified, forensic scientists at the crime lab started reviewing the
19 dozens of finger and palm prints lifted from the victims' van. In a report dated October 18, 2018,
20 Forensic Scientist Angela Hilliard documented her conclusion that a left palm print lifted from the
21 exterior of one of the van's rear doors matched the defendant.

22 V. MOTIONS IN LIMINE

- 23 1. To require the defendant to disclose the nature of his defense. CrR 4.7(b)(xiv).
- 24 2. To require the defendant to disclose the names of persons who he intends to
25 call as witnesses along with the nature of their expected testimony, any written or
26 recorded statements, and the substance of any oral statements of such witnesses.
CrR4.7(b)(1).
3. To prohibit any testimony, argument, or otherwise informing the jury of any
potential punishment the defendant may face if convicted. ER 401; ER 402; ER 403.

Argument concerning punishment is limited to the scope of WPIC 1.02 (2nd ed. supp.
2005), which reads in pertinent part:

1 You have nothing whatever to do with any punishment that may be imposed in case of a
2 violation of the law. You may not consider the fact that punishment may follow conviction except
3 insofar as it may tend to make you careful.

4 Specifically in this case, there should be no mention of any potential term of
5 incarceration or any other collateral legal consequences that may follow a conviction. That
6 information is not relevant to any of the issues the jury must decide and should therefore be
7 disallowed. See State v. Murphy, 86 Wn. App. 667, 670, 937 P.2d 1173 (1997) (“Washington
8 courts . . . follow the view that punishment is irrelevant to the jury’s task”).

9 **4. To prohibit the defendant from seeking to introduce evidence, making
10 argument, or otherwise implying that a specific person other than he committed the
11 crimes he is charged with. ER 401; ER 402; ER 403.**

12 A criminal defendant has a right under the Sixth Amendment of the United States
13 Constitution and article I, section 22 (amendment 10) of the Washington Constitution to present
14 a defense. State v. Strizheus, 163 Wn. App. 820, 829-30, 262 P.3d 100, 105 (2011) (quoting
15 State v. Maupin, 128 Wash.2d 918, 924, 913 P.2d 808 (1996)). Although the right to present a
16 defense includes the right to offer the testimony of witnesses and to compel their attendance,
17 this right to present a defense is not absolute. Strizheus, 163 Wn. App. at 830 (quoting Montana
18 v. Egelhoff, 518 U.S. 37, 42, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996)); Maupin, 128 Wn.2d at
19 924, 913 P.2d 808). The right to present a defense does not extend to irrelevant or inadmissible
20 evidence. *Id.*, at 830 (quoting State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010)).

21 To admit evidence suggesting another person committed the charged offense, the
22 defendant must lay a foundation; that is, he must establish a train of facts or circumstances as
23 tend clearly to point out someone besides the defendant as the guilty party. Strizheus, 163 Wn.
24 App. at 830 (quoting State v. Downs, 168 Wn. 664, 667, 13 P.2d 1 (1932)). The foundation
25 requires a clear nexus between the person and the crime. Strizheus, 163 Wn. App. at 830
26 (quoting State v. Condon, 72 Wn. App. 638, 647, 865 P.2d 521 (1993)). The offered evidence
must demonstrate a “step taken by the third party that indicates an intention to act” on the
motive or opportunity. Strizheus, 163 Wn. App. at 830 (quoting State v. Rehak, 67 Wn. App.
157, 163, 834 P.2d 651 (1992)). Mere motive, ability, and opportunity to commit a crime alone
are not sufficient. Strizheus, 163 Wn. App. at 830 (quoting Maupin, 128 Wn.2d at 927). The
defendant has the burden of showing that the other suspect evidence is admissible. Strizheus,
163 Wn. App. at 830 (quoting State v. Pacheco, 107 Wn.2d 59, 67, 726 P.2d 981 (1986)).

In cases where the defense sought admission of other suspect evidence, the courts
have considered whether there is direct evidence substantially contravening the State’s version

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1 of events, evidence of any step taken by the alternate suspect that indicated an intention to act
2 on his alleged motive should there be one, or whether the evidence is being offered solely to
3 encourage the jury to speculate as to possible other assailants. *Strizheus*, 163 Wn. App. 820
4 (2011); *State v. Drummer*, 54 Wn. App. 751, 775 P.2d 981 (1989); *Downs*, 168 Wn. 664 (1932).
5 It is while looking through this lens that the Court will find the defense lacking in any credible
6 evidence to present to a jury; either because they cannot establish a nexus between the
7 proposed “suspect” and the crime, or because they are lacking in relevant admissible evidence
8 in which to do so.

9 In *Strizheus*, the court held that other suspect evidence offered by the defendant was
10 inadmissible because there was no evidence establishing a nexus between the other suspect
11 and the crime—there was no physical evidence connecting the other suspect to the crime; no
12 eyewitness placed him at the crime scene; and despite many opportunities to do so, the victim
13 never identified the other suspect as her attacker. *Strizheus*, 163 Wn. App. at 829 (2011). The
14 *Strizheus* court also held that the other suspect evidence rule does not violate a defendant’s
15 constitutional right to present a defense. *Id.*

16 In *Downs*, the court looked to draw the line between remote speculation and a
17 reasonable inference. In so doing, the court held that the offered evidence by defense was
18 “merely of the most remote kind of speculation.” *Downs*, 168 Wn. App. at 668. The State
19 presented evidence that sometime after 11 p.m. on April 10, 1931, the Franklin Dairy in Seattle
20 was entered and burglarized. The door of the safe had been knocked off and a considerable
21 amount of money, checks, and other valuable papers had been taken. This burglary was
22 discovered by an employee at 5:30 a.m. the next morning. At around 2 a.m. on the morning of
23 April 11, two police officers in a prowler car discovered appellants parked in an automobile
24 along a side road within two miles of the dairy. Appellants had a dim light burning in the car,
25 checks and money were spread all over the back seat, and they were counting the money. At
26 trial, appellants contended that they had overheard some man named “Jimmy Mack something,”
at a restaurant discussing the location where his loot was stored, they drove to the south end of
the city on Beacon Hill, and had just found the loot, together with the loaded revolver, when the
officers arrested them. Appellants’ offer of proof consisted of testimony from a detective
confirming that there was, in fact, a known safe burglar named “Madison Jimmy” in town April
10, and that they had a picture of him at police headquarters. The court reasoned that the
admission of the testimony alone would be manifestly irrelevant; the mere presence of “Madison
Jimmy” on the night of the crime and the opportunity to commit the crime did not provide a
sufficient train of facts to connect him to this crime. “Before such testimony can be received,

1 there must be such proof of connection with the crime, such a train of facts and circumstances
2 as tend clearly to point out someone besides the accused as the guilty party.” *State v. Downs*,
3 168 Wash. 664, 667, 13 P.2d 1 (1932); *State v. Kwan*, 174 Wash. 528, 25 P.2d 104 (1933).

4 The Supreme Court recently clarified these decisions when it wrote that the “standard for
5 relevance of other-suspect evidence, (as evolved), is whether there is evidence tending to
6 connect someone other than the defendant with the crime”. *State v. Franklin*, 325 P.3d 159
7 (2014). The Court took the opportunity to clarify the holding in *Downes*, while noting that it was
8 still good law. The Court stated that “evidence establishing nothing more than suspicion that
9 another person might have committed the crime is inadmissible because its probative value was
10 greatly outweighed by the burden on the judicial system. Other suspect evidence that
11 established only such suspicion is inadmissible. The *Downes* test in essence has not changed:
12 Some combination of facts or circumstances must point to a non-speculative link between the
13 other suspect and the charged crime.” *State v. Franklin*, 325 P.3d 159 at 164 (2014).

14 In the present case, over the course of a 30-year-long investigation, detectives followed up
15 on dozens—if not hundreds—of leads. They came in the form of information from citizens who
16 thought they may have seen the victims and/or their van before they were killed and people who
17 remembered seeing a suspicious individual in the area at the time of the murders; there were
18 tips from informants about other convicts who were rumored to have been bragging about killing
19 people; there were cards mailed to the victims’ families wherein the author taunted them and
20 claimed to have committed the murders; there were fingerprint and DNA comparisons to known
21 sexual and violent offenders; there were phone calls from law enforcement agencies in other
22 states offering information about murders that were committed in their jurisdictions that had
23 similar characteristics. Investigators from multiple jurisdictions dutifully followed-up on these
24 various leads and none brought them any closer to identifying a legitimate suspect until
25 advances in DNA science and the advent of genetic genealogy led police to William Earl Talbott
26 II. In following that lead investigators learned that the defendant was 24-years-old at the time of
the murders and lived only six miles down the road from where Jay’s body was discovered.
They subsequently obtained a DNA sample from the defendant and the Washington State
Patrol Crime Laboratory determined that it matched the profile developed from the semen found
on the vaginal swabs from Tanya’s autopsy and on the leg of her sweatpants—with the chances
of a random match calculated to be 1 in 180 quadrillion. Months later, another scientist in the
Washington State Patrol Crime Laboratory matched a partial palm print recovered from the rear
door of Jay’s van to the defendant.

1 None of the many other leads the investigators pursued yielded any evidence related to
2 the murders of Tanya Van Cuylenborg and Jay Cook and no person other than the defendant
3 has been connected to these crimes through forensic or circumstantial evidence. Because the
4 defendant will be unable to establish a non-speculative link between some other suspect and
5 the charged crimes, he should be prohibited from introducing such evidence, making argument
6 suggesting the existence of such a link, or otherwise implying that a specific person other than
7 he committed the crimes he is charged with.

8 **VI. CONCLUSION**

9 Even with the defendant's arrest, many questions about what exactly happened to
10 Tanya Van Cuylenborg and Jay Cook remain unanswered. But the evidence in this case is quite
11 clear about one thing of critical importance: The defendant is responsible for the rape and
12 execution of Tanya Van Cuylenborg and the brutal murder of Jay Cook. And based on that
13 evidence the State will prove beyond a reasonable doubt that the defendant is guilty as
14 charged.

15 DATED this _____ day of _____, 2019.

16 Respectfully submitted,

17 ADAM CORNELL
18 Prosecuting Attorney

19 

20 MATTHEW D. BALDOCK, #30892
21 Deputy Prosecuting Attorney