

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

STATE OF MISSOURI,)	No. ED101551
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Francois County
vs.)	10WA-CR00247-02
)	
NANETTE SUE LITHERLAND,)	Honorable Kenneth Wayne Pratte
)	
Appellant.)	Filed: September 29, 2015

Nanette Sue Litherland (“Defendant”) appeals the judgment entered upon a jury verdict convicting her of first-degree assault with respect to the shooting of her father-in-law James Litherland (“James”)¹ and first-degree murder with respect to the shooting and death of her husband Jerry Litherland (“Jerry”). Defendant was found guilty of both charges pursuant to a theory of accomplice liability, for aiding or encouraging Jacob Feldman to shoot James and for aiding or encouraging Feldman to cause the death of Jerry by shooting Jerry.

On appeal, Defendant argues the trial court committed reversible error in denying her pre-trial oral motion for a continuance based on the temporary unavailability of her sole defense witness, M.L., due to M.L. going into labor on the morning of trial. M.L. was a possibly intimate friend of Feldman, the person who shot and killed Jerry and shot James; the daughter of both the Defendant and Jerry, the murder victim; the granddaughter of the assault victim, James; and the sister-in-law of Gwen Buhler, a key witness for the State.

REVERSED AND REMANDED FOR A NEW TRIAL.

Division Four holds:

- (1) To the extent the trial court’s denial of Defendant’s motion for a continuance was based upon the fact defense counsel had taken M.L.’s deposition before trial and knew she was pregnant at that time, the trial court’s decision denying the continuance was an abuse of discretion.
- (2) The trial court’s denial of Defendant’s motion for a continuance was also an abuse of discretion because the motion was based on the temporary unavailability of a key witness for Defendant’s defense against serious felony charges. It was undisputed M.L., Defendant’s sole defense witness, went into labor at 3:00 a.m. on the morning

¹ Because many of the parties involved in this case are family members who share the same last name, we will often refer to them by their first names for clarity and ease of reading. No disrespect is intended.

of trial and was expected to be out of the hospital after three days. Under these circumstances, Defendant was denied her constitutional right to present witnesses in her defense, Defendant was entitled to a continuance until she could secure M.L.'s testimony, and the trial court abused its discretion in denying Defendant the opportunity to introduce M.L.'s testimony in support of her defense.

- (3) Defendant was prejudiced by not being allowed to secure M.L.'s testimony at Defendant's trial because M.L. was a vital witness whose testimony could have been more significant than testimony from witnesses for the prosecution, and because M.L.'s testimony could have affected the outcome of the case.
- (4) Because the trial court abused its discretion in denying Defendant's motion for a continuance and because Defendant was prejudiced as a result of the denial of her motion, the trial court committed reversible error.

Opinion by: Robert M. Clayton III, J.
Patricia L. Cohen, P.J., and Roy L. Richter, J., concur.

Attorney for Appellant: Margaret M. Johnston

Attorney for Respondent: Chris Koster and Robert J. Bartholomew, Jr.

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.