NO.

THE SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER,

v.

STANLEY GUIDROZ, RESPONDENT

Court of Appeals Cause No. 47880-3
Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 14-1-03654-1

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER.

The State of Washington, respondent below, asks this Court to accept review of the Court of Appeals, Division II decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION.

The State of Washington now seeks review of the unpublished opinion, filed on October 25, 2016, in State v. Guidroz, COA No. 47880-3-II. *See* Appendix A. The State filed a motion for reconsideration of this opinion on November 14, 2016, and on January 5, 2017, the Court of Appeals denied that motion. *See* Appendix B. The State respectfully requests that this Court review the Court of Appeal's decision affirming the trial court's suppression of the defendant's confession after finding the State failed to present sufficient evidence to satisfy Washington's *corpus delicti* rule. The Court of Appeals held that the State's evidence was insufficient to reasonably infer the victim's death. This petition is timely and review is appropriate under RAP 13.4(a), (b).

C. ISSUE PRESENTED FOR REVIEW.

1. Did the Court of Appeals fail to follow the decisions of this Court and published decisions of the Court of Appeals which hold that Washington's *Corpus Delicti* rule requires the courts to view

the evidence as a whole and evaluate the reasonableness of all theories in the case?

D. STATEMENT OF THE CASE.

On January 10, 1983, three year old Wallace Guidroz was reported missing from Point Defiance Park in Tacoma, Washington, by his father, the defendant. Appendix C[1]. Defendant initially told police that he had been fishing with Wallace before the two went for a walk and saw a young couple with a daughter the same age as Wallace. App. C. While the two children played, the defendant and the other father walked to a waterfall. App. C. Defendant said that the other father left while he remained at the waterfall for ten minutes before returning and discovering everyone gone. App. C. He claimed that was around 5 p.m. and he searched for two hours by himself before walking to the Goldfish tavern and calling police. App. C.

Several police officers and agencies, including civilians, responded to assist in the search which included civil air patrol, a Tacoma fire boat crew, evergreen search and rescue, and multiple search dogs. App. C;

[1] The Court of Appeals relied primarily on the findings of fact and conclusions of law for its recitation of the evidence, but because this Court's review is de novo, the State will refer to and has attached as appendices the exhibits that were presented to the trial court in discussing the evidence. *See* ***State v. Pineda***, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000) (an appellate court engages in the same inquiry as the trial court in evaluating whether the State has met its burden of producing evidence sufficient to satisfy the *corpus delicti* rule, thus, its review is de novo.) Copies of these exhibits have been provided in this brief in appendices C through I as the originals were designated to the Court of Appeals.

Appendix D. Later that night, the defendant gave a second statement where he described the other family and admitted to drinking a beer with the other father while by the waterfall. App. D. He said that together they had walked back to the area where the children were playing to discover them missing and it was at that point that the other father walked off in a different direction. App. D.

The officer who took the second statement commented that the defendant would only respond to specific questioning. App. D. He felt something was missing and when he questioned defendant, the defendant got silent before saying he had tried to provide all he knew. App. D. The defendant also claimed that while searching for his son, he had contacted a bus driver asking if he had seen a little boy. Appendix F. Police spoke to eight bus drivers that were possibly in the area that night and none of them remembered this contact. App. F.

Wallace was never found and in 2011, Detective Gene Miller began further investigation on the case. Appendix E. He discovered that there had been a CPS referral from 1982 in the months before Wallace disappeared. Appendix G. Although the referral itself was gone, an article appeared in the Tacoma News Tribune and Detective Miller was contacted by a man name JD Miller who stated he was the case worker on the original incident[2]. App. G. JD Miller said that hospital staff had made

[2] Detective Miller confirmed that JD Miller was in fact an employee of CPS at the time. Appendix G.

the referral due to a suspicious head injury on Wallace. App. G. He said that he contacted the defendant and Wallace at home where he observed an impact injury on Wallace's head consistent with an iron. App. G. The defendant claimed Wallace had pulled the iron off of an ironing board and it fell on his head. App. G.

Detective Miller also made contact with a woman named Valerie Davis and her ex-husband Henry McBride who used to be the defendant's best friend. Appendix H. Mr. McBride told Detective Miller that the defendant's wife was gone for months at a time and that the defendant always felt burdened by Wallace and was always trying to get rid of him. App. H. The defendant would ask Mr. McBride and Ms. Davis to watch Wallace for a few hours and then be gone for days. App. H. Mr. McBride remembered a few times when he would drive around Tacoma looking for the defendant to return Wallace and when they found the defendant, he would get mad. App. H. He also said Wallace never wanted to go home after being with them and he would "hold on for dear life" to Mr. McBride and Ms. Davis. App. H.

Mr. McBride recalled how Wallace had several injuries, casts, marks, and black eyes and the defendant would always say Wallace had fallen. App. H. Although he never saw the defendant strike Wallace, Mr. McBride saw the defendant grab and pull Wallace with "vicious shaking." App. H. When he saw this, he would take Wallace away from the defendant until the defendant calmed down. App. H. He also recalled an

incident where he believed the defendant may have been trying to drown Wallace in a small pond. App. H. They were all in the front yard at Ms. Davis' father's house when Mr. McBride heard Wallace screaming in the back yard. App. H. When he ran around, Mr. McBride saw the defendant holding Wallace who was wet near a small pond. App. H. Mr. McBride described how Wallace looked very scared and was pushing away from the defendant as the defendant claimed Wallace had fallen in. App. H. When the defendant let go of Wallace, Wallace ran to Mr. McBride and grabbed onto him only then calming down. App. H.

Mr. McBride told Detective Miller he learned Wallace had gone missing from the television. App. H. He said the defendant told him that Wallace had been swinging with a lady and her daughter while he fished and when he looked back, he saw that Wallace was gone. App. H. The defendant told Mr. McBride he looked for Wallace for 40 minutes before calling the police. App. H.

Ms. Davis told Detective Miller that Wallace always had injuries of some sort that could not be explained such as marks, bruises, black eyes, and a body cast approximately a year before he went missing. App. H. She said that it seemed like Wallace was always on the defendant's nerves and that the defendant felt stuck with Wallace. App. H. She told Detective Miller that the defendant tried to commit suicide shortly after the incident. App. H.

Detective Miller traveled to Louisiana and spoke with the defendant. Appendix E. The defendant initially stated that he was fishing with his friend Lee while Wallace played with Lee's children in a grassy area. App. E; Appendix I. He said that Lee and his children left and when he went to get Wallace, he was missing. App. E; App. I. The defendant said he looked around for 20 minutes before calling the police. App. E; App. I. After being confronted with the inconsistencies in his story and shown a photo of Wallace, the defendant said he believed his wife may have taken Wallace and that Lee had something to do with it. App. E; App. I. After more discussion, the defendant admitted to killing Wallace at his home saying Wallace was "fussing and all that and I lost it." App. E; App. I. He said he backhanded Wallace on the head who then fell out of the chair onto the floor. App. E; App. I. The defendant said he panicked, but knew Wallace was dead because he had no pulse. App. E; App. I. He admitted to taking Wallace near the waterfront at Point Defiance and burying him about four feet down in a little flowered blanket. App. I.

The State charged the defendant with manslaughter in the first degree and the defendant moved to suppress his confession under Washington's *corpus delicit* rule. Appendix J. The trial court entered findings of fact and conclusions of law granting the defendant's motion to suppress and dismissed the case with prejudice. Appendix K; Appendix L. The State appealed and the Court of Appeals affirmed the trial court's

decision in State v. Guidroz, COA No. 47880-3. The State then filed a motion for reconsideration which was denied. App. M.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. CONTRARY TO DECISIONS OF THIS COURT AND OTHER PUBLISHED DECISIONS OF THE COURT OF APPEALS, DIVISION II OF THE COURT OF APPEALS FAILED TO APPROPRIATELY APPLY WASHINGTON'S *CORPUS DELICTI* RULE TO VIEW THE EVIDENCE AS A WHOLE AND EVALUATE THE REASONABLENESS OF ALL THEORIES IN THIS CASE.

To overcome suppression of the defendant's confession, the State needs to establish the *corpus delicti* through independent evidence that corroborated: (1) the fact of death, and (2) a causal connection between the death and a criminal act. ***State v. Aten***, 130 Wn.2d 640, 655, 627 P.2d 210 (1996)(*citing* ***State v. Lung***, 70 Wn.2d 365, 371, 423 P.2d 72 (1967)). In proving the fact of death, the State is not required to produce a body. ***Lung***, 70 Wn.2d at 371. To require the State to produce a body or direct proof of the killing "would be manifestly unreasonable and would lead to absurdity and injustice." *Id.* Instead:

> [a]ll that is required to prove death is circumstantial evidence sufficient to convince the minds of reasonable men of the existence of that fact. The law employs the judgment of reasonable minds as the only means of arriving at the truth by inference from the facts and circumstances in evidence.

Id. In other words, "[t]he final test is whether the facts found and the reasonable inferences from them have proved the nonexistence of any reasonable hypothesis of innocence." *Id.* "[T]he circumstances surrounding the disappearance of the victim must be such as to convince the mind of a moral certainty of death, and to the exclusion of every other reasonable hypothesis." *Id.*

In its review of the evidence in the present case, the Court of Appeals looked at specific pieces of evidence the State discussed in its brief and others that were raised briefly during oral argument. The Court then individually analyzed each piece of evidence in isolation to determine whether it created a reasonable inference that Wallace is deceased. By doing this, the Court of Appeals' review left out many key details in several of the pieces of evidence and ignored what the law requires the court to consider. This Court has held that the law requires the court to look at "the circumstances surrounding the disappearance of the victim," not just individual pieces of evidence as the Court of Appeals did. *See* ***Lung***, 70 Wn.2d at 371. The evidence in the present case shows that there are three logical possibilities about what happened to Wallace Guidroz. By failing to review the totality of that evidence and appropriately analyze it as a whole under the law set forth by this Court, the Court of Appeals' review of the evidence failed to see what is the only logical and reasonable inference to be drawn from the evidence, - that Wallace Guidroz is deceased.

The first possibility for Wallace's disappearance is that Wallace wandered off. If he was not found by anyone, given that he was a three year old child on his own, he would have either died naturally by succumbing to the conditions or by accident, like falling off a ledge. This is an unreasonable possibility given the evidence about the enormity of the search that ensued and the fact that no body was ever found. Defendant claimed that he last saw his three year old son one to two hours before he called the police. App. C. He claimed he searched the area where Wallace was last seen, drove by the docks and drove by the park exit and re-entry during that time. App. C. After police were notified, two police units and two park units arrived and began searching the area. App. C. After an hour, two other Ruston police units responded and set up perimeter control blocking the entry and exit roads. App. C.

Approximately four hours after Wallace originally went missing, Pierce County search and rescue units arrived, including the tactical unit and several additional deputies. Apps. C, D. Two search and rescue dogs and a trail scent bloodhound were requested at the scene. App. C. Explore Search and Rescue[3], run by an individual named Grant Smith who had great expertise in searches, had numerous people arrive and search the area. App. D. Civil Air Patrol and Evergreen Search and Rescue also assisted in the search. App. D. A Tacoma fire boat crew searched the

[3] Explore Search and Rescue is a civilian organization of volunteers that assist law enforcement in the search for missing persons.

shore line from the ferry ship north to the lighthouse. App. C. The search lasted at least until 3:13 a.m. App. D. Wallace's body was never found and he has been listed as a missing person since 1983. App. E.

This search involved numerous people, including both law enforcement personnel as well as civilian individuals. It involved numerous agencies, many of which have expertise in the search and rescue of people. It involved three tracking dogs and was conducted not only on the ground, but in the air and on the sea. It lasted well into the night and likely continued beyond that. It is not reasonable or logical to believe that Wallace wandered off and died naturally given the enormity of this search and the fact that no body has ever been recovered. Thus, although the possibility of Wallace wandering off on his own exists, it is not a reasonable possibility in the present case given the evidence.

The second logical possibility about what happened to Wallace involves him being kidnapped. Statistically, and given the evidence in the present case, it is not a reasonable possibility that this actually occurred. Between 1990 and 2016, the National Center for Missing and Exploited Children (NCMEC) documented 228,500 children who were reported missing. App. N. 1.3% were classified as non-family abductions. App. N. NCMEC analyzed 2,389 of the non-family abducted children were reported missing and recovered over those 26 years. App. N. More than half were recovered alive within two days of being abducted. App. N. However, as time goes on, the percentage of children recovered alive

drops to one and two percent. App. N. No children were recovered alive after ten years had passed. App. N. In contrast, 2% of the children who were recovered deceased were recovered after ten years. App. N. Wallace Guidroz has been missing for 33 years since 1983. It is unreasonable to believe that he was kidnapped and still alive today.

Additionally, the primary evidence suggesting that Wallace was kidnapped comes from the defendant himself. While this is almost always going to be the case in missing child cases, the fact that key details in the defendant's story about what occurred that day changed as he retold it is relevant for this Court in evaluating the reasonableness of whether an actual kidnapping did occur[4].

a. Defendant's First Statement 1983

In defendant's initial version of what occurred, he described walking and talking with the other father before remaining by the waterfall by himself for approximately ten minutes after the other father walked off. App. C. He said when he returned to the rose garden path north of the duck pond where Wallace had been, neither Wallace nor the other family were in sight and the defendant began searching by himself for two hours. App. C.

[4] Corpus delicti rule prohibits the Court from considering statements that are confessions to the crime, meaning expressions of guilt as to a past act, not other statements made by the defendant. ***State v. Dyson***, 91 Wn. App. 761, 763, 959 P.2d 1138 (1998); *see also* ***State v. Witherspoon***, 171 Wn. App. 271, 297, 286 P.3d 996 (2012).

b. Defendant's Second Statement 1983

Later that same day, defendant told a different version of what occurred to the police. He stated that he drank a beer with the other father and when they returned *together* they both noticed that the wife, other child, and Wallace were gone. App. D. Defendant said that he walked towards his car while the other man walked another direction. App. D.

c. Defendant's Third Statement 2011

In 2011, when defendant was interviewed by Detective Gene Miller, he completely left out the entire encounter with this other family and described Wallace as having gone missing from an entirely different location in the park. App. E. Defendant described how he and his Asian friend "Lee" and his two children went fishing with the defendant, and Wallace and the children all played together in the grass near the dock[5]. App. E. Defendant said that Lee left a couple of minutes before him and when he went to get Wallace from the grassy area he was gone so he looked around for 20 minutes before calling the police. App. E.

d. Defendant's 1983 Statement to McBride

When Detective Miller contacted the defendant's old friend Henry McBride, Mr. McBride relayed what the defendant had told him and said

[5] Defendant did describe this encounter in 1983 as occurring earlier in the day before he met the other family, but he did not say Lee's children were present and he said that Wallace spent the time napping in defendant's vehicle because he was tired. Exhibit 1 at 2-3.

he "remembered the story like it was just told to him yesterday." App. H. The defendant told him that while he was fishing, Wallace was swinging with another little girl and her mother and when defendant went to look for Wallace, he was gone, leaving out the other man entirely. App. H.

Each of these statements contains at least one, if not more, discrepancies about who was with Wallace, where Wallace went missing, and what the defendant did. The fact that there are markedly different key details in defendant's versions of how Wallace went missing is evidence the Court of Appeals failed to consider in evaluating the reasonableness of the possibility that Wallace was kidnapped.

Also relevant to this inquiry was the evidence that the defendant claimed to have asked a Pierce transit bus driver if he had seen Wallace and described Wallace to the driver before the driver responded that he had not. App. F. When asked by police, none of the eight bus drivers who could have been in the area remembered the defendant. App. F. Viewed in the light most favorable to the State, the reasonable inference is that none of the drivers remembered being asked because defendant never asked them. The fact that defendant lied to the police about contacting a bus driver in the search for his son should also be considered when evaluating the reasonableness of the possibility that Wallace was kidnapped. When the statistical likelihood that Wallace was abducted and is still alive is considered and the fact that the kidnapping claim itself stemmed from an individual who gave vastly differing accounts of what

occurred to police, it is unreasonable to believe that Wallace was kidnapped and is still alive today.

The final possibility about what occurred is that Wallace was never missing or kidnapped, but that the defendant murdered him, hid the body and made up the story about Wallace going missing to cover it up. When the totality of the evidence in the present case is reviewed in the light most favorable to the State, this is revealed as the only true *reasonable* possibility as to what occurred, thereby corroborating the fact of death necessary in a *corpus delicti* analysis.

While no case in Washington has addressed *corpus delicti* involving a no body child homicide, the cases that do involve no body homicides look to the circumstances of the victim's life prior to going missing to help evaluate the reasonableness of other possibilities as to what could have occurred. For instance, in ***State v. Thompson***, 73 Wn. App. 654, 870 P.2d 1022 (1994) and ***State v. Hummel***, 165 Wn. App. 749, 266 P.3d 269 (2012), *review denied*, 176 Wn.2d 1033 (2013), the victim's relationships and pattern of conduct were considered in evaluating the likelihood that the victim up and disappeared which in both cases was the alternate theory as to what could have occurred (and should be noted were posited by the defendant's themselves). Unlike the courts did in those cases, the Court of Appeals in the present case failed to consider the circumstances of Wallace's life prior to going missing to help evaluate the reasonableness of any alternate theory as to what occurred, specifically

that Wallace was kidnapped or wandered off as suggested by the defendant.

Here, we have a three and a half year old child whose father, the defendant, was the primary caretaker, as Wallace's mother would be gone for months at a time and would return for periods of only one or two weeks. Apps. G, H. A witness, Henry McBride, who was friends with the family, described how the defendant "always felt burdened by that boy." App. H. McBride's now ex-wife, Valerie Davis, said that Wallace was always on the defendant's nerves even though the child had not done anything and that the defendant felt stuck with Wallace. App. H. McBride stated that the defendant was always trying to get rid of Wallace, and that he and Davis would often watch Wallace for the defendant. App. H. He recalled several times where the defendant would ask McBride and Davis to watch Wallace for four hours and the defendant would end up being gone for days. App. H. They would end up having to put Wallace in their car, drive around Tacoma to "go lookin' for Stanley and he'd be all mad cause we found 'em." App. H.

McBride and Davis also described numerous physical injuries that Wallace always seemed to have "that couldn't be explained." App. H. They recalled Wallace having casts on his body, marks, bruises, and black eyes. App. H. There was also evidence that at one point a CPS referral was made because Wallace sustained an impact injury consistent with an iron on his head. App. G. This referral was later cleared after defendant

claimed that Wallace had grabbed an iron off the ironing board onto his head. App. G. McBride recalled several times where the defendant would grab and pull Wallace with "vicious shaking" to the point that McBride would take Wallace away from the defendant for a while until the defendant calmed down. App. H.

Wallace's own behavior towards the defendant gives insight into their relationship. Wallace was described by Davis as a sweet little boy, and McBride said that Wallace never wanted to go home after being with him and Davis. App. H. Specifically, he said Wallace would hold on to them "for dear life." App. H. McBride also described an incident a few months before Wallace went missing where McBride, his children, the defendant, and Wallace were at McBride's father-in-law's house. App. H. He said he was in the front yard when he heard Wallace screaming in the back yard. App. H. He ran around the house and found the defendant holding a soaking wet Wallace near a small pond. App. H. McBride said that Wallace looked very scared, was trying to push away from the defendant and when the defendant let go of him, Wallace ran to McBride, grabbed onto him and calmed down. App. H. The defendant claimed Wallace had fallen into the pond. App. H.

Viewed in the light most favorable to the State, this evidence leads to the reasonable inference that the defendant resented having to parent Wallace, was physically abusive to Wallace, and routinely covered up his behavior with questionable stories. In ***Thompson*** and ***Hummel***, evidence

about the victims' lives prior to their disappearances assisted the courts in explaining how such alternate theories of their disappearances were unreasonable. Indeed, the fact that those victims had established relationships and patterns of conduct with others and had failed to act in conformance with that does not lead to an inference of death. It leads to an inference that they would not choose to disappear on their own, thereby providing further evidence that the alternate theory of what occurred, that they had disappeared on their own, was unreasonable. Likewise, the evidence that Wallace was resented and physically abused by the defendant who routinely covered up this behavior does not by itself lead to an inference that Wallace is dead. It does however, provide further evidence that the alternate theory of what occurred, Wallace being kidnapped, is unreasonable in light of what we know about Wallace's life. The Court of Appeals erred in failing to appropriately apply the analysis set forth in ***Thompson*** and ***Hummel***, to the facts of the present case.

It is the unreasonableness of the other possible theories and the reasonableness of the theory that results in death that "convince the minds of reasonable men of the existence of that fact." ***Lung***, 70 Wn.2d at 371. In this case, the only reasonable theory given the evidence is that the defendant killed Wallace and made up the story about him going missing to cover up his actions, thereby establishing "fact of death" under ***Lung***, *supra*.

Wallace has been missing since 1983. At the time he went missing, he was a three and a half year old child. Wallace was in the defendant's care when he went missing. The defendant routinely abandoned Wallace and was resentful towards him. Wallace feared the defendant and sought comfort and safety with others. The defendant was physically abusive to Wallace and made up stories to cover up the abuse. The defendant told four different versions of how Wallace went missing. Key points, including who was with Wallace, what Wallace was doing, what the defendant was doing, and the location that Wallace went missing from all varied. The defendant stated Wallace went missing around dusk at 5 p.m., and claimed to search for two hours in the park in the dark by himself. The 911 call came in at 7:52 p.m. from the Goldfish Tavern. The defendant gave information to the police only in response to specific questioning. The police felt something was missing from the defendant's story of what occurred. The defendant lied to the police about asking a bus driver if he had seen Wallace. An extensive search of the area turned up nothing and the defendant attempted suicide shortly after the incident. App. H.

While an individual review of each piece of evidence in this case may not, standing alone, warrant an inference that Wallace is deceased, when the totality of all of these pieces of evidence is viewed in the light most favorable to the State, they reflect only one reasonable possibility of what occurred in this case - the defendant killed Wallace and made up the

story about Wallace going missing to cover it up. Just as in ***Hummel*** and ***Thompson***, although it was possible that the victims disappeared, those possibilities were considered unreasonable in light of the other evidence in those specific cases. The possibility that Wallace was kidnapped or wandered off, while possibilities, are unreasonable in light of the evidence and inferences in this specific case. The Court of Appeals erred by failing to appropriately analyze the evidence as required by law.

As stated above, this Court has held that to require the State to produce a body or provide direct proof of the killing "would be manifestly unreasonable and would lead to an absurdity of justice." ***Lung***, 70 Wn.2d at 371. Instead, "the circumstances surrounding the disappearance of the victim must be such as to convince the mind of a moral certainty of death, and to the exclusion of every other reasonable hypothesis." *Id.* In 2011, the Journal of Forensic Sciences published a case report analyzing cases involving filicide (the killing of a child by his or her parent) where the child is falsely reported as having been abducted or missing. Appendix M (Kathleen E. Canning, Mark A. Hilts, & Yvonne E. Muirhead, *False Allegation of Child Abduction*, 56 Journal of Forensic Sciences No. 3, 794-802 (May 2011)). The key findings in the study detailed that most of the victims were under the age of five and cause of death was primarily blunt force trauma and asphyxiation. App. N. They found that the majority of the offenders were one of the biological parents and in nearly all the cases (93%), the victim resided with the offender. App. N. They

also found that in 71% of those cases, the victim was reported missing by the primary offender, and in 75% of the cases, the homicide location and reported abduction location were within one mile of each other. App. N.

The evidence in this case, the inferences from that evidence and the statistics that exist about children who go missing, should have convinced the Court of Appeals and should convince this Court and all other reasonable minds that there exists a "moral certainty of death... to the exclusion of every other reasonable hypothesis" in this case. To reach any other conclusion here wanders far astray from the judgment of reasonable minds that this Court requires all others to employ. The Court of Appeals erred by failing to appropriately analyze the evidence as a whole as this Court requires. The State respectfully requests that this Court review the totality of the evidence in this case in the light most favorable to the State to find that there was sufficient evidence presented to reasonably infer and establish that Wallace is in fact deceased.

F. CONCLUSION.

This Court should grant review of the decision below.

DATED: February 1, 2017.

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Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2/1/17
Date Signature

APPENDIX "A"

Unpublished Opinion, COA No. 47880-3

PIERCE COUNTY PROSECUTOR

February 01, 2017 - 2:51 PM

Transmittal Letter

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Washington State
Court of Appeals
Division Two

October 25, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. STANLEY GUIDROZ, Respondent.	No. 47880-3-II UNPUBLISHED OPINION

LEE, J. — Stanley Guidroz was charged with one count of manslaughter in the first degree after telling a police detective in 2011 that he had killed his three-year-old son, Wallace, in 1983. Guidroz moved to suppress the confession under Washington's *corpus delicti* rule.[1] The superior court granted the motion to suppress, which resulted in a dismissal of the case with prejudice. The State now appeals, arguing that (1) the superior court erred in finding that the State failed to present sufficient evidence to establish a prima facie case for first degree manslaughter; (2) the superior court erred in considering evidence put forth by the defense and then weighing the evidence; and (3) the superior court erred in determining that Guidroz's statements were not admissible under RCW 10.58.035.

We hold that the superior court did not err in suppressing Guidroz's statement under Washington's *corpus delicti* rule because even when viewed in the light most favorable to the State, the State's evidence was insufficient to reasonably infer Wallace's death. We also hold that

[1] "'*Corpus delicti*' literally means 'body of the crime.'" *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996) (quoting 1 MCCORMICK ON EVIDENCE § 145, at 227 (John W. Strong ed., 4th ed. 1992)).

the superior court did not err because even if Guidroz's statements were admissible under RCW 10.58.035, the State did not present evidence independent of the statements sufficient to establish the *corpus delicti* of the crime charged—namely, Wallace's death. Therefore, we affirm.

FACTS

The facts are not in dispute. The superior court entered findings of fact, drafted by the State. The State did not assign error to any of the findings on appeal. The findings of fact are, therefore, verities on appeal. *State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59 (2006). Neither party argues the importance of facts not found in the superior court's findings of fact. Therefore, we can rely on the findings of fact as the complete factual record for this appeal. The superior court made the following findings of fact:

> I.1. On January 10, 1983, the defendant called police to report that his son, Wallace Guidroz, had gone missing from Point Defiance Park in Tacoma, Washington.
>
> I.2. The defendant spoke with police and initially told them the following:
>
> – He had spent the afternoon fishing with a friend while Wallace waited in his car.
>
> – He and Wallace then went for a walk in the park and met a man and woman with a daughter about Wallace's age.
>
> – He and the other man walked away from Wallace, the adult female, and the child.
>
> – He and the male separated and he was at the waterfall for about 10 minutes then when [sic] to get Wallace.
>
> – When [t]he defendant returned, Wallace was gone, along with the female, male and the child.
>
> I.3. The defendant spoke with police later and provided a different sequence of events. He said that he and the male did not separate until they returned from the

waterfall to the area where they had left Wallace, the female, and the little girl. They then separated to search and he never saw the male again.

I.4. The defendant told police he had spoken to a bus driver about Wallace being missing. The police reviewed work logs for Pierce County Transit and spoke with the eight bus drivers who might have been at the park that day. None of them recalled being asked about a missing boy.

I.5. The investigation was eventually suspended with no further leads. Wallace was never found.

I.6. In 2011, Tacoma Police Detective Gene Miller re-opened the investigation.

I.7. Detective Miller obtained a 1982 CPS [Child Protective Services] report wherein Wallace had suffered an injury to his head from a clothes iron. The defendant told the CPS case worker that Wallace injured himself by pulling the iron off the ironing board. The CPS referral was "cleared" with no action taken.

I.8. Detective Miler spoke with Valerie Davis and Henry McBride, who knew the defendant at the time of Wallace's disappearance. Valerie McBride said Wallace had always had some sort of injuries, bruises, black eyes, casts; the defendant seemed to feel he was stuck with Wallace; and the defendant would drop Wallace off at their house for a few hours then disappear for days, and the defendant would seem angry when they finally found him. Henry McBride also told Detective Miller about injuries he had seen on Wallace; and that he had seen the defendant shake Wallace.

I.9. In 2011, Detective Miller interviewed the defendant. The defendant gave statements inconsistent with his statements to police in 1983. Specifically, he initially said nothing about the couple with the little girl, but instead stated Wallace had been playing with the children of the friend he was fishing with.

I.10. Detective Miller confronted the defendant with the inconsistencies. The defendant then stated that he had killed Wallace accidentally. He stated that Wallace had been in his high[ ]chair when the defendant became upset and struck Wallace one time, sending him falling to the floor where he hit his head and died. It was these inculpatory statements which were the subject of the defendant's motion to suppress.

I.11. The State provided several exhibits, admitted into evidence, which detail the facts listed above.

I.12. In addition, the defendant presented the following facts:

– The defendant took two polygraph tests regarding whether he played a role in his son's disappearance. One test was found to be inconclusive and the other test he passed.

– The police made a composite sketch of the man the defendant described seeing at the park. The police received numerous calls from people recognizing the man from the composite drawing. One man told police he had seen the defendant and Wallace and he saw a man, matching the composite sketch, staring at Wallace. One woman told police that a man and a woman had tried to abduct her children from the same location. They also received calls from people reporting seeing Wallace after his disappearance.

– The FBI filed an application for search warrant, wherein they stated they had information that the boyfriend of Wallace's mother, Chom Guidroz, had travelled to Tacoma, abducted Wallace, and taken Wallace to Texas to be with him and Chom.

Clerk's Papers (CP) at 1-3.

The superior court ruled that the State had not established the *corpus delicti*, and therefore, Guidroz's statement to Detective Miller was inadmissible. Specifically, the superior court held that the State's independent evidence did not establish a prima facie case for Wallace being dead nor that Wallace had died as a result of another person's criminal act.

Based on its findings, the superior court suppressed Guidroz's confession, which resulted in the case being dismissed with prejudice. The State appeals.

ANALYSIS

A. *CORPUS DELICTI*

1. Legal Principles

We review a superior court's decision under the *corpus delicti* rule de novo. *State v. Green*, 182 Wn. App. 133, 143, 328 P.3d 988, *review denied*, 337 P.3d 325 (2014). Under the *corpus delicti* rule:

> The confession of a person charged with the commission of a crime is not sufficient to establish the *corpus delicti*, but if there is independent proof thereof, such confession may then be considered in connection therewith and the *corpus delicti* established by a combination of the independent proof and the confession.
>
> The independent evidence need not be of such a character as would establish the *corpus delicti* beyond a reasonable doubt, or even by a preponderance of the proof. It is sufficient if it *prima facie* establishes the *corpus delicti*.

State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996) (quoting *State v. Meyer*, 37 Wn.2d 759, 763-64, 226 P.2d 204 (1951)).

"The corpus delicti can be proved by either direct or circumstantial evidence." *Id.* at 655. And the evidence does not need to be sufficient to support a conviction or even enough to send the case to a jury. *Id.* at 656. But the independent evidence must be sufficient to provide prima facie corroboration of the crime allegedly committed. *Brockob*, 159 Wn.2d at 328.

In evaluating the independent evidence, we assume the truth of the State's evidence and consider the logical and reasonable inferences flowing from that evidence in the light most favorable to the State. *Aten*, 130 Wn.2d at 658. Prima facie corroboration exists where the independent evidence, and its logical and reasonable inferences, support the charge sought to be proven based on the crime described in the defendant's incriminating statement. *Brockob*, 159 Wn.2d at 328.[2] The independent corroborating evidence "'must be consistent with guilt and

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[2] As our Supreme Court in *Brockob* noted:

> [W]e are among a minority of courts that has declined to adopt a more relaxed rule used by federal courts. Under the federal rule, the State need only present independent evidence sufficient to establish that the incriminating statement is trustworthy. Under the Washington rule, however, the evidence must independently *corroborate*, or confirm, a defendant's incriminating statement.

159 Wn.2d at 328-29 (internal citations omitted).

inconsistent with a[ ] hypothesis of innocence.'" *Id.* at 329 (quoting *Aten*, 130 Wn.2d at 660) (alteration in original). Where no such evidence exists, the defendant's statement cannot be used to prove the defendant's guilt at trial. *Aten*, 130 Wn.2d at 656.

Applying the *corpus delicti* rule to this case, independent evidence must exist to support the inference that Guidroz committed the crime of first degree manslaughter. A person is guilty of first degree manslaughter when "[h]e or she recklessly causes the death of another person." RCW 9A.32.060(1)(a). However, the State does not need to provide independent evidence to support that the death was caused recklessly, but rather only needs to establish that the death was the result of a criminal act. *State v. Hummel*, 165 Wn. App. 749, 763, 266 P.3d 269 (2012) (noting that the court could not find a case requiring "evidence of the mental state applicable to a specific degree of the alleged crime is necessary to establish that the death was the result of a criminal act."), *review denied*, 176 Wn.2d 1023 (2013). Thus, in order for Guidroz's confession to survive suppression under the *corpus delicti* rule, the State needed to establish the *corpus delicti* through independent evidence that corroborated: (1) the fact of death, and (2) a causal connection between the death and a criminal act. *Aten*, 130 Wn.2d at 655-56.

2. The Fact of Death

The State argues that it "presented sufficient evidence to establish a *prima facie* case of the crime charged." Br. of Appellant at 9 (boldface omitted). We hold that, even when viewed in the light most favorable to the State, the evidence the State presented was insufficient to reasonably infer the fact of death.

In *Hummel*, 165 Wn. App. at 761, Division One of this court considered what independent evidence was sufficient to satisfy the fact of death in a *corpus delicti* challenge where no body was

ever found. There, Hummel was convicted of first degree murder of his wife after she disappeared. *Id.* at 754. Division One held that when the evidence and the reasonable inferences that followed were viewed in the light most favorable to the State, it was reasonable to conclude that Hummel's wife was (1) dead, and (2) that her death was a result of a criminal agency. *Id.* at 770. In holding that the evidence supported a reasonable inference that Hummel's wife was dead, Division One noted that the State had presented evidence that (i) shortly after Hummel's wife discovered that Hummel had been molesting their daughter, Hummel's wife "vanished suddenly and surprisingly, never to be heard from again"; (ii) "she was close with her children and was unlikely to simply abandon them"; (iii) "without explanation, she failed to attend a special event for her daughter's birthday"; and (iv) "the failure to complete a work assignment was out of character." *Id.*

Here, the independent evidence that the State presented, and all reasonable inferences therefrom, do not support that Wallace is dead. In this case, the State argues that the following evidence it presented was sufficient to satisfy the fact of death: (i) that Wallace has been missing since 1983; (ii) that not one of eight bus drivers who might have been in the area remembers being asked about a missing boy; (iii) that in 1982 there was a CPS referral regarding Wallace's injuries from a clothes iron; and (iv) that 30 years later Davis and McBride recounted stories of numerous unexplained injuries to Wallace and Guidroz's multiple-day absences. At oral argument, the State added that Guidroz had a motive to kill his son, as evidenced by the statements of Davis and McBride, that Guidroz had ample opportunities to kill his son, and that Guidroz exhibited odd behavior after Wallace went missing.

First, evidence that a person has been missing for many years does not, by itself, reasonably create the inference that the person is dead. In *Hummel*, the court held that the wife's long absence

was evidence that she was dead because she was an adult who was unlikely to suddenly abandon her children without telling them where she was going, would not skip her child's birthday without explanation, and had never left a work assignment uncompleted. *Id.* But, here, we have a three-and-a-half-year-old child, and no evidence that this three-and-a-half-year-old child had established a relationship and pattern of conduct with others such that his failure to act in conformance therewith is reasonably explained by presuming his death. *Cf. Hummel*, 165 Wn. App. at 770 n.7 (noting that in *State v. Thompson*, 73 Wn. App. 654, 663, 870 P.2d 1022 (1994), the court "rel[ied] on the victim's habits regarding housework, patterns of contact with her friends, and care of her pets, as well as evidence that she disappeared suddenly and without warning, as creating a strong inference" that the victim was dead, despite the absence of a body). Three-and-a-half-year-old children can wander away accidentally or be abducted. Once lost or abducted, three-and-a-half-year-old children are unlikely to be able to communicate without assistance from an older child or an adult. Thus, the State's evidence that Wallace has been missing since 1983 does not reasonably imply that Wallace is dead.

Second, the State's evidence that "of the eight bus drivers who might have been in the area at the time, not one of them remembered ever being asked about a missing boy" is not independent evidence that reasonably implies that the missing boy is dead. Br. of Appellant at 11. The State cites no authority, and does not provide additional argument, for how the failure of bus drivers to remember being asked about a missing boy could lead to a reasonable inference that the boy they do not remember being asked about is dead.

To the extent the State intended to argue that it shows another inconsistency in Guidroz's story, this argument fails because even if no bus driver could recall that a man asked about his

missing son, there could be any number of reasons for such an inconsistency that do not include the father knowing the child is dead. *Brockob*, 159 Wn.2d at 329 (holding that the independent corroborating evidence "'must be consistent with guilt and inconsistent with a[ ] hypothesis of innocence.'" (quoting *Aten*, 130 Wn.2d at 660) (alteration in original). At best, the reasonable inference that can be drawn from this evidence is that Guidroz did not ask any bus driver about his missing son. Thus, evidence that not one of eight bus drivers who might have been in the area remembered being asked about a missing boy is not evidence that creates a reasonable inference that the boy is dead.

Third, the State's evidence that there was a CPS referral for a suspicious injury to Wallace's head from a clothes iron the year before Wallace went missing is not evidence that creates the reasonable inference that Wallace is dead. Aside from recounting the facts in the preceding sentence, and neglecting to add that the investigation was "cleared," the State presents no other facts, citations, or argument to support how this CPS report could reasonably create the inference that Wallace is dead.

Fourth, the State's evidence from Davis and McBride regarding Guidroz's potential abuse and neglect of Wallace does not reasonably create the inference that Wallace is dead. Even assuming that Davis's and McBride's recollections from over 30 years ago of Guidroz's actions and feelings towards his son are accurate, they lead to the reasonable inference that Guidroz was not a good parent. Their recollections do not reasonably lead to an inference that Wallace is dead.

Fifth, just as Davis's and McBride's recollections of Guidroz's actions and feelings towards his son do not reasonably create the inference that Wallace is dead, they also do not reasonably create the inference that Guidroz was motivated to kill his son. We do not presume

that not being a good parent creates an inference that the parent has the motivation to kill his or her child.

Sixth, that Guidroz had ample opportunities to kill Wallace does not create the inference that Wallace is dead. During a child's young life, he or she will likely be alone with a parent quite frequently. But, the death of a child cannot be reasonably inferred from an opportunity a parent has to kill the child.

Seventh, the State argues that Guidroz exhibited odd behavior after Wallace disappeared, and that this odd behavior demonstrated Guidroz's consciousness of guilt. But the State was unable to provide citations to the record that demonstrate the alleged odd behavior created an inference of guilt. Moreover, that a parent feels guilty after their child disappears is no more indicative that the parent killed the child than it is that the parent is distraught over not being able to find the child. Accordingly, the alleged odd behavior is not "'inconsistent with a[ ] hypothesis of innocence,'" and is, therefore, insufficient to reasonably infer Wallace's death. *Id.* at 329 (quoting *Aten*, 130 Wn.2d at 660) (alteration in original).

Finally, even when all the evidence the State presented is considered together, it does not reasonably lead to the inference that Wallace is dead. Taken together, in the light most favorable to the State, the evidence the State relies upon would reasonably lead one to infer that Wallace is missing and that Guidroz was not a good parent. From this evidence, we hold that one could not reasonably infer Wallace's death. Consequently, having failed to establish the first element in a first degree manslaughter case challenging the existence of the *corpus delicti*—the fact of death—

we hold that the State failed to establish the *corpus delicti*, and the trial court did not err in suppressing Guidroz's statements.[3]

[3] The State also argues that the superior court erred because it failed to view the evidence in the light most favorable to the State, weighed the credibility of the evidence, and considered the evidence presented by the defense. We do not address the merits of this argument.

We review the superior court's dismissal de novo. *Green*, 182 Wn. App. at 143. Accordingly, when we review whether the *corpus delicti* rule prevents the admission of Guidroz's statement to Detective Miller, we do so under the same standard of review that the superior court should have applied. Which is to say, that we review whether the State has presented direct or circumstantial evidence sufficient to reasonably infer (1) the fact death, and (2) a causal connection between the death and a criminal act. *Aten*, 130 Wn.2d at 655; *Brockob*, 159 Wn.2d at 328.

Because we hold that the State failed to present evidence sufficient to reasonably infer that Wallace is dead, and we reach that conclusion under the standard that the superior court should have applied, it would waste judicial resources for this court to subsequently determine whether the superior court applied the proper standard and to potentially remand the case for the superior court to reconsider. This would waste judicial resources because we have already identified the conclusion that the superior court would necessarily reach when applying the proper legal standard. Accordingly, we do not address the merits of the State's argument that the superior court did not apply the proper legal standard.

B. RCW 10.58.035

The State next argues that the superior court erred in not admitting Guidroz's statements to Detective Miller under RCW 10.58.035.[4] We hold that even if Guidroz's statements were admissible under RCW 10.58.035, the superior court did not err in suppressing the statements because the State did not present other evidence, independent of the statements made to Detective

[4] RCW 10.58.035 provides:

> (1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.
>
> (2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:
>
> (a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;
>
> (b) The character of the witness reporting the statement and the number of witnesses to the statement;
>
> (c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or
>
> (d) The relationship between the witness and the defendant.
>
> (3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.
>
> (4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

Miller, sufficient to establish the *corpus delicti* of the crime charged—specifically, the fact of death.

Our Supreme Court explained why the standard of review in these types of challenges is de novo: "Generally, we review a trial court's decision of whether evidence is admissible for abuse of discretion. But determining the admissibility of a defendant's statement under RCW 10.58.035 is a mixed question of law and fact. The application of law is reviewed de novo." *State v. Dow*, 168 Wn.2d 243, 248, 227 P.3d 1278 (2010) (internal citations omitted).

In *Dow*, the State charged Dow with first degree child molestation based on his admission to the police that he molested a three-year-old child. *Id.* at 246. The State conceded that Dow and the child were the only people present at the time of the alleged molestation, and that the child was too young to testify, so there was no evidence independent of Dow's statements to the police of the alleged crime. *Id.* at 247. Instead, the State argued that Dow's statements should be admitted under RCW 10.58.035. *Id.* at 254.

Our Supreme Court affirmed the trial court's refusal to admit the statements and its dismissal of the State's case against Dow. *Id.* at 253-55. In doing so, the court held that even if Dow's statements were trustworthy and admissible under RCW 10.58.035, the trial court did not err because RCW 10.58.035 pertained "only to [the] admissibility" of the statements and the statute could not relieve the State of its burden of presenting sufficient independent evidence to support a conviction. *Id.* at 253-54. Accordingly, because there was no independent evidence corroborating Dow's statements to the police, dismissal was proper because the State had failed to establish the *corpus delicti*. *Id.* at 254-55.

Similarly here, we hold that the State failed to establish the *corpus delicti* because, even when viewed in the light most favorable to the State, the evidence the State presented was insufficient to reasonably infer the fact of death element for the crime of first degree manslaughter. Section A. 1., *supra*. Therefore, we hold that, "even if the statements are admissible," the superior court did not err in dismissing the case because "no other evidence [was presented] to establish the corpus delicti independent of" Guidroz's statements to Detective Miller, and "RCW 10.58.035 does nothing to change this requirement" that the *corpus delicti* must be supported by "sufficient evidence independent of a defendant's confession to support a conviction." *Id.* at 254.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Johanson, J.

Bjorgen, C.J.