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No. 96166-2
Court of Appeals No. 76076-9-I

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BINIAM PETROS DUBISO,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Biniam P. Dubiso, petitioner here and appellant below, requests this Court grant review of the decision designated in Part B of the petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Mr. Dubiso requests this Court grant review of the decision of the Court of Appeals, No. 76076-9-I (June 18, 2018). A copy of the decision is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. A criminal defendant has the right to trial by jury with the consent of the court. Mr. Dubiso, an immigrant from Ethiopia where jury trials are not held, represented himself in the present case. Pending trial, he filed several letters with the court setting out his version of events. At pretrial hearings, he asked the court to decide his case based on the letters. The court responded he did not need to present his case to the court because a jury would decide the case. Mr. Dubiso did not meaningfully participate in the ensuing trial. Does the Court of Appeals holding that Mr. Dubiso did not request a bench trial impose a degree of articulation unsupported by case law, demonstrate the need for further guidance from this Court, and involve an issue of substantial

public interest that should be determined by this Court, pursuant to RAP 13.4(b)(4)?

2. The *corpus delicti* rule prohibits a conviction based solely on a defendant's incriminating statement and requires independent evidence to support a reasonable inference the specific crime charged was committed. Mr. Dubiso was charged with attempted rape in the second degree and attempted residential burglary with sexual motivation. Although neither eyewitness testified she was afraid of a sexual assault or that Mr. Dubiso acted in a sexual or lewd manner, the Court of Appeals held evidence that Mr. Dubiso followed one of the witnesses for a period of time and both witnesses were afraid he might hurt them supported the reasonable inference of sexual motivation. Does this holding substantially lower the threshold for the quantum of independent evidence to establish the *corpus delicti* of the specific crime charged, demonstrate the need for further guidance from this Court, conflict with decisions by this Court and the Court of Appeals, and involve an issue of substantial public interest that should be determined by this Court, pursuant to RAP 13.4(b)(1), (2), and (4)?

D. STATEMENT OF THE CASE

Biniam Petros Dubiso was charged with attempted rape in the second degree and attempted residential burglary with sexual motivation. CP 1-4. Because the appellate issues are very fact-specific, the facts are set out in detail.

At the request of Mr. Dubiso's attorney, the court ordered a competency evaluation. CP 6-11. His attorney stated:

It is my belief that Mr. Dubiso does not understand the proceedings. He comes to every court hearing believing that this is his trial and that the alleged victim would be here. He's clearly not able to assist counsel.

7/22/16 RP 27.¹

A forensic mental health evaluation was conducted and the evaluator concluded Mr. Dubiso was mentally and culturally competent, even though he was from Ethiopia and had been in the United States for only four years, he spoke English only "fairly well," he did not know the role of a jury, and he exhibited rigid thinking and poor judgment. CP 15-22. The evaluator wrote:

¹ The Verbatim Report of Proceedings consists of 14 volumes and will be referred to by date. The September 22, 2016 proceedings are reported in two volumes time stamped 8:49 a.m. and 9:28 a.m. and will be referred to as "9/22/16(a)" and "9/22/16(b)" respectively. The October 4, 2016 proceedings are also reported in two volumes time stamped 9:17 a.m. and 3:30 p.m. and will be referred to as "10/4/16(a)" and "10/4/16(b)" respectively.

Mr. Dubiso indicated that he did not know the role of a jury in court² and he was provided education in this regard. When asked again to describe a jury he reported that he only wanted a judge and not a jury as jurors have no education in legal matters and are not experts in the area.

CP 20. The evaluator did not opine about Mr. Dubiso's competency at the time of the alleged offenses or at the time he was interviewed by the investigating officer.

Based on the evaluation, the court found Mr. Dubiso competent to proceed *pro se* with standby counsel. 8/18/16 RP 33-34; 8/23/16 RP 42-53. However, Mr. Dubiso adamantly refused to confer with standby counsel, he referred to the prosecutor as an FBI agent, and he repeatedly referred to standby counsel as a prosecutor. 9/22/16 RP 46-47; 9/26/16 RP 101; 10/3/16 RP 366-67. When asked to describe the role of a judge, he stated, "Being a judge is, you know, looking at all the sides and making rules and judgments." 9/26/16 RP 60. He was not asked to describe the role of a jury.

Pending trial, Mr. Dubiso filed several letters with the court setting out his version of events. CP 132-144. At pretrial hearings, Mr. Dubiso

² Jury trials are not held in Ethiopia. U.S. Dept. of State, Ethiopia 2014 Human Rights Report Executive Summary 8, <https://www.state.gov/documents/organization/236570.pdf>

asked the court to decide his case based on his letters. Although he initially requested 12 or 13 minutes for *voir dire*, he later stated, “I don’t need the time [for *voir dire*] because I finish -- the end of my job’s already. I wrote a letter on there. I wrote the motions, everythings. Now I don’t need counsel. I’m done everythings. So all my part I did so.”

9/22/16(b) RP 36; 9/26/16 RP 102. “For my part, I don’t have anything to say. I’m done everything, so I need the Court just to consider everythings what I’ve said and what I’ve written.” 9/26/16 RP 103. “[Y]our part is judgment, my part is defendant.” 9/22/16(b) RP 8. “If you don’t listen for me, how can you judge? That’s why I’m here.” 9/22/16(b) RP 9. “I don’t have any exhibits to exchange. ... I submitted everything I have.”

9/26/16(b) RP 18. “I already address everything in the letter, everything that I had to say.” 9/22/16(b) RP 31. “[T]he reason I wrote those letters is because my voice was not heard before. And I was just trying to express my -- the story on my end. And I did not get an opportunity to speak or to testify before, that’s why I was writing those letters.” 9/22/16(b) 32. Even on the final day of testimony, Mr. Dubiso stated, “I’m here to – my charges decided by the judge, but not by the parties or the prosecutor (gesturing to standby counsel).” 10/3/16 RP 367.

In response, the court answered, “The jury is going to be the one to decide if you’re not guilty or guilty.” 9/26/16 RP 68. The court later

reiterated, “It’s not a trial to the Court; it’s a jury trial. I won’t be making the decision whether you’re guilty or not guilty because we’re going to have a jury do that.” 9/26/16 RP 103. Shortly thereafter, the court again reiterated, “But, Mr. Dubiso, I keep telling you, the jury is going to make that decision as to whether you’re not guilty or whether you’re guilty, and they’re going to base it on evidence. And there’s no reason to put on a case to me because the jury is going to hear it.” 9/26/16 RP 110.

Mr. Dubiso did not meaningfully participate in the ensuing jury trial: he did not conduct *voir dire*, he did not make an opening statement, he did not cross-examine any witnesses, he did not make any objections, he did not testify or otherwise present a defense, and he did not make a closing argument. His lack of participation was so striking that, during deliberations, the jury inquired, “Does the defendant have competent command of the English language? (This question is due to the fact we have only heard him say “No” in court.)” CP 67. The court responded, “Please re-read your jury instructions.” CP 68.

The State presented testimony from Julia Brooker, Kristyn Graham, and Officer Andrew Hensing. Ms. Brooker testified that she was from out-of-town visiting her friend, Ms. Graham, who lived in a multi-building apartment complex in Federal Way. 9/29/16 RP 308-09;

10/3/16 RP 423-24. After a day on her own sightseeing in Seattle, she mistakenly boarded a bus that took her to Auburn. 10/3/16 RP 427-28. In Auburn, she transferred to a bus to Federal Way. 10/3/16 RP 425-26, 427-430. When she got off the bus in Federal Way, she noticed a man, later identified as Mr. Dubiso, get off at the same stop and follow her into the grocery store across the street from Ms. Graham's apartment complex. 10/3/16 RP 433. As she went from aisle to aisle shopping for dinner, she noticed he was often in the same aisle. 10/3/16 RP 433-34. When she checked out, she saw Mr. Dubiso outside looking into the parking lot, as if waiting for a ride. 10/3/16 RP 436. She crossed the street and walked into Ms. Graham's apartment complex. 10/3/16 RP 431. She noticed Mr. Dubiso was behind her, but she was not particularly concerned. 10/3/16 RP 437. However, she walked a bit faster and became alarmed when she realized Mr. Dubiso then also walked faster. 10/3/16 RP 438-39. At one point, Mr. Dubiso was very close behind her. 10/3/16 RP 440. Ms. Brooker turned and asked "Are you following me?" 10/3/16 RP 441-42. Mr. Dubiso raised his hands and said, "No." 10/3/16 RP 441. She again picked up her pace until she saw Ms. Graham waiting outside her second story apartment. 10/3/16 RP 410, 441-42. She and Ms. Graham ran up the stairs into the

apartment and immediately locked the door behind them. 10/3/16 RP 413-14, 442-43. Within seconds, Mr. Dubiso reached the door, jiggled the handle, and pushed on the door as if to open it. 10/3/16 RP 414, 443. He then simply stood outside the door for a few minutes before he walked away and lingered in the middle of the parking lot as if lost. 10/3/16 RP 415, 417, 445. Ms. Graham characterized his lingering as “very strange.” “queer,” and “weird.” 10/3/16 RP 415, 416, 417.

Ms. Brooker testified she was frightened “this man might have intent to hurt me.” 10/3/16 RP 439-40. Ms. Graham testified Mr. Dubiso was wearing a backpack and she “didn’t know if he could have anything to hurt us with.” 10/3/166 RP 415.

Ms. Brooker called 911 and Mr. Dubiso was quickly located by Officer Hensing quickly located in the apartment complex. 9/26/16 RP 310-11. According to Officer Hensing, “Every time I mentioned the girl, he kind of snickered, grinned, like it was -- like it was funny.” 9/29/16 RP 316. The officer testified, “He would smile, maybe chuckle a little bit, grin.” 9/29/16 RP 324. From these peculiar facial expressions and mannerisms, Officer Hensing concluded Mr. Dubiso “found her attractive.” 9/29/16 RP 324.

Officer Hensing arrested Mr. Dubiso, took him to the police station, advised him of his *Miranda*³ rights, and interrogated him with leading “yes-no” questions. 9/29/16 RP 316-22. According to Officer Hensing, Mr. Dubiso stated “yes” he followed Ms. Brooker from Seattle to Federal Way, “yes” he followed her into the grocery store, “yes” he followed her from the grocery store into the apartment complex, and “yes” he ran after her up a flight of stairs to get inside. 9/29/16 RP 319-20; Ex. 2, p.1. Officer Hensing then wrote:

Q: So you were going to force your way into her apartment? Why?

A: Because I like her.

Q: Do you love her?

A: Yeah.

Q: Did you push on the door to get inside?

A: Yes.

Q: It is ok to force your way into someone’s house?

A: No.

Q: Then why did you do it?

A: I thought it was ok because I wasn’t going to hurt her.

Q: Do you know you follow her for over 3 hours?

A: 3 hours, yes.

Q: I think you were going to kill her.

A: No! Never.

Q: OK, then you were going to have sex with her.

A: Yes, maybe.

Q: I think that even if she didn’t let you have sex with her you were going to anyways, right?

A: Right.

Q: You were going to force her to have sex/rape her?

A: Yes.

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

9/29/16 RP 319-322; Ex. 2, p.2.

Mr. Dubiso was convicted as charged.

On appeal, Mr. Dubiso argued the trial court abused its discretion when it failed to consider Mr. Dubiso's request that the court decide his case. He also argued Mr. Dubiso's statement to the officer was admitted in violation of the *corpus delicti* rule. The Court of Appeals affirmed his convictions and denied his motion for reconsideration.

E. ARGUMENT

1. The Court of Appeals holding that Mr. Dubiso did not request a bench trial erroneously imposed an unprecedented degree of articulation and demonstrates the need for further guidance from this Court.

a. The constitutional right to trial by jury may be waived.

A criminal defendant may waive the right to trial by jury with the consent of the court. *State v. McKague*, 159 Wn. App. 489, 500, 246 P.3d 558 (2011). Because waiver of the right to jury trial implicates a constitutional right, the validity of a waiver is reviewed *de novo*. *State v. Vasquez*, 109 Wn. App. 310, 319, 34 P.3d 1255 (2001), *aff'd on other grounds*, 148 Wn.2d 303, 59 P.3d 648 (2002).

CrR 6.1(a) provides, “Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.” However, failure to file a written waiver does not invalidate an otherwise knowing oral waiver of the right to trial by jury. *State v. Wicke*, 91 Wn.2d 638, 645-46, 591 P.2d 452 (1979); *State v. Hos*, 154 Wn. App. 238, 250, 225 P.3d 389 (2010). A waiver is valid when the record reflects a personal expression of waiver by the defendant and it was made knowingly, intelligently, and voluntarily. *State v. Stegall*, 124 Wn.2d 719, 724, 881 P.2d 979 (1994); *City of Bellevue v. Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984).

b. Mr. Dubiso repeatedly and unequivocally requested the court to decide his case.

As set forth above, throughout pretrial proceedings and trial, Mr. Dubiso repeatedly requested the court to decide his case based on his letters in which he set forth his version of events. 9/22/16(b) RP 8, 9, 18, 31, 32; 9/26.16 RP 59, 102, 103; 10/3/16 RP 367. The trial court responded he did not need to present his case to the court because a jury would decide his case. 9/26/16 RP 68, 103, 110. By so responding, the court indicated its understanding that Mr. Dubiso was requesting a bench trial. Yet, the court did not consider these requests as required by case law. *See, e.g., McKague*, 159 Wn. App. at 500 (“We review a trial

court's denial of a jury waiver for abuse of discretion to ensure that the trial court did not merely deny the request by rote but that it exercised discretion with an eye to ensuring a fair trial.").

Nevertheless, the Court of Appeals held, "Dubiso never expressed to the trial court – either verbally or in writing – that he wished to waive his right to a jury trial and proceed with a bench trial. Because Dubiso never requested to proceed with a bench trial, the trial court had no opportunity to rule on this issue." Opinion at 6. This holding ignores Mr. Dubiso's multiple requests for the trial court to make a decision and the trial court's responses that clearly demonstrate the court's understanding Mr. Dubiso was requesting a bench trial.

Moreover, this holding imposed an unprecedented degree of articulation that is unsupported by case law. Case law requires only a defendant's personal expression of waiver and the waiver be knowing, intelligent, and voluntary. *See, e.g., Stegall*, 124 Wn.2d at 724-25; *Acrey*, 103 Wn.2d at 208-09. No specific verbiage is required. Pursuant to RAP 13.4(b)(1), (2), and (4), this Court should accept review to provide further guidance on the degree of articulation required of a *pro se* defendant to waive trial by jury.

2. The Court of Appeals holding that the *corpus delicti* of sexually motivated offenses was established by evidence Mr. Dubiso followed a witness for a period of time and attempted to unlawfully enter her apartment significantly lowered the threshold of independent *prima facie* evidence and demonstrates the need for further guidance from this Court.

a. The *corpus delicti* rule.

The *corpus delicti* (“body of the crime”) rule precludes a conviction based solely on a defendant’s incriminating statement. *State v. Brockob*, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006), *amended* (Jan. 26, 2007). The rule was established to protect against unjust convictions based solely on an incriminating statement, which may be of questionable reliability.

It arose from judicial distrust of confessions generally, coupled with recognition that juries are likely to accept confessions uncritically. This distrust stems from the possibility that the confession may have been misreported or misconstrued, elicited by force or coercion, based upon mistaken perception of the facts or law, or falsely given by a mentally disturbed person.

City of Bremerton v. Corbett, 106 Wn.2d 569, 576-77, 723 P.2d 1135 (1986) (citations omitted). *Corpus delicti* pertains to the sufficiency of the evidence and may be raised for the first time on appeal. *State v. Cardenas-Flores*, 189 Wn.2d 243, 251-63, 401 P.3d 19 (2017).

The rule requires the State to present *prima facie* evidence of the crime charged, independent of the defendant’s statement, prior to

admission of the statement at trial. *State v. Meyer*, 37 Wn.2d 759, 763-64, 226 P.2d 204 (1951). In this context, ‘*prima facie*’ means evidence sufficient to support a logical and reasonable inference of the facts sought to be proved. *State v. Aten*, 130 Wn.2d 640, 656, 927 P.2d 210 (1996). The independent evidence must corroborate “not just *a crime* but *the specific crime* with which the defendant has been charged.” *Brockob*, 159 Wn.2d at 329 (emphasis in original). A causal connection between the body of the crime and the defendant’s acts cannot be based on mere speculation or conjecture. *Aten*, 130 Wn.2d at 661.

In *State v. Jameison*, __ Wn. App. __, 421 P.3d 463 (2018), the Court of Appeals addressed the distinction between a reasonable inference and speculation or conjecture. Citing *Fannin v. Roe*, 62 Wn.2d 239, 242, 382 P.2d 264 (1963), the Court noted an inference is a logical deduction or conclusion from an established fact. *Id.* at 470-71. An inference is not reasonable when it is based on speculation or conjecture. *Id.* at 471. Moreover, “[w]hen the evidence is equally consistent with two hypotheses, the evidence tends to prove neither.” *Id.* Whether the evidence supports a reasonable inference or only speculation is a fact-specific inquiry determined on a case-by-case basis. *Id.*

b. The Court of Appeals erroneously relied on speculation and conjecture to rule Mr. Dubiso's conduct was sexually motivated.

The *corpus* of attempted rape in the second degree consists of a substantial step toward the commission of sexual intercourse by forcible compulsion. *See* RCW 9A.28.020, 9A.44.050(1)(a). The *corpus* of attempted burglary consists of a substantial step toward entering or remaining unlawfully in a dwelling with intent to commit a crime therein. *See* RCW 9A.28.020, 9A.52.025.

The facts relied upon by the appellate court do not give rise to a reasonable inference Mr. Dubiso acted with sexual motivation, and not another offense. As stated, the court relied on the witnesses' testimony and a store surveillance video that showed Mr. Dubiso following one of the witnesses. Opinion at 10. It may be noted, the court also relied on evidence Mr. Dubiso followed Ms. Brooker from Seattle to Auburn. Opinion at 10. However, Ms. Brooker testified "probably three or four people" from the bus from Seattle to Auburn boarded the bus from Auburn to Federal Way and she did not notice Mr. Dubiso until she got off the bus in Federal Way. RP 428-430. Significantly, the court did not address the fact that neither Ms. Brooker nor Ms. Graham testified they were afraid they would be sexually assaulted. Nor did the court

address the lack of evidence Mr. Dubiso acted in a sexually suggestive or lewd manner or that he carried sexually related items.

In *Brockob*, several cases were consolidated to determine the sufficiency of independent evidence to establish the *corpus delicti* of the crimes charged, two of which are instructive here. 159 Wn.2d at 317. In the first case, the defendant was convicted of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine based on a store loss prevention officer's observation the defendant left the store with between 15 and 30 packages of cold tablets, as well as his custodial statement that he stole the tablets for a third party to make methamphetamine. *Id.* at 319. This Court reversed his conviction on the grounds the independent evidence did not support the inference of the crime charged, but, rather supported the only inference of unlawful possession a pseudoephedrine. *Id.* at 331-32. By contrast, in the second case, the defendant was convicted of attempted manufacture of methamphetamine based on evidence he possessed three bottles of ephedrine tablets and several coffee filters, his companion possessed one bottle of ephedrine tablets, as well as his custodial statement that he stole the ephedrine for a third party to manufacture methamphetamine. *Id.* at 321-22. This Court upheld the conviction on the grounds the independent evidence established not only that the defendant possessed ephedrine, but

he also possessed coffee filters, which are commonly used for manufacture of methamphetamine, and he acted in concert with another person to acquire more than the legal amount of ephedrine. *Id.* at 333.

Here, as in the first consolidated case, the independent evidence established only that Mr. Dubiso attempted to unlawfully enter Ms. Graham's apartment by jiggling the locked door handle and pushing against the door. The descriptions of Mr. Dubiso's behavior, however alarming and inappropriate, do not present *prima facie* evidence of a substantial step to commit the specific sexually motivated crimes charged, that is, rape in the second degree and residential burglary with sexual motivation.

Other cases that have found the *corpus delicti* rule was satisfied have relied on significantly stronger independent corroboration than presented here. For example, in *Cardenas-Flores*, to support the reasonable inference of second degree child assault, the Court relied on evidence a non-ambulatory infant suffered a broken leg and the treating physician determined the injury was the result of non-accidental trauma. 189 Wn.2d at 264-65.

The independent evidence must corroborate the gravamen of the crime charged, not simply a crime. *Cardenas-Flores*, 189 Wn.2d at

264; *Brockob*, 159 Wn.2d 311, 331-32, 150 P.3d 59 (1996). Here, while the evidence supports the hypothesis that Mr. Dubiso committed the uncharged crime of attempted criminal trespass, the conclusion that Mr. Dubiso's actions suggested sexual motivation is mere speculation or conjecture.

The Court of Appeals decision significantly lowered the threshold for the quantum of independent evidence from reasonable inference to speculation or conjecture. Pursuant to RAP 13.4(b)(1), (2), and (4), this Court should accept review and give more guidance on the quantum of evidence required to establish the *corpus* of the specific offense charged.

E. CONCLUSION

The Court of Appeals imposed an unprecedented degree of articulation for a valid jury waiver by a *pro se* defendant. In addition, the court substantially lowered the threshold of independent evidence to satisfy the *corpus delicti* rule. For the foregoing reasons, Mr. Dubiso respectfully petitions this Court to accept review.

DATED this 6th day of August 2018.

Respectfully submitted,

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Washington Appellate Project (91052)
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APPENDIX A

2018 JUN 18 AM 8:37

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 76076-9-1
v.)	
)	UNPUBLISHED OPINION
BINIAM PETROS DUBISO,)	
)	
Appellant.)	FILED: June 18, 2018
_____)	

DWYER, J. — Biniam Dubiso was charged and convicted of attempted rape in the second degree and attempted residential burglary with sexual motivation. On appeal, Dubiso contends that the trial court erred by failing to consider his request to proceed with a bench trial. Dubiso also contends that the State failed to present evidence establishing the corpus delicti of the crimes of which he was convicted. Finding no error, we affirm.

I

In early May 2016, Julia Brooker travelled from her home in Nevada to visit her friend, Kristyn Graham, in Federal Way. On May 2, Brooker took public transportation to downtown Seattle to sight-see. Brooker decided to return to Federal Way around 2:00 pm. Unfortunately, Brooker took the wrong bus and ended up in Auburn. Brooker eventually transferred to a bus heading toward Federal Way.

When Brooker finally reached Federal Way, she decided to stop by a grocery store and purchase ingredients to make dinner for Graham and herself. Brooker exited the bus, walked across a parking lot, and entered Fred Meyer. Brooker observed a man—later identified as Biniam Dubiso—exit the bus at the same stop as her. Brooker observed Dubiso follow her through the parking lot and into Fred Meyer.

Brooker walked through the store and went into the restroom, where she spent a few extra minutes charging her cell phone. Brooker then plugged her cell phone into an outlet in the hallway outside of the restroom. After waiting a while for her phone to charge, Brooker decided to shop for groceries. Brooker noticed that Dubiso “kind of kept randomly popping up” around the store, but that “it appeared as if he was shopping himself.”

Brooker decided to charge her cell phone one last time before exiting the store. Brooker found an outlet near the store entrance and waited there for several minutes for her cell phone to charge. While she was waiting for her phone to charge, Brooker observed Dubiso standing just outside of the front doors, looking into the parking lot. Brooker assumed that Dubiso must have been waiting for a ride.

Brooker sent a text message to Graham, letting Graham know that she was about to leave the store. As Brooker began to walk through the parking lot, she realized that Dubiso was behind her. Dubiso followed Brooker through the parking lot and across the street. Brooker grew concerned and began to walk faster, but Dubiso picked up his pace and continued to follow her. Brooker

abruptly changed the direction that she was walking and cut across a patch of grass, but Dubiso continued to follow her.

Brooker was frightened and believed that Dubiso intended to hurt her. Brooker called Graham on her cell phone. While she was on the phone with Graham, Dubiso came within arm's distance of Brooker. Brooker spun around and asked Dubiso if he was following her. Dubiso put his hands up and said no, but Brooker did not believe him. Brooker turned around and resumed her brisk walk toward Graham's apartment. Brooker could hear Dubiso continue to follow her.

Graham was waiting outside of her apartment on the ground floor. When Brooker reached the stairs leading up to the apartment, she told Graham that Dubiso was following her and that they needed to quickly go inside the apartment. Graham and Brooker ran up the stairs and into the apartment, locking the door behind them. Within seconds, Dubiso began trying to enter the apartment. Dubiso tried to forcibly enter the apartment by banging on the door and jiggling the handle. Graham and Brooker screamed and shouted that they were going to call the police.

Graham pushed against the door from the inside of the apartment while Brooker called 911. Brooker provided a description of Dubiso to the emergency operator and stayed on the phone until the police arrived, around 10 to 15 minutes later. While Graham and Brooker were waiting for the police to arrive, Dubiso descended the stairs and lingered around the apartment complex for

several minutes. Police arrested Dubiso at the scene and Brooker positively identified him as the man who had followed her.

Officer Andrew Hensing interviewed Dubiso following his arrest. Dubiso admitted that he was on the same bus to Auburn as Brooker and that he transferred buses and followed Brooker to Federal Way. Dubiso admitted that he followed Brooker into Fred Meyer and waited for her to leave. Dubiso stated that he followed Brooker because he liked her and thought that she was pretty.

Dubiso admitted that he followed Brooker to the apartment. Dubiso admitted that he chased Brooker up the stairs and tried to force his way into the apartment. Dubiso stated that he did these things because he loved Brooker. Dubiso stated that he knew that it was not okay to force his way into someone's apartment, but that he did so anyway because he was not going to hurt Brooker. Dubiso stated that he was not going to kill Brooker, but admitted that he was going to have sex with Brooker whether or not she consented.

Dubiso was charged and convicted of attempted rape in the second degree and attempted residential burglary with sexual motivation. He appeals from the judgment entered on the jury's verdicts.

II

Dubiso first contends that the trial court erred by failing to consider his request to proceed with a bench trial. We disagree.

There is no constitutional right to a nonjury trial. Newsome v. Shields, 10 Wn. App. 505, 506, 518 P.2d 741 (1974) (citing Singer v. United States, 380 U.S. 24, 34, 85 S. Ct. 783, 13 L. Ed. 2d 630 (1965)). A defendant may waive his or

her right to a jury trial only with the consent of the trial court. CrR 6.1(a); RCW 10.01.060. We review a trial court's denial of a jury trial waiver for an abuse of discretion "to ensure that the trial court did not merely deny the request by rote but that it exercised discretion with an eye to ensuring a fair trial." State v. McKague, 159 Wn. App. 489, 500, 246 P.3d 558 (2011), aff'd, 172 Wn.2d 802, 262 P.3d 1225 (2011). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. McKague, 159 Wn. App. at 500. To establish reversible error, the defendant must show that he was prejudiced by having his case tried before a jury. State v. Maloney, 78 Wn.2d 922, 928, 481 P.2d 1 (1971).

Here, at his competency evaluation, Dubiso expressed confusion as to the role of a jury in criminal proceedings.¹ When asked to describe the role of a jury, Dubiso stated that he "only wanted a judge and not a jury as jurors have no education in legal matters and are not experts in the area." Dubiso went on to explain that a jury was a "[c]ollection of people from a group; 12 people," and that the jury decides "[r]elease or not." Dubiso also stated that there was "no witness in this case" and that Brooker "can't be a witness for herself." Dubiso asserted that he was unwilling to work with counsel and that he wanted to represent himself. Dubiso stated that he understood English well enough and did not want an interpreter. Dubiso was found competent to stand trial.

¹ Dubiso is an immigrant from Ethiopia. He reportedly speaks English "fairly fluent[ly]" but often has to have questions repeated for him. The Ethiopian legal system does not employ jury trials. U.S. Dept. of State, Ethiopia 2014 Human Rights Report Executive Summary at 8, <https://www.state.gov/documents/organization/236570.pdf>.

The trial court engaged in several colloquies with Dubiso regarding the jury selection process, the role of the jury, and the role of the judge. For example, the judge explained to Dubiso that the jury would determine guilt and that, if he was found guilty, sentencing would come later. Dubiso inquired as to how the jury selection process works and who can ask the potential jurors questions. Dubiso requested an allotment of 12 or 13 minutes to question the potential jurors. (However, Dubiso later changed his mind and declined to ask any questions during voir dire.) When Dubiso expressed that he wanted the trial court to “consider everything[]” the judge explained that “[i]t’s not a trial to the Court; it’s a jury trial, not a bench trial. I won’t be making the decision whether you’re guilty or not guilty because we’re going to have a jury do that.”

Although Dubiso was, at times, confused about the role of the judge, the jury, and the prosecutor, he clearly and repeatedly communicated his requests to the trial court. We note that Dubiso clearly and unequivocally requested to represent himself at trial—a request that the trial court granted. However, Dubiso never expressed to the trial court—either verbally or in writing—that he wished to waive his right to a jury trial and proceed with a bench trial. Because Dubiso never requested to proceed with a bench trial, the trial court had no opportunity to rule on this issue. Accordingly, it did not abuse its discretion by proceeding with a jury trial.

Nevertheless, Dubiso contends that the trial court erred by failing to inquire, sua sponte, whether he would prefer a jury trial or a bench trial. But no authority requires trial courts to so inquire. Rather, the onus is on the defendant

to request permission from the court to proceed with a bench trial. CrR 6.1(a); RCW 10.01.060. In any event, Dubiso has made no showing that he “was prejudiced in any manner in having his cause heard before a jury.” Maloney, 78 Wn.2d at 928. Accordingly, he has failed to establish a basis for appellate relief.

III

Dubiso next contends that the State failed to present independent evidence sufficient to establish the corpus delicti of attempted rape in the second degree and attempted residential burglary with sexual motivation. We disagree.

“Corpus delicti means the ‘body of the crime.’” State v. Brockob, 159 Wn.2d 311, 327, 150 P.3d 59 (2006) (internal quotation marks omitted) (quoting State v. Aten, 130 Wn.2d 640, 655, 927 P.2d 210 (1996)). The body of the crime “usually consists of two elements: (1) an injury or loss (e.g., death or missing property) and (2) someone’s criminal act as the cause thereof.” City of Bremerton v. Corbett, 106 Wn.2d 569, 573-74, 723 P.2d 1135 (1986). “However, crimes such as attempt, conspiracy, perjury, and reckless or drunken driving do not require the first corpus delicti element, injury or loss.” State v. Smith, 115 Wn.2d 775, 781, 801 P.2d 975 (1990).

“The corpus delicti ‘must be proved by evidence sufficient to support the inference that’ a crime took place, and the defendant’s confession ‘alone is not sufficient to establish that a crime took place.’” State v. Cardenas-Flores, 189 Wn.2d 243, 252, 401 P.3d 19 (2017) (quoting Brockob, 159 Wn.2d at 327-28). Specifically, “[t]he State must present other independent evidence . . . that the

crime a defendant described in the [confession] actually occurred.” Brockob, 159 Wn.2d at 328.

Essentially, corpus delicti is a corroboration rule that “prevent[s] defendants from being unjustly convicted based on confessions alone.” [State v.] Dow, 168 Wn.2d [243,] 249[, 227 P.3d 1278 (2010)]; see also 1 KENNETH S. BROUN ET. AL., MCCORMICK ON EVIDENCE § 145, at 802 n.7 (7th ed. 2013) (“The corroboration requirement rests upon the dual assumptions that [the] risk[] of inaccurac[ies] are serious . . . and that juries are likely to accept confessions uncritically.”).

Cardenas-Flores, 189 Wn.2d at 252.

Our Supreme Court has held that corpus delicti is a rule of sufficiency that may be raised, as here, for the first time on appeal. Cardenas-Flores, 189 Wn.2d at 257, 263. “Under the Washington rule . . . the evidence must independently corroborate, or confirm, a defendant’s” confession. Brockob, 159 Wn.2d at 328-29. “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. Meyer, 37 Wn.2d 759, 763-64, 226 P.2d 204 (1951). “Prima facie corroboration . . . exists if the independent evidence supports a ‘logical and reasonable inference of the facts’” that the State seeks to prove. Brockob, 159 Wn.2d at 328 (internal quotation marks omitted) (quoting Aten, 130 Wn.2d at 656). “While the State must establish the mental element of the crime beyond a reasonable doubt to sustain a conviction, mens rea is not required to satisfy corpus delicti.” Cardenas-Flores, 189 Wn.2d at 263-64. Indeed, “corroborating evidence need ‘only tend to show the “major” or “essential” harm involved in the

offense charged and not all of the elements technically distinguished.”

Cardenas-Flores, 189 Wn.2d at 264 n.9 (quoting 1 BROUN, supra, § 146, at 810).

“On appeal, any error in the admission of a confession under corpus delicti is necessarily considered in light of *all the evidence at trial*, not simply the foundation laid when the confession is offered.” Cardenas-Flores, 189 Wn.2d at 262. “In determining whether there is sufficient evidence of the corpus delicti independent of the defendant’s statements, we assume the ‘truth of the State’s evidence and all reasonable inferences from it in a light most favorable to the State.’” Cardenas-Flores, 189 Wn.2d at 264 (quoting Aten, 130 Wn.2d at 658).

Here, Dubiso was charged with attempted rape in the second degree pursuant to RCW 9A.28.020 and RCW 9A.44.050(1)(a),² as well as attempted residential burglary pursuant to RCW 9A.28.020 and RCW 9A.52.025(1).³ To establish the corpus delicti of these crimes, the State had to present prima facie evidence that someone took a substantial step to enter a dwelling unlawfully and engage in sexual intercourse with another person by forcible compulsion. State v. Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). “Conduct is a substantial step if it is strongly corroborative of the actor’s criminal purpose.” Vangerpen, 125 Wn.2d at 796. As discussed herein, independent evidence is

² RCW 9A.28.020 is the criminal attempt statute and provides, in pertinent part, that “[a] person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime. RCW 9A.44.050(1)(a) provides, in pertinent part, that “[a] person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person . . . [b]y forcible compulsion.”

³ RCW 9A.52.025(1) provides, in pertinent part, that “[a] person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.” The State alleged that this crime was committed for the purpose of sexual motivation. RCW 9.94A.835.

sufficient if it supports a logical and reasonable inference of the facts that the State seeks to prove. Cardenas-Flores, 189 Wn.2d at 264. The evidence presented by the State here included the testimony of Brooker and Graham and a surveillance video showing Dubiso follow Brooker around Fred Meyer.

Sufficient evidence prima facie establishes the fact that the crimes of attempted rape in the second degree and attempted residential burglary with sexual motivation occurred. Dubiso followed Brooker to Auburn, transferred busses with her to Federal Way, followed her through Fred Meyer, followed her to Graham's apartment complex, and chased her up the stairs. Once Brooker and Graham were safely inside the apartment, Dubiso tried to forcibly enter the apartment. Considering all of the circumstances and drawing all reasonable inferences in the light most favorable to the State, independent evidence supports the logical and reasonable inference that someone took a substantial step toward attempted residential burglary and attempted rape.

IV

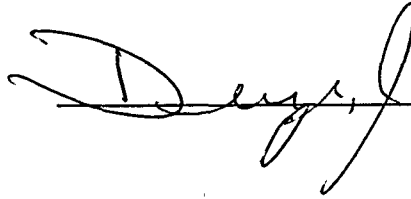
Finally, Dubiso contends that his convictions for attempted rape in the second degree and attempted residential burglary with sexual motivation were not supported by substantial evidence. We disagree.

"Evidence is sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the elements of the charged crime beyond a reasonable doubt." Cardenas-Flores, 189 Wn.2d at 265. "A claim of evidentiary insufficiency admits the truth of the

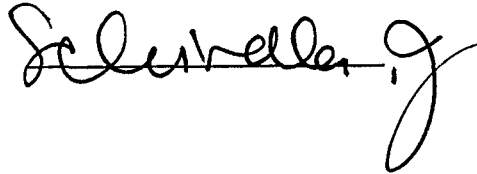
State's evidence and all reasonable inferences from that evidence." State v. Rodriguez, 187 Wn. App. 922, 930, 352 P.3d 200 (2015).

Here, because the State satisfied corpus delicti, Dubiso's confession to the police was properly considered by the jury. Dubiso admitted that he followed Brooker and intended to have sex with her, with or without her consent. The evidence establishing corpus delicti, coupled with Dubiso's confession, provides overwhelming evidence that he committed the crimes of attempted rape in the second degree and attempted residential burglary with sexual motivation.

Affirmed.



We concur:



DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 76076-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Washington Appellate Project

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