

NO. 47880-3

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

STANLEY GUIDROZ, RESPONDENT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff

No. 14-1-03654-1

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR.

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3. The trial court erred when it ruled that the defendant's inculpatory statements were not admissible under RCW 10.58.035.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court err when it ruled that the defendant's inculpatory statements were inadmissible under Washington's traditional *corpus delicti* rule, where the State presented sufficient evidence to establish a *prima facie* case of the crime charged?

2. Did the trial court err when it failed to apply the proper legal standard under Washington's traditional *corpus delicti* rule, to wit: whether the state's evidence, independent of the defendant's statements, established a *prima facie* case of the crime charged, but instead considered

evidence put forth by the defense and weighed all of the evidence when ruling that the defendant's statements were inadmissible?

3. Did the trial court err when it ruled that the defendant's inculpatory statements were not admissible under RCW 10.58.035, where the alleged victim was "dead or incompetent to testify" and there was "substantial independent evidence that would tend to establish the trustworthiness of the confession"?

C. STATEMENT OF THE CASE.

1. Procedure

On September 16, 2014, the State charged the defendant, Stanley Guidroz, with one count of manslaughter in the first degree. CP 10. The charges were based on the alleged death of his son, W.G., in January of 1983.

On April 2, 2015, the defendant filed a motion to suppress statements under Washington's *corpus delicti* rule, and specifically to suppress the defendant's admission that he had struck and thereby killed W.G. CP 11-17. In his brief, the defendant asserted facts intended to exculpate the defendant of the charge of manslaughter. CP 11-17.

On May 29, 2015, the State filed its response to the defendant's motion to suppress statements. CP 18-26.

On June 4, 2015, a hearing was held before Hon. Bryan Chushcoff,

Judge of the Pierce County Superior Court. CP 27-28. Following oral argument, Judge Chushcoff orally granted the defendant's motion and suppressed the defendant's inculpatory statements. CP 28.

On June 9, 2015, the State filed a motion to reconsider the order suppressing the defendant's inculpatory statements. CP 29-35. On June 11, 2015, the defendant filed a response, in which he again asserted facts designed to cast doubt on the crime charged. CP 36-68.

On June 12, 2015, a hearing was held before Judge Chushcoff. CP 69-70. Following oral argument, Judge Chushcoff denied the state's motion to reconsider. CP 70.

On July 9, 2015, Judge Chushcoff signed and filed Findings of Fact and Conclusions of Law; Order Suppressing Statements, CP 1-5, and an Order of Dismissal with Prejudice, CP 6-7. In the Order of Dismissal with Prejudice, Judge Chushcoff acknowledged that "the practical effect of the suppression order is to terminate the case, as described in RAP 2.2(b)(2). CP 6.

On August 6, 2015, the State filed its notice of appeal. CP 71-72.

2. Facts

On January 10, 1983, Tacoma Police were dispatched to Point Defiance Park regarding a report of a missing three-year-old child, W.G. Exh 1, p 1. The reporting party was the child's father, the defendant,

Stanley Guidroz. Exh 1, p 1. The defendant called the police at 19:42 hours from the Goldfish Tavern across the street from Point Defiance Park. Exh 1, p 1. The defendant claimed he had taken his son fishing earlier that day, leaving him in the car alone several times while he went out on the dock to fish. Exh 1, p 2. The defendant claimed to have been fishing until about 4:00-4:30, CP 19, then he and Wallace went to Point Defiance where they went for a walk near the rose garden and duck pond. Exh 1, p 3. The defendant claimed they met a couple with a child about Wallace's age. Exh 1, p 3. The children began playing and the defendant and the other man began talking and walked off conversing. Exh 1, p 3. They reached the waterfall, well out of sight of the duck pond, and the other man left. Exh 1, p 3. The defendant remained at the waterfall for approximately 10 minutes, then returned to find his son missing and the other family gone. Exh 1, p 3. The defendant stated he searched the area, then drove to the boathouse where they had been fishing, but was unable to find his son anywhere. Exh 1, pp 3-4. Multiple search and rescue teams from various agencies responded to search the areas for days, but Wallace was never found. Exh 5.

The defendant was questioned again by a different officer and his story changed. Exh 2, pp 2-3. Instead of waiting at the waterfall alone, he now claimed he and the other father returned to the duck pond together. Exh 2, p 2. When they didn't see the children or the other man's wife, they split up to search and then the other man disappeared as well. Exh 2, pp 2-

3. The defendant had been fishing with a friend, Hoyung Lee. Exh 1, p 2; Exh 3, p 4. Lee told investigators that the defendant actually stopped fishing and left around 2:30-3:30, up to two hours earlier than the defendant claimed. CP 19.

The defendant gave detailed descriptions of the couple and composite sketches were drawn. CP 19. Police spent a great deal of time looking for the suspects, showing the sketch to possible witnesses, and following up on tips regarding potential suspects. CP 19. The defendant was also considered a suspect, but the investigation was unable to determine what had happened to Wallace and was eventually put into inactive status. CP 19.

The defendant told police at the time of the disappearance that he had contacted a Pierce Transit bus driver during his search for Wallace and asked the bus driver if he had seen Wallace. Exh 4, p 1. The defendant stated the bus driver said he had not seen Wallace and the defendant continued his search. Exh 4, p 1. However, investigation revealed 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. Exh 4, p 1.

In 2011, Tacoma Police Detective Gene Miller re-opened the investigation as part of Tacoma PD's cold case initiative. CP 20; Exh 3, pp 3. He noted the inconsistencies in the defendant's stories and also with the information provided by Lee. CP 20; Exh 3, p 4. Det. Miller also checked records and noted that on the day of the disappearance, the high

temperature was 48 degrees Fahrenheit, with 16 mph winds and nearly an inch of rain. CP 20. Also, the sunset was at 4:40, meaning the walk around the duck pond would have taken place after dark. CP 20.

Det. Miller conducted an extensive investigation to see if there was any evidence that Wallace might have been alive after January 10, 1983. CP 21-23. These efforts included tracking the whereabouts of both the defendant and Wallace's mother, and checking school records in those areas. CP 22. Det. Miller concluded:

Based on all of the above research, I can find nothing to suggest that Wallace was with his mother at any time following the reported disappearance. Chom Guidroz did not appear to have any family members in the United States. Additionally, there has been extensive coverage of the reported disappearance over the years by the media as well as the National Center for Missing and Exploited Children and other similarly motivated entities. Despite all of this, Wallace has never been located. This is easily explained by Stanley Guidroz' admission that he killed Wallace in 1983 and buried his remains as a means of disposal.

CP 22.

Det. Miller discovered that in 1982, there was a CPS referral wherein Wallace had suffered an injury to his head from being struck by a clothes iron. Exh 5, pp 4-5. The referral was made by hospital staff who believed the injury to be suspicious. Exh 5, p 4. When CPS investigated,

the defendant claimed Wallace had pulled the hot iron off of the ironing board by the cord. Exh 5, p 4.

Det. Miller also spoke with friends of the defendant, Valerie (David) McBride and Henry McBride, regarding the defendant's care of Wallace prior to his disappearance. Exh 6, pp 4-5. Valerie McBride stated that Wallace always had some sort of injuries that couldn't be explained, *e.g.*, bruises, black eyes, casts. Exh 6, p 4. She also stated that Wallace always seemed to be on the defendant's nerves and that the defendant seemed to feel stuck with Wallace. Exh 6, p 4. Henry McBride stated that the defendant always felt burdened by Wallace, and would sometimes dump Wallace off with him and Valerie, claiming to need a babysitter for a few hours then disappearing for days. Exh 6, p 5. They would find the defendant and he would seem angry at being found. Exh 6, p 5. Henry McBride also reported seeing injuries on Wallace, including black eyes and casts. Exh 6, p 5. He also reported seeing the defendant shake Wallace violently. Exh 6, p 5.

In March of 2011, Det. Miller received information that the defendant had been arrested in Louisiana for the murder of his wife (not Wallace's mother). Exh 3, p 3. The defendant admitted to the murder of his wife and is currently serving a prison sentence in Louisiana for that murder. Exh 3, p 3. Det. Miller traveled to Louisiana and spoke with the defendant about the disappearance of Wallace. Exh 3, pp 3-6. These interviews took place on April 9 and 10, 2011. Exh 3, pp 3-6. Initially, the defendant told a

similar story as before, but there were new inconsistencies. Exh 3, p 4. For example, he claimed Lee had his children with him and Wallace played with those children. Exh 3, p 4. He also stated he only looked for Wallace for 20 minutes rather than the two hours that had elapsed from the alleged disappearance until his phone call to police. Exh 3, p 4. He also completely omitted the story about going to the duck pond and encountering another family. Exh 3, p 4. Det. Miller eventually confronted the defendant with the inconsistencies and asked him to tell the truth about Wallace's disappearance. Exh 3, pp 4-5.

The defendant then attempted to implicate Lee and his ex-wife (Wallace's mother, now deceased). Exh 3, p 4. Det. Miller advised the defendant he didn't think that was true either. Exh 3, p 4. The defendant then admitted being involved in Wallace's death and disappearance. Exh 3, p 5. He stated that on the day in question, he had been caring for Wallace alone. Exh 3, p 5. After fishing, they had gone to his apartment in Fife. Exh 3, p 5. Wallace was in his high chair, fussing, and the defendant lost his patience, saying he "just lost it." Exh 3, p 5; Exh 7, p 5. He admitted to "backhanding" Wallace which sent the child spilling to the floor and hitting his head. Exh 3, p 5; Exh 7, p 5. The defendant said Wallace wasn't moving and he "knew he was dead." He checked for a pulse but there was none. Exh 3, p 5; Exh 7, p 5. He then loaded the body in to his car and drove to the Tacoma waterfront, where he buried Wallace in a shallow grave, before calling police and reporting him missing. Exh 3, p 5; Exh 7, p 6.

D. ARGUMENT.

1. THE TRIAL COURT ERRED WHEN IT RULED THAT THE DEFENDANT'S INCUHPATORY STATEMENTS WERE INADMISSIBLE UNDER WASHINGTON'S TRADITIONAL *CORPUS DELICTI* RULE, BECAUSE THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH A *PRIMA FACIE* CASE OF THE CRIME CHARGED.

The trial court erred when it ruled that the defendant's inculpatory statements to Det. Miller were inadmissible under Washington's traditional *corpus delicti* rule. Under that rule, a confession is admissible if there is sufficient evidence, independent of the confession, to establish a prima facie case of the crime charged. Here, the State presented such evidence and the motion to suppress should have been denied.

Washington's traditional *corpus delicti rule* prohibits the admission of a confession absent prima facie evidence that a crime has been committed. See, e.g., *State v. Finch*, 137 Wn.2d 792, 839, 975 P.2d 967 (1999). The purpose of the rule is to prevent a person from being convicted based on a confession to a crime that has not been committed. *Finch*, 137 Wn.2d at 839 (citing *City of Bremerton v. Corbett*, 106 Wn.2d 569, 576–77, 723 P.2d 1135 (1986); *State v. Dodgen*, 81 Wn. App. 487, 492, 915 P.2d 531 (1996). See also *State v. DuBois*, 79 Wn. App. 605, 609, 904 P.2d 308 (1995), and *State v. Solomon*, 73 Wn. App. 724, 727, 870 P.2d 1019 (1994)).

The State need not produce independent evidence of “all the material elements of the statutory offense.” *State v. Mason*, 31 Wn. App. 41, 48, 639 P.2d 800 (1982). Rather, “[p]rior to trial use of an accused's confession, the prosecution must present independent evidence which supports a logical and reasonable conclusion that (1) a specific kind of injury or loss occurred, and (2) some person's criminality was the source of that injury or loss.” *Mason*, 31 Wn. App. at 48 (citing *State v. Fagundes*, 26 Wn. App. 477, 614 P.2d 198 (1980); and *State v. Zuercher*, 11 Wn. App. 91, 521 P.2d 1184 (1974)). Again, such independent evidence only needs to meet a *prima facie* standard, not proof beyond a reasonable doubt. *Finch*, 137 Wn.2d at 839.

“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, 655-56, 927 P.2d 210 (1996) (quoting *State v. Meyer*, 37 Wn.2d 759, 226 P.2d 204 (1951)).

“‘Prima facie’ in this context means there is ‘evidence of sufficient circumstances which would support a logical and reasonable inference’ of

the facts sought to be proved. The evidence need not be enough to support a conviction or send the case to the jury.” *Aten*, 130 Wn.2d at 656 (citing *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)).

Here, the State produced sufficient evidence to satisfy Washington’s traditional *corpus delicti* rule and the defendant’s confession should have been ruled admissible.

The State presented the following evidence:

The defendant’s three-year-old disappeared on January 10, 1983, and was never heard from again. During the initial investigation the defendant gave law enforcement two different accounts of how his son disappeared, and then gave a radically different third version in 2011 when interviewed by police, completely omitting the strange couple who allegedly abducted his son.

The defendant told police at the time of the disappearance that he had contacted a Pierce Transit bus driver during his search for Wallace and asked the bus driver if he had seen Wallace. The defendant stated the bus driver said he had not seen Wallace and the defendant continued his search. However, investigation revealed 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.

In 1982, there was a CPS referral wherein Wallace had suffered an injury to his head from being struck by a clothes iron. The referral was made by hospital staff who believed the injury to be suspicious. When

CPS investigated, the defendant claimed Wallace had pulled the hot iron off of the ironing board by the cord.

Friends of the defendant, Valerie (David) McBride and Henry McBride, spoke with law enforcement regarding the defendant's care of Wallace prior to his disappearance. Valerie McBride stated that Wallace always had some sort of injuries that couldn't be explained, *e.g.*, bruises, black eyes, casts. She also stated that Wallace always seemed to be on the defendant's nerves and that the defendant seemed to feel stuck with Wallace. Henry McBride stated that the defendant always felt burdened by Wallace, and would sometimes dump Wallace off with him and Valerie, claiming to need a babysitter for a few hours then disappearing for days. They would find the defendant and he would seem angry at being found. Henry McBride also reported seeing injuries on Wallace, including black eyes and casts. He also reported seeing the defendant shake Wallace violently.

In determining whether there is sufficient independent evidence under the *corpus delicti* rule, the evidence must be viewed in the light most favorable to the State. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006) (citing *Aten*, 130 Wn.2d at 658). The independent evidence need not be sufficient to support a conviction, but it must provide *prima facie* corroboration of the crime described in a defendant's incriminating statement. *Brockob*, 159 Wn.2d at 328. *Prima facie* corroboration of a defendant's incriminating statement exists if the

independent evidence supports a “‘logical and reasonable inference’ of the facts sought to be proved.” *Bockrob*, 159 Wn.2d at 328 (citing *Aten*, 130 Wn.2d at 656 (quoting *Vangerpen*, 125 Wn.2d at 796, 888 P.2d 1177)).

Here, viewing all of the above evidence in the light most favorable to the state, it establishes prima facie corroboration of the defendant’s incriminating statement that he killed his child and filed a false kidnapping report to cover up his crime.

Accordingly, the trial court erred in granting the defendant’s motion to suppress his inculpatory statements.

2. THE TRIAL COURT ERRED WHEN IT FAILED TO APPLY THE PROPER LEGAL STANDARD UNDER WASHINGTON’S TRADITIONAL *CORPUS DELICTI* RULE, TO WIT: WHETHER THE STATE’S EVIDENCE, INDEPENDENT OF THE DEFENDANT’S STATEMENTS, ESTABLISHED A *PRIMA FACIE* CASE OF THE CRIME CHARGED, BUT INSTEAD CONSIDERED EVIDENCE PUT FORTH BY THE DEFENSE AND WEIGHED ALL OF THE EVIDENCE WHEN RULING THAT THE DEFENDANT’S STATEMENTS WERE INADMISSIBLE.

The trial court erred when it failed to view all of the evidence in the light most favorable to the State, and instead weighed the credibility of such evidence and also weighed it against evidence presented by the defendant in his briefing.

In determining whether there is sufficient independent evidence under the *corpus delicti* rule, the evidence must be viewed in the light

most favorable to the State. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006) (citing *Aten*, 130 Wn.2d at 658). Here, however, the court weighed the state's evidence in determining that it wasn't sufficiently reliable as to allow for admission of the defendant's confession to killing his son.

At the first hearing, on June 4, 2015, the trial court went through its understanding of the evidence presented. 6/4/15 RP 6-10. In addition to the evidence proffered by the state, the trial court admitted that it also considered "a couple other things that occurred during the course of the investigation, which was, I think Ms. Melby [the defendant's attorney] pointed out, that – I won't go through the details of this, but various other people reported information that to some extent may be useful in corroborating this [the defendant's original] account." 6/4/15 RP 10. The trial court then listed several items of purported evidence offered by the defendant in his briefing, including but not limited to witness reports of people similar to the suspects the defendant originally described and the FBI investigating whether Wallace had been abducted by his mother. 6/4/15 RP 10; CP 12-13.

The trial court initially acknowledged that "I'm supposed to construe all the evidence in the light most favorable to the state. So to consider that other people that looked like these people and all that kind of stuff, wouldn't that be, in my – in a sense, me weighing the evidence?" 6/4/15 RP 11. But the defendant's attorney argued, "I don't think that

means that anything that goes against the State has to be completely ignored.” 6/4/15 RP 11. In its ruling, the trial court took the time to enumerate what it called “tons of evidence” that the defendant’s original denial might be true. 6/4/15 RP 24. The trial court mentioned again the other witnesses who came forward in response to requests for information by the police, polygraph examinations taken by the defendant, and the FBI investigation, among others. 6/4/15 RP 24-25. The trial court then disregarded the *prima facie* standard and concluded that since Wallace’s body was never found and law enforcement followed up on other leads, “So the State really has no evidence whatsoever that Wallace Guidroz is deceased.” 6/4/15 RP 25.

The trial court later impermissibly weighed and discounted the discrepancies in the defendant’s initial stories of what happened, stating “We have these inconsistencies here, but they don’t amount to much, and they don’t, of themselves, really – they’re just sort of slightly different versions, really just one slightly different version of how the thing went down.” 6/4/15 RP 30-31.

The trial court also initially ignored, then weighed and discounted, the significantly different version of events the defendant initially told police in 2011. 6/4/15 RP 42. The court admitted “I really did limit it [my analysis], when I was thinking about all of this, to just the immediate events” and then concluded, “Again, given all of that, and given the 30 years, that explains some the differences here.” 6/4/15 RP 42.

The court continued to weigh the evidence and consider evidence proffered by the defense at the second hearing, on the state's motion to reconsider, on June 15, 2015.

Rather than accept the reasonable inference from the state's evidence, Exh 4, that the defendant had fabricated a story about speaking with a bus driver, the trial court asked, "And there is nothing that supports the conclusion that these were the only folks that could have been driving a bus in that area at that time?" 6/15/15 RP 11.

Rather than accept the reasonable inference from the state's evidence, Exhs 5 and 6, that CPS had investigated abuse allegations, and such allegations were corroborated by the defendant's friends at the time, the trial court asked, "Was there any effort made to actually locate the CPS records from 1982 that were related to this to make sure that we're, in fact, talking about the same thing?" 6/15/15 RP 11-12.

In its oral ruling denying the motion to reconsider, the trial court tried to explain this way: "To me, in the end, it [the inconsistencies in the defendant's versions of events] didn't lead to a logical and reasonable inference that the child was dead and there was a criminal mechanism about it. As I say, maybe it's weighing or maybe it isn't. That wasn't my point. My point was simply to say aloud where I thought that led us. In the end, it didn't lead me very far." 6/15/15 RP 24.

The trial court then went through all of the evidence the State presented, admitting things like, "if the state's theory of this is right, he

[the defendant] has lied about trying to contact the bus drivers; therefore, that indicates some consciousness of guilt,” 6/15/15 RP 27, and “Now I think all of that [the CPS evidence and expected testimony of Ms. David and Mr. McBride] is probably admissible. It may well tend to show that if Wallace is dead, that it may be the product of a criminal act,” 6/15/15 RP 29.

Nevertheless, the trial court denied the motion to reconsider, and in so ruling admitted it was weighing the evidence and raising the standard from *prima facie* to something akin to proof beyond a reasonable doubt: “I’m still not, I guess, sure or satisfied that there is evidence that Wallace is dead other than the fact that no one has seen him since 1983, at least that we know of. ... I will deny the motion to reconsider.” 6/15/15 (emphasis supplied).

The trial court failed to apply the proper standard. Rather than weigh the evidence to see if the court is “sure” of the crime, the proffered evidence must be viewed in the light most favorable to the State, and need only provide *prima facie* corroboration of the crime described in a defendant's incriminating statement. *State v. Brockob*, 159 Wn.2d at 328.

Accordingly, the trial court erred in its analysis and in its ruling to suppress the defendant’s confession.

3. THE TRIAL COURT ERRED WHEN IT RULED THAT THE DEFENDANT'S INCULPATORY STATEMENTS WERE NOT ADMISSIBLE UNDER RCW 10.58.035, WHERE THE ALLEGED VICTIM WAS "DEAD OR INCOMPETENT TO TESTIFY" AND THERE WAS "SUBSTANTIAL INDEPENDENT EVIDENCE THAT WOULD TEND TO ESTABLISH THE TRUSTWORTHINESS OF THE CONFESSION."

The trial court erred in its application of RCW 10.58.035, an admissibility alternative to Washington's traditional *corpus delicti* rule. The trial court erroneously concluded that the statute did not create a second path for admissibility and then failed to conduct any analysis as to whether the facts presented would satisfy the admissibility requirements of the statute.

RCW 10.58.035 states, in pertinent part:

- (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.

RCW 10.58.035.

Here, the State established that the victim was dead or incompetent to testify because he had been missing since 1983. Accordingly, subsection (1) is satisfied and the statute applies. Then, looking to the factors in subsection (2), each factor would weigh in favor of admission.

The evidence corroborating the defendant's confession that he killed Wallace on January 10, 1983, was the fact that the boy has not been seen since, and that his versions of how Wallace went missing were inconsistent.

The witness reporting the statement is retired Tacoma P.D. Det. Gene Miller, whose character was not in question and who had no relationship with the defendant other than that of investigator.

Finally, the confession was recorded and transcribed, and provided to the trial court. Exh 7.

Therefore, the details of statement were preserved, were reported by a neutral third party, and were corroborated by the other facts of the case. Accordingly, RCW 10.58.035 would have been satisfied and the confession should be admitted at trial.

However, the trial court failed to conduct this analysis. Instead, the trial court avoided the analysis altogether by misapplying the case of *State*

v. *Dow*, 168 Wn.2d 243, 227 P.3d 1278 (2010). The trial court stated that, under *Dow*, RCW 10.58.035 “doesn’t really change the *corpus delicti* rule at all. To that extent, it really is irrelevant to the determination [admissibility of the defendant’s confession] that I am being asked to make here.” 6/15/15 RP 21.

The trial court quoted a passage from *Dow* that addressed, not admissibility of a confession under RCW 10.58.035, but the sufficiency of evidence for a conviction after such admission. The quote was as follows: “But, even if the statements are admissible, no other evidence exists to establish the *corpus delicti* independent of Dow’s statement. Further, our *corpus delicti* cases have always required sufficient evidence independent of a defendant’s confession to support a conviction. RCW 10.58.035 does nothing to change this requirement.” 6/15/15 RP 21; *Dow*, 168 Wn.2d at 254.

However, *Dow* involved a sexual assault case where the State conceded it had no evidence other than the defendant’s statements of the crime charged. The allegation was that the defendant molested a three-year-old who was incompetent to testify and whose statements about the alleged abuse were inadmissible. Unlike here, the State in *Dow* conceded there was no evidence of the crime independent of the defendant’s confession. Accordingly, *Dow* stands for the limited proposition that admissibility under RCW 10.58.035 does not necessarily mean there will be sufficient facts to support a conviction beyond a reasonable doubt.

Unlike in *Dow*, the State had additional evidence in this case to present to the jury, *e.g.*, the inconsistent and false statements by the defendant, and the fact that Wallace was never seen or heard from again. The trial court conflated the standard of admissibility under RCW 10.58.035 with the standard of sufficiency of the evidence, as discussed in *Dow*.

Accordingly, the trial court erred in not conducting the admissibility analysis under RCW 10.58.035. Had it conducted such analysis, the defendant's confession would have been ruled admissible and the case would have proceeded to trial.

E. CONCLUSION.

The trial court erred when it granted the defendant's motion to suppress his inculpatory statements wherein he admitted to killing his son.


There was sufficient evidence of the *corpus delicti*, independent of the defendant's inculpatory statements, which, when viewed in the light most favorable to the state, established *prima facie* the crime charged. However, rather than accept the truth of this evidence and draw all reasonable inference in favor of the State, the trial court improperly weighed the evidence and considered additional evidence proffered by the defendant.

In addition, the defendant's inculpatory statements were admissible under RCW 10.58.035, however the trial court erred when in conflated admissibility with sufficiency and refused to conduct an admissibility analysis under RCW 10.58.035.

Accordingly, the trial court erred in granting the defendant's motion to suppress his inculpatory statements. The trial court's ruling should be reversed and the case remanded for further proceedings.

DATED: January 4, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


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WSB # 25470

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.

1/4/16 Therese Kar
Date Signature

PIERCE COUNTY PROSECUTOR

January 04, 2016 - 2:36 PM

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