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

RESPONSE BRIEF

Marie J. Trombley, WSBA 41410
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Graham, WA
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TABLE OF AUTHORITIES

WASHINGTON CASES

STATUTES

I. COUNTER ISSUE STATEMENT

A. Where the charged crime is a homicide and the State has no independent proof of the fact of death or a causal connection between the death and a criminal act, did the State fail to satisfy the requirements of the *corpus delicti* rule?

B. Where the State has not produced evidence of a death and any inference of a death and a criminal act causally connected to a death would be based on mere conjecture and speculation, did the trial court use the correct legal standard?

C. Where there is no evidence the alleged victim is deceased did the trial court rightly suppress the defendant's statements, concluding that RCW 10.58.035 was irrelevant to the analysis?

II. STATEMENT OF THE CASE

On September 16, 2014, Pierce County prosecutors charged Stanley Guidroz with manslaughter first degree. Supp. CP 1. Mr. Guidroz is currently serving a life sentence in the Angola Prison, Louisiana on an unrelated matter. Supp. CP 4-5; 6/4/15 RP 44.

Following a suppression hearing, the trial court entered findings of fact[1] and conclusions of law. CP 1-5.

On the afternoon of January 10, 1983, Mr. Guidroz called the Tacoma police department to report that his three-year-old son had gone missing from Point Defiance Park. CP 1. Mr. Guidroz told officers that he, his son, and a friend had gone fishing. Exh. 1 p.2; CP 1. His son tired and took a nap in the car while they fished. Exh.1 p.2; CP 1. At some point in the afternoon, Mr. Guidroz returned to the car and took his son for a walk to the duck pond. Exh.1 p.3; CP 1.

On the walk, they met up with a man and a woman with a girl about his son's age. Exh.1 p.3; CP 1. While the children played, Mr. Guidroz and the male walked off, leaving the woman with the children. Exh.1 p.3; CP 2. The men separated at the waterfall and Mr. Guidroz returned for his son about 10 minutes later. CP 2. When he returned, his son was gone, along with the male, female and child. CP 2. A woman later told police that a man and a

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[1] The State has not assigned error to the findings of fact entered by the court after the suppression hearing, thus those findings are verities on appeal. *State v. Hill,* 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

woman had tried to abduct her children from the same location. CP 2.

Mr. Guidroz reported this was before dusk, and he tried to find his son, looking in several areas of the park. His efforts were unsuccessful, so he called the police. Exh.1 p.4. Officers searched the area for the boy, using two shepherd dogs, a bloodhound, and the search and rescue team. Ex.1 p.5. They were unable to locate the child. CP 2.

Other officers also spoke with Mr. Guidroz that day and he provided a slightly different sequence of events. Exh. 2 p.2. CP 2. He said he and the other male returned from the waterfall to the area where the woman, child and Mr. Guidroz's son had been earlier. When they saw the woman and children were gone, they separated to search for them. CP2. Mr. Guidroz reported he spoke to a bus driver about his missing son. CP 2. Police later learned there may have been 8 bus drivers traveling through the area, but none of them recalled being asked about a missing boy. CP2.

Mr. Guidroz described the man at the park and police made a composite sketch. CP2. Police later received numerous calls from people recognizing the man in the drawing. One man told

police he had seen Mr. Guidroz and his son and he saw a man, who matched the sketch, staring at Mr. Guidroz's son. CP 2.

Mr. Guidroz took two polygraph tests questioning whether he played a role in his son's disappearance. One test was found to be inconclusive and the other test he passed. CP 3. Additionally, the FBI later filed an affidavit that they had information that the boyfriend of Mr. Guidroz's son's mother had traveled to Tacoma, abducted the child, and taken him to Texas to be with his mother and her boyfriend. CP 2.

The investigation was eventually suspended with no further leads and the child was never located. CP 2. The case was filed as a "missing person" case. Exh. 3 p.1-2.

In 2011, the case was reopened. Exh. 3 p.1; CP 2. As a part of his investigation, Detective Gene Miller obtained a 1982 CPS report about an injury the child had suffered to his head from pulling an iron off the ironing board. CP 2. The CPS worker spoke with Detective Miller, and confirmed the case was cleared, with no action taken. Exh. 5 p.4-5; CP 2.

Detective Miller also spoke with Valerie Davis[2] and Henry McBride, who had cared for Mr. Guidroz's son on numerous occasions. In 2011, they claimed that the child often had bruises and black eyes, and at one point was in some type of a body cast. CP 2; Exh.6 p.4-5.[3] Mr. McBride said he saw Mr. Guidroz shake the child one time. CP 2.

Detective Miller traveled to Louisiana to interview Mr. Guidroz about the day his son disappeared. During the interview, Mr. Guidroz described picking up his friend, Mr. Lee, and Lee's children on that afternoon sometime between 1:00 and 1:30 p.m. He said they fished while the children played and stopped fishing between 4:00 and 4:30 p.m. In contrast, Mr. Lee said he left some time between 2:30 and 3:30pm. Exh. 3 p. 4. The statement from 1983 was not exactly the same as the statement in 2011, 28 years later. CP 2.

With continued questioning, Mr. Guidroz then said he had accidentally killed his son. He claimed that he got frustrated with the child, who was seated in his high chair. He struck him, the child's head hit the floor, and he died. CP 2. He claimed he drove

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[2] Valerie Davis was previously married to Henry McBride.
[3] No medical records or hospital visit records were produced as evidence corroborating their allegations.

to the Tacoma waterfront and gave specific information about where he had buried the child's remains. Exh. 3 p.5. He said he then called the police. Supp. CP 74. When Detective Miller returned to Washington, officers searched the area Mr. Guidroz identified; no body or other related evidence was recovered from the area, even with the assistance of Georadar and cadaver dogs. Supp. CP 5. Based on the confession, the medical examiner issued a death certificate. 6/4/2015 RP 29.

Two years later, in August 2013, Detective Miller returned to Louisiana to question Mr. Guidroz. Mr. Guidroz told the detective that he had not killed his son and admitted his prior confession was false. After continued questioning, Mr. Guidroz said the confession was genuine. 2nd Supp. CP 74.[4].

After reading the briefs and hearing argument at the suppression hearing, the trial court concluded the evidence presented by the State in its exhibits and arguments did not establish a prima facie case of the corpus delicti of the charge. CP 4. The court specifically concluded that the State's evidence, independent of the inculpatory statements by Mr. Guidroz, did not

[4] The facts are found in the Declaration for Determination of Probable Cause filed by the State September 16, 2014, pages 2-3.

establish prima facie that the child was deceased or if he was, that he died as a result of someone's criminal actions. CP 4.

The court also concluded that RCW 10.58.035 pertained "only to admissibility and does not change Washington's *corpus delicti* rule. The State must still produce prima facie evidence of the charge independent of the defendant's inculpatory statements." CP 4. The court granted the motion to suppress and entered an order of dismissal with prejudice, expressly finding that the practical effect of the suppression was to terminate the case. The state filed a motion for reconsideration, which was denied after further argument and briefing. (6/12/2015 RP 1-31). The State appealed. CP 62-70.

III. ARGUMENT

A. The Dismissal Should Be Affirmed Because The State Failed To Produce Sufficient Evidence Independent Of Mr. Guidroz's Statement To Establish The Corpus Delicti.

The appellate court engages in the same inquiry as the trial court in determining whether the state has met its burden of production with respect to *corpus delicti*, thus, review is *de novo.* State v. McPhee, 156 Wn.App. 44, 60, 230 P.3d 284 (2010).

Under Washington's version of the *corpus delicti* rule, an admission or confession, standing alone, is insufficient to establish

the *corpus delicti* of a crime. State v. Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1997). Rather, the state is required to produce evidence, independent of a defendant's statement, that provides prima facie corroboration of the crime or a reasonable and logical inference he committed the specific crime with which he is charged. State v. Brockob, 159 Wn.2d 311, 329, 150 P.3d 59 (2006); State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996). If no such evidence exists, the defendant's confession or admission *cannot* be used to establish the *corpus delicti* and prove the defendant's guilt at trial. Aten, 130 Wn.2d 656.

The Court views the independent evidence and all reasonable inferences from it in the light most favorable to the state. Aten, 130 Wn.2d at 658.

Here, Mr. Guidroz was charged with first-degree manslaughter under RCW 9A.32.060(1)(a): A person is guilty of manslaughter in the first degree when he recklessly causes the death of another person. Criminal recklessness occurs when an individual knows of and disregards a substantial risk that a wrongful act (death) may occur and his disregard of such substantial risk constitutes a gross deviation from conduct that a reasonable person would exercise in the same situation. RCW 9A.08.010.

Thus, to establish the *corpus delicti* for the crime, the state was required to establish two elements: (1) the fact of death and (2) a causal connection between the death and a criminal act. Aten, 130 Wn.2d at 655.

Here, apart from Mr. Guidroz's inculpatory statements in 2011 and 2013, the trial court rightly concluded the state had not overcome the first hurdle, as its evidence did not establish prima facie the fact of death. CP 4.

In Hummel, the Court detailed the type of evidence necessary to establish prima facie evidence of the fact of death when there is no recovery of a body. There, Hummel's wife discovered that he had been molesting their daughter. State v. Hummel, 165 Wn.App. 749, 755, 266 P.3d 269 (2012). Days after the disclosure, Mrs. Hummel unexpectedly disappeared, leaving behind her purse, clothing, makeup, and medications. Id. Hummel packed up the items, purportedly to send to her at her new job out of state, but later sold them at a garage sale. Id. Letters that were supposedly sent to the children after the mother's disappearance were later found to have been signed by Hummel. Id. at 756. Hummel continued to cash his wife's disability checks. Id. He eventually pleaded guilty to wrongfully cashing the checks. He was

also charged with murder in the first degree, even though her body was never found. Id. at 757.

On appeal, Hummel challenged whether the state had established the *corpus delicti* of the crime of homicide sufficiently to allow admission of post-arrest inculpatory statements by Hummel. Id. at 758. The evidence presented showed she vanished suddenly and surprisingly; was never heard from again; she was close with her children and unlikely to abandon them; and without explanation failed to attend a daughter's birthday event. Moreover, the daughter told her of Hummel's molestation just days before she disappeared; he forged documents in her name, stole her disability pension for years and continued to molest his daughter. The Court reasoned that viewing the evidence in a light most favorable to the state and all reasonable inferences in favor of the state, led to the reasonable and logical conclusion Hummel's wife was dead and it was as a result of criminal agency. Id. at 280.

Unlike Hummel, here the state's evidence fails to meet the requirements of the *corpus delicti* rule. The state presented evidence that Mr. Guidroz gave two slightly differing accounts of the events on January 10, 1983. The trial court aptly noted "We have these inconsistencies here, but they don't amount to much, 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." (6/4/2015 RP 30-31). The state openly agreed, "It is thin without the [inculpatory] statement, which is why we're having this argument." (6/4/2015 RP 34). The state acknowledged the death certificate issued by the medical examiner was as a result of the alleged confession, and should be set aside and not considered by court. (6/24/2015 RP 29).

On a motion for reconsideration of the suppression order, the state re-presented information: (1) bus drivers (*possibly* 8) had no recollection of a man asking about a child. The state agreed there was no information that identified the bus drivers, or whether there was reason to believe they were the only bus drivers who were present that day. (6/12/15 RP 11). (2) The state pointed to a CPS report, but produced no CPS records. Further, a police interview with the CPS worker confirmed that CPS cleared the investigation; no dependency action or criminal charges were filed against Mr. Guidroz. (3) The state presented the interviews with the McBrides, which occurred around 30 years after the child's disappearance. (6/12/15 RP 8-9). Although the McBrides alleged they saw the child in casts or a body cast, no medical records

regarding injuries were produced. Both also said they had never seen Mr. Guidroz hit the child. (Exh. 6 p.4-6). Lastly, (4) Mr. Guidroz's differing statements to officers on the day of the disappearance amounted to a 10 minute time difference of when he went back to collect his child. (6/12/2015 RP 24).

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." Vangerpen, 125 Wn.2d at 796. Here, the evidence as presented by the state does not even support a logical and reasonable inference of the fact of death. Even viewing the evidence in a light most favorable to the state, the whole of the evidence amounts only to the disappearance of the child not a death. The trial court rightly reasoned that a very young child who was abducted was not able to reach out to his family or fend for himself, in contrast to Mrs. Hummel who was an adult and would not have voluntarily abandon her children and job. In contrast to this case, the leap in logic was in Hummel was short.

In Ray, the defendant confessed to having placed his three year old daughter's hand on his genitals and was charged with first-

degree child molestation. State v. Ray, 130 Wn.2d 673, 926 P.2d 904 (1996). The independent evidence was:

> "At approximately one in the morning, three-year-old L.R. came to her parents bedroom and asked for a glass of water. Ray, probably nude, accompanied his daughter back to her room. Ray later returned to his room upset and crying. Ray awakened his wife and talked to her. His wife became upset and rushed to check on L.R. After further discussion with his wife, Ray, who was still upset, placed an emergency call to his sexual deviancy counselor."

Ray, 130 Wn.2d at 680.

The Supreme Court reasoned that the facts suggested something had occurred, but it was "a leap in logic to conclude that any kind of criminal conduct occurred, let alone the specific conduct of first degree child molestation." Ray, 130 Wn.2d at 680.

Similar to the case here, the Court stated

> "The sparse facts surrounding Ray's getting a glass of water for his daughter fail to rule out …criminality or innocence…Even though Ray speculatively could have molested L.R. and even though he had the opportunity to do so, the mere opportunity to commit a criminal act, standing alone, provides no proof that the defendant committed the criminal act."

Ray, 130 Wn.2d at 681. (internal citations omitted).

The Court viewed the emergency call to the therapist as inconclusive: because although it showed he was disturbed by

something, it was inconclusive. The Court quoted *Aten,* "The *corpus delicti* doctrine is specifically designed to prevent convictions based solely on the defendant's sense of guilt…" The Court affirmed exclusion of the confession and dismissal of the charge. Id.

In Bremerton the Court reasoned:

> "The *corpus delicti* rule was established by the courts to protect a defendant from the possibility of an unjust conviction based upon a false confession alone. The requirement of independent proof of the *corpus delicti* before a confession is admissible was influenced somewhat by those widely reported cases in which the 'victim' returned alive after his supposed murderer had been tried and convicted, and in some instances executed…Thus, it is clear that the *corpus delicti* rule was established to prevent not only the possibility that a false confession was secured by means of police coercion or abuse but also the possibility that a confession, though voluntarily given is false."

City of Bremerton v. Corbett, 106 Wn.2d 569, 576-77, 723 P.2d 1135 (1986).

In 2013, Mr. Guidroz told Detective Miller that his 2011 confession was *false*. With more questioning the Detective obtained another confession from Mr. Guidroz. However, even with advanced searching techniques, the body was not where Mr.

Guidroz allegedly confessed to placing it. There is no direct evidence that the child is deceased. The *corpus delicti* rule is to prevent confessions that are given possibly out of guilt from being considered absent other independent evidence. The trial court correctly concluded that the independent evidence was insufficient to establish the first element, the fact of death.

Mr. Guidroz respectfully asks this Court to affirm the reasoning and ruling of the trial court.

B. The Trial Court Used The Correct Legal Standard In Determining The State Had Not Produced Sufficient Evidence.

Independent corroborative evidence is sufficient if it supports a logical and reasonable inference of criminal activity. Aten, 130 Wn.2d at 656. In making a determination whether the state has produced sufficient *prima facie* evidence, the truth of the state's evidence is assumed and all reasonable inferences drawn therefrom. State v. Pineda, 99 Wn.App. 65, 77-78, 992 P.2d 525 (2000). However, such evidence must support a logical and reasonable inference of criminal activity only; if it also supports inferences of non-criminal activity, it is insufficient to establish the *corpus delicti*. Aten, 130 Wn.2d at 659-60. In other words, the

independent evidence must be consistent with guilt and inconsistent with a hypothesis of innocence. Brockob, 159 Wn.2d at 329.

Here, the state assigns error to the trial court's determination process. (Br. of App. at 13-17). The trial court is tasked with determining the sufficiency of the evidence. To that end, as the court here stated, "I don't think it is okay to weigh the evidence. One has to look at the inferences from it, though." (6/12/2015 RP 22). The court stated that his style was to take the evidence presented and talk about it out loud, "about what I'm thinking about, why I'm thinking the way I am." Id.

> "When I say out loud, okay, the State sees these inconsistences, for instance, in the statement of Mr. Guidroz, then I try to say aloud what I those– the inferences are from those particular inconsistences or the particular accounts and then see where does that leave me and does that make any sense at all in terms of viewing the evidence in the light most favorable to the State, which is what I'm supposed to be doing at this point. Does that get us to where the State needs to get in order to complete the motion from the defense?
> Maybe it is semantics as to whether I'm weighing it or not. What I'm really trying to do is, I'm trying to say aloud what these implications are."

(6/12/2015 RP 23).

And again,

"I don't think that I weighed the evidence. I certainly didn't mean to." (6/12/2015 RP 27).

The *corpus delicti* rule does not require the court to evaluate the evidence in a vacuum. Here, it appears the state is asking, for example, the court to consider only that hospital staff reported Mr. Guidroz's son's head injury to CPS as *prima facie* evidence that he killed his child. (Br. of App. at 11-12). However, that same police report the state relied on included information that CPS investigated the report and no further actions were taken, the referral was cleared. The court is required to review the evidence and *make a determination* if it supports an inference of the facts sought to be proved. Vangerpen, 125 Wn.2d at 796. (emphasis added). The court does not weigh the credibility of the evidence as the evidence speaks for itself. Pineda, 99 Wn.App. at 79.

Similarly, even disregarding evidence that police reports document witnesses came forward in response to the police-generated composite sketches, the polygraphs administered to the defendant showed one inconclusive and one that he passed, and the FBI affidavit, the court rightly questioned the state about the bus drivers, the CPS record, and the statement inconsistencies.

In Aten, the Court held the *corpus delicti* of manslaughter must include more than a failure to rule out criminality. Aten, 130

Wn.2d at 640. As in Aten, the court here tested the independent evidence, as it was tasked with the onerous burden of making a well-reasoned determination of whether the independent evidence supported a reasonable and logical inference of the fact of a death and criminal cause.

The state argues that the court weighed the evidence and raised the standard to "something akin to proof beyond a reasonable doubt" because the court was not "sure or satisfied that there is *evidence* that" the child "is dead, other than the fact that no one had seen him since 1983." (Br. of App. at 17). It was the court's job to determine whether the state had presented prima facie evidence of the fact of a death, not merely a failure to rule out criminality.

In Pineda this Court affirmed the trial court's dismissal of a second-degree manslaughter charge because the state could not prove *corpus delicti.* The state could prove the fact of a death, but could not show by *prima facie* evidence that death was causally connected with negligence.

Mr. Pineda arrived home from work in the early morning hours. He saw his wife, son and nine day old daughter sleeping on the futon. Although the baby had been to the pediatrician a day

earlier and found to be healthy and bonding with her mother, Mr. Pineda noticed that she looked pale, picked her up and found that she was not breathing. Id. at 67. They called 911. The baby was pronounced dead; her body did not show any signs of foul play. Mrs Pineda did not manifest any emotion, although her husband openly wept. Id.

Officers interviewed Mrs. Pineda for 5 hours and told her they believed she intentionally killed her baby. She answered that what happened was accidental and the last thing she remembered was putting the baby on her chest.

On appeal, the state argued the trial court erred by ignoring evidence that the baby was only 9 days old[5] and had seemed healthy just before her death; the medical examiner found nothing in his autopsy; the mother was present and fully dressed at the time of the death and that she had not shown emotion after the death. Id. at 80-81.

This Court determined that those facts, without more, did not support a logical and reasonable inference that anyone committed a crime or that the baby's death was the result of a criminal act.

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[5] Testimony at the hearing was that SIDS related deaths usually occur between about one month and six months of age. Pineda, 99 Wn.App. at 76.

"The reason a trial court is charged with determining sufficiency is so that it will not encroach on the fact-finding function of the jury." Id. at 78. Simply put, the court is to look at the presented evidence, construe conflicting evidence[6] in favor of the state, and determine whether what is left reasonably and logically supports the inference of a crime and criminal activity.

Here, the court did exactly as the rule requires: "The *corpus delicti* doctrine generally is a principle that tests the sufficiency or adequacy of evidence, other than a defendant's confession to corroborate the confession." State v. Dow, 168 Wn.2d 243, 250, 227 P.3d 1278 (2010). Here, the court looked at the evidence presented by the state, tested the sufficiency, viewed it in favor of the state, and determined the evidence was insufficient to support a logical and reasonable inference that Mr. Guidroz committed the crime of manslaughter.

C. The Trial Court Correctly Interpreted And Applied RCW 10.58.035

Determining the admissibilty of a defendant's statement under RCW 10.58.035 is a mixed question of law and fact. The

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[6] As noted above, because the state has not challenged any of the findings of fact, they are verities on appeal thus, there is no conflict in the evidence.

application of law is reviewed *de novo.* State v. Law, 110 Wn.App. 36, 39, 38 P.3d 374 (2002).

RCW 10.58.035 permits a lawfully obtained and otherwise admissible statement of a defendant to be admitted when independent proof of the crime is absent, the alleged victim is dead or incompetent, and the defendant's statement is found trustworthy based on a nonexclusive set of statutory factors that a court must consider. Washington courts have held that the statute applies only to admissibility of evidence. Dow, 168 Wn.2d at 252.

Even if statements are admissible, sufficient evidence to establish the *corpus delicti* , independent of the statements is still required. Dow, 168 Wn.2d at 254. If no other evidence exists to establish the *corpus delicti* independent of Mr. Guidroz's statements, RCW 10.58.035 is irrelevant. Id. The trial court correctly concluded that RCW 10.58.035 was inapplicable to the present case.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Guidroz respectfully asks this Court to affirm the trial court's dismissal with prejudice.

Respectfully submitted this 9th day of March, 2016.

s/Marie Trombley WSBA No. 41410
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CERTIFICATE OF SERVICE

I,Marie Trombley, certify under penalty of perjury of the laws of the State of Washington and the United States, that on March 9, 2016, I sent an electronic copy, by prior agreement between the parties, or sent by USPS mail, first class, postage prepaid, a true and correct copy of the Respondent's Brief to the following:

EMAIL: PCPatcecf@co.pierce.wa.us
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Stanley Guidroz

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OF THE STATE OF WASHINGTON

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Respondent	)	Court of Appeals No. 47880-3-II
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Dated: January 8, 2016

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