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Court of Appeals
Division I
State of Washington

72055-4

NO. 72055-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

IRA DECHANT,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA CAHAN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

- 1) Whether the *corpus delicti* rule is inapplicable to circumstances in which the defendant's out-of-court statements amount to the *actus reus* of the crime, as opposed to confessions to offenses purportedly committed in the past.
- 2) Whether the defendant can be convicted of solicitation, conspiracy, and attempted murder without violating constitutional protections against double jeopardy, where each crime is factually and legally distinct, and the legislature enacted separate statutes to prohibit each offense in order to address separate evils.
- 3) Whether the defendant fails, on appeal, to establish ineffective assistance of trial counsel where he inappropriately relies on "facts" outside the trial record and cannot demonstrate the absence of strategic or tactical justifications for his attorney's decisions.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The appellant, Ira Dechant, was charged by third amended information with one count each of solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree,

and attempted murder in the first degree; each count also included an allegation that Dechant was armed with a handgun when he committed these offenses. CP 74-75. Dechant was also accused in the same charging document of second-degree unlawful possession of a firearm and possession of heroin, in violation of the Uniform Controlled Substances Act. CP 75-76.

Prior to jury selection, Dechant elected to have the trial court decide his culpability for the firearm possession and narcotics offenses, and to have a jury render verdicts on the other charges, though all evidence would be presented at a single, un-severed trial. 2RP 28-30, 47.¹ At the conclusion of the evidentiary phase, the trial court, on Dechant's motion, dismissed the firearm allegation as to the charge of solicitation due to lack of sufficient evidence. 14RP 1445.

By jury and trial court verdicts rendered on March 25, 2014, Dechant was found guilty as charged on all counts. 15RP 1542-44; CP 122-24.

¹ The verbatim report of proceedings consists of 15 volumes, referred to in this brief as follows: 1RP (9/18/2013, 5/2/2014, 5/21/2014, 5/27/2014, and 6/12/2014); 2RP (3/4/2014); 3RP (3/5/2014); 4RP (3/6/2014); 5RP (3/10/2014); 6RP (3/11/2014); 7RP (3/12/2014); 8RP (3/13/2014); 9RP (3/17/2014); 10RP (3/18/2014); 11RP (3/19/2014); 12RP (3/20/2014); 13RP (3/21/2014); 14RP (3/24/2014); and 15RP (3/25/2014).

2. SUBSTANTIVE FACTS

On January 7, 2013, Seattle Police Department (SPD) narcotics detective Pete Lazarou received a phone call from a long-standing informant, Louis Didomenici. 6RP 413, 424, 426. Didomenici told Lazarou that Ira Dechant, a convicted felon wanted on an outstanding warrant, was in Seattle's Ravenna neighborhood, driving a BMW SUV that contained a number of guns. 6RP 424. Lazarou confirmed the existence of the warrant for Dechant's arrest, and then reached out for help from members of SPD's north precinct anti-crime team for help in capturing Dechant. 6RP 429.

The anti-crime team located Dechant's SUV, conducted a traffic stop, and placed him under arrest on the warrant. 6RP 327. Lazarou arrived at the scene and asked Dechant if the SUV belonged to him. 7RP 488. Dechant explained that he had borrowed the vehicle from an auto broker named Louis Didomenici, and gave Lazarou Didomenici's phone number. 7RP 488. At Lazarou's request, Didomenici and the vehicle's registered owner arrived at Lazarou's location and consented to a search of the SUV; inside, officers found two handguns, along with several hypodermic needles, a police tactical vest, zip-ties, a security badge, a King

County Sheriff's Office patch, and \$10,900 in cash. 6RP 329-30, 353-54, 381; 7RP 488-90.

Dechant was booked into the King County Jail later that night. 6RP 400; 9RP 801. Jail officer Lyle Bremmeyer conducted Dechant's strip-search. 6RP 401. When Dechant pulled down his underwear, two plastic baggies fell to the floor. 6RP 402. Dechant tried to cover the baggies with his feet, but Bremmeyer directed him to kick the items to him. 6RP 402. Bremmeyer collected the baggies, which contained substances that the state patrol crime laboratory later confirmed were methamphetamine and heroin. 6RP 403; 7RP 466-71.

Dechant was thereafter housed in a unit of the King County Jail with Michael Rogers, a repeat offender who had recently been arrested on suspicion of bank robbery. 8RP 693-94, 698. Rogers and Dechant gravitated toward each other because both were older men who had spent significant time in custody, and the two ended up sharing a cell together. 8RP 699.

While playing cards with Rogers and several other inmates, Dechant expressed his anger about being set up for arrest by another man, and said that he wanted this other person killed, adding that he was willing to pay someone else to do it. 8RP 701-

02. Rogers, interested in Dechant's proposal, asked him if the two could talk about it privately. 8RP 705.

The next day, Dechant told Rogers that the "target's" name was Louis Didomenici, a car salesman, and drew a map for Rogers to Didomenici's home. 8RP 705-07. Didomenici suggested that Rogers pour gasoline on Didomenici and set him ablaze, or shoot him and then cut off Didomenici's head and hands. 8RP 708. Dechant explained to Rogers that a friend of his named Chuck would help Rogers by providing him with a pistol and some money, and gave Rogers a map to Chuck's home. 8RP 709, 714.

Rogers told Dechant that he would kill Didomenici for \$8,000. 8RP 718. Dechant agreed to Rogers's price, and said that he would come up with the money through a variety of ways, including identity thefts that he would commit if Rogers would post Dechant's bail bond for him after killing Didomenici, by using money he could acquire from inside Didomenici's home. 8RP 719-20.

Rogers began to develop reservations about Dechant's plan, because he learned that Didomenici had children who would be losing their father. 8RP 717. While Dechant was temporarily away, housed in the jail's administrative segregation unit, Rogers decided

to notify the authorities, so that Didomenici would know that Dechant was trying to have him killed. 8RP 721.

After informing jail staff of Dechant's plan, Rogers was put in contact with SPD detective Timothy Renihan, who was assigned to his department's intelligence section. 8RP 728; 9RP 872-73. At Renihan's request, Rogers agreed to wear a recording device on his body and engage in conversation with Dechant. 8RP 728-30. During their conversation, Dechant directed Rogers to kill Didomenici and put his body inside an abandoned house near the home of Dechant's father. 8RP 737. Dechant again told Rogers that "Chuck" would supply him with a gun. 8RP 739.

Charles "Chuck" Schuelke told the jury that he first met Dechant in 2012, and that the two worked together, selling drugs and conducting home invasion robberies. 10RP 940-42. Dechant and Rogers would dress up for the robberies in order to look like police officers, with tactical vests, badges, and handguns when they would burst into homes and steal items of value. 10RP 950-51.

Dechant called Schuelke from the King County Jail and told him that he had been set up by "that car salesman," who had owed Dechant money for drugs. 10RP 955-56. Schuelke met with

Dechant soon after at the jail. 10RP 985-86. During their conversation, Dechant told Schuelke that a fellow inmate was going to be released soon, and would be coming to Schuelke's house. 10RP 988. Dechant told Schuelke to give the fellow inmate anything he needed, including a gun. 10RP 988-90.

Rogers was released into Det. Renihan's custody on January 29, 2013. 9RP 774-75. Prior to his release, Rogers had told Dechant that Rogers's father had posted his bond. 9RP 768. 774-75. Renihan provided Rogers with an unmarked car equipped with audio/video recording devices, and followed Rogers in a separate vehicle to Schuelke's house. 9RP 775.

When Rogers arrived at Schuelke's house, he identified himself as Dechant's inmate friend, and explained to Schuelke that he needed a gun from Schuelke in order to kill the car salesman. 10RP 1003, 1010. Schuelke provided Rogers with a handgun, and agreed to show Rogers where Didomenici lived. 10RP 1001, 1003. En route to Didomenici's home, Rogers gave a prearranged signal to Det. Renihan, and members of SPD's SWAT team stopped Rogers's car and arrested Schuelke and him. 9RP 810-11. Schuelke, originally charged with conspiracy to commit first-degree murder and attempted first-degree murder, pleaded guilty to a

reduced charge of attempted second-degree murder prior to Dechant's trial, in exchange for agreeing to testify truthfully at the trial. 11RP 1049-51.

Outside the jury's presence, King County deputy prosecutor Amanda Froh testified that she participated in a sentencing hearing with Dechant in May 2011, at which judgment and sentence was entered against him following a conviction for second-degree burglary. 10RP 1023-24. A certified copy of Dechant's felony sentence was admitted into evidence. 10RP 1022.

C. ARGUMENT

1. THE DOCTRINE OF CORPUS DELICTI IS INAPPLICABLE WHERE THE DEFENDANT'S STATEMENTS ARE THE ACTUS REUS OF THE OFFENSE.

Dechant contends that his convictions for solicitation, conspiracy, and attempted murder must be reversed because the State did not present sufficient proof of his guilt apart from his statements. He asserts, at length, that the doctrine of *corpus delicti* applies here, and that his out-of-court statements were inadmissible absent other definitive proof of his culpability. Brief of Appellant, at 13-50.

Dechant's claim is without merit. The *corpus delicti* rule bars introduction of a defendant's confession to a purportedly already-

completed crime when there is no independent proof that such crime actually occurred. Application of the rule is nonsensical when the defendant's out-of-court statements constituted the crime itself. Dechant's contention should be rejected.

In Washington, confessions or admissions of a person charged with a crime are not sufficient, standing alone, to prove *corpus delicti* and must be corroborated by other evidence. State v. Aten, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996). As the Aten court noted, this rule "arose from a judicial distrust of confessions," and thus "protects defendants from unjust convictions based upon confessions alone which may be of questionable reliability." Aten, 130 Wn.2d at 656-57. Accordingly, when the State's case against the accused depends significantly on his or her self-incriminating admission, the *corpus delicti* doctrine tests the sufficiency or adequacy of the State's other evidence to ensure that it corroborates the defendant's confession. State v. Dow, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010).

Here, the State's case was in no way premised on Dechant's confession to his illegal acts. After all, Dechant did not admit any culpability whatsoever. Rather, his out-of-court statements to Rogers and Schuelke comprised the crimes themselves of which

he stood accused. By verbally entreating Rogers to kill Didomenici in exchange for future compensation, Dechant committed the crime of solicitation to commit murder. See RCW 9A.28.030(1), RCW 9A.32.030(1)(a). By orally coming to a meeting of the minds with Rogers in a joint plan to dispatch Didomenici, Dechant perpetrated, in large measure, the crime of conspiracy to commit murder. See RCW 9A.28.040(1), RCW 9A.32.030(1)(a). Finally, by encouraging and instructing Rogers and Schuelke in their incomplete effort to kill their intended target, Dechant exposed himself to culpability as an accomplice to the crime of attempted murder in the first degree. See RCW 9A.08.020(3), RCW 9A.28.020, RCW 9A.32.030(1)(a).

Dechant fails to recognize, in his brief to this Court, that certain crimes consist, in whole or in large measure, of a defendant's out-of-court statements. If the *corpus delicti* rule were to apply in the prosecution of these offenses, it would be impossible to prove not only solicitation and conspiracy, but harassment, extortion, theft-by-deception, and any robbery in which the culprit's threat of force were verbally made. Such an outcome is illogical on its face, and Dechant provides no authority for such an absurd proposition. Rather, it is a matter of well-settled law that the doctrine of *corpus delicti* applies only in cases where the primary

evidence that any crime occurred lies in the ostensible culprit's after-the-fact admission of his supposed misdeed. See, e.g., State v. Brockob, 159 Wn.2d 311, 328, 150 P.3d 59 (2006) (holding that a defendant's incriminating statement alone is not sufficient to establish that a crime took place).

2. THE STATUTES PROHIBITING THE CRIMES OF SOLICITATION, CONSPIRACY, AND ATTEMPT PUNISH SEPARATE AND DISTINCT ACTS, AND DO NOT IMPLICATE DOUBLE JEOPARDY PRINCIPLES.

Next, Dechant contends that, assuming *arguendo*, the State proved his culpability for the crimes of solicitation, conspiracy, and attempted murder, he should not have been punished for each of these offenses because to do so would amount to a violation of the double jeopardy clauses of the state and federal constitutions. Brief of Appellant, at 50-57. He asserts that conviction and sentencing for these crimes amounts to multiple punishments for the same offense. Brief of Appellant, at 50.

Dechant's argument should be rejected. As numerous Washington courts have recognized, the state's legislature, in enacting separate statutes for solicitation, conspiracy, and attempt, intended to address specific harms uniquely created by the commission of each of these crimes. Accordingly, to hold

accountable someone who commits all three offenses is to punish him or her for discrete and distinct acts. A person so punished has not been subjected to double jeopardy.

The double jeopardy clauses of the federal and state constitutions protect individuals from, among other things, multiple punishments for the same offense. State v. Turner, 102 Wn. App. 202, 205-06, 6 P.3d 1226 (2000). Double jeopardy in this context may occur when a person is charged with violating the same statutory provision repeatedly, or where the State seeks to punish a defendant for violating several statutes when he committed a single act. See Turner, 102 Wn. App. at 206; State v. Calle, 125 Wn.2d 769, 776-77, 888 P.2d 155 (1995).

Dechant appears to contend that he was exposed to double jeopardy via the second method described supra, i.e., that he committed a single act for which he was punished multiple times. His claim ignores the plain fact that he was convicted of perpetrating separate and distinct crimes that he committed independently of each other; proof of each offense existed autonomously.

The crime of solicitation occurs when a person, "with intent to promote or facilitate the commission of a crime... offers to give

[something of value] to another to specific conduct which would constitute such crime.” RCW 9A.28.030(1). The evil that the legislature criminalized in this statute is the act of solicitation, rather than the crime for which the offer is made. State v. Varnell, 162 Wn.2d 165, 169, 170 P.3d 24 (2007); see also State v. Jensen, 164 Wn.2d 943, 953, 195 P.3d 512 (2008) (observing that by offering something of valuable to another person to commit a crime, “a solicitor supplies a motive that otherwise would not exist,” thereby increasing the risk that greater harm will occur). The State need only prove that the defendant offered something of value in order to facilitate a crime; it is no defense that the offer was not accepted, and, unlike conspiracy or attempt, no overt act other than the offer itself is required. Varnell, 162 Wn.2d at 170; Jensen, 164 Wn.2d at 952.

A person commits conspiracy when he or she, with the intent that conduct constituting a crime be performed, agrees with one or more people to engage in the performance of that conduct, and any one of them “takes a substantial step in pursuance” of their agreement. RCW 9A.28.040(1). The state supreme court has noted:

Conspiracy focuses on the additional dangers inherent in group activity. In theory, once an individual reaches an agreement with one or more persons to perform an unlawful act, it becomes more likely that the individual will feel a greater commitment to carry out his original intent, providing a heightened group danger. As an inchoate crime, conspiracy allows law-enforcement officials to intervene at a stage far earlier than attempt does.

State v. Dent, 123 Wn.2d 467, 476, 869 P.2d 392 (1994) (citations omitted). Because the crux of conspiracy is the agreement to commit a crime, rather than the planned crime itself, there is no need to prove a serious effort to carry out the agreement, and an insignificant act may suffice. Id. (citations omitted).

Lastly, a person is guilty of an attempt to commit crime if, “with intent to commit a specific crime, he does any act which is a substantial act toward the commission of that crime.” RCW 9A.28.020(1). Because a defendant charged with attempt is accused of trying to cause the harm that the statute defining the substantive offense was intended to avoid (in this case, the intentional and unjustified destruction of human life), the State must prove that the defendant made a significant effort to violate that statute. Proof of an agreement with others is not sufficient, and an act that satisfies the “substantial step” element of the conspiracy

statute may be thoroughly inadequate to prove the “substantial act” element of attempt. Dent, 123 Wn.2d at 476-77.

There can be no dispute that the solicitation, conspiracy, and attempt statutes contain different legal elements, and require proof of a fact not required by the others. Dechant completed the crime of solicitation when he made his offer to Rogers of future monetary reward in exchange for ridding him of Didomenici. He completed the crime of conspiracy when he reached agreement with Rogers and later, through Rogers, with Schuelke, and the men met at the jail and exchanged correspondence to carry out their pact. Finally, Dechant became liable for the crime of attempted murder when, at his direction, Rogers met with Schuelke and the two, armed with Schuelke’s gun, drove to Didomenici’s home.

Thus, Dechant’s convictions were for crimes that are different in law and fact and are prohibited because each causes a unique harm that the legislature intended to prevent. Accordingly, double jeopardy is not implicated.

Dechant’s reliance on State v. Mutch, 171 Wn.2d 646. 254 P.3d 803 (2011), for the proposition that he may have been convicted of all three crimes for a single act, is misplaced. See Brief of Appellant, at 57-61. As discussed in detail supra, proof that

Dechant offered compensation to Rogers to entice him to commit a crime would not address any of the elements of the charged crimes of conspiracy or attempted murder, and proof that Dechant, Rogers, and Schuelke agreed to kill Didomenici and took a single step, even a fairly insignificant one, in furtherance of that agreement would not support conviction for solicitation or attempt. Nor would proof that Dechant acted as an accomplice to Schuelke's attempt to murder Didomenici necessarily establish his guilt for the inchoate offenses of conspiracy and solicitation. Unlike in Mutch, where the defendant was accused of five counts of rape involving the same victim over an extended period of time, here there was scant risk that the jury could have so misunderstood the "to-convict" instructions and found Dechant liable for three distinct crimes, each of which contained at least one element not present in the others, because of a single act. His claim to the contrary should be denied.

3. DECHANT FAILS TO DEMONSTRATE THAT HE RECEIVED THE INEFFECTIVE ASSISTANCE OF COUNSEL.

Finally, Dechant contends that his counsel at trial provided him with constitutionally insufficient representation because he failed to move to suppress evidence seized from the vehicle that Dechant was driving when initially stopped by police on January 7,

2013. When asked to provide written consent to a search of the vehicle, Dechant declined, explaining that he did not have authority to permit a search because the SUV belonged to Didomenici. 3RP 113-14; 7RP 488-89. After Didomenici arrived at the scene with the vehicle's registered owner and both agreed to a search, officers discovered, among other items, two handguns in the passenger compartment, which led to Dechant's arrest for unlawful possession of a firearm; in a custodial search at the King County Jail later that night, Dechant was found to have been concealing several grams of methamphetamine and heroin in his underwear. 6RP 329-30, 400-03; 7RP 488-90.

On appeal, Dechant asserts that his attorney was incompetent for failing to move for suppression of the firearms and narcotics on the basis that Didomenici lacked authority to consent to the vehicle search, and that this incompetence caused Dechant reversible prejudice because such a suppression motion would have succeeded and prevented the State from moving forward with its case against him for illegal possession of firearms and controlled substances. Brief of Appellant, at 64-65. Dechant's argument is baseless.

To demonstrate ineffective assistance of counsel, a defendant bears the burden of making two showings: first, that his attorney's representation fell below an objective standard of reasonableness based on consideration of all the circumstances, and, second, that there is a reasonable probability that, but for counsel's unprofessionalism, the result of the proceeding would have been different. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); see also Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Appellate courts engage in a strong presumption that counsel's representation was effective. Id. at 337.

Dechant bases his claim of ineffective assistance on the proposition that Didomenici lacked standing to give valid consent to a search of the vehicle he had lent to Dechant prior to the night of January 7th. Dechant asserts that only he could consent to the officers' intrusion into the vehicle's passenger compartment, because he signed a "borrowed car agreement" with Didomenici that, he purports, effectively gave Dechant sole proprietary interest in the car, and forfeited any ownership interest that Didomenici had previously held.

It is difficult to know where to begin in responding to Dechant's argument. Perhaps most importantly, Dechant premises his contention on the specific language of a "borrowed car agreement" that is not part of the trial record. Where a claim is brought on direct appeal, the reviewing court cannot consider matters outside the trial record. McFarland, 127 Wn.2d at 335 (noting that the appropriate means of introducing facts not in the existing record is through a personal restraint petition). Dechant's reliance on extrinsic evidence is fatal to his claim.

In addition, the presumption of competence of counsel requires the defendant to show the absence of any valid tactical or strategic reason for the challenged action in order to sustain the defendant's burden. State v. McNeal, 145 Wn.2d 352, 362-63, 37 P.3d 280 (2002). Although Dechant did not move for suppression pursuant to CrR 3.6, the State, in the course of both a pretrial hearing in support of its CrR 3.5 motion to admit Dechant's statements at the time of his arrest, as well as testimony produced at trial, developed a sufficient record upon which this Court can comfortably conclude that Dechant's counsel made a strategic decision to attempt to distance his client from the contents of the SUV. After all, Dechant's contention on appeal – that Didomenici

lacked a sufficient possessory interest to enable him to give valid consent to a search of the SUV – necessarily suggests that only Dechant held ownership, and thus would have been that much more likely to have had dominion and control over the items found in the vehicle. Given that Dechant denied a propriety stake in the vehicle at the time he was stopped by police and, in fact, told the officers to seek consent from Didomenici, it is not unreasonable to believe that Dechant’s trial counsel decided to forgo a suppression motion that likely would not have succeeded, and instead elect to attempt to shift responsibility for the items found in the vehicle back to Didomenici.

Dechant cannot meet his substantial obligation to show the absence of any reasonable basis for his trial attorney’s decision regarding suppression, and he fails to show that a suppression motion would have likely succeeded. His claim of ineffective assistance should, therefore, be declined.

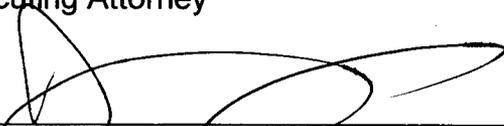
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Dechant’s convictions and his judgment and sentence.

DATED this 27th day of August, 2015.

RESPECTFULLY submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Mitch Harrison, the attorney for the appellant, containing a copy of the Brief of Respondent, in State v. Ira Dechant, Cause No. 72055-4-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame
Name
Done in Seattle, Washington

8/27/15
Date