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I. ASSIGNMENTS OF ERROR

1. Mr. Harris' confession should have been inadmissible at trial, because the State failed to adequately corroborate the confession under the *corpus delicti* rule.
2. The State produced insufficient evidence at trial to support Mr. Harris' convictions for Unlawful Possession of a Firearm and Possession of a Stolen Firearm, respectively.
3. The trial court erred in holding venue was proper in Pierce County, because each of the elements of the charged offenses, if committed, were committed at Mr. Harris' home in King County.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the State produced *prima facie* evidence at trial showing that Mr. Harris knowingly possessed the stolen firearms.
2. Whether the State provided sufficient evidence to prove Mr. Harris possessed the firearms beyond a reasonable doubt apart from the improperly admitted confession.
3. Whether any of the elements of Mr. Harris' convictions for Unlawful Possession of a Firearm and Possession of a Stolen Firearm, respectively, were alleged to have been committed in Pierce County

III. STATEMENT OF THE CASE

On December 17, 2011, 41 firearms were stolen during a burglary from a Sportco store located in Fife, Washington. RP 10. In January 2012, one of those

firearms was recovered in East Wenatchee, Washington, inside of a vehicle used in a robbery. RP 11. On April 12, 2012, Mr. Harris was arrested at his home in White Center, Washington. RP 15-16.

After his arrest, Mr. Harris was interrogated for several hours. The interrogation was recorded on video. Exhibit 3; RP During that interrogation, Mr. Harris made several incriminating statements to police about the above mentioned firearms. He admitted that the firearms were brought to his home but denied any involvement in the burglary of the Sportco.

One day later, on the 13th day of April, 2012, the State charged the defendant with Trafficking in Stolen Property in the First Degree, Possession of a Stolen Firearm and Unlawful Possession of a Firearm in the First Degree. CP 76-79.

Well before trial, Defense counsel moved to dismiss the case against Mr. Harris, arguing that Venue was improper in Pierce County. CP 8-13, 14-29. That Motion was denied. The Court held that venue was proper in Pierce County, not because Mr. Harris committed any of those crimes in Pierce County, but rather, because the firearms involved in the underlying crimes *were* stolen in Pierce County. No party disputed that there was absolutely no evidence that Mr. Harris had ever been in Pierce County until he was arrested and brought there to face these charges.

At first, it looked as if both Mr. Harris and Mr. Stearman would be tried together. In fact, the Court held a joint 3.5 hearing to admit the statements of both Mr. Stearman and Mr. Harris before the testimony for either defendant.

During that hearing, Detective Jeff Nolta testified about the contents of Exhibit 3, Mr. Harris's so-called "confession." He, for instance, testified that Alix Harris had admitted that a group of Asian males brought a bag of possibly stolen firearms to Mr. Harris's home, in White Center, Washington, King County. RP 17-22. The Asian males then tried to sell the guns to those who were present within the house. RP 12-14. Detective Nolta also testified that Stearman had made several incriminating statements in a separate interview from that of Mr. Harris. RP 17-22. Realizing that the statements were admissible for purposes of the 3.5 hearing, Mr. Harris's counsel did not cross examine Detective Nolta.

After the 3.5 hearing, the State recognized that, in a joint trial, the State would not be able to admit the video-taped statements of each defendant without violating each defendant's right to confrontation. To avoid this result, the State and Mr. Stearman moved to sever the defendant's and hold separate trials. After the court granted the severance motion, Mr. Harris waived his right to a jury trial, and decided to proceed with a trial to the bench. CP 79.

Before the State began to present testimony, Mr. Harris stipulated he had been convicted of a felony defined as a "serious offense" and was not permitted by law to possess a firearm during all times relevant to the charges. CP 76-79. He also stipulated that the Sportco burglary did in fact occur. Aside from these two stipulations, the State's entire case rested upon Exhibit 3, Mr. Harris's video-recorded statement to police, immediately following his arrest. The State played the video in its entirety for the court. After that, the State rested its case.

On April 4, 2013, Mr. Harris again moved to dismiss the case. CP 50-58. He argued that the State's case should be dismissed under Corpus, because the State failed to offer sufficient corroborating evidence under the Corpus Delicti Doctrine. RP 96-104. He also renewed his motion to dismiss for improper venue. RP 100-04. Without *any* substantive discussion of the arguments, the Court denied the motion to dismiss. RP 103-04.

After the completion of both Mr. Harris's and Stearman's trials, the court found Mr. Harris guilty of Unlawful Possession of a Firearm and Possession of a Stolen Firearm. CP 77-79. Mr. Harris was given a standard range sentence. CP 62-73. He filed this timely appeal. CP 74-75.

IV. ARGUMENTS

A. THE CORPUS DELICTI DOCTRINE

1. THE CORPUS DELICTI RULE APPLIES WHENEVER THE STATE SEEKS TO PROVE THE DEFENDANT'S GUILT WITH PROOF OF INCRIMINATING STATEMENTS BY THE DEFENDANT.

Corpus delicti (Hereinafter "Corpus") means the "body of the crime."¹ The rule's sole purpose is to prevent a defendant from being convicted based upon his incriminating statements alone.² To serve that purpose, Washington, the Federal Courts, and many other jurisdictions have adopted the corpus delicti doctrine.³ Under Washington's version (as well as the version used by the Federal Courts), "a defendant's incriminating statement alone is not sufficient to establish that a crime

¹ *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).

² *Id.* at 249.

³ *State v. Dow*, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010) ("Historically, courts have grounded the rule in judicial mistrust of confessions.")

took place.”⁴ Obviously then, Corpus applies whenever the State seeks to prove a defendant’s guilt, at least in part, by relying upon the defendant’s incriminating statements as proof of his guilt. Here, the State’s entire case-in-chief comprised of the defendant’s video-taped so-called-“confession,” which contains numerous incriminating statements. Corpus, therefore, is clearly applicable and the State was thus obligated to satisfy its requirements.

2. CORPUS GOVERNS BOTH ADMISSIBILITY OF A CONFESSION AND SUFFICIENCY OF THE EVIDENCE BASED UPON A CONFESSION.

Corpus is both a rule of evidentiary admissibility and a rule of evidentiary sufficiency.⁵ It is also a judicially created doctrine and a statutory one. That is, under RCW 10.58.035, the Legislature has set forth certain evidentiary requirements that must be met before a defendant’s statements can be admitted into evidence. This evidentiary rule, however, did not abrogate this State’s long-standing Corpus doctrine which was first established by our judiciary over 100 years ago. If the State fails to present such evidence, the court must reverse the defendant’s conviction and dismiss it with prejudice.⁶

The Supreme Court recently explained this distinction in *State v. Dow*. In *Dow*, the court addressed whether RCW 10.58.035 changes the corpus delicti rule. Mr. Dow was charged with first degree child molestation.⁷ The victim was a three-

⁴ *Id.* (citing *Brockob*, 159 Wn.2d at 328. In *Brockob*, the Court noted that Courts use a variety of terms to describe a defendant’s statement when analyzing corpus delicti claims, such as “admissions,” “confessions,” “statements,” “incriminating statements,” “inculpatory statements,” “exculpatory statements,” and “facially neutral” statements. *Id.* For the sake of clarity and uniformity, the court used the term “incriminating statements.” *Id.*

⁵ *Dow*, 168 Wn.2d at 249.

⁶ *Id.* at 254 (“Any departure from the traditional corpus delicti rule under RCW 10.58.035 pertains only to admissibility and not to the sufficiency of evidence required to support a conviction.”).

⁷ *Id.* at 247. †

year-old child, and the State conceded she was too young to testify.⁸ Consequently, her statements to others about the alleged offense were inadmissible. Mr. Dow and the child were the only people present at the time of the alleged offense.⁹ During a recorded police interview, Mr. Dow made statements regarding the events surrounding the alleged molestation. Mr. Dow moved to exclude his statements, arguing they were inadmissible for lack of corpus delicti (no such motion was made by Mr. Grogan).¹⁰ The trial court found these statements to be inadmissible. And, without those statements, the State failed to present any other admissible evidence of the defendant's guilt. The court accordingly dismissed the case.

The State appealed the dismissal order.¹¹ The Court of Appeals reversed and the Supreme Court granted Mr. Dow's petition for review. Our Supreme Court held that RCW 10.58.035 pertained "only to admissibility and not to the sufficiency of evidence required to support a conviction."¹² Thus, a statement may be admissible because it is trustworthy under RCW 10.58.035, but the State still has the burden of establishing all the elements of the crime.¹³ The Court, therefore, re-instated the dismissal order of the trial court.

3. THE STATE MAY NOT USE MR. HARRIS'S OWN OUT-OF-COURT STATEMENTS TO CORROBORATE HIS OWN INCRIMINATING STATEMENTS.

In Washington, the defendant's incriminating statements must be corroborated by evidence that is entirely "independent" of the defendant's own out-of-court statements, even if those statements are completely "innocent" on their

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 248.

¹² *Id.* at 253-54.

¹³ *Id.* at 254.

own.¹⁴ Notably, this rule places a far greater burden on the State than does its federal counterpart,¹⁵ which does allow the defendant's own statements to corroborate the defendant's incriminating statements.

This variance makes sense when one recognizes that Washington's Corpus rule and the Federal Corpus rule are vastly different conceptually. The Federal Corpus rule only seeks to establish that the defendant's incriminating statements are "trustworthy,"¹⁶ by, for example, showing that incriminating statements were not made under duress. Washington's version of the rule is far more demanding. Under Washington's version of the rule, Corpus is not satisfied if the State merely shows that we can trust the circumstances under which the statement was made. Rather, it demands that the State must produce evidence that actually corroborates *the facts* contained in the defendant's allegedly incriminating statements.¹⁷

Accordingly, as the Court applies this doctrine to the facts of this particular case, this court should reject any suggestion by the State that it use any of Mr. Harris's own incriminating statements as "independent" corroborating evidence.

4. MR. HARRIS DID NOT WAIVE THE CORPUS ARGUMENT

To argue Corpus on appeal, the defendant need not "raise a corpus delicti challenge during the State's case in chief."¹⁸ Mr. Harris did just that with a written

¹⁴ *State v. Aten*, 130 Wn.2d 640, 657-58, 927 P.2d 210 (1996) (holding that "the purpose of the corpus delicti doctrine would be frustrated if the court allowed a false confession to be 'corroborated' by a false admission, or even by seemingly innocent statements.").

¹⁵ *Brockob*, 159 Wn.2d at 328-29; *Aten*, 130 Wn.2d at 662-63.

¹⁶ *Brockob*, 159 Wn.2d at 328-29; *Aten*, 130 Wn.2d at 662-63.

¹⁷ *Brockob*, 159 Wn.2d at 328-29 (noting that the word "corroborate" is defined as "to provide evidence of the truth: make more certain: confirm."); *Aten*, 130 Wn.2d at 662-63.

¹⁸ *State v. Pietrzak*, 110 Wn. App. 670, 680, 41 P.3d 1240 (2002) (citing *Aten*, 130 Wn.2d at 654 (defendant raised corpus delicti challenge after close of State's case in chief)). The Supreme Court has addressed corpus delicti arguments raised for the first time on appeal. See *State v. Vangerpen*, 125 Wn.2d 782, 795-96, 888 P.2d 1177 (1995); *State v. Riley*, 121 Wn.2d 22, 31-32, 846 P.2d 1365 (1993).

motion. Even had he not, he still would have waived the argument as it pertains to Corpus sufficiency because that would be inconsistent with the rule's only purpose: Corpus serves "to protect a defendant from the possibility of an unjust conviction based upon a false confession alone."¹⁹ The rule is therefore inseparable from the sufficiency claim that follows and can, therefore, be raised for the first time on appeal.²⁰

5. EVIDENCE THAT WAS NOT ADMITTED AT TRIAL OR THAT WAS INADMISSIBLE CANNOT BE USED TO ESTABLISH CORPUS.

In response to the arguments below, the State may try to argue that evidence outside that mentioned above, somehow supports a finding of sufficient corroboration in this case. It does not, and in fact, it cannot because the State's burden of establishing Corpus through independent proof requires that the hearsay evidence be admissible.²¹ Moreover, Washington courts must presume that a judge in a bench trial did not consider inadmissible evidence to find the defendant guilty. Since *Miles*, Washington courts have presumed that a trial court judge knows the applicable rules of evidence and applies them properly.²² As a result, on appeal, the reviewing court must assume that the trial court did not rely on inadmissible evidence when it made its findings.²³

¹⁹ *Vangerpen*, 125 Wn.2d at 796 (citing *City of Bremerton v. Corbett*, 106 Wn. 2d 569, 576, 723 P.2d 1135, 1138 (1986)).

²⁰ *Pietrzak*, 110 Wn. App. at 680; *Vangerpen*, 125 Wn.2d at 796 (citing *Corbett*, 106 Wn.2d at 576).

²¹ See *Aten*, 130 Wn. 2d at 656; accord *State v. Nelson*, 74 Wn. App. 380, 392 n.8, 874 P.2d 170 (1994) ("Even if identity had to be established as part of the corpus delicti, Nelson's claim would still fail given that [the] written [hearsay] statement, which specifically identified Nelson, was properly admitted into evidence.").

²² *State v. Gower*, 172 Wn. App. 31, 288 P.3d 665 (2012),

²³ *Id.*

If the State does attempt to argue that evidence that was not admissible at trial supported Mr. Harris's conviction, this State's common law regarding both Corpus and Bench trials both show that the State is clearly barred from doing so. Simply put. Even if there was evidence that could have been introduced or that could have been admissible at trial, the Court cannot use that evidence to corroborate Mr. Harris's confession.

B. THE STATE FAILED TO ADEQUATELY PRODUCE SUFFICIENT INDEPENDENT EVIDENCE TO CORROBORATE MR. HARRIS'S INCRIMINATING STATEMENTS. WITHOUT SUCH CORROBORATION, THE STATE MAY NOT RELY UPON THE CONVICTION TO PROVE THAT MR. HARRIS COMMITTED THE CHARGED CRIMES.

To satisfy Corpus, the State must corroborate the defendant's incriminating statement with evidence apart from any statements the defendant may have made out-of-court.²⁴ In other words, "[T]he State must present evidence independent of the incriminating statement that the crime a defendant described in the statement actually occurred." To do this, the State's evidence must meet three general requirements: (1) the evidence must be independent from the defendant's own statements,²⁵ (2) the evidence must allow the finder of fact to make a "logical and reasonable" inference²⁶ that the facts sought to be proved" are true ("prima facie corroboration"),²⁷ and (3) that independent evidence must "support an inference that he committed *the crime with which he was charged.*"²⁸

²⁴ *Brockob*, 159 Wn.2d at 328 (citing *Aten*, 130 Wn.2d at 656).

²⁵ *Aten*, 130 Wn.2d at 657-658 (holding that "the purpose of the corpus delicti doctrine would be frustrated if the court allowed a false confession to be 'corroborated' by a false admission, or even by seemingly innocent statements.").

²⁶ An inference is a logical deduction or conclusion following the establishment of the basic facts. *State v. Jackson*, 112 Wn.2d 867, 874, 774 P.2d 1211 (1989).

²⁷ *Brockob*, 159 Wn.2d at 328 (citing *Aten*, 130 Wn.2d at 656 (quoting *Vangerpen*, 125 Wn.2d at 796).

²⁸ *Id.* at 311.

1. THE STATE FAILED TO PRODUCE INDEPENDENT EVIDENCE THAT CORROBORATED THE FACTS REQUIRED TO PROVE THAT MR. HARRIS POSSESSED ANY OF THE FIREARMS.

To satisfy Corpus, the State must produce independent evidence that corroborates or confirms that “*the* crime described in a defendant's incriminating statement” actually occurred.²⁹ In other words, the independent evidence that show more than the mere fact that *someone* committed *a* crime.³⁰ As the *Brockob* Court recently stated in 2006, Corpus in Washington “is not so forgiving.”³¹

Corpus in Washington “requires the State to present evidence that is independent of the defendant's statement and that corroborates not just a crime but the specific crime with which the defendant has been charged.”³² Rejecting an argument to the contrary, the *Brockob* Court summarized this part of Corpus as follows:

[T]he corpus delicti rule requires the State to present evidence that is independent of the defendant's statement and that corroborates not just a crime but the specific crime with which the defendant has been charged. The dissent claims the purpose of the rule is only to ensure that “some evidence, however slight, supports an inference that a crime was committed.”... But the rule is not so forgiving. The State's evidence must support an inference that the crime with which the defendant was charged was committed. This is a much higher standard than the dissent implies. It requires that the evidence support not only the inference that a crime was committed but also the inference that a particular crime was committed.³³

Under the standard stated in *Aten* and clarified in *Brockob*, the State failed to present sufficient independent evidence to corroborate the facts contained in Mr.

²⁹ *Brockob*, 159 Wn.2d at 328 (citing *Aten*, 130 Wn.2d at 656).

³⁰ *State v. C.M.C.*, 110 Wn. App. 285, 288, 40 P.3d 690 (2002) (quoting *State v. Flowers*, 99 Wn. App. 57, 59-60, 991 P.2d 1206 (2000)).

³¹ *Brockob*, 159 Wn.2d at 328-29.

³² *Id.* at 329.

³³ *Id.*

Harris video-taped confession. Both crimes that Mr. Harris was convicted of required the State to prove that Mr. Harris was in possession of a firearm.³⁴ To establish both of these crimes, the State must make a prima facie showing that the defendant was in possession of a firearm.³⁵ Mr. Harris was convicted of two such offenses: unlawful possession of a firearm and possession of a stolen firearm. Thus, the relevant inquiry here is whether there was sufficient independent evidence that Mr. Harris possessed a firearm.³⁶ A thorough review of the record reveals that the State failed to meet this burden. Division I's decision in *Wright* explains why.³⁷

In *Wright* a police officer on regular patrol heard gunfire from nearby. He looked around and spotted Wright standing next to individual on a nearby street corner.³⁸ The officer approached the two men and questioned them about the shooting. In response to the officer's question, Wright said that he thought that someone had fired the shots out of a car passing by the area. The officer investigated the allegation and confirmed that the shots could not have come from the car as Wright had claimed. The officer then found a firearm in the bushes next to Wright and his companion. The officer confronted Wright about the firearm and Wright eventually confessed to possessing the firearm. At trial, the State introduced the confession as evidence and a jury Wright was convicted of unlawful possession of a firearm.

³⁴ RCW 9A.04.040 (unlawful possession of a firearm); RCW 9A.56.310 (possession of a stolen firearm); *State v. Anderson*, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000); *State v. Wright*, 76 Wn. App. 811, 817-18, 888 P.2d 1214 (1995) (overruled on other grounds by *Aten*).

³⁵ *Wright*, 76 Wn. App. at 817-18.

³⁶ *See id.*

³⁷ *See id.*

³⁸ *Id.* at 819.

On appeal, Wright argued that the State failed to satisfy Corpus. In analyzing the Corpus argument, the court noted that the following facts were insufficient to corroborate the crime:

- (1) [The Officer] heard a gunshot;
- (2) Wright was close to or in the place from which the shot had evidently been fired;
- (3) Wright gave the officer false information;
- (4) Wright was next to the bushes with his hands out of view when Fountain returned;
- (5) [Another Officer] found the gun in those bushes; and
- (6) There was evidence that it had been placed there recently.³⁹

Under the more liberal pre-*Aten* and pre-*Brockob* standard, the court said that all of these facts failed to establish Corpus for possession of the firearm because they failed to set Wright apart from his companion.⁴⁰ Likewise here, under either standard, the State failed to introduce sufficient evidence to allow the trial court to logically and reasonably conclude that he possessed any of the firearms in question.

Aside from Mr. Harris's videotaped confession, the State offered no independent evidence establishing that Mr. Harris possessed a firearm so as to support admission of his incriminating statements. The State called no witnesses that testified that Mr. Harris possessed any of the firearms. It introduced no exhibits, such as a firearm with Mr. Harris's fingerprints. Outside of Mr. Harris's confession, the State only proved one crime—the burglary of Sportco. Had Mr. Harris confessed to being involved in the burglary, this evidence certainly would provide

³⁹ *Id.*

⁴⁰ The *Wright* Court ultimately upheld the conviction, citing Wright's out-of-court statement in which Wright claimed that someone else shot the firearm as the one fact that tipped the scale to prove Corpus. However, our Supreme Court would later hold that Corpus may not be established by the defendant's own incriminating statements. *Aten*, 130 Wn.2d at 657-58. Washington's Corpus doctrine requires that the State must rely upon evidence that is *entirely independent* from the defendant's own out-of-court statements.

independent evidence that he committed that crime. But Mr. Harris did not confess to the burglary because he had no involvement in that crime and was unaware it occurred until after the burglary was completely. Evidence of the burglary is simply evidence that *some firearms* were stolen by someone during the course of a burglary.

Such facts fall well short of what constitutes “prima facie corroboration.” As clearly stated in *Brockob* and *Aten*, the independent evidence “must provide prima facie corroboration of the crime described in a defendant's incriminating statement.”⁴¹ No evidence presented by the State independently leads to a reasonable conclusion that Mr. Harris possessed a firearm, let alone a stolen firearm. At best, the State merely provided independent evidence that *someone* possessed a firearm, but it failed to show the Mr. Harris ever possessed the firearm himself. Only proving that someone else committed a different crime, in a different jurisdiction, at a different time, can of course never be sufficient to “the inference that the particular crime charged was committed.”⁴²

As a result, the court should dismiss all charges against Mr. Harris. And because the independent evidence must prove corroborate the underlying facts that support *the crime* with which Mr. Harris was charged (rather than just “any crime”), the stipulation as to the Sportco burglary only proved that a burglary occurred, which is insufficient to lead a reasonable person to corroborate that Mr. Harris possessed a firearm. In short, the State presented no independent evidence that

⁴¹ *Brockob*, 159 Wn.2d at 328 (citing *Aten* at 656).

⁴² *Id.* at 329 (“The corpus delicti rule requires the State to present evidence that is independent of the defendant's statement and that corroborates not just a crime but the specific crime with which the defendant has been charged.”).

corroborated Mr. Harris's apparent confession that he ever possessed a firearm during the charging period alleged by the State.

2. EVEN IF THE STATE PROVIDED INDEPENDENT EVIDENCE THAT MR. HARRIS POSSESSED THE A FIREARM, THE STATE STILL FAILED TO SATISFY CORPUS BECAUSE IT FAILED TO PROVE THAT HE *KNOWINGLY* POSSESSED A FIREARM OR THAT HE KNEW THE FIREARMS HE POSSESSED WERE STOLEN.

In *Brockob*, the Court established a new rule for Corpus that required the State to corroborate the defendant's criminal intent before the defendant's incriminating statement could be used as evidence against him.⁴³ In that case, the Court held, for the first time, that the State must provide independent evidence to corroborate the defendant's mens rea, and it did so for several varying types of crimes. If, for instance, the defendant is charged with possession of pseudoephedrine *with intent to manufacture methamphetamine*, merely producing independent evidence that the defendant *possessed* pseudoephedrine is insufficient. To amount to "prima facie" corroboration, the State must also produce independent evidence that the defendant *intended to use that drug to manufacture methamphetamine* because without such proof, the State has only corroborated that *a crime* occurred (theft of Sudafed), but has not corroborated *the crime charged* (possession with intent to manufacture methamphetamine).

In *Brockob*, the defendant was arrested for possession of Sudafed with the intent to manufacture it after he was arrested for stealing 15 to 20 packs of Sudafed from a drugstore. Brockob confessed that he intended to steal the Sudafed to give to someone else, who intended to make methamphetamine with it. At trial, the State introduced the defendant's confession. In addition, a police officer testified

⁴³ See *id.*

that Sudafed is commonly used in the manufacture of methamphetamine. The State argued that the police officer's statement was "prima facie" corroboration of the intent to manufacture. The Court rejected that argument, reasoning, that "the mere fact that Sudafed is known to be used to manufacture methamphetamine does not necessarily lead to the logical inference that" the defendant intended manufacture methamphetamine with it.

Similarly, if a defendant is charged with attempted second degree robbery, the State must prove that the defendant intended to take property against the will of its owner because that intent is required to prove that *the crime* actually occurred. To sufficiently corroborate that intent, the State must present evidence that rules out the possibility that the defendant had the owner's permission to take that property. In *Cobabe*, the defendant was charged with attempted second degree robbery after he confessed to police that "he took [the victim's] DVD player to compel [the victim] to come see him." At trial, the State presented testimony that Cobabe went to the victim's apartment, tried to take the DVD player, unplugged the player from the wall and television, and was about to take the DVD player from the wall until the victim's roommate stopped him. Although these facts clearly suggested that the owner did not give Cobabe permission to take the DVD player, they failed to rule out the possibility that he did. Cobabe's confession was therefore inadmissible.

Crimes involving possession of stolen firearms deserve no different rule and a contrary holding here would undoubtedly contradict the clear results reached in *Brockob* and *Cobabe* described above. Both crimes required the State to prove that

Mr. Harris *knowingly* possessed a firearm.⁴⁴ Additionally, to prove possession of a stolen firearm, the State also had to prove that Mr. Harris “acted with knowledge that the firearm was stolen.” To establish Corpus for these crimes, under the rule announced in *Brockob*, the State was required to present independent evidence of these criminal intents. Applying that rule to the facts here, it is clear that the State failed to meet this burden.

Brockob's holding unmistakably requires the State to present independent evidence that corroborates not just the act of possession (i.e. of Sudafed or a firearm) but also that the defendant possessed the mens rea required to prove the crime charged (i.e. intent to manufacture, knowing possession, or knowledge that the firearm is stolen).⁴⁵ And the Court's application of the doctrine to *Cobabe*'s robbery conviction, a crime that is both a crime against person and a property crime, shows quite clearly that the Court's holding was not merely limited to the crime of Possession of Sudafed with Intent to Manufacture Methamphetamine.

In Mr. Harris' case, apart from his confession, the State utterly failed to present any admissible evidence that Mr. Harris had known that the firearms were actually in his home or could otherwise have been in his possession. Further, the record also lacks any independent evidence that Mr. Harris ever acted with the knowledge that any of these firearms were in fact stolen. Looking at the limited admissible evidence presented by the State, the State obviously felt that it did not need to produce independent evidence of the crime charged. It

⁴⁴ *Anderson*, 141 Wn.2d at 357 (2000) (unlawful possession of a firearm); RCW 9A.56.310 (possession of a stolen firearm) and RCW 9A.56.140 (possession of stolen property).

⁴⁵ *Brockob*, 159 Wn.2d at 332.

believed, falsely, that his confession was sufficient to support a conviction.

The State fell well short of producing evidence supporting a reasonable inference that Harris had *knowingly* possessed the stolen firearms or that he acted with any knowledge that those firearms were in fact stolen. In the end, Mr. Harris's convictions rest solely upon his confession. Because the State failed to independently corroborate the facts required to prove Mr. Harris' criminal intent, his confession cannot stand to support his conviction.

3. EVEN IF THE STATE PROVIDED INDEPENDENT EVIDENCE TO CORROBORATE THE FACTS STATED IN MR. HARRIS'S INCRIMINATING STATEMENTS, THE STATE STILL FAILED TO SATISFY CORPUS BECAUSE THOSE INDEPENDENT FACTS FAIL TO ALLOW A REASONABLE JUROR TO REASONABLY AND LOGICALLY CONCLUDE THAT MR. THOSE FACTS ARE TRUE.

To satisfy Corpus, the State's independent evidence need not rule out "every reasonable hypothesis" than tends to negate the defendant's guilt. However, the State's independent evidence must still support a "reasonable and logical inferences" that a crime was caused by a non-criminal act.⁴⁶ In *Aten*, the Court rejected the State's argument to the contrary. In that case, the State argued that it had sufficiently corroborated the defendant's confession simply because "one logical and reasonable inference from the evidence is that Sandra died as a result of a criminal act."⁴⁷ Rejecting that argument, the Court held that if the independent evidence "supports the reasonable inference of a criminal explanation of what caused the event" but it also supports "one that does not involve criminal agency, the evidence is not sufficient to corroborate the defendant's statement."⁴⁸

⁴⁶ *Aten*, 130 Wn.2d at 660 (1996).

⁴⁷ *Id.* at 659

⁴⁸ *Id.*

Later that year, in *Ray*, the Court re-affirmed its decision in *Aten* and reinstated an order that dismissed Ray's conviction for First Degree Child Molestation. In *Ray*, the defendant was convicted of one count of first degree child molestation after he confessed to have sexual contact with his three-year-old daughter.⁴⁹ Although the opinion does not reveal the specific details of the molestation, it was quite clear that Ray had confessed to molesting the victim to at least three separate people, first his wife, then his sexual deviance therapist, and finally to police. Each of these confessions were "consistent" with each other and established the elements of the crime.

Aside from the defendant's confessions, the State presented evidence of these facts at trial: (1) the victim entered Ray's room at 1:00 A.M. at night to ask for a glass of water; (2) Ray woke up, got out of bed, and left the room with the victim to get her a glass of water; (3) the defendant was nude when he awoke and was nude when he left the room with the victim; (4) Ray normally slept in the nude; (5) when Ray later returned to the bedroom upset and crying; (6) he awoke his wife to have a discussion, but the details were inadmissible based upon the spousal privilege; (7) the details of the conversation with Ray made his wife upset and she immediately ran to the victim's bedroom to make sure that her daughter was okay; (8) Ray's wife returned to their bedroom and had another discussion with Ray; and (9) after that final conversation, Ray placed an emergency call to his sexual deviancy therapist.

⁴⁹ *State v. Ray*, 130 Wn.2d 673, 675, 926 P.2d 904 (1996).

Despite the consistency amongst the three separate confessions made by the defendant, these facts failed to adequately corroborate the criminal act—the sexual touching of the victim—because they failed to independently corroborate “the specific conduct of first degree child molestation.”⁵⁰ The Court noted that the last night call to his sexual deviancy therapist, perhaps the most damning piece of independent evidence, certainly suggested that the defendant harbored a “subjective sense of guilt.” Yet, the Court noted that this fact was simply “inconclusive” as to the defendant’s guilt.

Even when combined with the rest of the evidence, failed to rule out other reasonable explanations for the defendant’s actions, such as “unfulfilled urges, nightmares, or a subjective sense of guilt,” all of which failed to prove that Ray molested the victim. At best, these facts only established that Ray had the *opportunity* to molest the victim, but it failed to independently show that he did in fact molest the victim.⁵¹ In sum, these “sparse facts” failed “to rule out Ray’s criminality or innocence.”⁵²

Finally, several years in later, in *Brockob*, the Court confirmed what it said in *Aten* and *Ray*:

Aten modified the rule and, in so doing, increased the State’s burden. It held that if the evidence supports both a hypothesis of guilt and a hypothesis of innocence, it is insufficient to corroborate the defendant’s statement. In other words, if the State’s evidence supports the reasonable inference of a criminal explanation of what

⁵⁰ *Id.* at 680-81 (“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.”).

⁵¹ *Id.* (citing *Aten*, 130 Wn.2d at 660).

⁵² *Id.*

caused the event and one that does not involve criminal agency, the evidence is not sufficient to corroborate the defendant's statement.⁵³

Applying the State's heightened burden under *Aten*, *Ray*, and *Brockob*, the State failed to satisfy Corpus for either of the charged crimes. Even if the State can find some admissible evidence in the record to corroborate some of the facts in Mr. Harris's incriminating statements, it certainly will not be provide a logical basis for a reasonable jury to determine that Mr. Harris did in fact possess the firearm, that he did so *knowingly*, or that he actually *knew* that the firearms were stolen. Simply put, even if some of the "evidence" admitted at trial was admissible, without Mr. Harris's confession, it is unreasonable and too far a leap in logic to conclude that Mr. Harris committed either of the crimes for which he was convicted.⁵⁴

4. THIS COURT CANNOT IGNORE SUPREME COURT PRECEDENT'S RECENT PRECEDENT IN ATEN, BROCKOB, AND DOW, ALL OF WHICH CLEARLY INCREASED THE STATE'S BURDEN TO PROVE CORPUS.

Under the Ex Post Facto Clause of the Constitution, this court and our Supreme Court is "bound to follow [our Supreme Court's] previous rulings on [a particular] issue unless the State can show how those rulings are incorrect or harmful."⁵⁵ Stare Decisis serves many vital functions. It promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the

⁵³ *Brockob*, 159 Wn.2d at 330 (citing *Aten*, 130 Wn.2d at 660-61).

⁵⁴ *Aten*, 130 Wn.2d at 660

⁵⁵ *Ray*, 130 Wn.2d at 679 (modified by *State v. Barber*, 170 Wn.2d 854, 863, 248 P.3d 494 (2011)).

judicial process.⁵⁶ These considerations require the State to meet a very high burden to over-turn existing precedent. It must make a “clear showing that an established rule is incorrect and harmful before it is abandoned.”⁵⁷

At least one lower court has ignored this Doctrine and our Supreme Court’s formulation of Corpus in *Aten*, *Ray*, and *Brockob*, all of which have upheld the current and much more stringent Corpus standard that this court must apply to the facts of this case.⁵⁸ One such case is Division III’s decision in *Angulo*. Over a strong dissent, the *Angulo* Court flatly rejected *Brockob*’s expansion of Corpus in Washington and clearly ignored the doctrine of Stare Decisis.⁵⁹

In *Angulo*, the court held that although the defendant was charged with first degree rape of a child, rather than child molestation, the State need not provide independent evidence of the element of penetration to corroborate the defendant’s confession to the rape.⁶⁰ The majority expressed its “view” that *Brockob* was wrongly decided. The *Angulo* Court held that “in our view,” in *Brockob*, the Supreme Court “unnecessarily” replaced “[t]he traditional requirement” that the State only prove “a criminal act” with “a specific element.”⁶¹ The majority concluded that, “[w]e do not think the purpose of the corpus delicti corroboration

⁵⁶ *Keene v. Edie*, 131 Wn.2d 822, 831, 935 P.2d 588 (1997) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720, reh’g denied, 501 U.S. 1277, 112 S. Ct. 28, 115 L. Ed. 2d 1110 (1991)).

⁵⁷ *In Re Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d508 (1970).

⁵⁸ *See State v. Angulo*, 148 Wn. App. 642, 656-57, 200 P.3d 752 (2009) (refusing to follow *Brockob*, but doing so before *Dow* reaffirmed the *Brockob* holding).

⁵⁹ *See id.*

⁶⁰ *Id.* at 656-59.

⁶¹ *Id.* at 656.

rule is served by trying to apply it to the elements of the crime rather than focusing on whether a criminal act has been established.”⁶²

Furthermore, the reasoning in *Angulo* is even less persuasive now than when it was decided, because Division III decided *Angelo* before our Supreme Court’s recent decision in *Dow*, in which the Court re-affirmed its holdings in *Brockob* and *Aten*: [T]he State must still prove every element of the crime charged by evidence independent of the defendant’s statement.”⁶³ “The purpose of the [new and modified version of the] rule is to ensure that other evidence supports the defendant’s statement and satisfies the elements of the crime.”⁶⁴

Certainly, then, although *Aten* began a clear departure from the previously established Corpus rules in Washington, this court is nonetheless bound by our Supreme Court’s holdings in *Brockob*.⁶⁵ This Court has been presented with similar opportunities to throw out Washington’s defendant-friendly Corpus rule and to replace it with the federal court’s formulation of the doctrine, but has declined to do so every time. In one such instance, in *Ray*, the Court summarily rejected the request, reasoning that to do so would require a complete “disregard [for] the doctrine of stare decisis”:

[T]he State urges this court to reject the traditional corpus delicti doctrine and adopt in its place the “trustworthiness” standard used by the federal courts. The State claims the “trustworthiness” standard is more workable. If this court abandoned the corpus delicti rule, it would have to overrule nearly 100 years of well-settled case law. This court has infrequently discussed under what conditions it

⁶² *Id.* at 658-59.

⁶³ *Dow*, 168 Wn.2d at 254.

⁶⁴ *Id.*

⁶⁵ *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) (“[O]nce this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court ... ‘unless we wish anarchy to prevail within the [] judicial system, a precedent of this Court must be followed by the lower [] courts ...’”).

should disregard the doctrine of stare decisis and overturn an established rule of law. . . . Through stare decisis, the law has become a disciplined art--perhaps even a science--deriving balance, form and symmetry from this force which holds the components together. It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law. Stare decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.

Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions--a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law. . . .

To be uniformly applied, and equally administered, the rules of law should be both just and adaptable to the society they govern. A bad law uniformly administered is equally unjust and uniformly bad. If a rule laid down by the courts proves in time to be a bad one, applying the bad rule evenly does not provide equal justice for all. It may be equal, but it will not be justice. And courts are instituted among men to do justice between them, and between men and their government. So, to do justice, courts have devised a means of getting rid of bad rules, yet, at the same time, preserving stare decisis. Rules of law, like governments, should not be changed for light or transient causes; but, when time and events prove the need for a change, changed they must be.⁶⁶

Finally, even if the Supreme Court did decide to reverse course and suddenly course, any new, easier to prove formulation of the law could not apply to Mr. Harris's case under the ex post facto clause of the Constitution. The concurring opinion of *Roy* accurately explains why:

This framework applies not only to new legislative enactments, but also to changes in the common law. *State v. Gore*, 101 Wn.2d 481, 489, 681 P.2d 227 (1984). The abandonment of the corpus delicti rule would change the legal rules to permit less testimony to convict the offender than was required when the crime in this case was originally committed and hence is not constitutionally permissible. *Tapia v. Superior Court*, 53 Cal. 3d 282, 807 P.2d 434, 279 Cal. Rptr. 592 (1991) (portions of initiative changing California's

⁶⁶ *Ray*, 130 Wn.2d at 677-78.

corroboration requirement retroactively violate rule against ex post facto legislation and will be effective only prospectively).⁶⁷

Accordingly, if the State here encourages this Court to adopt the *Angelo* Court's reasoning, this Court should and must reject it.

C. WITHOUT MR. HARRIS'S INADMISSIBLE CONFESSION, THE STATE PRESENTED INSUFFICIENT EVIDENCE FOR EITHER CONVICTION.

1. STANDARD OF REVIEW.

The substantial evidence test has been replaced by Jackson's "more rigorous review for sufficient evidence."⁶⁸ Under the more rigorous sufficiency test announced in *Jackson* and *Green*, the evidence is still viewed in the light most favorable to the State, but a jury may not make inferences based upon mere speculation or conjecture.⁶⁹ Evidence may be insufficient if the record lacks *any* evidence at all to suggest that the defendant committed the crime charged or even if there is merely a "total failure of proof" of just one element of the crime charged.⁷⁰

But, in a case that relies upon circumstantial evidence to prove any element, the record need not be so bare for the evidence to be insufficient. In such a case, evidence is insufficient to support a verdict where a reasonable juror would have had to ground his guilty verdict in speculation, rather than reasonable inferences from the facts actually proved at trial.⁷¹ A reasonable inference is one that rests on a logical deduction from proven facts.⁷² Mere proximity to

⁶⁷ *Id.* at 682 (Talmadge, J. concurring)

⁶⁸ *State v. Green*, 94 Wn.2d 216, 222, 616 P.2d 628 (1980).

⁶⁹ *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010).

⁷⁰ *Id.* (citing *Briceno v. Scribner*, 555 F.3d 1069, 1079 (9th Cir. 2009)).

⁷¹ *Id.* (citing *Juan H. v. Allen*, 408 F.3d 1262, 1277-79 (9th Cir. 2005)).

⁷² *See id.*; *Eifler v. State*, 570 N .B.2d 70, 7 5-7 6 (Ind. Ct. App. 1991).

contraband, or association with a person having possession of such contraband, for instance, is insufficient standing alone to support an inference that the defendant possessed that contraband.⁷³

With these rules in mind, we turn to the limited admissible evidence presented in Mr. Harris's case.

2. THE STATE FAILED TO PROVE THAT MR. HARRIS KNOWINGLY POSSESSED THE FIREARMS.

Possession may be actual or constructive.⁷⁴ Actual possession requires the firearms to be within the personal custody of the defendant.⁷⁵ There was no evidence that Mr. Harris ever actually possessed the firearms. Thus his possession could only have been constructive.

Constructive possession requires that a defendant have dominion and control over the firearms in question.⁷⁶ Whether a person has dominion and control is determined by the "various indicia" of dominion and control, their cumulative effect, and the totality of the situation.⁷⁷ While control need not be exclusive, mere proximity to the firearm is insufficient to prove constructive possession.⁷⁸ Likewise, knowledge of the presence of contraband, without more, is insufficient to prove dominion and control.⁷⁹

In *State v. Reiger*, the Supreme Court dismissed a special jury verdict finding that the defendants had been armed with a firearm during the course of

⁷³ See *United States v. Chambers*, 918 F.2d 1455, 1459 (9th Cir. 1990); see also *Arellanes v. United States*, 302 F.2d 603, 606 (9th Cir. 1962).

⁷⁴ *State v. Raleigh*, 157 Wn.App. 728, 737, 238 P.3d 1211 (2010).

⁷⁵ *Id.*

⁷⁶ *State v. Murphy*, 98 Wn. App. 42, 46, 988 P.2d 1018 (1999), *review denied*, 140 Wn.2d 1018, 5 P.3d 10 (2000).

⁷⁷ *State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977).

⁷⁸ *State v. Echeverria*, 85 Wn.App. 777, 783–84, 934 P.2d 1214, 1217 (1997).

⁷⁹ *State v. Hystad*, 36 Wn.App. 42, 49, 671 P.2d 793 (1983).

their attempted robbery.⁸⁰ The Court held that there was insufficient evidence to allow the question of whether the defendants possessed a firearm to go to the jury where a loaded gun was found near the location of the attempted burglary.⁸¹ The firearm was recovered in a box next to a garbage container in an alley where the defendants had been seen.⁸²

Here, setting aside the inadmissible confession and hearsay testimony, the evidence suggesting that Harris ever possessed the firearms is far more tenuous than presented in *Regier*. The only admissible evidence provided at trial connecting Harris to the firearms was 1) that the eventual possessors of one of the stolen firearms had been texting Harris, and 2) the eventual possessors were “Facebook friends” with Mr. Harris. Both facts fall well short of proving Harris’ guilt beyond a reasonable doubt.

Even viewing the facts in the light most favorable to the State, no reasonable jury could have found that Mr. Harris had dominion and control over the firearm or that he knew that it was in his possession. Because the State failed to present sufficient evidence independent from Mr. Harris’s confession, it failed to establish corpus delicti (“the body of the crime”). As a result, the trial court erred when it refused to grant Mr. Harris’ motion to dismiss.

3. EVEN IF THE STATE PROVED THE MR. HARRIS POSSESSED *SOME FIREARMS*, THE STATE FAILED TO PROVE THAT MR. HARRIS *KNEW THAT THOSE FIREARMS WERE STOLEN*.

Even if the State proved that Mr. Harris possessed a firearm, to prove the Mr. Harris possessed stolen firearms, it still had to prove that Harris knew the

⁸⁰ *State v. Reiger*, 96 Wn.2d 546, 547, 637 P.2d 236 (1981).

⁸¹ *Id.*

⁸² *Id.*

firearms that he possessed were actually stolen.⁸³ It is not enough for the State to merely prove that *some* firearms (i.e. the firearms stolen from Sportco) were stolen, and that Mr. Harris possessed *any* firearms.⁸⁴ The State must present sufficient evidence to allow a reasonable jury to rationally conclude that those firearms which were proven to be stolen from Sportco were *the same* firearms that Mr. Harris allegedly possessed at his home.⁸⁵

Here, without Mr. Harris's confession, the State failed to make that required connection. Moreover, even if the State did establish such a connection it failed to present sufficient facts, apart from his inadmissible confession, to establish that Mr. Harris knew that those firearms were in fact stolen. This court should therefore reverse and dismiss both of Mr. Harris's convictions.

D. VENUE WAS IMPROPER IN PIERCE COUNTY. FORCING MR. HARRIS TO BE TRIED IN THE WRONG COUNTY, OVER HIS OBJECTION, VIOLATED HIS STATUTORY AND CONSTITUTIONAL RIGHTS TO BE CHARGED IN THE COUNTY IN WHICH THE OFFENSE WAS COMMITTED.

Although proper venue is not an element of a crime, the Washington Constitution guarantees a criminal defendant the right to a speedy and public trial by an impartial jury "of the county in which the offense is charged to have been committed."⁸⁶ Similarly, CrR 5.1 creates additional rules with regard to Washington's venue requirement and defines what county or counties the State must file charges in depending upon where it was committed.

⁸³ *State v. McPhee* 156 Wn. App. 44, 62, 230 P.3d 284 (2010).

⁸⁴ *Id.*

⁸⁵ *See id.*

⁸⁶ *State v. Rockl*, 130 Wn. App. 293, 296, 122 P.3d 759 (2005).

As a preliminary matter, as noted in his original motion to dismiss, Mr. Harris properly preserved his venue challenge, because he filed his motion to change venue way back in July of 2012. At that time, Mr. Harris objected to venue under this statute and under the Washington State Constitution.⁸⁷

The court denied the motion. Mr. Harris again raised the motion during trial. Again, the Court denied the motion. Because the State failed to prove venue by a preponderance of the evidence, as required by *State v. Dent*, the trial court erred in refusing to dismiss the charges against Mr. Harris. Now, this court must dismiss each of the charges he was convicted of with prejudice.

In *Dent*, the Washington Supreme Court defined the duty of the State to prove Venue to the trier of fact:

If the evidence reveals a genuine issue of fact about venue, it becomes a matter for resolution by the trier of fact. If it is a jury case, it will be a jury question. The instruction should require proof by a preponderance of the evidence, not beyond a reasonable doubt.⁸⁸

Put another way, if not one element of the offense was committed within the county, then venue is not proper and any conviction in that county would violate both the defendant's statutory and constitutional rights.

⁸⁷ In July 2010, Mr. Harris moved to change venue on all charges from Pierce County to King County. The motion was heard in front of Honorable Superior Court Judge Murphy. After full argument from both sides, the court denied the motion, finding that Venue was proper in both counties. *See State v. Dent*, 123 Wn.2d 467, 480, 869 P.2d 392 (1994) (“Although the record does not reflect whether the venue issue was raised at the omnibus hearing, at least as to Dent, waiver probably did not occur here because of Dent's pretrial motions for a change of venue to King County.”).

⁸⁸ *See Dent*, 123 Wn.2d at 480.

Even taking all of the evidence admitted at trial as true, the State failed to prove beyond a preponderance of the evidence that Mr. Harris committed each of these crimes within Pierce County.

1. UNLAWFUL POSSESSION OF A FIREARM

The lack of evidence connecting Mr. Harris to a crime in Pierce County is most obvious with regard to the crimes of Unlawful Possession of a Firearm, as this crime did not require any of the property to be stolen (an argument the State will likely advance with regard to the other charges as addressed below). A person is guilty of first degree unlawful possession of a firearm if he possesses or controls a firearm after having been convicted of any serious offense. RCW 9.41.040(1)(a). The State must prove that the defendant knowingly possessed the firearm.⁸⁹

The State should concede that none of the facts offered in this case establish that a single element of this offense occurred in Pierce County. Harris' possession was alleged to have occurred at his home in White Center, Washington, King County. Harris was not alleged to have participated in the robbery, nor was any evidence presented that he ever possessed the firearms in Pierce County. The State made no showing that Harris had ever visited Pierce County. The State, then, could not have proved that any of the elements of this crime occurred in Pierce County. This charge must be dismissed.

2. POSSESSION OF A STOLEN FIREARM

Again, none of the facts introduced at trial tend to prove that Mr. Harris was ever in Pierce County during the charging period. However, the State will likely

⁸⁹ *State v. Anderson*, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000).

argue that the mere fact that the property (firearms) were stolen from Pierce County establishes venue under CrR 5.1 (allowing an offense to be charged in any county where an “element” of the offense was committed). However, such an argument should fail because it is inconsistent with the Washington State Constitution and State Supreme Court Precedent. *State v. Carrol* controls the issue here.⁹⁰ In that case, the Court analyzed an old statute that is directly on point with this case. The statute read as follows:

When property taken in one county by burglary, robbery, larceny, or embezzlement has been brought into another county, the jurisdiction is in either county.⁹¹

The statute has an identical effect as the effect of CrR 5.1 does in this case. Both statutes allow criminal defendants to be charged in a county in which the crime was not *actually* committed.

The Court’s reasoning explains why trying Mr. Harris in Pierce County simply because stolen goods from Pierce County fell upon his doorstep has violated his right to a trial in the proper venue under Washington’s constitution:

It is true that, in cases of larceny, courts have generally held that the defendant could be tried either in the county where the offense was committed or in the county to which the goods had been removed. But this is upon the theory that each asportation of the stolen property constitutes a new theft, thereby making the crime a continuing crime.

[W]here the constitution of the state provides that the accused in a criminal case is entitled to a trial by an impartial jury of the county in which the offense has been committed, it has generally been held that a statute giving jurisdiction of a prosecution to the courts of a county other than that in which the offense has been committed is

⁹⁰ *State v. Carrol*, 55 Wash. 588, 104 P. 814 (1909).

⁹¹ *Id.* at 589.

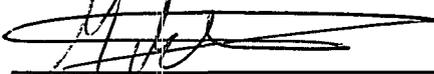
void as denying to the offender the constitutional right of a trial in his county or vicinage.⁹²

The State charged Mr. Harris with these crimes of possession, not because *possessed* the firearms in Pierce County. Rather, they charged them there because the firearms were *stolen* in Pierce County. But Mr. Harris did not steal anything, he therefore certainly did not steal anything from Pierce County. Accordingly, each of the charges should be dismissed because no reasonable fact finder could find that any of these offenses were committed in Pierce County.

VI. CONCLUSION

Mr. Harris respectfully requests that this court grant the relief as requested in this brief.

Dated November 13, 2013,



Mitch Harrison, ESQ., WSBA#43040
Attorney for Appellant

⁹² *Id.* at 590.

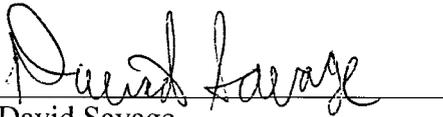
PROOF OF SERVICE

On November 14, 2013, I filed by mail the original copy and one additional copy of the attached document upon the Court of Appeals, Division II, located at 950 Broadway, Suite 300, Tacoma, WA 98402.

In addition, a copy was also sent to the Pierce County Prosecuting Attorney's Office, Appellate Unit at County-City Building, 930 Tacoma Avenue South, Room 946, Tacoma, WA 98402-217.

A copy of this motion was sent via the USPS to the appellant, Mr. Alix Harris, at his last known address of 12270 2nd Ave SW, Seattle, WA 98146-2935.

Dated this 14th day of November, 2013,



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