

NO. 47606-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Appellant

v.

GARRETT THOMAS SYFRETT, Respondent

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-02430-4

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

- I. **Assignments of error from trial court’s “Order Granting Defense Motion; Order of Dismissal with Prejudice”**
 - a. The trial court erred when it failed to assume the truth of the State’s evidence and all reasonable inferences from it in a light most favorable to the State.
 - b. The trial court erred in holding that the State was required to provide independent evidence of “sexual contact” in order to establish the *corpus* of Child Molestation in the First Degree.
 - c. The trial court erred by holding that the State failed to establish prima facie evidence of the corpus delicti of the crime of Child Molestation in the First Degree.
 - d. The trial court erred in by dismissing the case based on its holding that the State failed to establish prima facie evidence of the corpus delicti of the crime of Child Molestation in the First Degree.
- II. **Assignments of error from trial court’s “Memorandum of Disposition”**
 - a. The trial court erred in granting Syfrett’s motion to dismiss.

ISSUES PRESENTED

- I. **The State presented sufficient independent evidence that a touching of a sexual organ of the victim occurred such that the *corpus* of the crime of Child Molestation in the First Degree was established.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Garrett Syfrett, was charged by information with Child Molestation in the First Degree for an incident occurring between January 1, 2003 and December 31, 2006. CP 1. Mr. Syfrett filed a motion dismiss based on CrR 8.3(c) and the *corpus delicti* rule and a memorandum in support of his motion. CP 8-17.

On April 17, 2015, The Honorable Robert Lewis held a hearing on the motion dismiss. RP 1-35. Following the hearing, the trial court dismissed the State's case pursuant to Mr. Syfrett's motion and the *corpus delicti* rule. CP 42; RP 34. The State filed a motion to reconsider, and that motion was argued on May 8, 2015 at which time the trial court denied the State's motion and entered its formal "Order Granting Defense Motion; Order of Dismissal with Prejudice." CP 43-45, 51-54; RP 39-46. This timely appeal followed. CP 55.

B. STATEMENT OF FACTS¹

Denise Syfrett has four children, including two boys; Garrett Syfrett and Gideon Syfrett. CP 5. Garrett's date of birth is September 28, 1983 and Gideon's is October 7, 1985. CP 1, 23. Denise Syfrett's niece,

¹ To avoid confusion this brief will reference each person by his or her first name. No disrespect is intended.

Christine Simpson, has two children of her own named E.N.S. and J.S. CP 4. E.N.S. was born on August 8, 2001. CP 4. For about a year, around 2004 or 2005, Denise babysat E.N.S. and J.S. while Christine was in beauty school. CP 4, 6.

The investigation² into Garrett began when, as part of a pre-employment background check with the Pierce County Sheriff's Office, Garrett indicated that he had committed child molestation in the past. CP 4. Garrett typed an explanation stating that 10 to 15 years prior he had inappropriately touched a few young girls. CP 4. The background investigator contacted him via telephone and Garrett told her when he was in his late teens he put his hand down his cousin's (Christine Syfrett) daughter's (E.N.S.) pants. CP 4. He said that he left his hand there for a second and then realized it was wrong and pulled his hand out. CP 4. He told the background investigator that he was 17 or 18 years old at the time and the victim, E.N.S. was 3 to 4 years old. Garrett told the investigator that the incident occurred between 2000 and 2002 at his parent's house. CP 4.

Garrett also told his friend Patrick Morgan who works for the Renton Police Department about what he did to E.N.S. CP 4-5. The police

² This information is taken almost directly from the probable cause statement, which both parties below utilized in their briefs to communicate the facts of the case to the trial court and which the trial court reviewed and utilized in its decision. CP 9, 51-52.

investigator in this case contacted Mr. Morgan who relayed what Garrett had told him. CP 4-5. Garrett told Mr. Morgan that approximately 15 years ago he inappropriately touched a 3 year old girl. CP 5. Garrett said that the girl was a distant relative but that he did not see her anymore. CP 5. Garrett told Mr. Morgan that he touched the young girl out of curiosity, not for sexual gratification and that he had very little sexual knowledge, was a very sheltered kid, never had sex education, and that his parents never talked to him about sex. CP 5.

Following the conversation with Mr. Morgan, the police investigator in this case authored a search warrant to get the documents that Garrett had filled out for his Pierce County background investigation. CP 5. As part of the service of the warrant, the investigator was informed that Garrett had also confessed to his boss, Chief Egan, at his job at Border Patrol. CP 5. When the investigator contacted Chief Egan he learned that Garrett had appeared at Chief Egan's door and informed him that he had touched or fondled a young girl when he was younger and approximately 12 years ago. CP 5.

The investigator then spoke with Christine Simpson, E.N.S.'s mother. CP 5. Christine told the investigator that she was not aware of any sexual abuse, however, when E.N.S. was 3 or 4 years old she stated that Gideon touched her potty. CP 5. She explained that when they got

home one day after picking up E.N.S. and J.S. from Denise Syfrett's that E.N.S. said "Gideon touched my potty."³ CP 5. She reported that the statement was completely out of the blue and that E.N.S. could not tell her anything else.

Christine indicated that she had talked to her mom, Becky Syfrett, about the statement. CP 5. Christine and Becky figured Gideon must have done something akin to helping E.N.S. after she used the bathroom. CP 5. Christine decided not to tell Denise about the statement. CP 5. However, after E.N.S.'s disclosure, E.N.S. stopped playing with Gideon, Christine stopped using Denise as a babysitter, and E.N.S. had little contact with Gideon or the other Syfrett children. CP 5. E.N.S. could not recall anything that had happened when questioned by the investigator. CP 5.

Finally, the investigator interviewed Garrett. CP 5. Garrett disclosed that one day when he was a teenager and his mom was watching his cousin's 3 year old daughter (E.N.S.), he and E.N.S. began rough housing in the living room. CP 5. He said that for some reason his "brain went who knows where and he put his hands down her pants." CP 5. He

³ It is the State's position that E.N.S. misidentified her abuser. Garrett was actually the one that touched her "potty." This is borne out by the numerosity of his confessions and the fact that he identifies the time period of his crime, which was contemporaneous to E.N.S.'s statement and the time in which he had access to E.N.S. Moreover, it is not at all surprising that a three or four year old girl would confuse the identity of two brothers who were very close in age and close in appearance. Nonetheless, as explained below, this misidentification does not impact the legal analysis. Rather, the statement itself bolsters Garrett's confession.

said it was really quick and only happened one time. CP 5. Garrett's mom, Denise was on the phone in the kitchen, which was around the corner but no one else was home or present when this occurred. CP 5. Garrett further explained he was sexually curious. CP 5. He stated that on the day in question that he and E.N.S. were playing around and he was throwing her and catching her. CP 5. He said that while he was doing this he was purposely touching her vagina area on the outside of her clothing, which occurred 2-3 times. CP 5.

He said he got an erection while playing with E.N.S and at one point he caught her and laid her on her back against his chest. CP 5. When this happened he rested his hands on top of her vagina area. CP 5. Garrett then placed his right hand inside her pants and underwear and touched her naked vagina with his two fingers for a few seconds. CP 5. Garrett described her vagina as feeling soft, dry and smooth. CP 5. He denied any penetration occurred but described rubbing her vagina with his two fingers. CP 5. Garrett got nervous because his mom was in the next room so he pulled his hand from E.N.S.'s underwear and went to the restroom. CP 5. Garrett denied masturbating or ejaculating during or after the incident. CP 5.

Garrett explained that this incident occurred at his parents' residence where he lived at the time with his three siblings. CP 6. Garrett

admitted he was probably 19-20 years old when this occurred. CP 6. He described E.N.S. as a little chubby with dark hair. CP 6. He explained that she was well spoken and he believes that she called him Garrett. CP 6. Garrett said that E.N.S. did not come over after that and he did not see her again for a few years and when he did see E.N.S. again she was always quiet and shy around him. CP 6.

Garrett also acknowledged touching other girls when they were young, to include his sister, and watching his sisters shower when they were younger. CP 6. Denise Syfrett stated that she did babysit E.N.S. when E.N.S. was about three and recalled Garrett getting in trouble for either looking at or touching one of his sisters when the sister was young. CP 6. Denise stated that she could not remember the details of that incident and was not going to incriminate her son. CP 6.

ARGUMENT

- I. **The trial court erred when it dismissed Mr. Syfrett's case based on the State's failure to establish prima facie evidence of the corpus delicti of the crime of Child Molestation in the First Degree because the State presented sufficient independent evidence that a touching of a sexual organ of the victim occurred .**

In this case, the trial court, after reviewing the pleadings and the probable cause statement, and considering the parties oral arguments held that "all of the evidence, when viewed in a light most favorable to the

State, is insufficient to prove, prima facie, that *sexual contact* occurred with someone.” CP 53 (emphasis added). More specifically, the trial court found that the statement, “Gideon touched my potty” only “shows that someone may have helped her after she had gone to the bathroom. . . . This statement alone describes innocent contact and there is no other evidence that it was evidence of *sexual contact*.” CP 52 (emphasis added). The trial court did agree with the State, however, that E.N.S.’s identification of Gideon as her abuser was not relevant to its *corpus delicti* determination because identity is not part of the *corpus delicti*. CP 52. The trial court then dismissed the State’s case for failure to establish the *corpus delicti* of child molestation. CP 53-54. As argued below, the trial court erred in dismissing the case.

The *corpus delicti* or “body or substance of the crime” rule exists to protect a defendant “from being convicted based solely on a false confession and to protect an accused . . . [from having] confessions secured through police abuse” admitted into evidence. *State v. Mathis*, 73 Wn.App. 341, 345-46, 869 P.2d 106 (1994) (citing *State v. Vangerpen*, 71 Wn.App. 94, 98, 856 P.2d 1106 (1993)); *Bremerton v. Corbett*, 106 Wn.2d 569, 576–77, 723 P.2d 1135 (1986). The rule is one of evidentiary sufficiency and of admissibility. *State v. Dow*, 168 Wn.2d 243, 251, 227 P.3d 1278 (2010). At its most basic, the rule requires the State to produce

independent evidence that provides “*prima facie* corroboration of the crime. . . .” *State v. McPhee*, 156 Wn.App 44, 60, 230 P.3d 284 (2010) (citation omitted).

“Proof of the identity of the person who committed the crime is not part of the *corpus delicti*. . . .” *Corbett*, 106 Wn.2d at 574; *State v. Hummel*, 165 Wn.App. 749, 759, 266 P.3d 269 (2012) (citation omitted). Neither is the State required to establish, as part of a *corpus delicti* challenge, “the appropriate mental state (intent, recklessness, negligence). . . .” *State v. Angulo*, 148 Wn.App. 642, 656, 200 P.3d 752 (2009); *State v. C.M.C.*, 110 Wn.App. 285, 289, 40 P.3d 690 (2002) (holding that “[w]hile the *mens rea* is an essential element of the offense, it is separate and distinct from the initial question of whether the body of the crime has been established”) (citing *State v. Aten*, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996)). Accordingly, the rule does not require State to present “evidence of the mental state applicable to a specific degree of the alleged crime” in order to establish the *corpus delicti*. *Hummel*, 165 Wn.App. at 763-66; *See also Angulo*, 148 Wn.App. at 656-57. Thus, the proposition that the “mental element of the felony charged need not be proved by independent evidence prior to trial use of a defendant's confession when that element of the crime charged provides merely the degree of the generic crime charged” remains good law. *State v. Mason*, 31 Wn.App 41, 48, 639 P.2d

800 (1982); *Hummel*, 165 Wn.App. at 763-66; *Angulo*, 148 Wn.App. at 656-57, 59. This follows from the fact that the “*corpus delicti* corroboration rule” is focused “on whether a criminal act has been established” and is not served by trying to apply it to the “elements of the crime.” *Angulo*, 148 Wn.App. at 658-59; *State v. Burnette*, 78 Wn.App. 952, 956, 904 P.2d 776 (1995) (holding that “Washington’s *corpus delicti* rule does not require the State to establish acts constituting every essential element”).

The independent evidence used to establish the *corpus delicti* “may be either direct or circumstantial and need not be of such character as would establish the *corpus delicti* beyond a reasonable doubt or even by a preponderance of the evidence.” *Hummel*, 165 Wn.App. at 759 (citation omitted). The State can establish the *corpus delicti* so long as the evidence is “of sufficient circumstances which would support a logical and reasonable inference of the facts sought to be proved.” *Id.*; *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995) (holding that the “independent evidence need not have been sufficient to . . . even to send the case to the jury”). In analyzing whether there is sufficient evidence to support the *corpus delicti*, reviewing courts “assume[] the truth of the State’s evidence and all reasonable inferences from it in a light most favorable to the State.” *Aten*, 130 Wn.2d at 658.

State v. Ray and *State v. Grogan*, two cases applying the *corpus delicti* rule to the crime of child molestation, are instructive. 130 Wn.3d 673, 926 P.2d 904 (1996); 158 Wn.App. 272, 246 P.3d 196 (2010). In *Ray*, at approximately one in the morning, the defendant's three year old daughter came to her parents' bedroom and asked for a glass of water. 130 Wn.2d at 675, 680. The defendant, probably nude, accompanied his daughter back to her room. *Id.* The Defendant later returned to his room upset and crying. *Id.* The defendant awakened his wife and talked to her. *Id.* His wife became upset and rushed to check on their daughter. After further discussion with his wife, the defendant, who was still upset, placed an emergency call to his sexual deviancy counselor. *Id.* The defendant would later confess to his wife and to the police. *Ray*, 130 Wn.2d at 675-76. The victim was found incompetent to testify and her hearsay statements—which apparently did not shed any light on what had happened—were also ruled inadmissible. *Id.* at 676.

The defendant ended up telling the police that after he gave his daughter a glass of water and walked her back to her bedroom that he took her hand and placed it on his penis. *Id.* The defendant stated that after a few seconds his daughter pulled her hand away and said something to the effect of “don't like to touch you” and following that he returned to his bedroom. *Id.*

Ray held that “[t]o establish the corpus delicti of first degree child molestation, the State had to establish, independent of Defendant's confession, that *touching of the sexual organs occurred* between Defendant and [the victim].” 130 Wn.2d at 680 (emphasis added). Notably, the court did not hold, for the purpose of establishing *corpus delicti*, that the State had to present evidence of “sexual contact” or that the “touching of the sexual organs” was for sexual gratification. *Id.* Based on the sparse independent evidence in the case surrounding the defendant getting a glass of water for his daughter, the court concluded that while the “facts suggest something out of the ordinary occurred, . . . it is a leap in logic to conclude that any kind of criminal conduct occurred.” *Id.* As a result, *Ray* held that the trial court had correctly dismissed the case against the defendant for a failure to establish the *corpus delicti*. *Id.* at 681.

In *Grogan*, the six-year-old victim and her sister were being bathed by a family member at the defendant’s home when the victim said “Pap-pa or Pop-pa-has touched me down there.” 158 Wn.App. at 274. When the family member bathing the victim asked where she meant, the victim pointed toward her vagina and then pointed toward the defendant and his wife. *Id.* The defendant would later tell the victim’s stepfather “I touched [the victim] inappropriately.” *Id.* at 275.

Grogan held that the victim’s statement and her pointing “in conjunction with . . . testimony that [the defendant] admitted inappropriately touching [the victim] provide the necessary corroborative independent evidence of the corpus delicti of first degree child molestation.” *Id.* at 276. Consequently, the court affirmed his conviction. *Id.*

In the field of the *corpus delicti* case law, *Ray*’s holding, that the *corpus delicti* of child molestation is “that touching of the sexual organs occurred,” and *Grogan*’s application of the *corpus delicti* rule in the context of a child molestation case are correct. 130 Wn.2d at 680; 158 Wn.App. at 276. These cases are correct because, as established above, the required mental state of the crime at issue is not part of a *corpus delicti* challenge and in such a proceeding the State need not establish it. *Angulo*, 148 Wn.App. at 656-57; *C.M.C.*, 110 Wn.App. at 289. Thus, in a child molestation case when a *corpus delicti* challenge is brought, the State need not establish the mental state of the crime, i.e., that the defendant acted “for the purpose of gratifying sexual desire.” RCW 9A.44.010(2); *State v. French*, 157 Wn.2d 593, 611, 141 P.3d 54 (2006) (holding that to convict a defendant of the crime of child molestation the State must show the defendant acted with the “purpose or intent” to gratify sexual desire).

It necessarily follows, as stated in *Ray*, that body of the crime of child molestation is just the touching of the sexual organs. Moreover, “[p]roof of the identity of the person who committed the crime is not part of the *corpus delicti*. . . .” *Corbett*, 106 Wn.2d at 574; *Hummel*, 165 Wn.App. at 759. Ultimately then, in order to defeat a *corpus delicti* challenge in a child molestation case, the State must provide sufficient independent evidence that supports a logical and reasonable inference that a touching of a victim’s sexual organ⁴ occurred.

An appellate court reviews a trial court’s *corpus delicti* ruling *de novo*. *State v. Green*, 182 Wn.App. 133, 143, 328 P.3d 988 (2014); *State v. Pineda*, 99 Wn.App. 65, 77-78, 992 P.2d 525 (2000) (citations omitted). Also, just as a trial court must, reviewing courts shall “assume the truth of the State’s evidence and view all reasonable inferences therefrom in the light most favorable to the State.” *Green*, 182 Wn.App. at 143 (citing *Aten*, 130 Wn.2d at 658).

Here, by way of E.N.S.’s statement and the context in which it was made, the State provided sufficient independent evidence that supports a logical and reasonable inference that a touching of a sexual organ of E.N.S. occurred. E.N.S. told her mother that “Gideon touched my potty.” CP 5. When a three or four-year-old girl spontaneously exclaims that a

⁴ Or that the victim touched a sexual organ of another.

teenage or slightly older boy—who is not her babysitter, not her brother, and not tasked with her care, but had been present and had the opportunity—has touched a sexual organ of hers it is a logical and reasonable inference that the touching occurred. Moreover, in assuming the truth of the State's evidence and viewing all reasonable inferences therefrom in the light most favorable to the State, the conduct of *that* teenage or slightly older boy touching a sexual organ of a three or four-year-old girl is more likely to be of a criminal nature than one of innocence.

This case is legally indistinguishable from *Grogan* and plainly distinguishable from *Ray*. Both here and in *Grogan* an extremely young girl stated without prompting that a male had touched a sexual organ of hers. Both defendants confessed, though the defendant in *Grogan* only admitted that he “touched [the victim] inappropriately” and Garrett confessed his crime in more detail to more people and more times. In *Grogan*, this was sufficient to establish the *corpus* of the crime.

Ray, meanwhile, correctly held that suspicious circumstances surrounding the defendant’s confession did not, alone, suffice to establish the *corpus delicti* of the crime. Importantly, those circumstances involved a *father* getting out of bed to get a glass of water for his *daughter*. Moreover, his daughter did not make a statement alleging a sexual organ

of hers was touched. Thus, an inference of innocence from the evidence was much more plausible there, even taking the facts in a light most favorable to the State. Accordingly, the two key distinctions between this case and *Ray* are (1) the victim in this case made a statement alleging a sexual organ of hers was touched and (2) the person who confessed and who the victim alleged touched a sexual organ of hers were both teenage or slightly older boys who were not her babysitter, were not her brother, and not tasked with her care.

Because review of the trial court's decision is *de novo* this court should not give any weight to the trial court's reasoning especially where the trial court erred by (1) not assuming the truth of the State's evidence and viewing all reasonable inferences therefrom in the light most favorable to the State, despite its claims to the contrary; and (2) holding that the State needed to provide evidence of "sexual contact." CP 52-53; RP 33-35.⁵ In reference to E.N.S.'s statement that "Gideon touched my potty," the trial court reasoned:

That statement alone shows that someone may have helped her after she had gone to the bathroom. In fact, her mother believed it was just that and did not inquire further nor did the child offer anything else. This statement alone describes

⁵ As part of its oral ruling the trial court stated: "there's no other evidence that indicates [the statement] was a description of sexual contact. So for that reason, it standing alone, would not be sufficient to show that sexual contact, *as that term is defined*, occurred." (emphasis added) .

innocent contact and there is no other evidence that it was evidence of sexual contact.

CP 52. The trial court continued by claiming that the statement “is equally susceptible to an act of innocent conduct as well as a potentially criminal act.” CP 53.

First, this reasoning cannot be sustained when, as argued above, a three or four-year-old girl spontaneously exclaims that a teenage or slightly older boy—who is not her babysitter, not her brother, and not tasked with her care—has touched a sexual organ of private part of hers, and undoubtedly such reasoning does not assume the truth of the State's evidence and view all reasonable inferences therefrom in the light most favorable to the State. This is especially the case where the trial court used E.N.S.'s mother's comment that she believed E.N.S.'s statement meant that Gideon helped her use the bathroom to bolster the proposition that the conduct in question was innocent while ignoring the fact that E.N.S.'s statement troubled her mother to the extent that she: (1) discussed the statement with her own mother; (2) had E.N.S. stop playing with Gideon; (3) stopped using the defendant's and Gideon's mother as a babysitter; and (4) limited the contact E.N.S had with the Syfrett children. CP 5. While E.N.S.'s mother's belief may not be relevant independent evidence of the *corpus delicti*, viewed in the light most favorable to the State, her beliefs

and actions suggest it was not innocent contact and that the Syfrett male children did not have her permission to help E.N.S. use the bathroom. Accordingly, when the trial court enlisted evidence of E.N.S.'s mother's belief to support its reasoning, it construed the evidence in a light most favorable to Garrett.

Second, as shown above, the State was not required to show evidence of "sexual contact" as defined by RCW 9A.44.010(2) because such proof would require evidence of a mental state, which is not required by the *corpus delicti* rule. Rather, the State only had to show that "touching of the sexual organs occurred" and the trial court erred when it held otherwise. *Ray*, 130 Wn.2d at 680. E.N.S.'s statement, combined with the nature of her relationship with Garrett, is sufficient under *Ray* and *Grogan* to show that "touching of the sexual organs occurred." As a result, the State satisfied the *corpus delicti* rule.

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CONCLUSION

For the reasons argued above, the trial court's order suppressing evidence and dismissing this case should be reversed.

DATED this 25 day of Sept, 2015.

Respectfully submitted:

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