

FILED  
Court of Appeals  
Division II  
State of Washington  
11/14/2017 9:51 AM  
No. 49355-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**JENNIFER KAY THAYER,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Supplemental Brief**

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## I. ISSUES

- A. Did the State present independent evidence sufficient for prima facie corroboration of each count of Unlawful Possession of a Controlled Substance as charged?
- B. Did the State sufficiently present prima facie corroboration that the prescriptions were obtained under fraudulent means?
- C. Did the trial court's findings support Thayer's convictions for each individual count?

## II. STATEMENT OF THE CASE

Carole Smith is a DSHS employee who works for Residential Care Services in the licensing and compliance of adult family homes. 3RP 12-13.<sup>1</sup> As part of her duties, Ms. Smith looks at medication log management systems, commonly referred to as "MAR" sheets to ensure compliance. 3RP 17-19. It is a requirement by law that MAR sheets are filled out as caregivers administer medications to residents at adult family homes. 3RP 19-20.

Ms. Smith looked at the MAR sheets for Margaret Greear in January 2016. 3RP 20. Thayer was one of Ms. Greear's caregivers. 3RP 21. Vicodin, also known as hydrocodone, was one of the medications Ms. Greear was prescribed and administered by her

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<sup>1</sup> The State will use the same designations for the verbatim report of proceedings as Appellant has for consistency. There are five volumes, which are not consecutively paginated. The VRP containing 4/5, 4/14, 5/26, 6/2, 6/9, and 6/23/16 will be 1RP; the VRP with 6/24/16 will be 2RP; the VRP with 6/27/16 will be 3RP; the VRP with 7/7/16 will be 4RP, and the VRP with 8/23/16 will be 5RP.

caregivers. Ex 4.<sup>2</sup> The Vicodin was not in the log, and Thayer was keeping it in a location away from Ms. Greear's other medications. RP 24-5. Ms. Smith discovered there were 117 pills missing from Ms. Greear's prescription. 3RP 26-27.

Between June 2015 and December 2015 Ms. Greear was not given a single hydrocodone pill. Ex 6-12. Despite Ms. Greear not being administered hydrocodone during this period, her prescription was still being written and filled. Ex 1-3. Thayer signed for Ms. Greear's hydrocodone prescription when she picked up during those months. Ex 2-3. When confronted Thayer admitted she was filling the prescription, paying for them herself, and consuming Ms. Greear's hydrocodone. 3RP 43-45.

On March 16, 2016 the State filed an information charging Thayer with Count I: Possession of a Controlled Substance, to-wit Hydrocodone. CP 1-2. The affidavit of probable cause alleged that Thayer was an employee at Adult Family Care at Park Place in Centralia and an audit discovered that Thayer had obtained hydrocodone pills for a resident but used them herself. CP 3-4.

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<sup>2</sup> The State will be doing a supplemental Clerk's Papers were it designates all of the trial exhibits found on CP 27. The State will cite to these exhibits as Ex and their number found on the exhibit list.

The State filed an amended information on June 3, 2016 charging Thayer with eight counts of Possession of a Controlled Substance, to-wit: Hydrocodone. CP 16-21. All counts included the allegation the aggravating factor the defendant used her position of trust, confidence or fiduciary responsibility to facilitate the crimes. CP 16-20.

Thayer waived jury trial and proceeded to have her case tried to the bench. 3RP; CP 22, 24-26. The State dismissed Counts I and VIII prior to trial commencing. 3RP 4. The trial judge found Thayer guilty of the remaining counts, II-VII. 3RP 56; CP 49-52. The trial judge also found the aggravating factor. 3RP 58; CP 52.

Sentencing occurred on August 23, 2016. 5RP. Findings of Fact and Conclusions of Law for the Bench Trial were not entered. See 5RP. The State recommended an exceptional sentence of a year and a day. 5RP 2. Thayer's trial counsel asked the trial judge to impose 30 days. 5RP 3. The trial judge sentenced Thayer to six months in the county jail. 5RP 7. The sentence was stayed pending the appeal. 5RP 9.

Thayer timely appeals her conviction. CP 41. After the State received Appellant's Opening Brief the trial court entered the Findings of Fact and Conclusions of Law from the Bench Trial. CP

49-52. The State responded to initial briefing and this second round of briefing has been allowed to deal with the substantive issues now that the Findings of Fact and Conclusions of Law have been entered.

The State will supplement the facts as necessary throughout its argument below.

### III. ARGUMENT

#### A. THE STATE SUFFICIENTLY ESTABLISHED *CORPUS DELICTI* FOR THE CHARGED CRIMES, THEREFORE, THAYER'S STATEMENTS WERE ADMISSIBLE AND THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING OF GUILT.

Thayer argues the State failed to sufficiently establish *corpus delicti* prior to the trial court admitting her statements regarding her possession and consumption of Ms. Greear's hydrocodone. Thayer argues that absent her incriminatory statements the State does not have sufficient evidence to convict her of the charged crimes, which is evidenced by the trial court's Findings of Fact and Conclusions of Law. Thayer's analysis is incorrect. The State sufficiently established prima facie corroboration of possession of a controlled substance on all dates charged. The trial court correctly admitted Thayer's statements, denied Thayer's motion to dismiss, and found her guilty of all charged counts. This Court should affirm.

## **1. Standard Of Review.**

Review of a trial court's determination that *corpus delicti* has been established is reviewed de novo. *State v. Pineda*, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000).

Sufficiency of evidence following a bench trial is reviewed for "whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court's conclusions of law." *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244 (2015) (citation omitted). Unchallenged findings are verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011).

A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

## **2. The State Presented Independent Evidence Sufficient For Prima Facie Corroboration Of Each Count Of Possession Of A Controlled Substance As Charged.**

The *corpus delicti* rule requires the state to present evidence sufficient to support the inference that a criminal act has occurred prior to the admission of the defendant's statements. *State v. Brockob*, 159 Wn.2d 311, 327-28, 150 P.3d 59 (2006). This rule ensures that a criminal defendant's statements, with nothing more,

will not be sufficient evidence to convict him or her of a crime. *Brockob*, 159 Wn.2d at 328.

The State is required to “prove every element of the crime charged by evidence independent of the defendant’s statement.” *State v. Dow*, 168 Wn.2d 243, 254, 227 P.3d 1278 (2010). The evidence is reviewed in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328. The independent evidence need not be sufficient to support a conviction against the defendant, but must provide a prima facie showing that there is corroborative evidence of the crime that the defendant describes in his or her statement. *Id.*

The evidence presented also must be consistent with guilt and inconsistent with a hypothesis of innocence. *Id.* at 329. If the independent evidence supports reasonable and logical inferences of both guilt and innocence, then it is insufficient to corroborate a criminal defendant’s admissions of guilt. *Id.*

The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration of the crime described in the defendant’s incriminating statement. Prima facie corroboration of a defendant’s incriminating statement exists if the independent evidence supports a logical and reasonable inference of the facts sought to be proved.

*Id.* (citations and emphasis omitted).

Identity of the person who has committed the crime is not an element of *corpus delicti*. *State v. Zillyette*, 163 Wn. App. 124, 129, 256 P.3d 1288 (2011). The State only needs to prove “that a crime was committed by someone.” *Zillyette*, 163 Wn. App. at 129 (citations and internal quotations omitted). “The State must present evidence independent of the incriminating statement that the crime a defendant *described in the statement* actually occurred.” *Brockob*, 159 Wn.2d at 328 (emphasis original).

There are exceptions to all rules, and that includes the identity exception of the *corpus delicti* rule. *State v. Solomon*, 73 Wn. App. 724, 728, 870 P.2d 1019 (1994). There are certain crimes that have been recognized by the courts in Washington that require the identity of a particular person to be established as part of the *corpus delicti*. *Solomon*, 73 Wn. App. at 728. “Those crimes, however, inherently require proof of identity; the fact that a crime occurred cannot be established without the identification of a particular person. Possession of a controlled substance is not a crime of that nature.” *Id.*

In *Solomon*, the police went into a house where cocaine was found inside a bedroom of an apartment. *Id.* at 729. The apartment was inhabited. *Id.* The court found the evidence supported a “logical

and reasonable deduction that someone possessed a controlled substance.” *Id.* This was sufficient, prima facie corroboration, independent of the defendant’s admissions, to establish *corpus delicti* of possession of a controlled substance. *Id.*

Thayer was charged, by Amended Information, of eight counts of Possession of a Controlled Substance, to wit: Hydrocodone. CP 16-21. The State dismissed Counts I and VIII the morning of trial. 3RP 4. This left the State to prove Possession of a Controlled Substance, to wit: Hydrocodone, on or about the following dates, June 8, July 6, August 11, September 9, October 15, and November 17, 2015.

In the present matter, Thayer argues the only evidence the State presented was that she lawfully possessed Ms. Greear’s prescriptions because she was Ms. Greear’s caregiver. According to Thayer, she lawfully picked up Ms. Greear’s prescriptions on June 8, July 6, August 11, September 9, October 15, and November 17, 2015 pursuant to the caregiver exemption to pick up prescriptions for people who are in their care. Brief of Appellant 18. According to Thayer, without her statements, either to Ms. Smith, or to Detective Seiber, the State would not have been able to establish the *corpus delicti* of possession of a controlled substance on the charged dates.

Therefore, Thayer argues, the State did not meet its burden under *corpus delicti*, and the trial court improperly admitted Thayer's statements, which led to Thayer's conviction on insufficient evidence.

Thayer's analysis is flawed. The State had to provide sufficient prima facie corroboration that there was possession of a controlled substance on or about the following dates, June 8, July 6, August 11, September 9, October 15, and November 17, all in 2015. CP 16-20. Ms. Greear had a prescription for hydrocodone, dating back to April 22, 2014. Ex 4. In April 2015 Ms. Greear's MAR sheet shows she was administered 73 hydrocodone pills that month. Ex 4.<sup>3</sup> There are two days in April Ms. Greear was not given hydrocodone, Easter Sunday and the following Monday. *Id.* The last three days of the month she was only given one hydrocodone pill each day. *Id.*

In May 2015 Ms. Greear was administered two hydrocodone pills. Ex 5. Ms. Greear was given one pill on May 1 and the second on May 2. *Id.* There are no other notations for hydrocodone being given to Ms. Greear in the month of May 2015. *Id.*

On June 8, 2015 Ms. Greear's doctor wrote her a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 1). That prescription

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<sup>3</sup> Ms. Smith testified to 61, but the State's reading of the MAR sheet leads it to believe the correct number was 73. Ms. Smith does qualify her statement by saying, "I think a total of 61..." See 3RP 26; Ex 4.

was filled at Halls Drug Center in Centralia on June 8, 2015. Ex 3. The prescription was picked up by Jennifer Thayer. *Id.* Ms. Greear's MAR sheet for June 2015 indicates she was not given a single hydrocodone pill that month. Ex 6.

On July 7, 2015 Ms. Greear's doctor wrote her a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 2) That prescription was filled at Halls Drug Center in Centralia on July 6, 2015. Ex 2. The prescription was picked up by Jennifer Thayer. *Id.* Ms. Greear's MAR sheet for July 2015 indicates she was not given a single hydrocodone pill that month. Ex 7.

On August 3, 2015 Ms. Greear's doctor wrote her a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 3). That prescription was filled on August 11, 2015 at Halls Drug Center in Centralia. Ex 3. The prescription was picked up by Jennifer Thayer. *Id.* Ms. Greear's MAR sheet for August 2015 indicates she was not given a single hydrocodone pill that month. Ex 8.

On September 9, 2015 Ms. Greear's doctor wrote a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 4). Ms. Greear's MAR sheet for September 2015 indicates she was not given a single hydrocodone pill that month. Ex 9.

On October 15, 2015 Ms. Greear's doctor wrote a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 5). That prescription was filled at Halls Drug Center in Centralia on October 15, 2015. Ex 2. The prescription was picked up by Jennifer Thayer. *Id.* Ms. Greear's MAR sheet for October 2015 indicates she was not given a single hydrocodone pill that month. Ex 10.

On November 17, 2015 Ms. Greear's doctor wrote a prescription for hydrocodone, quantity 120 pills. Ex 1 (pg. 6). That prescription was filled at Halls Drug Center in Centralia on November 17, 2015. Ex 2. The prescription was picked up by Jennifer Thayer. *Id.* Ms. Greear's MAR sheet for November 2015 indicates she was not given a single hydrocodone pill that month. Ex 11.

The State, through the documented evidence, the prescriptions, receipts from the pharmacy, and MAR sheets, provided prima facie corroboration that someone possessed a controlled substance on or about June 8, July 6, August 11, September 9, October 15, and November 17, 2015. From June to November Thayer (or in September another person) collected 120 hydrocodone pills each month through fraudulent means. That is a total of 720 pills that were not being given to Ms. Greear. While there may be some exception that allows a caregiver to pick up medication

for a client, that exception only works if the client actually needs and is being given the medication. See 3RP 36, 39.

When Ms. Smith conducted her compliance audit of the adult care home that Ms. Greear lived in, there was no evidence Ms. Smith found a stockpile of Ms. Greear's hydrocodone pills, to the tune of 6 bottles and 720 missing pills. See 3RP. This would be in addition to the number of pills Ms. Smith found missing from the April 2015 hydrocodone prescription bottle. 3RP 26-27. There were only seven pills remaining from a 180 quantity hydrocodone prescription, which by the State's count had 73 pills administered to Ms. Greear. 3RP 26-27; Ex 4. This evidence is sufficient for prima facie corroboration of possession of a controlled substance on or about June 8, July 6, August 11, September 9, October 15, and November 17, 2015.

Therefore, because the State had sufficient prima facie corroboration that there was possession of a controlled substance on the charged dates the *corpus delicti* rule was satisfied. *Brockob*, 1569 Wn.2d at 329. The trial court properly admitted Thayer's statements regarding her conduct surrounding fraudulently obtaining and personally taking Ms. Greear's hydrocodone. 3RP 32, 42-45.

Thayer argues that pursuant to CrR 6.1, the trial court's findings must adequately identify the evidence it relies upon in

support of each individual count for conviction. Brief of Appellant 18-19. Thayer further argues that the only evidence that supports the multiple counts, as stated in the findings, are based upon her own admissions. Brief of Appellant 19-20. Thayer ignores the first Finding of Fact entered by the trial court, which states,

The parties stipulated to the relevance, accuracy, and admissibility of prescriptions issued to Margaret Greear from Hall's Pharmacy for Vicodin (hydrocodone from: June 8, 2015; July 6 2015; September 9, 2015; October 15, 2015; and November 17 2015.

CP 49. The findings also mention the MAR sheets that were checked for compliance. CP 50; Ex 4-12.

Thayer's issue with the Findings of Fact is that she believes that certain findings she has assigned error to are not supported by the record due to the State failing to establish *corpus delicti* for the charged crimes. As argued above, the State sufficiently provided prima facie corroboration that someone possessed hydrocodone on June 8, 2015; July 6 2015; September 9, 2015; October 15, 2015; and November 17, 2015. Therefore, Thayer's statements were admissible and the Findings of Fact based upon them are proper.

Contrary to Thayer's contention, the trial court did not err when it denied her motion to dismiss the multiple counts of unlawful possession of a controlled substance. As stated above, there was

ample evidence that someone possessed a controlled substance on the charged dates. Ex 1-12; 3RP 20-22, 26-27. Once this was established, Thayer's admissible statements regarding her conduct were admissible and properly admitted by the trial court. Thayer admitted she continued to have Ms. Greear's hydrocodone prescription filled, even though she had told Ms. Greear's family that Ms. Greear did not need the medication anymore. 3RP 44. Thayer was picking up Ms. Greear's hydrocodone prescriptions on the charged dates, directly paying the copays, and admitted to consuming the hydrocodone. 3RP 43-45. The motion to dismiss was properly denied and this Court should affirm the trial court's rulings and Thayer's convictions.

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**V. CONCLUSION**

The State sufficiently provided prima facie corroboration of Possession of a Controlled Substance on the charged dates, therefore Thayer's statements were admissible pursuant to the *corpus delicti* rule. This Court should find the trial court did not err in admitting Thayer's statements. There was also sufficient evidence to support each instance of Possession of a Controlled Substance, as individually charged, and this Court should affirm Thayer's convictions and the trial court's denial of Thayer's motion to dismiss.

RESPECTFULLY submitted this 13<sup>th</sup> day of November, 2017.

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**November 14, 2017 - 9:51 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49355-1  
**Appellate Court Case Title:** State of Washington, Respondent v. Jennifer Thayer, Appellant  
**Superior Court Case Number:** 16-1-00129-1

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