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Division II
State of Washington
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NO. 53370-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

VICTOR W. SPRAGUE,

Appellant.

REPLY BRIEF OF APPELLANT,
VICTOR W. SPRAGUE

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY
THE HONORABLE MICHAEL H. EVANS, JUDGE

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I. ARGUMENT IN REPLY

Mr. Sprague was convicted of possession with intent to deliver methamphetamines. He was arrested in his home with a quantity of drugs, a digital scale, and a pipe. He also made incriminating statements to police. The trial court determined that this evidence was insufficient to establish corpus delicti for possession with intent to deliver. RP at 25. However, the court found corpus delicti based on one additional factor—the presence of plastic Safeway grocery bags in Mr. Sprague’s home. *Id.* The bags were not burned, torn, or otherwise connected to packaging drugs. RP at 139, 151. This Court must reverse because a common household item, found in an unsurprising location, is consistent with innocence and not indicative of intent to deliver drugs.

Corpus delicti requires evidence sufficient to support the inference that there has been a criminal act. *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996). A defendant’s incriminating statement alone is not sufficient to establish that a crime took place. *Id.* at 655-56; *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). To satisfy corpus delicti, the state must present independent evidence to corroborate a defendant’s incriminating statement. *Aten*, 130 Wn.2d at 656.

To establish corpus delicti of possession with intent to deliver, the state must present evidence of “at least one additional factor, suggestive of intent.” *State v. Whalen*, 131 Wn. App. 58, 63, 126 P.3d 55 (2005). Evidence that is consistent with “both a hypothesis of guilt and a hypothesis of innocence” is insufficient to establish corpus delicti. *State v. Brockob*, 159 Wn.2d 311, 330, 150 P.3d 59 (2006). Specifically, evidence that is consistent with both intent to deliver and with personal use of drugs does not meet this threshold. *See id.*

In its brief, the state argues that it satisfied corpus delicti because “the evidence in this case independently corroborates” intent to deliver. Response at 7. The state points out that Mr. Sprague “was in possession of two separate baggies containing approximately nine to ten grams of methamphetamine, an operational digital scale with methamphetamine residue on it, and multiple plastic bags to be used as packaging for the methamphetamine.” *Id.*

The state’s argument fails because none of this evidence satisfies corpus delicti. First, “mere possession of a controlled substance, ***including quantities greater than needed for personal use***, is not sufficient to support an inference of intent to deliver.” *State v. Hotchkiss*, 1 Wn. App.2d 275, 280, 404 P.3d 629 (2017) (quoting *State v. O’Connor*, 155 Wn. App. 282, 290, 229 P.3d 880 (2010)) (emphasis added). Second, the trial court

correctly found that the digital scale could “equally be for personal use,” particularly when coupled with the pipe with residue. RP at 25. This is especially true considering police found “no money, no safe, no pay/owe [sheets], [and] no texts,” which is all “suggestive of personal use.” *Id.* Third, plastic Safeway bags are not sufficient to establish corpus delicti because this evidence is consistent with “both a hypothesis of guilt and a hypothesis of innocence.” *Brockob*, 159 Wn.2d at 330.

The state points to two cases to argue that it established corpus delicti. Relying on *State v. Davis*, 79 Wn. App. 591, 595, 904 P.2d 306 (1995), the state argues that the “the presence of weighing devices” indicates an intent to deliver. Response at 6. Relying on *Brockob*, 159 Wn.2d at 321, the state argues that seemingly innocuous items can establish corpus delicti when they indicate an intent to commit the charged crime. *Id.* at 9.

These arguments fail because the state ignores the context in which the items were found in both cases. In *Davis*, it appears that the defendant was stopped with “a bread sack with six individually wrapped baggies of marijuana, two baggies of marijuana seeds, a film canister containing marijuana, a baggie with marijuana residue in it, a box of sandwich baggies, a pipe used for smoking marijuana, [and] a number of knives” on his person. 79 Wn. App. at 593. In that context, possession of a scale with residue could

indicate intent to deliver drugs. Here, Mr. Sprague was not stopped with drugs and a scale on his person. Instead, police raided his home. The trial court correctly concluded that a digital scale in one's home, alongside a pipe with residue, indicates personal use. RP at 25.

The state also ignores the context in *Brockob*. In that case, the defendant was found with “three new sealed bottles of tablets containing ephedrine” in his car as well as “several loose unused coffee filters in two different sizes” in the backseat. 159 Wn.2d at 321. The Court found corpus delicti because ephedrine and coffee filters are used to manufacture methamphetamine. *Id.* at 333. The state argues that plastic Safeway bags, like coffee filters, have an innocent purpose, but can also indicate intent to commit a crime. Response at 9.

The state's reliance on *Brockob* is misplaced. It is highly unlikely that the defendant in *Brockob* was making coffee in his car, or otherwise using the filters in an innocent manner. The location of the loose filters, combined with their proximity to the ephedrine and the lack of an innocent explanation, established corpus delicti. *See Brockob*, 159 Wn.2d at 333. By contrast, Mr. Sprague had plastic Safeway grocery bags in his house. RP 139, 151. Allegedly, plastic bags can be torn or burned to package drugs, but the bags in Mr. Sprague's home were not torn or burned. *Id.* One bag was lining his trash can. RP 151. Police found no evidence that Mr.

Sprague used the bags to package drugs. RP 139, 151. This distinguishes the case from *Brockob* because here, there was no evidence connecting the bags to illicit conduct or to drugs. *See Brockob*, 159 Wn.2d at 333.

Mr. Sprague possessed methamphetamine and items consistent with personal use of methamphetamine. Like many people, he also had plastic Safeway grocery bags in his home. Absent any connection to drugs, the state cannot rely on these plastic bags to establish corpus delicti. This Court should reverse.

II. CONCLUSION

Mr. Sprague respectfully requests that this Court reverse his conviction and remand.

RESPECTFULLY SUBMITTED this 24th day of December, 2019.



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