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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 36441-1-III

*On review from Yakima County Superior Court
Cause no. 17-1-02319-7*

STATE OF WASHINGTON, Respondent,

v.

JAVIER GILES, Appellant.

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

In support of its argument that it sufficiently proved Javier Giles drove the vehicle on the night of his arrest, the State relies upon cases establishing that a registered owner's presence at the scene of an accident is sufficient corroboration to allow the owner's confession to be presented to a jury under the *corpus delicti* doctrine. *Respondent's Brief*, at 10 (citing *City of Bremerton v. Corbett*, 42 Wn. App. 45, 51 n. 7, 708 P.2d 408 (1985), *affirmed*, 106 Wn.2d 569 (1986)). But the requirement to present evidence sufficient to *prima facie* establish the *corpus delicti* of a crime is a significantly lower burden than proving the crime beyond a reasonable doubt. In affirming the Court of Appeals, the Supreme Court in *Corbett* stated:

The independent evidence need not be sufficient to support a conviction or even to send the case to the jury. Nor is it necessary that the evidence exclude every reasonable hypothesis consistent with petitioners not driving a car. "Prima facie," in this context, means only that there be evidence of sufficient circumstances which would support a logical and reasonable inference that petitioners were driving or in actual physical control of a vehicle.

106 Wn.2d at 578-79.

That the registered owner's presence at the scene of an accident may provide the *corpus delicti* to admit the owner's confession presents an entirely different question than whether the registered owner's presence

near the vehicle some distance and time from the scene of an accident in which the vehicle was believed to be involved is sufficient to prove beyond a reasonable doubt that the registered owner was the person driving the vehicle at the time of the accident. Because the express language of the *Corbett* courts acknowledges that the quantum of evidence held sufficient in that case to establish the *corpus delicti* is a lower quantum of evidence than needed to convict, the State's reliance upon *Corbett* is misplaced.

Secondarily, the State contends that by walking away from police as they approached the group of individuals standing near the vehicle, Giles' conduct amounted to evidence of flight sufficient to prove his consciousness of guilt. *Respondent's Brief*, at 11-13. In making this assertion, the State overlooks that even when evidence of flight is admissible, "it tends to be only marginally probative as to the ultimate issue of guilt or innocence." *State v. Freeburg*, 105 Wn. App. 492, 498, 20 P.3d 984 (2001). This is because an accused can have any number of reasons for wanting to avoid contact with the police that have nothing to do with guilt. In the present case, Giles was already known to police and consequently may have believed police would assume he acted wrongly rather than give him the benefit of the doubt. Furthermore, if Giles had known who was driving the car, identifying the driver to the police in

order to exonerate himself would have resulted in his being labeled as a “snitch” and placed at risk of harassment and violent retaliation. *See generally* Browning, John, *Snitches Get Stitches: Witness Intimidation in the Age of Facebook and Twitter*, 35 Pace L. Rev. 192 (2014).

Moreover, the State fails to acknowledge that Giles had no duty to cooperate with police or provide information. *State v. D.E.D.*, 200 Wn. App. 484, 494-95, 402 P.3d 851 (2017). At the time Giles walked away from the police car, the car’s emergency lights were not on and there was no indication that he was not free to leave. RP 43. Once he was detained and placed in handcuffs, Giles made no effort to escape. RP 43, 44, 185. That Giles acted consistent with his right to refuse police contact and his lack of a duty to cooperate with their investigation is a prime example why such evidence is of marginal, if any, value in determining guilt. *See Freeburg*, 105 Wn. App. at 498.

As such, the State’s argument that it met its burden relies upon (1) an effort to reduce that burden by citing to inapplicable legal principles, and (2) an effort to inflate its evidence by pointing to facts courts have recognized as having little to no value. This argument does not substitute for presenting to the jury evidence of a sufficient quantum to prove Giles’ identity as the driver of the vehicle.

II. CONCLUSION

For the foregoing reasons, Giles respectfully requests that the court
VACATE and DISMISS his convictions.

RESPECTFULLY SUBMITTED this 3 day of September,
2019.

TWO ARROWS, PLLC

A handwritten signature in black ink, appearing to read "Andrea Burkhart", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Reply Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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

Signed and sworn this 3 day of September, 2019 in Kennewick, Washington.



Andrea Burkhart

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