

NO. 93385-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 46605-8-II

STATE OF WASHINGTON, Respondent

v.

ZAIDA YESENIA CARDENAS FLORES, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-00992-7

SUPPLEMENTAL BRIEF OF RESPONDENT

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ISSUES FOR WHICH REVIEW WAS GRANTED

- I. **Whether in this criminal prosecution for assault of the defendant's own child, a jury instruction defining assault as harmful or offensive touching that would offend an ordinary person was adequate to allow the defendant to argue her theory of the case that she intentionally touched her child but accidentally injured him.**
- II. **Whether in this criminal prosecution the defendant may assert a corpus delicti argument for the first time on appeal on the basis that violation of corpus delicti rule constitutes a manifest constitutional error, and if so, whether there was sufficient evidence to support the conviction independent of the defendant's inculpatory statement, allowing admission of the inculpatory statement.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Zaida Cardenas-Flores was charged by amended information with Assault of a Child in the Second Degree for an incident that happened on or about and between December 20, 2013, through December 23, 2013. CP 3. A jury found Cardenas-Flores guilty as charged and the trial court sentenced her to a standard range sentence of 31 months. RP 429-430, 445; CP 27-37.

Cardenas-Flores appealed. CP 41. Division II of the Court of Appeals affirmed her conviction, rejecting numerous assignments of error, but remanded to the trial court on an LFO issue. Appendix A (Decision of the Court of Appeals). In affirming Cardenas-Flores' conviction, the Court

of Appeals held that the trial court's instruction defining assault, WPIC 35.50, adequately informed the jury of the applicable law and allowed Cardenas-Flores to argue her theory of the case. App. A at 14-15. In addition, the Court of Appeals held that Cardenas-Flores waived any challenge to the admission of her statements pursuant to the corpus delicti rule and that, regardless of waiver, the State presented sufficient evidence under the corpus delicti rule's sufficiency component. App. A at 7-10, 18-21. Cardenas-Flores then petitioned this Court for review.

B. STATEMENT OF FACTS

On November 28, 2013, Cardenas-Flores gave birth to a baby boy, herein referred to as CA. RP 55-56, 316, 348. Carlos Austin was the boy's father and the two parents lived together. CP 316-17, 348. On December 3, 2013, baby CA was taken to the doctor for his first regular check-up visit. RP 56, 91. Everything was normal with CA's health, but Cardenas-Flores reported a lot of stress in coping with the new baby because there was not a lot of support for her in the Vancouver area and because Mr. Austin was often at work. RP 56-58.

On December 18, 2013, Cardenas-Flores brought CA to the emergency room. RP 58. The parents reported that CA was in pain as a result of Mr. Austin rolling onto CA's leg while they were co-sleeping. RP 58-59, 152-53. Dr. Jonathan Stein examined the baby and ordered

X-rays from the hip down to the foot. RP 151, 155. In examining CA and the X-rays, Dr. Stein concluded that there were no fractures or abnormalities and that CA's leg was normal. RP 59, 93, 153-56.

On December 20, 2013, Cardenas-Flores and CA returned to their doctor's office for a check-up visit. RP 59-61. The treating doctor was told about the December 18 incident, and the doctor examined CA and reviewed the X-rays that were taken on the 18th. RP 61-62. That doctor likewise concluded that the X-rays were negative for a fracture and noticed, at most, some mild swelling on the top of the left foot. RP 62.

On December 23, 2013, the family was back at the emergency room with CA. RP 63. That day, Cardenas-Flores heard cracking coming from the baby's leg, she noticed his crying was different and uncontrollable, and that his leg was swollen and it had a lump. RP 73-74, 127, 134, 186-88, 249, 327-28, 356-57. CA was noted to be in moderate distress and irritable, and CA's left thigh appeared swollen and tender. RP 64. An X-ray of the left leg disclosed a displaced femur fracture which means a "large fracture" and a fracture where "it's not a bone with a line through it where the bone's [sic] still together . . . [but] the two pieces of bones are apart." RP 64. Furthermore, this injury was in a different area compared to where swelling was reported on December 18 and December 20, i.e., the lower leg and foot respectively. RP 65. In sum, "[t]his was a

very different type of injury than anything that was seen on the 18th or 20th.” RP 66.

Dr. Cathleen Lang, who examined and treated CA on December 23 (or early December 24), testified about the injuries CA sustained and what the injuries told her happened to CA. RP 63-138. Dr. Lang testified that the X-rays showed a displaced, oblique fracture and that the fracture was a new fracture. RP 69. With this type of fracture “any time the diaper’s [sic] changed, the leg’s [sic] moved, it’s going to be excruciating pain for the child.” RP 69-71, 74-75, 122. Dr. Lang stated that “this type of fracture is immediately obvious, immediately symptomatic. It causes immediate pain and swelling.” RP 72, 74-75, 122.

Dr. Lang testified that in her expert opinion the explanation for how CA’s injury on the December 18 occurred, Mr. Austin rolling onto CA, could not have caused the injury with which CA was presenting on December 23. RP 75, 110. As Dr. Lang explained, typically an oblique fracture is created when there is “a compression and also a torsion or twist.” RP 76.

Dr. Lang further testified that it was possible for an infant to suffer this type of injury “if the body was stabilized and someone were [sic] to grab and either yank on the leg as they’re turning the leg, that would be one potential way of doing it. Basically, anything where you exert that

force where you're compressing and then also twisting will do it." RP 79, 117-18. Moreover, she explained that this type of fracture when it occurs in a femur, one of the strongest bones in the body, requires a great amount of force and "more force than what's going to be going on in normal everyday life." RP 80, 117.

Based on her examination and speaking with the parents, whose only explanation for how the presenting injury occurred was the co-sleeping incident, Dr. Lang opined that "the injury we saw on [CA] is highly concerning for nonaccidental trauma. Because we have an unexplained fracture in a very young infant." RP 75, 80-81, 86, 136. Thus, while Dr. Lang would not rule out that accidental trauma caused the injury; she did confirm that an oblique fracture of this type is typically nonaccidental. RP 91, 138.

Detective Deanna Watkins, along with two other detectives, met with and spoke to Cardenas-Flores in the early morning hours of December 24, 2013. RP 180-81. Cardenas-Flores provided the officers the chronology of what had happened from December 18, 2013, until she brought CA to the hospital. RP 181-87, 231-33. When asked what happened to CA's leg on December 23 that could have caused his injury, Cardenas-Flores said that she did not know and that he could not have fallen and nobody could have stepped on him because he was always in

her sight. RP 188. She indicated she would have noticed if something had happened. RP 188.

At first, Cardenas-Flores told Detective Watkins that it was possible that the co-sleeping incident caused the injury. RP 222-24, 234. Soon thereafter, however, she told the detective that maybe CA being in the car seat too long caused the injury or maybe she tried to get him out of the car seat faster than she should have. RP 188, 230-34. The detectives told Cardenas-Flores that CA's injuries did not match her explanations. RP 222-24, 235. Detective Watkins asked Cardenas-Flores to tell the group what really happened. RP 223. At some point, Cardenas-Flores said she believed in God and did not want to lie, and that she would not be a good parent if she lied. RP 200, 333-34, 342-43. She continued by stating that she wanted to believe the car seat caused CA's injury but that was not what caused it. RP 200. Consequently, Cardenas-Flores told the detectives that she was desperate to get CA out of the car seat because he was crying and when she attempted to quickly pull him out his left leg got caught on a strap that was not undone. RP 200-01.

Finally, however, Cardenas-Flores's demeanor changed, she stood up from her chair, stood behind it, took a long pause and a deep breath, and said that on Monday when she put CA in the car seat that she may have put too much pressure on his leg trying to get him into it. RP 201,

246, 248, 259, 377. She admitted that she was trying to make CA's leg fit under the strap of the car seat and was having difficulties accomplishing this task so she pushed his left leg out and down to straighten it. RP 201-202, 231, 244-45, 253, 377. This was her explanation as to how the injury was inflicted and it was not suggested by the police. RP 345, 364, 375-77. Cardenas-Flores also demonstrated to the detectives how she did this by using her hands. RP 253, 336, 345, 376. When asked if she knew she broke his leg when she handled his leg in this manner she stated "I knew I did something." RP 202, 249. In response to her actions, she said that CA cried and that it was different from his normal cry. RP 202, 249. She admitted when she was told that his leg was broken she knew it was from the incident when she pushed his leg down. RP 202, 258. When asked about her previous explanation that CA may have been injured when she tried to get him out of his car seat, she confessed that the incident did not actually happen. RP 201, 235, 245-48.

At trial, Cardenas-Flores disavowed her confession, adhered to her earliest explanation that co-sleeping incident caused the injury, and explained that she only falsely confessed because the police placed her under duress and would not accept her explanations of how CA was hurt. RP 286-290, 292, 299, 332-33. Mr. Austin also provided testimony. *See*

RP 347-359. He confirmed that Cardenas-Flores told him that on December 23 she heard CA's leg crack. RP 356-57.

ARGUMENT

I. When a parent intentionally touches a child and said touching results in substantial bodily harm, that the resulting harm is “accidental” is immaterial, and a conviction for assault is proper, when the State alleges and proves the parent acted recklessly.

To convict Cardenas-Flores of assault of a child in the second degree as charged and based on an assault by battery, the State had to prove that she (1) intentionally assaulted another person (2) who was then less than 13 years old and thereby (3) recklessly inflicted (4) substantial bodily harm. RCW 9A.36.130(1)(a); RCW 9A.36.021(1)(a); *State v. Hovig*, 149 Wash.App. 1, 7-8, 202 P.3d 318 (2009).

a. Criminal Intent

Because Cardenas-Flores was charged with an assault by battery the jury was given an instruction that defined such an assault. CP 20. The jury was instructed that:

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking or [sic] is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

CP 20; WPIC 35.50. “Jury instructions are proper when they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the applicable law.” *State v. Hayward*, 152 Wn.App. 632, 641, 217 P.3d 354 (2009) (quoting *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005)).

Cardenas-Flores now argues that the above instruction defining assault relieved the State of its burden to prove “criminal intent” and prevented her from arguing her theory of the case, i.e., that she did not have the “criminal intent” to commit the crime.¹ Pet. for Rev. at 14-16. Cardenas-Flores’ argument purportedly relies on *State v. Hahn*², for the proposition that under the common law the State must prove more than “an intentional touching . . . of another person that is harmful” that, instead, there is some additional or different “criminal intent” that the State must prove. *Id.*; WPIC 35.50. A closer analysis of *Hahn* and other case law shows that no such holding exists and that this argument has already been rejected.

The assault instruction given to the jury in this case is completely consistent with established case law holding that when an assault by

¹ Defense did not object to the giving of the instruction and did not attempt to argue the theory she now raises. Instead, despite Cardenas-Flores’ claim she “never suggested that [sic] conviction required proof that she intended to cause substantial bodily injury,” she argued exactly that in her closing argument. Pet. for Rev. at 16; RP 414, 419, 421-22.

² 174 Wn.2d 126, 129, 271 P.3d 892 (2012).

battery is at issue, the State need only prove the defendant’s “intent to do the physical act constituting assault.” *State v. Keend*, 140 Wn.App. 858, 867, 166 P.3d 1268 (2007), *rev. denied*, 163 Wn.2d 1041, 187 P.3d 270 (2008); *State v. Hall*, 104 Wn.App. 56, 62, 14 P.3d 884 (2000), *rev. denied*, 143 Wn.2d 1023, 25 P.3d 1020 (2001) (holding that “[a]ssault by battery does not require specific intent to inflict harm or cause apprehension; rather, battery requires intent to do the physical act constituting assault”); *State v. Osman*, 192 Wn.App. 355, 378, 366 P.3d 956 (2016); *State v. Daniels*, 87 Wn.App. 149, 155, 940 P.2d 690 (1997). Accordingly, the argument that in an assault by battery case the “intent” to assault must require “some element of malice or ill will” has routinely been rejected. *State v. Jarvis*, 160 Wn.App. 111, 119, 246 P.3d 1280 (2011).

In *State v. Hahn*, a per curium opinion, this Court stated in passing that “[u]nder the common law, a person assaults another . . . by unlawfully touching another with criminal intent (actual battery).” 174 Wn.2d at 129 (citing *State v. Wilson*, 125 Wn.3d 212, 218, 883 P.2d 320 (1994)). *Hahn* does not provide a further analysis of what “criminal intent” means in the context of an assault, nor does *Wilson*, the case it cites. *See id.* Instead, tracing the phrase “criminal intent” back from *Hahn* and others in search of its origin leads to *State v. Krup*, 36 Wn.App. 454, 676 P.2d 507 (1984),

a case that does not use the phrase, involve an assault by battery, or provide analysis supporting a requirement that to prove an assault by battery that the State must prove more than an intentional touching that is harmful. Thus, bereft of any analysis of “criminal intent,” and lacking a citation to legal authority suggesting “criminal intent” means something different than how the jury was instructed, *Hahn* provides no persuasive reasoning or legal authority supporting Cardenas-Flores’ argument. Additionally, Cardenas-Flores fails to cite to any other authority that supports her argument that there is some different common law definition of “criminal intent” as it pertains to assault by battery. She further fails to cite any authority to support an argument that “criminal intent” means something different when the assault involves a parent and an infant.

On the contrary, the cases in which an actual assault by battery occurred, intent was raised, and the phrase “criminal intent” was used have concluded that “[c]riminal intent’ in this context means the intent to do the physical act constituting assault, not the intent that one’s actions be malicious or illegal.” *Jarvis*, 160 Wn.App at 117 FN 4 (citing *Keend*, 140 Wn.App. at 866-67; *State v. Baker*, 136 Wn.App. 878, 883-84, 151 P.3d 237 (2007)). Consequently, there is no authority for Cardenas-Flores’ proposition that the pattern “instruction is inconsistent with the common law, which requires proof of an ‘unlawful touching . . . with criminal

intent.” Pet. for Rev. at 14. Thus, the assault instruction permitted the parties to argue their theories of the case, which were supported by the law, and properly informed the jury of the applicable law.

b. “Accidental” Harm

Cardenas-Flores also argues that the court’s instruction defining assault violated her due process rights because it allowed for “conviction if Cardenas-Flores intentionally touched her child (by trying to get him into or out of his car seat) and accidentally harmed him.” Pet. for Rev. at 15. This argument and use of the term “accidentally,” which appears to be a stand in for “innocently,” ignores that the State must prove recklessness.

When an assault in the second degree is at issue, the State must prove more than just an assault, i.e., an intentional touching that is harmful, as it must also prove that in assaulting the other person the defendant “thereby recklessly inflict[ed] substantial bodily harm.” RCW 9A.36.021(1)(a). Broken into its constituent parts, this crime “is defined by an act (assault) and a result (substantial bodily harm) . . . [a]nd the mens rea of intentionally relates to the act (assault), while the mens rea of recklessly relates to the result (substantial bodily harm).” *Keend*, 140 Wn.App. at 866. Straightforwardly, a defendant could intend to assault another without intending to inflict substantial bodily harm, but still be guilty of assault in the second degree if he or she were reckless as to the

resulting harm. *Id.* at 867. One could even say that the above defendant harmed another “accidentally.” Describing the nature of the resulting harm as “accidental,” however, is irrelevant to a determination of guilt if the State proves the defendant was reckless. Recklessness is defined, and the jury was so instructed, as:

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

RCW 9A.08.010(c); CP 24.

Cardenas-Flores’ aiming of her “accidental” harm argument at the assault definition is misplaced because, even after proving an intentional touching that was harmful, the State still had to prove recklessness as to the substantial bodily harm. Pet. for Rev. at 14-16. Thus, her argument that, under the assault definition, a “parent can be convicted of assault for lifting a baby by the arms and accidentally causing ‘nursemaid’s elbow’” is not persuasive. Pet. for Rev. 14. The real question in such a situation is did the parent in intentionally lifting the baby by the arms “know of and disregard[] a substantial risk that a wrongful act may occur and . . . her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation”? RCW

9A.08.010(c). If the answer is yes, then the behavior is criminal absent some claim of lawful use of force or other defense.

Similarly, Cardenas-Flores argues that “[w]here a parent is accused of harming an infant, the definition must accommodate a parent’s right and duty to engage in intentional touch—including bathing, changing, feeding, or comforting an infant—even when that infant strenuously resists the parent’s touch, increasing the potential for accidental harm.” Pet. for Rev. 14-15. But accidental harm does not equate to innocent conduct; if a parent intentionally touches an infant, the touch is harmful, and the parent thereby *recklessly* inflicts substantial bodily harm while bathing, changing, feeding, or comforting an infant, such “a gross deviation from conduct that a reasonable person would exercise in the same situation” is properly criminalized. RCW 9A.08.010(c). An intentional act that recklessly causes that level of harm when feeding a baby should be punished more severely than a parent who negligently causes harm and thereby could be convicted of assault of a child in the third degree. RCW 9A.36.140; RCW 9A.36.031(1)(f).

II. A defendant may not assert a *corpus delicti* argument for the first time on appeal because any such argument is based on a judicially created rule without a constitutional source. Nonetheless, the State presented independent evidence that provided *prima facie* corroboration of the crime.

a. Waiver

“Washington’s corpus delicti rule . . . is judicially created and not constitutionally mandated.” *State v. Dow*, 168 Wn.2d 243, 249-50, 227 P.3d 1278 (2000); *Bremerton v. Corbett*, 106 Wn.2d 569, 576, 723 P.2d 1135 (1986). In addition to being a rule of admissibility the corpus delicti rule is also one of evidentiary sufficiency. *Dow*, 168 Wn.2d at 251. Nonetheless, the evidentiary sufficiency component of the rule is “not a *constitutional* sufficiency of the evidence requirement, and a defendant must make proper objection to the trial court to preserve the issue.” *State v. Dodgen*, 81 Wn.App. 487, 492, 915 P.2d 531 (1996) (emphasis added and citation omitted). Accordingly, because the corpus delicti rule is purely a rule of evidence, the violation of which cannot constitute a manifest constitutional error, it cannot be raised for the first time on appeal under RAP 2.5(a)(3). *Id.*; *State v. C.D.W.*, 76 Wn.App. 761, 763-64, 887 P.2d 911 (1995); *State v. Page*, 147 Wn.App. 849, 855, 199 P.3d 437 (2008). Thus, Cardenas-Flores, who did not raise any corpus delicti issues in the trial court, waived such challenges under RAP 2.5(a)(3).

Cardenas-Flores, beginning in her reply brief, however, also claims to be able to raise her corpus delicti challenge under RAP 2.5(a)(2), which states that “a party may raise the following claimed errors for the first time in the appellate court: . . . (2) failure to establish facts upon which relief

can be granted.” Reply Brief of Appellant at 5; Pet. for Rev. at 9-10. This rule “should not be read to permit a party as a matter of right to challenge on appeal each and every action that he did not challenge at trial. It should be read, as it was intended to be read, as applying solely to insufficient proof of an essential element of a party’s case.” *State v. Clark*, 195 Wn.App. 868, 874-77, 381 P.3d 198 (2016).

Cardenas-Flores’ corpus delicti argument does not challenge the facts, which necessarily includes her confession, supporting the elements of the crime for which she was convicted. Instead, she challenges the sufficiency of the facts independent of her confession. As a result, Cardenas-Flores’ corpus delicti argument is not properly raised for the first time on appeal under RAP 2.5(a)(2).

b. Sufficiency

The corpus delicti generally consists of “two elements: (1) an injury or loss . . . and (2) someone’s criminal act as the cause thereof.” *Corbett*, 106 Wn.2d at 573-74. “Proof of the identity of the person who committed the crime is not part of the corpus delicti. . . .” *Id.* 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 “the *mens rea* . . . 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)).

Essentially, 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). Moreover, as discussed in *Hummel*, nothing in *Aten*, *Dow*, or *State v. Brockob*, 159 Wn.2d 311, 150 P.3d 59 (2006) requires the 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 (discussing *Brockob*). Thus, the rule 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.

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). In analyzing whether there is sufficient evidence to support the corpus delicti of the crime, reviewing courts “assume[] the truth of the State's evidence and all reasonable inferences from it in a light most favorable to the State.” *State v. Aten*, 130 Wn.2d at 658.

Furthermore, when a defendant fails to move to dismiss based on a failure of proof the corpus delicti and testifies or introduces substantive evidence on her own behalf, she has “waived [her] challenge to the sufficiency of the evidence as it stood” at the close of the State’s case. *State v. Pennewell*, 23 Wn.App. 777, 778 598 P.2d 748 (1979) (citing *State v. Smith*, 74 Wn.2d 744, 768, 446 P.2d 571 (1968)). Instead, an “appellate court then may review the evidence as a whole to determine whether there is sufficient independent evidence supporting a logical and reasonable inference that the crime charged occurred,” to include the defendant’s testimony. *State v. Liles-Heide*, 94 Wn.App. 569, 572, 970 P.2d 349 (1999) (citation omitted); *State v. Mathis*, 73 Wn.App. 341, 347,

860 P.2d 106 (1994). Simply put, “once the defendant elects to present evidence and that evidence establishes the corpus delicti, [s]he . . . cannot prevail on appeal.” *State v. McPhee*, 156 Wn.App. 44, 60-61, 230 P.3d 284 (2010) (quoting *State v. Pietrzak*, 110 Wn.App. 670, 679, 41 P.3d 1240 (2002)).

Moreover, in child abuse cases where a defendant “has sole custody of a victim and there is evidence of other inculpatory circumstances tending to show guilt, the evidence may be sufficient to convict.” *Pennewell*, 23 Wn.App. at 782-83 (citing cases). Notably, in such cases a “false or improbable explanation is sufficient evidence of other inculpatory circumstances to sustain a verdict of guilty.” *Id.* (citing *State v. Green*, 2 Wn.App. 57, 466 P.2d 193 (1970)). As a result, *Pennewell* held that where a “defendant had total control of the victim at all critical times and gave two explanations of accidental injury, neither of which were inculpatory per se, but neither of which were possible in view of the medical findings . . . that the circumstantial evidence was sufficient to enable the jury to find that the child was the victim of a criminal act by the defendant.” *Id.* at 782.

Here, Cardenas-Flores’ total control of the victim at all critical times, combined with the nature of the injury, i.e., the force needed to create the injury and the mechanism required to cause it, provides

sufficient independent evidence to establish the corpus delicti and corroborate Cardenas-Flores' confession. Moreover, this evidence when combined with Cardenas-Flores' trial testimony including her admission to making the confession, overwhelmingly established the corpus delicti. The bottom line is that the state produced "independent evidence that provide[d] *prima facie* corroboration of the crime" and to the extent it was lacking, here "the defendant elect[ed] to present evidence and that evidence establishe[d] the corpus delicti, [thus] [s]he . . . cannot prevail on appeal." *McPhee*, 156 Wn.App. at 60-61.

CONCLUSION

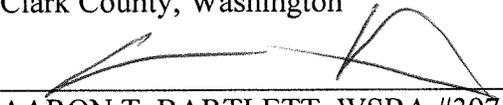
For the reasons argued above, Cardenas-Flores' conviction should be affirmed.

DATED this 16 day of December, 2016.

Respectfully submitted:

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