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No. 93385-5
SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington)
vs.) Second Statement of Additional Authority
Zaida Cardenas-Flores) and Certificate of Service
) RAP 10.8

Authority relating to the *corpus delicti* rule.

“Judicially, we have rejected the *Opper* rule.”
***State v. Dow*, 168 Wn.2d 243, 252, 227 P.3d 1278 (2010)** (citing *Opper v. United States*, 348 U.S. 84, 75 S. Ct. 158, 99 L. Ed. 101 (1954)).

“*Opper* describes the corroboration rule, which is used in Washington, as requiring the State to produce evidence that establishes ‘the whole of the corpus delicti’ *independent of the defendant’s incriminating statement.*”

***State v. Brockob*, 159 Wn.2d 311, 329 n. 12, 150 P.3d 59 (2006), as amended (Jan. 26, 2007)** (emphasis in *Brockob*) (quoting *Opper*, 348 U.S. at 93).

“Instead of the traditional *corpus delicti* rule, federal courts have adopted the more relaxed rule that the independent corroborating evidence must only tend to establish the trustworthiness of the confession. An increasing number of state courts have followed this trend. We are not among them.”

***State v. Aten*, 130 Wn.2d 640, 662–63, 927 P.2d 210 (1996)** (citing *Opper*).

Second Statement of Add’l Authority- 1

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3 **Authority relating to the definition of assault.**

4 “An essential element is one whose specification is necessary to establish the very illegality of
5 the behavior charged...[E]ssential elements include only those facts that must be proved
6 beyond a reasonable doubt to convict a defendant of the charged crime.”

7 ***State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013)** (internal quotation marks and
8 citations omitted).

9 “INTENT. A person acts with intent or intentionally when he or she acts with the objective or
10 purpose to accomplish a result which constitutes a crime.”

11 **RCW 9A.08.010(1)(a)**

12 “A person acting in self-defense cannot be acting intentionally as that term is defined in RCW
13 9A.08.010(1)(a). There can be no intent to kill within the first degree murder statute unless a
14 defendant kills ‘unlawfully’, *i.e.*, ‘with the objective or purpose to accomplish a result which
15 constitutes a crime.’ RCW 9A.08.010(1)(a). Since self-defense is explicitly made a ‘lawful’ act
16 under Washington law...it negates the element of unlawfulness contained within Washington’s
17 statutory definition of criminal intent.”

18 ***State v. McCullum*, 98 Wn.2d 484, 495, 656 P.2d 1064 (1983)¹**

19 “Not only was there no instruction on the State’s duty in the instant case as to the State’s burden
20 of proof when some evidence of self-defense is admitted, but further...there was no reference
21 to self-defense, excuse or justification in the element instruction. A fortiori then, under
22 *McCullum*, this case must be reversed. The prosecution relies upon the fact that the definition
23 of assault does not contain self-defense, excuse or justification as a statutory element. Such
24 avails the State nothing. *McCullum* held that lack merely relieves the State of pleading its
25 absence, but once the issue of self-defense is raised, the absence of self-defense becomes
26 another element of the offense which the State must prove beyond all reasonable doubt.”

27 ***State v. LeBlanc*, 34 Wn. App. 306, 308, 660 P.2d 1142 (1983)**

28 “We hold that when a defense necessarily negates an element of the crime, it violates due
29 process to place the burden of proof on the defendant. The key to whether a defense
30 necessarily negates an element is whether the completed crime and the defense can coexist.”

***State v. W.R., Jr.*, 181 Wn.2d 757, 765, 336 P.3d 1134 (2014)**

**I certify that on March 6, 2017, I delivered an electronic version of this document to the Clark
County Prosecuting Attorney (at prosecutor@clark.wa.gov, aaron.bartlett@clark.wa.gov and
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26 _____
27 ¹ *McCullum* was overruled by *State v. Camara*, 113 Wn.2d 631, 781 P.2d 483 (1989), which was overruled by *State v.*
28 *W.R., Jr.*, 181 Wn.2d 757, 336 P.3d 1134 (2014).

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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 this March 6, 2017 at Olympia, Washington.



Manek R. Mistry, WSBA No. 22922
Attorney for Defendant/Appellant

BACKLUND & MISTRY

March 06, 2017 - 11:26 AM

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