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No. 69147-3-I

DIVISION I OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

PATRICK AUBLE,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR KING COUNTY

Cause No. 11-C-07076-6 KNT

REPLY BRIEF

Spencer D. Freeman
WSBA #25069

FREEMAN LAW FIRM, INC.
Attorneys for Appellant
1107 ½ Tacoma Ave. S.
Tacoma, WA 98402
(253) 383-4500

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I. ARGUMENT

A. INSUFFICIENT EVIDENCE EXISTS FOR AUBLE'S CONVICTION OF RENDERING CRIMINAL ASSISTANCE.

It is absolutely clear, by a review of the record and by the State's brief, that the entirety of the State's proof that Mr. Auble provided any assistance to the Kent Car Show shooters was solely the statements of Mr. Auble.

The Washington State Supreme Court, in applying the *corpus delicti* doctrine, has made clear that a criminal defendant cannot be convicted of a crime when the evidence is solely based upon the statements of the defendants. In *State v. Aten*, the Washington State Supreme Court stated:

A majority of jurisdictions follow the traditional corpus delicti rule. See 1 MCCORMICK ON EVIDENCE, *supra*, § 145, at 557; 7 WIGMORE ON EVIDENCE § 2071 (Chadbourn rev. 1978). The rule arose from a judicial distrust of confessions, coupled with the view that a confession admitted at trial would probably be accepted uncritically by a jury, thus making it extremely difficult for a defendant to challenge. Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U.P.A. L. REV. 638, 642-43 (1955). See *Corbett*, 106 Wn.2d at 576. "This distrust stems from the possibility that the confession may have been misreported or misconstrued, elicited by force or coercion, based upon mistaken perception of the facts or law, or falsely given by a mentally disturbed individual." *Corbett*, 106 Wn.2d at 576-77 (citations omitted). The corpus delicti rule protects defendants from unjust convictions based upon confessions alone which may be of questionable reliability. *Id.* at 576 (citations omitted).

State v. Aten, 130 Wn.2d 640, 656-57, 927 P.2d (1996).

A key purpose for the application of the *corpus delicti* doctrine is that it is designed to protect defendants from unjust

convictions based upon confessions alone. Achieving such a purpose requires a bright-line application of the rule, which is to say that a defendant's statements, without appropriate independent evidence establishing the *corpus* of the crime, are insufficient to support a conviction.

In the instant case, there is no independent evidence that *anyone* provide assistance to the Kent Car Show shooters, a necessary element to the crime rendering criminal assistance. *State v. Dodgen*, 81 Wn.App. 487, 915 P.2d 531 (1996). Accordingly, there is insufficient evidence to support Mr. Auble's conviction for rendering criminal assistance.

Moreover, even if the Court were to determine that a defendant's statements may be considered as the sole evidence in determining sufficiency of the evidence absent the corpus of the crime, there simply is insufficient evidence in the case at hand to support a criminal conviction. This case is similar to *State v. Budik*, 173 Wn.2d 727, 272 P.3d 816 (2012), where in the Washington State Supreme Court overturned a conviction for rendering criminal assistance, based upon the defendant's lies to the police regarding the perpetrator of a shooting.

In *Budik*, the defendant was the victim of a shooting, wherein another man was killed. In response to police questioning, Budik stated that he did not know the identity of the shooters. However, he later admitted to the deceased's mother the identity of the shooter, along with others present. *Id.* at 730-32. The State had been able to charge two people in association with the shooting, but not the person Budik identified to the deceased's

mother. Budik was charged and convicted of rendering criminal assistance for lying to the police regarding the identity of the shooter. *Id.*

In overturning Budik's conviction, the State Supreme Court found that the rendering criminal assistance statute required an affirmative act by the criminal defendant. The Court found that falsely denying knowledge to the police was not an affirmative act. *Id.* at 737-38.

The State Supreme Court, in *Budik*, also focused on the "aid in the discovery or apprehension of such person" portion of the rendering criminal assistance statute. The Court specifically found that the ability to lodge a criminal complaint was *not* included in such language. Thus, prevention or obstruction of the State from filing charges against another would *not* violate the portion of the rendering criminal assistance statute inclusive of such language. *Id.* at 738-39.

In the case at hand, Mr. Auble was charged and convicted of rendering criminal assistance to Mr. Nicholas Moreno, specifically for hiding a car and a gun. A detective testified that Mr. Auble was asked to hide a car. Mr. Auble denied that he was asked to hide a car, and denied that the car was locked in his mother's garage, although someone had parked it there. He also denied knowing that Nicholas Moreno had driven the car from the car show. 3 RP 167, 175.

Evidence was also presented at trial that someone other than Mr. Auble put a gun in the trunk of Mr. Auble's car. Mr.

Auble, after returning from the store, noticed the gun in his trunk. He removed the gun and placed it in a safe in his house.

It is clear from the record that at the time Mr. Auble supposedly locked a car in his garage and at the time that he removed the gun from the trunk of his car, he was unaware that either were related to a shooting that day. Rather, he became aware of their potential connection later that evening, based upon conversations he overheard at a party.

In order for there to be sufficient evidence to support a conviction of Mr. Auble for rendering criminal assistance, the State must present evidence that Mr. Auble engaged in an affirmative act, with the intent to prevent, hinder, or delay the apprehension or prosecution of another person. The only acts presented by the State were Mr. Auble's supposed hiding of a car (which he denied) and the removal of a gun someone placed in his trunk to a safe in his house. At the time of either act, there is no evidence that Mr. Auble knew of their connection to the car show shooting. In fact, the only evidence presented at trial was that Mr. Auble was then unaware of their connection.

Hours later, Mr. Auble concluded that the car and the gun may have been associated with the shootings, based upon conversations he overheard at a party. Mr. Auble called the police and informed them that he was aware of the whereabouts of the car and the gun.

Based upon the evidence established regarding Mr. Auble's knowledge at the time that the car was in his mother's garage and when he discovered the gun in the trunk of his car, the State failed

to establish that Mr. Auble acted with intent to prevent, hinder, or delay the apprehension or prosecution of another person *who he knows has committed a crime*. RCW 9A.76.050.

The State argues that Mr. Auble's refusal to turn over the gun in the weeks and months that followed renders him guilty of rendering criminal assistance. (The car was removed from Auble's mother's garage by someone else later the same night of the shooting.) However, at that time, Mr. Auble did not engage in any acts. Mr. Auble told the police where the gun was – in a safe in one of his four houses. Mr. Auble did nothing to prevent the police from coming to get the gun. (The police certainly had probable cause to apply for a search warrant for the gun.)

Moreover, the physical evidence – the gun – would not have aided in the discovery of or apprehension of Mr. Moreno. The police were already aware of Mr. Moreno and his role in the shooting, and thereafter apprehended him. The production of the gun may have assisted in the prosecution of Mr. Moreno, but there was no evidence that it would have assisted in the discovery or apprehension of Mr. Moreno.

RCW 9A.76.050(5), for which Mr. Auble was charged and convicted, requires that the physical evidence concealed to have aided in the discovery or apprehension of Mr. Moreno. The police already knew of Mr. Moreno, his role, and had apprehended Mr. Moreno. There was no evidence produced at trial that the recovery of the gun would have, or may have, assisted in the discovery or apprehension of Mr. Moreno. The guns' potential role in the prosecution of Mr. Moreno does not render it a piece of physical

evidence subject to RCW 9A.76.050(5). *See Budik*, 173 Wn.2d at 738-39.

Application of the *corpus delicti* doctrine mandates that a conviction based solely upon a criminal defendant's statements is based upon insufficient evidence. Additionally, in the case at hand, even the statements by the defendant are insufficient to support a conviction for rendering criminal assistance.

B. TO THE EXTENT THIS APPEAL IS VIEWED AS AN OBJECTION TO ADMISSIBILITY OF DEFENDANT'S STATEMENTS AT TRIAL, COURT SHOULD REVISIT PREVIOUS HOLDINGS REGARDING WAIVER.

In *State v. C.D.W.*, 76 Wn.App. 761, 887 P.2d 911 (1995), this Court found that the corpus delicti rule was an evidentiary rule, foundational requirement before the admission of evidence, rather than a sufficiency of evidence issue. Accordingly, the failure to object to the admission of statements at trial waived the ability to argue the issue on appeal. The Court made this determination largely because of an interpreted implication by the Supreme Court that the rule is not a constitutional sufficiency of evidence requirement. *Id.* at 763. This court found support for this interpretation in that federal courts replaced the corpus delicti rule with a less stringent corroboration rule. *Id.*

However, since this Court's ruling in *C.D.W.*, the State Supreme Court has addressed the corpus delicti rule in context of whether to abandon the rule and adopt the federal court's less stringent trustworthiness standard. The Supreme Court flatly declined. *State v. Ray*, 130 Wn.2d 673, 677-78, 926 P.2d 904

(1996). Thus, the existence of the federal rule should have no weight in interpreting the application of the corpus delicti rule.

In discussing the import of the corpus delicti rule, the Supreme Court found that the rule arose from a judicial distrust of confessions and specifically protects defendants from unjust convictions. *State v. Aten*, 130 Wn.2d 640, 656-57, 927 P.2d (1996).

To view the corpus delicti rule as simply a rule of evidentiary foundation, and distinguish entirely from a sufficiency of evidence challenge upon appeal, substantially negates the import and purpose of the rule. If the rule is intended to protect against unjust convictions, it cannot be stated that the rule does not have constitutional sufficiency of evidence underpinnings.

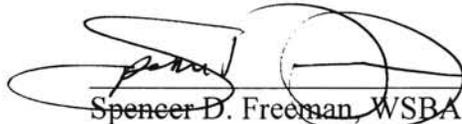
Accordingly, it is respectfully requested that the Court reconsider its previously finding that the corpus delicti rule is only an evidentiary foundational rule.

II. CONCLUSION

Mr. Auble's conviction was based entirely on his statements. First and foremost, his statements do not rise to the constitutionally mandated sufficiency of evidence to support a conviction of rendering criminal assistance. In addition, the corpus delicti rule prohibits a conviction bases solely upon a defendant's statements.

Therefore, it is respectfully requested that Mr. Auble's conviction be overturned.

DATED this 26th day of February, 2014



Spencer D. Freeman, WSBA #25069
Attorney for Appellant