

69147-3

69147-3

NO. 69147-3-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

PATRICK AUBLE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. To prove first degree rendering criminal assistance, the State must show that the defendant intended to prevent, hinder, or delay the apprehension or prosecution of a person whom he knew had committed or was being sought for the commission of a class A felony by undertaking specified actions to render assistance. Here, the State proved that Auble concealed a gun and a vehicle belonging to Nicholas Moreno, whom Auble knew was involved in the commission of a gang-motivated shooting and was being sought by the police. Additionally, the State presented evidence of Auble's statements describing how he rendered assistance; Auble's trial testimony was largely consistent with his earlier statements. Viewing the evidence in the light most favorable to the State, is the evidence sufficient to demonstrate that Auble rendered criminal assistance?

2. The rule of corpus delicti is a judicially created rule of evidence and must be properly objected to at trial for the issue to be preserved on appeal. Here, Auble failed to object to the admission of his statements during trial. Has he waived this issue on appeal?

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS.

Defendant Patrick Auble was charged by Second Amended Information with one count of first degree rendering criminal assistance. CP 121-23. The Information alleged that Auble rendered criminal assistance to Nicholas Moreno, a person whom Auble knew committed or was being sought for the commission of assault in the first degree. CP 123.

Auble represented himself at trial.<sup>1</sup> CP 20-21. The jury found Auble guilty as charged. CP 106. After trial, Auble obtained counsel to represent him at the sentencing hearing. 5RP<sup>2</sup> 3. The trial court imposed a standard-range sentence of 12 months to be served in work or education release. CP 151, 153.

Following the sentencing hearing, Auble sought to arrest judgment, claiming that the conviction was based on a violation of the corpus delicti rule because it relied solely on Auble's statements. CP 159-60. In response, the State argued that the conviction rested on sufficient evidence to support corpus delicti

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<sup>1</sup> Although Auble was charged along with six co-defendants, he was tried individually.

<sup>2</sup> There are six volumes of the verbatim report of proceedings. They will be referred to as follows: 1RP (April 24, 2012); 2RP (April 25, 2012); 3RP (April 26, 2012); 4RP (April 30, 2012); 5RP (July 6, 2012); and 6RP (August 24, 2012).

and that, in any event, Auble did not preserve the objection because he failed to raise the issue until after the verdict. 6RP 8, 11-12.

The court found that, due to Auble's failure to object, the issue was not properly preserved for a post-trial motion. 6RP 15. The court declined to rule on whether there was sufficient evidence to support the body of the crime noting that, "because it's not properly preserved, there's no reason for me [to do so]." 6RP 14-16. However, the court stated, "I do think the jury got it right. It was a strong case, and it was no surprise that Mr. Auble was convicted." 6RP 15.

## 2. SUBSTANTIVE FACTS.

On July 23, 2011, several hundred people, including families and children, were in the La Plaza shopping center parking lot in Kent, Washington, to see musical acts performing at a "low rider" car show. 1RP 28, 77, 79. At approximately 4:15 p.m., a gang-motivated fight broke, and at least five shooters fired into and amidst the crowd resulting in twelve people being shot. 1RP 30, 80-81; 2RP 42-43. As shots were being fired, hundreds of people

fled from what had turned into “the second largest mass shooting in Washington State history.” 1RP 49-50; 2RP 42-43.

Nearby, Sean Estrada was in his work truck stopped at a traffic light when he heard gunshots and screaming. 1RP 103, 108. Estrada saw Nicholas Moreno running away from La Plaza while holding a gun in his hand.<sup>3</sup> 1RP 108. While running, Moreno was firing the gun back in the direction of the La Plaza shopping center. 1RP 108. Moreno then put his weapon in the waistband of his pants and jumped into the back of a teal and white “low rider” car that had pulled over to pick him up. 1RP 108, 118. The car drove away “in a hurry,” and Estrada called 911 to report the vehicle’s license plate information and a description of Moreno. 1RP 109, 120.

After the shooting, Patrick Auble and his brother, Shea Auble,<sup>4</sup> were driving around to get liquor for a party.<sup>5</sup> 1RP 179. They met up with Moreno and others at a house. 1RP 179, 181.

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<sup>3</sup> At the time, Estrada did not know Moreno’s identity; his name is used here for clarity.

<sup>4</sup> Shea Auble is referred to by his first name throughout this brief to avoid confusion.

<sup>5</sup> Auble gave police an account of his whereabouts on the afternoon and evening of the shooting; this information was later corroborated by a gas station surveillance video. 1RP 179-83; 2RP 84; Ex. 28.

While there, somebody put a gun in the trunk of Auble's car.<sup>6</sup>  
1RP 179-80. Before heading to the party that was being held at Auble's home, the group stopped at a liquor store and a gas station. 1RP 181; Ex. 28. At the gas station, Auble paid for gasoline for his own car and for Moreno's car, the same teal and white car that was used as the "getaway car" after the shooting. 1RP 181; Ex. 28. Auble was asked to hide Moreno's car. 1RP 181. After the group was at Auble's home, Auble hid Moreno's car in a locked garage. 1RP 181, 183.

Auble left to pick up beer; when he returned to his house, he took Moreno's gun out of the trunk of his car and placed it in a safe in his house. 1RP 182. Auble had heard people "bragging" about the shooting and "was putting two and two together" that the gun and the car were used in the earlier shooting at La Plaza. 3RP 168-69.

Later, Auble, Shea, and several others were carrying guns on their way to a shooting range on Auble's property when they were contacted by King County Sheriff's deputies. 1RP 183; Ex. 37. Shea was arrested on an outstanding warrant, and two of

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<sup>6</sup> Auble claimed that he did not know that the item in his trunk was a gun until he returned to his home and removed it from his trunk. 1RP 180.

Auble's guns were confiscated. 1RP 183. After Shea was arrested, people tried to retrieve Moreno's gun from the trunk of Auble's car and remove Moreno's car from the garage.<sup>7</sup> 3RP 145.

Approximately an hour and a half after Shea was arrested, Auble placed two calls to 911. Ex. 37. In the first call, he provided his name and told the dispatcher, "I know where the gun, and the car, and the two suspects [from the La Plaza shooting] that happened a couple hours ago ... when my brother's released, I'll tell you exactly where everything is." Ex. 37. Shortly after the first call, Auble called 911 again and identified himself as "Pat Doe." Ex. 37. Auble told the dispatcher, "I have one of the guns that was involved in the, the Kent (unintelligible) shooting at the low rider club ... I want my guns back uh that were taken from me..." Ex. 37. The dispatcher told Auble that an officer would be in touch with him soon. Ex. 37.

At 10:40 p.m., Kent Police Officer Jennifer Prusa, an officer investigating the shooting at La Plaza, was notified that someone had called 911 with information about the shooting. 1RP 58-59. Officer Prusa called Auble, who told her that he knew the location of a gun and car used in the shooting. 1RP 59-60. Auble said that

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<sup>7</sup> Auble claimed that when he was asleep that night, someone woke him up, took the keys to the garage, and drove Moreno's car away. 1RP 183.

if his brother were released from jail, he would tell her the name of the shooter and the locations of the gun and car. 1RP 60. Officer Prusa told Auble that she did not have authority to release his brother, but she would pass the information on to a detective who would contact him. 1RP 60. At approximately 11:00 p.m., Officer Prusa was contacted by a 911 dispatcher who informed her that Auble called 911 a third time saying that he wanted to hear from a detective by 1:00 a.m. or stuff was going to "start missing." 1RP 61.

At approximately 1:00 a.m., Stephanie Rodriguez arrived at the party being held at Auble's home. 1RP 132, 135, 144. A group of people, including Moreno, started telling Rodriguez about the shooting at La Plaza. 1RP 132, 135. Moreno said that he was one of the shooters and that he had shot rival gang members while running away. 1RP 139-40. Moreno also told Rodriguez that he was a gang member and showed her one of his gang tattoos.<sup>8</sup> 1RP 139-40.

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<sup>8</sup> A few days later, Rodriguez contacted police through an anonymous tip line to disclose the information Moreno had shared with her. 1RP 143-44. Rodriguez did not see Auble at the party that evening. 1RP 36.

Two days after the shooting, Shea called Auble from the King County Jail. Ex. 44. Although the call was recorded, the two discussed Moreno's involvement in the shooting. Ex. 44.

On July 26, Kent Police Detective Rick Gilcrist learned of Auble's calls to 911 and arranged to speak with him at the Kent Police Station. 1RP 170, 176. Auble told Gilcrist that he wanted his guns back and his brother released from jail. 1RP 176-77. If his conditions were met, Auble said he would release one of the guns used in the shooting. 1RP 176-77. Detective Gilcrist explained that he needed additional information to know that Auble was credible. 1RP 176-77. Auble provided information about the gangs involved in the shooting and told the detective detailed information about how he came into possession of the gun. 1RP 178-83.

After recounting the events from the day of the shooting, Auble told Detective Gilcrist that the gun was still in his safe and that he would give it to the detective if his brother were released and Auble's two guns were returned. 1RP 184. Detective Gilcrist asked Auble to voluntarily give him the gun and the names of the people involved in the shooting. 1RP 184. Auble refused. 1RP 184. Detective Gilcrist informed Auble that withholding or

destroying evidence of a crime is against the law. 1RP 186. Auble later left a voicemail message for Detective Gilcrist stating, "You better call your prosecutor friend because if my brother gets filed on tomorrow, I'll have to bail him out and that gun's going to disappear." 1RP 185.

In a phone call placed from jail on July 26, Shea told Auble that police had talked to him and were trying to figure out who was involved in the shooting. Ex. 44. Auble told him, "Don't say shit to 'em. Don't say shit to 'em." Ex. 44.

After Detective Gilcrist met with Auble, officers searched for surveillance video of Moreno from the locations where Auble said they had been shortly after the shooting. 1RP 187. Officers located surveillance video from a Fred Meyer gas station showing Auble and Moreno approximately an hour and a half after the La Plaza shooting. 2RP 84; Ex. 28. The video shows Moreno's teal and white car pulling into the gas station at the same time as Auble's car. 2RP 84; Ex. 28. Auble can be seen paying for Moreno's gas, and then both cars leave together. 2RP 85; Ex. 28.

Three days after the shooting, officers pulled Moreno over and seized his teal and white car and his cell phone pursuant to a search warrant. 2RP 70. A bullet fragment was located in the car's

tire. 2RP 71. No weapon was recovered from Moreno or his vehicle. 2RP 91. Phone records showed that Auble and Moreno had been in communication on the day of the shooting and over the next several days.<sup>9</sup> Ex. 34.

Moreno's gun had still not been located at the time of Auble's trial. 2RP 91. If the gun had been recovered, law enforcement would have attempted to obtain DNA or fingerprint evidence from the gun. 2RP 91. Additionally, law enforcement would have conducted ballistic tests on the gun to compare it with shell casings recovered from La Plaza. 2RP 93.

Auble testified at trial. 3RP 141. He admitted that he knew that the gun and car at his home on the evening of July 23, 2011, were involved in the shooting at La Plaza. 3RP 168-69. He also knew at the time that he helped hide the car that Moreno had been driving. 3RP 168. Auble testified that, before he called 911 that night, he took the gun from the trunk of his car and put it in his safe. 3RP 168. At trial, Auble claimed that he did not give the gun to Detective Gilcrist because the detective "never asked for it." 3RP 170.

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<sup>9</sup> The phone records showed that: on July 23, Moreno called Auble seven times; on July 24, Moreno and Auble each called each other twice; on July 27, Auble called Moreno eight times; and on July 28, Auble called Moreno four times. Ex. 34.

At trial, Auble implied that he surrendered Moreno's gun to law enforcement, claiming that he turned over two guns to the Auburn Police Department on September 5, 2011. 3RP 156. Auble did in fact give two guns to Auburn Police Officer Douglas Koch on that date. 4RP 27-28. When delivering the guns, Auble told Officer Koch that the guns had been used in multiple robberies of 7-Eleven stores. 4RP 27-28, 31. Ballistic tests showed that the two guns Auble gave to Officer Koch did not match any of the guns used in the La Plaza shooting. 4RP 56, 60. The weapons were consistent with guns used by a suspect in multiple robberies of 7-Eleven stores. 4RP 40, 45.

**C. ARGUMENT**

1. SUFFICIENT EVIDENCE SUPPORTS AUBLE'S CONVICTION FOR RENDERING CRIMINAL ASSISTANCE AND AUBLE WAIVED ANY CHALLENGE TO THE ADMISSIBILITY OF HIS STATEMENTS BY FAILING TO OBJECT AT TRIAL.

Auble challenges the sufficiency of the evidence, claiming that his conviction is based solely on his statements. Auble also claims that, pursuant to the rule of corpus delicti, his statements should not have been admitted at trial. Auble's arguments fail. Auble waived any challenge to the admissibility of his statements

by failing to object to them at trial. In any event, the State produced substantial evidence for a rational trier of fact to find that Auble rendered criminal assistance.

a. Auble's Conviction Is Supported By Sufficient Evidence.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Id. When the defendant provides conflicting testimony, the reviewing court assumes the truth of the State's testimony. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence carry equal weight when reviewed by an appellate court. Goodman, 150 Wn.2d at 781. Specific criminal intent may be inferred from the conduct where it is

plainly indicated as a matter of logical probability. State v. Johnson, 159 Wn. App. 766, 774, 247 P.3d 11 (2011).

The role of the reviewing court is not to reweigh the evidence and substitute its judgment for that of the jury. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Instead, a reviewing court must defer to the trier of fact's resolution on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt. Id. at 718.

A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who has committed or is being sought for any class A felony. RCW 9A.76.070. In pertinent part, RCW 9A.76.050 provides that a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime or is being sought by law enforcement officials for the commission of a crime, he:

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might

aid in the discovery or apprehension of such person;  
or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person ....

Here, the State charged Auble with rendering criminal assistance to Nicholas Moreno, one of the La Plaza shooters. As pertinent here, the State was required to prove that Auble rendered criminal assistance by (1) intending to (2) prevent, hinder, or delay (3) the apprehension or prosecution of Nicholas Moreno (4) who he knew had committed or was being sought for the commission of a class A felony, and (5) by undertaking one of the specified actions. See State v. Budik, 173 Wn.2d 727, 734, 272 P.3d 816 (2012).

Here, the State proved just that. It offered evidence that a gunfight broke out at La Plaza and 12 people were shot by multiple shooters. 1RP 49-50; 2RP 42-43. Moreno was seen firing a gun into the crowd at La Plaza. 1RP 108. Moreno then took the gun into his distinctive-looking car. 1RP 108, 118. Shortly after the shooting, Moreno met up with Auble, and Moreno's gun was placed in the trunk of Auble's car. 1RP 179-80.

Auble, Moreno, and others then went to a gas station together where Auble was asked to hide Moreno's car. 1RP 181.

Auble locked Moreno's car in a garage at Auble's house. 1RP 182. Auble knew Moreno's gun and car were involved in the shooting. 3RP 168-69. Auble removed the gun from his car and locked it in a safe. 1RP 182. While at Auble's home, Moreno was bragging about his involvement in the shooting. 1RP 139-40.

Auble called 911 and attempted to leverage the release of his guns and his brother in exchange for Moreno's car and gun and the names of the shooters involved in the La Plaza shooting. Ex. 37. After the car was no longer in his possession, Auble attempted to leverage the return of his guns and the release of his brother in exchange for Moreno's gun. 1RP 183-84. When a detective asked Auble to voluntarily give him the gun, Auble refused. 1RP 184.

On the day of the shooting and in the days immediately thereafter, Auble and Moreno were in communication. Ex. 34. When Moreno and his vehicle were searched by police, the gun used in the shooting was not recovered. 2RP 70, 91. By the time of trial, Moreno's gun had still not been located. 2RP 91.

At trial, possibly as an attempt to negate the element of intent, Auble claimed that he was trying to assist the police in their investigation of the shooting. 3RP 150. This claim is not credible

and, here, all evidence and reasonable inferences that can be drawn therefrom must be viewed in the light most favorable to the State. Auble's intent to prevent, hinder, or delay can logically be inferred from his conduct. After Auble put "two and two together" that Moreno's car and gun had been used in the La Plaza shooting, Auble concealed the getaway car in a locked garage and hid the gun in a safe. 3RP 168-69. Auble's intent to prevent, hinder, or delay Moreno's apprehension can also be inferred from Auble's statements. Auble stated that if his conditions were not met, evidence would go "missing" and "that gun's going to disappear." 1RP 61, 185. Following Auble and Shea's discussion that Moreno was involved in the shooting, Auble told his brother not to talk to the police in their investigation of the shooting, saying "Don't say shit to 'em. Don't say shit to 'em." Ex. 48.

Viewing the record in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that Auble rendered criminal assistance.

b. Auble Waived Any Challenge To The Admissibility Of His Statements By Failing To Object At Trial.

Auble erroneously claims that his statements should have been suppressed under the rule of corpus delicti. Perhaps in recognition that the evidence at trial is sufficient to support his conviction, Auble attempts to raise this claim on appeal despite his failure to preserve it at trial. Because Auble failed to object below, this issue has been waived.

Corpus delicti is a judicially created rule of evidence, not a constitutional requirement that evidence be sufficient to sustain a verdict. State v. C.D.W., 76 Wn. App. 761, 763-64, 887 P.2d 911 (1995). A defendant must make a proper objection to the trial court to preserve the issue of corpus delicti. Id.

[T]he failure to object precludes appellate review because “[i]t may well be that proof of the corpus delicti was available and at hand during the trial, but that in the absence of [a] specific objection calling for such proof it was omitted.”

Id. (quoting People v. Wright, 52 Cal.3d 367, 404, 802 P.2d 221, 245, 276 Cal. Rptr. 731, 755 (1990), cert. denied, 502 U.S. 834 (1991)).

“The purpose of the rule [of corpus delicti] is to ensure that a defendant does not, for whatever reason, confess to a crime that has not been committed.” State v. Dodgen, 81 Wn. App. 487, 492, 915 P.2d 531 (1996). Pursuant to the rule, a defendant’s extrajudicial confession or admission is not admissible unless there is independent prima facie proof that the crime charged has been committed by someone. State v. Cobelli, 56 Wn. App. 921, 924, 788 P.2d 1081 (1989). A prima facie showing requires evidence of sufficient circumstances supporting a logical and reasonable inference that the charged crime occurred. City of Bremerton v. Corbett, 106 Wn.2d 569, 578-79, 723 P.2d 1135 (1986).

In analyzing whether there is sufficient evidence to support the corpus delicti of the crime, a reviewing court assumes the truth of the State’s evidence and draws all reasonable inferences from it in the light most favorable to the State. State v. Hummel, 165 Wn. App. 749, 759, 266 P.3d 269 (2012). The rule of corpus delicti was created to prevent convictions based solely on a defendant’s false confessions or admissions; statements made during the commission of a crime do not constitute a confession. State v.

Dyson, 91 Wn. App. 761, 763, 959 P.2d 1138 (1998). As such, the rule of corpus delicti does not apply to statements made during the course of a crime. Id.

Here, Auble did not object when testimony was elicited regarding his statements to 911 and police officers.<sup>10</sup> After he was sentenced, Auble moved to arrest the judgment of the jury, framing his motion in terms of whether the State's evidence was sufficient to establish corpus delicti. CP 159-60. The trial court denied his motion, finding that, due to Auble's failure to object at trial, he waived his right to raise the issue post-trial. 6RP 15-16. Similarly here, Auble's failure to object to the admissibility of his statements waived his right to raise this issue on appeal. As a result, this Court should consider Auble's statements, made both before and during trial, to determine whether there is sufficient evidence to support his conviction. See Dodgen, 81 Wn. App. at 493.

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<sup>10</sup> If Auble had objected at trial, the State would have had arguments to make in response. For example, several of the statements made by Auble were made during the commission of the crime and, thus, would not have been subject to suppression pursuant to the rule of corpus delicti. See Dyson, 91 Wn. App. at 763-63.

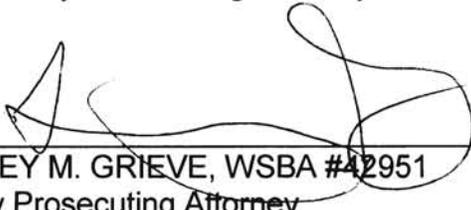
**D. CONCLUSION**

For all of the foregoing reasons, the State respectfully asks this Court to affirm Auble's conviction.

DATED this 31 day of January, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Spencer D. Freeman, the attorney for the appellant, at 1107 - ½ Tacoma Ave. S., Tacoma, WA 98402, containing a copy of the BRIEF OF RESPONDENT, in STATE V. PATRICK AUBLE, Cause No. 69147-3 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 3 day of January, 2014

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

\_\_\_\_\_  
Name  
Done in Seattle, Washington