

NO. 71712-0-1

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

STATE OF WASHINGTON,

Appellant,

v.

DAVID F. RUIZ,

Respondent.

2007 JUN 14 11:15 AM
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REPLY BRIEF OF APPELLANT

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I. REPLY TO RESPONDENT'S STATEMENT OF THE CASE

The "Factual Background" in the respondent's brief contains a number of assertions concerning the circumstances of the defendant's statements to police. These assertions are irrelevant to the issues on appeal. Nonetheless, to avoid any misunderstanding of the facts, the State will respond to these assertions.

1. **"David Ruiz left the house without any reason to believe that anything unusual or inappropriate had occurred."** Brief of Respondent at 3, citing CP 30.

The cited portion of the record indicated that the defendant was first confronted about the accusations two days after the incident. The defendant's statements, however, make it clear that he was aware that he had engaged in inappropriate conduct. CP 24-25, 28-30.

2. **"David admitted he had been drinking heavily and didn't remember much of what occurred that evening."** Brief of Respondent at 4, citing CP 24.

The cited portion of the record is a police report that summarizes the defendant's statements. According to the report, the defendant said that he and his friends "drank alcohol." CP 24. (These are the words in the report, which paraphrases the

defendant's words.) The report goes on to state that the defendant said that he was "intoxicated." CP 25. The report does *not* state that the defendant "didn't remember much of what occurred that evening."

The defendant's "Factual Background" goes on to quote the defendant's statement to police. The quoted words do not appear in the record. They are, however, consistent with the summary set out at CP 24-25.

3. **"Police then mischaracterized the written statements of the witnesses in an apparent effort to observe Mr. Ruiz' reaction, telling him that the witnesses reported seeing his head in [R.B.'s] crotch, something no one had ever said."** Brief of Respondent at 5, citing CP 85.

The cited portion of the record is the "Summary of Facts" in the defendant's Memorandum in Support of Motion to Dismiss. The Memorandum contains no evidence supporting these alleged facts.

Another portion of the record states that the investigating officer told the defendant that other people had seen his head in R.B.'s crotch. CP 25. It is not clear whether the officer had in fact received such information. According to the police reports, two witnesses "had been up to get water during the night and observed

Ruiz on [R.B's] lap." CP 20. The report does not indicate what portion of the defendant's body was on the victim's lap. *After* the defendant's interrogation, one of these witnesses told police that the other witness "told her that he saw David on his knees on the floor in front of the couch and that his head was on [R.B's] lap." CP 26.

The "Factual Background" accurately summarizes the *written* statements of these witnesses. Brief of Respondent at 4. Those statements were not, however, available to police until March 13, three weeks after the defendant's interrogation. CP 26-27.

4. "Upon being confronted by police with these characterizations and unsure of what actually happened, David appeared to acquiesce and made more incriminating statements reflecting the accusations offered by police, interspersed with his continuing assertions that 'I'm not sure, to be honest...' CP 85. He stated this was because he had been passed out and really had a no [sic] recollection of what had happened during the night. CP 85." Brief of Respondent at 5.

Again, these statements are based on the unsupported factual assertions in the defendant's Memorandum in Support of

Motion to Dismiss. Nothing in the record substantiates the defendant's description of his confession.

5. **"This is the essence of the 'confession' in this case."**

Brief of Respondent at 5.

In addition to the mischaracterizations discussed above, this assertion ignores the defendant's admissions to two other witnesses. CP 28-30.

II. ARGUMENT IN REPLY

IN DETERMINING WHETHER THE *CORPUS DELICTI* WAS ESTABLISHED, THIS COURT MUST ASSUME THE TRUTH OF THE STATE'S EVIDENCE.

The defendant states the issue as whether the trial court properly exercised its discretion in dismissing the case. Brief of Respondent at 1. He concedes, however, that "[i]n reviewing a dismissal pursuant to *State v. Knapstad*, this Court reviews the issues *de novo*." Brief of Respondent at 5, citing *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986). Consequently, no element of discretion is involved. Regardless of how many trial judges ruled on the issue, or what those judges did before their appointment to the bench, this court must determine for itself whether the evidence was sufficient to establish the *corpus delicti*. See *State v. Montano*, 169 Wn.2d 872, 876 ¶ 8, 239 P.3d 360 (2010).

The defendant asks this court to take “judicial notice” that it is impossible for a man to determine after the fact whether he has been subjected to oral sex. Brief of Respondent at 10. He cites no authority for this proposition. As pointed out in the Brief of Appellant, this court must assume the truth of the State’s evidence. State v. Aten, 130 Wn.2d 640, 657, 927 P.2d 210 (1996). A witness’s testimony can be considered incredible as a matter of law only if the testimony is manifestly irreconcilable with undisputed physical facts. Bunnell v. Barr, 68 Wn.2d 771, 415 P.2d 640 (1966). Such is not the case here. To the contrary, R.B.’s statements were corroborated by other evidence: the position of his pants when he woke up, the position of the defendant, and the stains on R.B.’s pants. CP 28, 33.

At trial, a jury might or might not choose to believe R.B.’s statements. In assessing the sufficiency of the *corpus delicti*, however, this court must assume that those statements are true. Based on that assumption, the evidence supports a reasonable inference that the crime occurred. The trial court therefore erred in dismissing the case.

III. CONCLUSION

The order of dismissal should be reversed and the case remanded for trial.

Respectfully submitted on January 9, 2015.

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AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 12th day of January, 2015, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

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containing an original and one copy to the Court of Appeals, and one copy to the attorney for the Respondent of the following documents in the above-referenced cause:

REPLY BRIEF OF APPELLANT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 12th day of January, 2015.



DIANE K. KREMENICH
Legal Assistant/Appeals Unit