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Washington State
Court of Appeals
Division Two

October 25, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. STANLEY GUIDROZ, Respondent.	No. 47880-3-II UNPUBLISHED OPINION

LEE, J. — Stanley Guidroz was charged with one count of manslaughter in the first degree after telling a police detective in 2011 that he had killed his three-year-old son, Wallace, in 1983. Guidroz moved to suppress the confession under Washington's *corpus delicti* rule.[1] The superior court granted the motion to suppress, which resulted in a dismissal of the case with prejudice. The State now appeals, arguing that (1) the superior court erred in finding that the State failed to present sufficient evidence to establish a prima facie case for first degree manslaughter; (2) the superior court erred in considering evidence put forth by the defense and then weighing the evidence; and (3) the superior court erred in determining that Guidroz's statements were not admissible under RCW 10.58.035.

We hold that the superior court did not err in suppressing Guidroz's statement under Washington's *corpus delicti* rule because even when viewed in the light most favorable to the State, the State's evidence was insufficient to reasonably infer Wallace's death. We also hold that

[1] "'*Corpus delicti*' literally means 'body of the crime.'" *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996) (quoting 1 MCCORMICK ON EVIDENCE § 145, at 227 (John W. Strong ed., 4th ed. 1992)).

the superior court did not err because even if Guidroz's statements were admissible under RCW 10.58.035, the State did not present evidence independent of the statements sufficient to establish the *corpus delicti* of the crime charged—namely, Wallace's death. Therefore, we affirm.

FACTS

The facts are not in dispute. The superior court entered findings of fact, drafted by the State. The State did not assign error to any of the findings on appeal. The findings of fact are, therefore, verities on appeal. *State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59 (2006). Neither party argues the importance of facts not found in the superior court's findings of fact. Therefore, we can rely on the findings of fact as the complete factual record for this appeal. The superior court made the following findings of fact:

> I.1. On January 10, 1983, the defendant called police to report that his son, Wallace Guidroz, had gone missing from Point Defiance Park in Tacoma, Washington.
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> I.2. The defendant spoke with police and initially told them the following:
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> – He had spent the afternoon fishing with a friend while Wallace waited in his car.
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> – He and Wallace then went for a walk in the park and met a man and woman with a daughter about Wallace's age.
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> – He and the other man walked away from Wallace, the adult female, and the child.
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> – He and the male separated and he was at the waterfall for about 10 minutes then when [sic] to get Wallace.
>
> – When [t]he defendant returned, Wallace was gone, along with the female, male and the child.
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> I.3. The defendant spoke with police later and provided a different sequence of events. He said that he and the male did not separate until they returned from the

waterfall to the area where they had left Wallace, the female, and the little girl. They then separated to search and he never saw the male again.

I.4. The defendant told police he had spoken to a bus driver about Wallace being missing. The police reviewed work logs for Pierce County Transit and spoke with the eight bus drivers who might have been at the park that day. None of them recalled being asked about a missing boy.

I.5. The investigation was eventually suspended with no further leads. Wallace was never found.

I.6. In 2011, Tacoma Police Detective Gene Miller re-opened the investigation.

I.7. Detective Miller obtained a 1982 CPS [Child Protective Services] report wherein Wallace had suffered an injury to his head from a clothes iron. The defendant told the CPS case worker that Wallace injured himself by pulling the iron off the ironing board. The CPS referral was "cleared" with no action taken.

I.8. Detective Miler spoke with Valerie Davis and Henry McBride, who knew the defendant at the time of Wallace's disappearance. Valerie McBride said Wallace had always had some sort of injuries, bruises, black eyes, casts; the defendant seemed to feel he was stuck with Wallace; and the defendant would drop Wallace off at their house for a few hours then disappear for days, and the defendant would seem angry when they finally found him. Henry McBride also told Detective Miller about injuries he had seen on Wallace; and that he had seen the defendant shake Wallace.

I.9. In 2011, Detective Miller interviewed the defendant. The defendant gave statements inconsistent with his statements to police in 1983. Specifically, he initially said nothing about the couple with the little girl, but instead stated Wallace had been playing with the children of the friend he was fishing with.

I.10. Detective Miller confronted the defendant with the inconsistencies. The defendant then stated that he had killed Wallace accidentally. He stated that Wallace had been in his high[ ]chair when the defendant became upset and struck Wallace one time, sending him falling to the floor where he hit his head and died. It was these inculpatory statements which were the subject of the defendant's motion to suppress.

I.11. The State provided several exhibits, admitted into evidence, which detail the facts listed above.

I.12. In addition, the defendant presented the following facts:

– The defendant took two polygraph tests regarding whether he played a role in his son's disappearance. One test was found to be inconclusive and the other test he passed.

– The police made a composite sketch of the man the defendant described seeing at the park. The police received numerous calls from people recognizing the man from the composite drawing. One man told police he had seen the defendant and Wallace and he saw a man, matching the composite sketch, staring at Wallace. One woman told police that a man and a woman had tried to abduct her children from the same location. They also received calls from people reporting seeing Wallace after his disappearance.

– The FBI filed an application for search warrant, wherein they stated they had information that the boyfriend of Wallace's mother, Chom Guidroz, had travelled to Tacoma, abducted Wallace, and taken Wallace to Texas to be with him and Chom.

Clerk's Papers (CP) at 1-3.

The superior court ruled that the State had not established the *corpus delicti*, and therefore, Guidroz's statement to Detective Miller was inadmissible. Specifically, the superior court held that the State's independent evidence did not establish a prima facie case for Wallace being dead nor that Wallace had died as a result of another person's criminal act.

Based on its findings, the superior court suppressed Guidroz's confession, which resulted in the case being dismissed with prejudice. The State appeals.

ANALYSIS

A. *CORPUS DELICTI*

1. Legal Principles

We review a superior court's decision under the *corpus delicti* rule de novo. *State v. Green*, 182 Wn. App. 133, 143, 328 P.3d 988, *review denied*, 337 P.3d 325 (2014). Under the *corpus delicti* rule:

> The confession of a person charged with the commission of a crime is not sufficient to establish the *corpus delicti*, but if there is independent proof thereof, such confession may then be considered in connection therewith and the *corpus delicti* established by a combination of the independent proof and the confession.
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> The independent evidence need not be of such a character as would establish the *corpus delicti* beyond a reasonable doubt, or even by a preponderance of the proof. It is sufficient if it *prima facie* establishes the *corpus delicti*.

State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996) (quoting *State v. Meyer*, 37 Wn.2d 759, 763-64, 226 P.2d 204 (1951)).

"The corpus delicti can be proved by either direct or circumstantial evidence." *Id.* at 655. And the evidence does not need to be sufficient to support a conviction or even enough to send the case to a jury. *Id.* at 656. But the independent evidence must be sufficient to provide prima facie corroboration of the crime allegedly committed. *Brockob*, 159 Wn.2d at 328.

In evaluating the independent evidence, we assume the truth of the State's evidence and consider the logical and reasonable inferences flowing from that evidence in the light most favorable to the State. *Aten*, 130 Wn.2d at 658. Prima facie corroboration exists where the independent evidence, and its logical and reasonable inferences, support the charge sought to be proven based on the crime described in the defendant's incriminating statement. *Brockob*, 159 Wn.2d at 328.[2] The independent corroborating evidence "'must be consistent with guilt and

[2] As our Supreme Court in *Brockob* noted:

> [W]e are among a minority of courts that has declined to adopt a more relaxed rule used by federal courts. Under the federal rule, the State need only present independent evidence sufficient to establish that the incriminating statement is trustworthy. Under the Washington rule, however, the evidence must independently *corroborate*, or confirm, a defendant's incriminating statement.

159 Wn.2d at 328-29 (internal citations omitted).

inconsistent with a[ ] hypothesis of innocence.'" *Id.* at 329 (quoting *Aten*, 130 Wn.2d at 660) (alteration in original). Where no such evidence exists, the defendant's statement cannot be used to prove the defendant's guilt at trial. *Aten*, 130 Wn.2d at 656.

Applying the *corpus delicti* rule to this case, independent evidence must exist to support the inference that Guidroz committed the crime of first degree manslaughter. A person is guilty of first degree manslaughter when "[h]e or she recklessly causes the death of another person." RCW 9A.32.060(1)(a). However, the State does not need to provide independent evidence to support that the death was caused recklessly, but rather only needs to establish that the death was the result of a criminal act. *State v. Hummel*, 165 Wn. App. 749, 763, 266 P.3d 269 (2012) (noting that the court could not find a case requiring "evidence of the mental state applicable to a specific degree of the alleged crime is necessary to establish that the death was the result of a criminal act."), *review denied*, 176 Wn.2d 1023 (2013). Thus, in order for Guidroz's confession to survive suppression under the *corpus delicti* rule, the State needed to establish the *corpus delicti* through independent evidence that corroborated: (1) the fact of death, and (2) a causal connection between the death and a criminal act. *Aten*, 130 Wn.2d at 655-56.

2. The Fact of Death

The State argues that it "presented sufficient evidence to establish a *prima facie* case of the crime charged." Br. of Appellant at 9 (boldface omitted). We hold that, even when viewed in the light most favorable to the State, the evidence the State presented was insufficient to reasonably infer the fact of death.

In *Hummel*, 165 Wn. App. at 761, Division One of this court considered what independent evidence was sufficient to satisfy the fact of death in a *corpus delicti* challenge where no body was

ever found. There, Hummel was convicted of first degree murder of his wife after she disappeared. *Id.* at 754. Division One held that when the evidence and the reasonable inferences that followed were viewed in the light most favorable to the State, it was reasonable to conclude that Hummel's wife was (1) dead, and (2) that her death was a result of a criminal agency. *Id.* at 770. In holding that the evidence supported a reasonable inference that Hummel's wife was dead, Division One noted that the State had presented evidence that (i) shortly after Hummel's wife discovered that Hummel had been molesting their daughter, Hummel's wife "vanished suddenly and surprisingly, never to be heard from again"; (ii) "she was close with her children and was unlikely to simply abandon them"; (iii) "without explanation, she failed to attend a special event for her daughter's birthday"; and (iv) "the failure to complete a work assignment was out of character." *Id.*

Here, the independent evidence that the State presented, and all reasonable inferences therefrom, do not support that Wallace is dead. In this case, the State argues that the following evidence it presented was sufficient to satisfy the fact of death: (i) that Wallace has been missing since 1983; (ii) that not one of eight bus drivers who might have been in the area remembers being asked about a missing boy; (iii) that in 1982 there was a CPS referral regarding Wallace's injuries from a clothes iron; and (iv) that 30 years later Davis and McBride recounted stories of numerous unexplained injuries to Wallace and Guidroz's multiple-day absences. At oral argument, the State added that Guidroz had a motive to kill his son, as evidenced by the statements of Davis and McBride, that Guidroz had ample opportunities to kill his son, and that Guidroz exhibited odd behavior after Wallace went missing.

First, evidence that a person has been missing for many years does not, by itself, reasonably create the inference that the person is dead. In *Hummel*, the court held that the wife's long absence

was evidence that she was dead because she was an adult who was unlikely to suddenly abandon her children without telling them where she was going, would not skip her child's birthday without explanation, and had never left a work assignment uncompleted. *Id*. But, here, we have a three-and-a-half-year-old child, and no evidence that this three-and-a-half-year-old child had established a relationship and pattern of conduct with others such that his failure to act in conformance therewith is reasonably explained by presuming his death. *Cf. Hummel*, 165 Wn. App. at 770 n.7 (noting that in *State v. Thompson*, 73 Wn. App. 654, 663, 870 P.2d 1022 (1994), the court "rel[ied] on the victim's habits regarding housework, patterns of contact with her friends, and care of her pets, as well as evidence that she disappeared suddenly and without warning, as creating a strong inference" that the victim was dead, despite the absence of a body). Three-and-a-half-year-old children can wander away accidentally or be abducted. Once lost or abducted, three-and-a-half-year-old children are unlikely to be able to communicate without assistance from an older child or an adult. Thus, the State's evidence that Wallace has been missing since 1983 does not reasonably imply that Wallace is dead.

Second, the State's evidence that "of the eight bus drivers who might have been in the area at the time, not one of them remembered ever being asked about a missing boy" is not independent evidence that reasonably implies that the missing boy is dead. Br. of Appellant at 11. The State cites no authority, and does not provide additional argument, for how the failure of bus drivers to remember being asked about a missing boy could lead to a reasonable inference that the boy they do not remember being asked about is dead.

To the extent the State intended to argue that it shows another inconsistency in Guidroz's story, this argument fails because even if no bus driver could recall that a man asked about his

missing son, there could be any number of reasons for such an inconsistency that do not include the father knowing the child is dead. *Brockob*, 159 Wn.2d at 329 (holding that the independent corroborating evidence "'must be consistent with guilt and inconsistent with a[ ] hypothesis of innocence.'" (quoting *Aten*, 130 Wn.2d at 660) (alteration in original). At best, the reasonable inference that can be drawn from this evidence is that Guidroz did not ask any bus driver about his missing son. Thus, evidence that not one of eight bus drivers who might have been in the area remembered being asked about a missing boy is not evidence that creates a reasonable inference that the boy is dead.

Third, the State's evidence that there was a CPS referral for a suspicious injury to Wallace's head from a clothes iron the year before Wallace went missing is not evidence that creates the reasonable inference that Wallace is dead. Aside from recounting the facts in the preceding sentence, and neglecting to add that the investigation was "cleared," the State presents no other facts, citations, or argument to support how this CPS report could reasonably create the inference that Wallace is dead.

Fourth, the State's evidence from Davis and McBride regarding Guidroz's potential abuse and neglect of Wallace does not reasonably create the inference that Wallace is dead. Even assuming that Davis's and McBride's recollections from over 30 years ago of Guidroz's actions and feelings towards his son are accurate, they lead to the reasonable inference that Guidroz was not a good parent. Their recollections do not reasonably lead to an inference that Wallace is dead.

Fifth, just as Davis's and McBride's recollections of Guidroz's actions and feelings towards his son do not reasonably create the inference that Wallace is dead, they also do not reasonably create the inference that Guidroz was motivated to kill his son. We do not presume

that not being a good parent creates an inference that the parent has the motivation to kill his or her child.

Sixth, that Guidroz had ample opportunities to kill Wallace does not create the inference that Wallace is dead. During a child's young life, he or she will likely be alone with a parent quite frequently. But, the death of a child cannot be reasonably inferred from an opportunity a parent has to kill the child.

Seventh, the State argues that Guidroz exhibited odd behavior after Wallace disappeared, and that this odd behavior demonstrated Guidroz's consciousness of guilt. But the State was unable to provide citations to the record that demonstrate the alleged odd behavior created an inference of guilt. Moreover, that a parent feels guilty after their child disappears is no more indicative that the parent killed the child than it is that the parent is distraught over not being able to find the child. Accordingly, the alleged odd behavior is not "'inconsistent with a[ ] hypothesis of innocence,'" and is, therefore, insufficient to reasonably infer Wallace's death. *Id.* at 329 (quoting *Aten*, 130 Wn.2d at 660) (alteration in original).

Finally, even when all the evidence the State presented is considered together, it does not reasonably lead to the inference that Wallace is dead. Taken together, in the light most favorable to the State, the evidence the State relies upon would reasonably lead one to infer that Wallace is missing and that Guidroz was not a good parent. From this evidence, we hold that one could not reasonably infer Wallace's death. Consequently, having failed to establish the first element in a first degree manslaughter case challenging the existence of the *corpus delicti*—the fact of death—

we hold that the State failed to establish the *corpus delicti*, and the trial court did not err in suppressing Guidroz's statements.[3]

[3] The State also argues that the superior court erred because it failed to view the evidence in the light most favorable to the State, weighed the credibility of the evidence, and considered the evidence presented by the defense. We do not address the merits of this argument.

We review the superior court's dismissal de novo. *Green*, 182 Wn. App. at 143. Accordingly, when we review whether the *corpus delicti* rule prevents the admission of Guidroz's statement to Detective Miller, we do so under the same standard of review that the superior court should have applied. Which is to say, that we review whether the State has presented direct or circumstantial evidence sufficient to reasonably infer (1) the fact death, and (2) a causal connection between the death and a criminal act. *Aten*, 130 Wn.2d at 655; *Brockob*, 159 Wn.2d at 328.

Because we hold that the State failed to present evidence sufficient to reasonably infer that Wallace is dead, and we reach that conclusion under the standard that the superior court should have applied, it would waste judicial resources for this court to subsequently determine whether the superior court applied the proper standard and to potentially remand the case for the superior court to reconsider. This would waste judicial resources because we have already identified the conclusion that the superior court would necessarily reach when applying the proper legal standard. Accordingly, we do not address the merits of the State's argument that the superior court did not apply the proper legal standard.

B. RCW 10.58.035

The State next argues that the superior court erred in not admitting Guidroz's statements to Detective Miller under RCW 10.58.035.[4] We hold that even if Guidroz's statements were admissible under RCW 10.58.035, the superior court did not err in suppressing the statements because the State did not present other evidence, independent of the statements made to Detective

[4] RCW 10.58.035 provides:

> (1) In criminal and juvenile offense proceedings where independent proof of the corpus delicti is absent, and the alleged victim of the crime is dead or incompetent to testify, a lawfully obtained and otherwise admissible confession, admission, or other statement of the defendant shall be admissible into evidence if there is substantial independent evidence that would tend to establish the trustworthiness of the confession, admission, or other statement of the defendant.
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> (2) In determining whether there is substantial independent evidence that the confession, admission, or other statement of the defendant is trustworthy, the court shall consider, but is not limited to:
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> (a) Whether there is any evidence corroborating or contradicting the facts set out in the statement, including the elements of the offense;
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> (b) The character of the witness reporting the statement and the number of witnesses to the statement;
>
> (c) Whether a record of the statement was made and the timing of the making of the record in relation to the making of the statement; and/or
>
> (d) The relationship between the witness and the defendant.
>
> (3) Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission.
>
> (4) Nothing in this section may be construed to prevent the defendant from arguing to the jury or judge in a bench trial that the statement is not trustworthy or that the evidence is otherwise insufficient to convict.

Miller, sufficient to establish the *corpus delicti* of the crime charged—specifically, the fact of death.

Our Supreme Court explained why the standard of review in these types of challenges is de novo: "Generally, we review a trial court's decision of whether evidence is admissible for abuse of discretion. But determining the admissibility of a defendant's statement under RCW 10.58.035 is a mixed question of law and fact. The application of law is reviewed de novo." *State v. Dow*, 168 Wn.2d 243, 248, 227 P.3d 1278 (2010) (internal citations omitted).

In *Dow*, the State charged Dow with first degree child molestation based on his admission to the police that he molested a three-year-old child. *Id.* at 246. The State conceded that Dow and the child were the only people present at the time of the alleged molestation, and that the child was too young to testify, so there was no evidence independent of Dow's statements to the police of the alleged crime. *Id.* at 247. Instead, the State argued that Dow's statements should be admitted under RCW 10.58.035. *Id.* at 254.

Our Supreme Court affirmed the trial court's refusal to admit the statements and its dismissal of the State's case against Dow. *Id.* at 253-55. In doing so, the court held that even if Dow's statements were trustworthy and admissible under RCW 10.58.035, the trial court did not err because RCW 10.58.035 pertained "only to [the] admissibility" of the statements and the statute could not relieve the State of its burden of presenting sufficient independent evidence to support a conviction. *Id.* at 253-54. Accordingly, because there was no independent evidence corroborating Dow's statements to the police, dismissal was proper because the State had failed to establish the *corpus delicti*. *Id.* at 254-55.

Similarly here, we hold that the State failed to establish the *corpus delicti* because, even when viewed in the light most favorable to the State, the evidence the State presented was insufficient to reasonably infer the fact of death element for the crime of first degree manslaughter. Section A. 1., *supra*. Therefore, we hold that, "even if the statements are admissible," the superior court did not err in dismissing the case because "no other evidence [was presented] to establish the corpus delicti independent of" Guidroz's statements to Detective Miller, and "RCW 10.58.035 does nothing to change this requirement" that the *corpus delicti* must be supported by "sufficient evidence independent of a defendant's confession to support a conviction." *Id.* at 254.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Johanson, J.

Bjorgen, C.J.