IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. NICK TAYLOR ARQUETTE, Appellant.	No. 40776-1-II UNPUBLISHED OPINION

Worswick, A.C.J. — Nick Arquette appeals his second degree perjury conviction. He contends that one of the trial court's jury instructions incorrectly stated the law and lowered the burden of proof for perjury. In a pro se statement of additional grounds (SAG) he also argues that (1) a member of the jury panel had a preexisting relationship with one of the police officers involved in the case, (2) he was not permitted to present evidence that he had obtained a new title to the vehicle at issue, and (3) police officers did not give him *Miranda*[1] warnings when they booked him into jail. We affirm.

FACTS

In March of 2009, Gary McKee purchased a Datsun pickup from a man he knew only as Robert. When Robert failed to deliver the Datsun, McKee went to his residence to inquire about it. He spoke with Nick Arquette, who also lived there. Arquette explained that the Datsun belonged to him, not Robert, but he agreed to give McKee the title if McKee brought Robert to the house so that Arquette could tell him that he was no longer allowed on the property. McKee did so, and Arquette signed the vehicle title and gave it to McKee. Several days later, McKee

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

returned with a friend and took possession of the Datsun and towed to his brother's house. Arquette was present at the time and moved his other vehicle out of the driveway, giving McKee access to the pickup.

On March 27, 2009, Arquette reported the Datsun stolen. When Longview police officers arrived at his house, Arquette told them somebody named Gary might have taken the vehicle because Gary believed he had bought it from Robert Tribble, Arquette's former roommate. Arquette said that he believed Tribble had stolen the vehicle title. He signed an incident report to that effect under penalty of perjury.

Two days later, Arquette called the Longview Police Department and indicated to a police officer he believed his automobile could be found "somewhere on the 200 block of Cypress." Verbatim Report of Proceedings (VRP) (May 5, 2010) at 37. Officer Charles Meadows responded. He found the Datsun in plain sight in a carport located in the same complex where McKee's brother lived. Officer Meadows did not talk to anyone at the house, but McKee's father saw him examining the pickup and contacted the police to find out why. McKee himself later produced the title to the truck.

Officer Meadows contacted Arquette again and requested another written statement regarding the matter. In the second statement, Arquette asserted that he had told McKee he would report the vehicle stolen if McKee took it. He again said that he was not home when McKee came for the pickup.

Meadows submitted the copy of the title along with both of Arquette's written statements to the crime lab to analyze Arquette's signature. An expert determined that the signatures from

the statements and the one on the vehicle title transferring ownership were the same. On October 7, 2009, the State charged Arquette with two counts of second degree perjury. The trial court dismissed one charge; the other charge was tried to a jury.

At trial, Arquette stipulated that he had signed the title. He explained that he was anticipating a sale to a different individual when the pickup was stolen. Among the instructions given by the court was jury instruction 12,[2] that states:

> To convict the defendant of the crime of perjury in the second degree there must be one credible direct witness along with independent direct or circumstantial evidence of supporting circumstances that clearly overcomes the oath of the defendant and the legal presumption of the defendant's innocence.

Clerk's Papers at 45.

ANALYSIS

We review an alleged error of law in jury instructions de novo. *In re Det. of Alsteen*, 159 Wn. App. 93, 99, 244 P.3d 991 (2010). Arquette's argument regarding the instruction alleges an error of law, and we review his challenge accordingly.

The requirements for proof of perjury are longstanding and well established:

> "There must be the direct testimony of at least one credible witness, and that testimony to be sufficient must be positive and directly contradictory of the defendant's oath; in addition to such testimony, there must be either another such witness or corroborating circumstances established by independent evidence, and of such a character as clearly to turn the scale and overcome the oath of the defendant and the legal presumption of his innocence. Otherwise the defendant must be acquitted."

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[2] The State argues that Arquette requested this instruction. The record before this court does not support that assertion. It appears that defense counsel proposed 11A *Washington Practice: Washington Pattern Jury Instructions: Criminal* 118.12, at 454 (3d ed. 2008) (WPIC). *See* VRP (May 4, 2010) at 167-68. The trial court's instruction omitted some of the language contained in WPIC 118.12.

Nessman v. Sumpter, 27 Wn. App. 18, 23, 615 P.2d 522 (1980) (quoting *State v. Rutledge*, 37 Wash. 523, 528, 79 P. 1123 (1905)). Arquette argues that the omission of the word "corroborating" from jury instruction 12 relieved the State of its burden to prove the perjury charge beyond a reasonable doubt. Instead, the instruction referred to "supporting circumstances." "Supporting" circumstances are clearly the equivalent of "corroborating" circumstances. And the use of the term "circumstantial evidence" is not erroneous. That is what the court in *Nessman* referred to when it spoke of "circumstances established by independent evidence." 27 Wn. App. at 23. We have long considered direct evidence and circumstantial evidence to be equally reliable. *State v. Delmarter,* 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The court's instruction is a correct statement of the law.

Turning to Arquette's SAG arguments, he relies on factual assertions about matters that are outside the record. We cannot consider matters outside the record on a direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

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Van Deren, J.