

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 66049-7-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	UNPUBLISHED OPINION
jason matthew absher,)	
)	
Appellant.)	FILED: April 23, 2012

Schindler, J. — Jason Absher challenges his jury conviction for attempted possession with intent to deliver OxyContin in violation of the Uniform Controlled Substances Act, RCW 9A.28.020 and RCW 69.50.401(1), (2)(a). Absher argues the trial court erred by denying his motion to suppress statements he made to a police informant and the admissions he made following arrest that he purchased 420 OxyContin pills for \$10,500. Absher asserts that independent corroborating evidence does not establish the corpus delicti of the charged crime. Because the corpus delicti rule does not apply to statements Absher made to the informant during the course of the crime, and those statements are properly considered along with the other independent corroborating evidence of the charged crime, we affirm.

FACTS

Patricia Quinn has worked as a paid confidential informant with Auburn Police Detective Jeffrey Crawford since 2003. In May 2009, Quinn offered to sell Jason Absher a large quantity of OxyContin pills for \$25 each. Detective Crawford listened to the telephone conversations between Absher and Quinn as they negotiated a deal. Absher agreed to meet Quinn at the Walmart parking lot at the Auburn SuperMall around 8:00 p.m. on May 14 to buy 420 OxyContin pills for \$25 per pill. Absher told Quinn he intended to buy the pills for himself and at least two other people.

Detective Douglas Faini watched as Absher arrived in his truck at the Walmart parking lot and pulled into a parking spot next to a dark Acura with a person sitting in the driver's seat. The Acura driver got out of his car and got into Absher's truck. Police observed Absher and the Acura driver make back-and-forth shuffling motions with their hands, consistent with counting money. After a few minutes, the Acura driver got out of the truck and drove away.

After the Acura driver left, Absher called Quinn and told her he was waiting for a "guy from Milton to come in and bring the rest of the money." A few minutes later, a Subaru pulled into the Walmart parking lot and parked next to Absher's truck. The Subaru driver, later identified as Brandon Blokzyl, got out of his car and got into Absher's truck. Police observed similar shuffling motions by the two men before the Subaru driver got out of the truck and returned to his car.

Absher then called Quinn and told her that he had the money but needed to

count it. Quinn suggested Absher count the money in her truck. Absher got out of his truck and got into Quinn's truck. Absher pulled out "[r]olls and wads of money" from his two front pockets, counted out \$10,500, and placed the money on the console of the truck. In exchange, Quinn gave Absher 420 imitation OxyContin pills. Absher said that 50 pills were for him, 150 for his friend, and the rest were for some other people in Milton. After Absher left Quinn's truck, the police arrested him.

Absher waived his Miranda¹ rights. Absher admitted that he purchased 420 OxyContin pills for \$10,500 and said that Blokzyl gave him money for 150 pills. The next day, Absher provided a written statement admitting that he purchased the pills for "several people."

Prior to trial, Absher moved to suppress the statements he made to Quinn and to the police under the corpus delicti rule. The trial court denied the motion. A jury found Absher guilty as charged and the court imposed a standard range sentence.

analysis

Absher contends the trial court erred in denying his motion to suppress the statements he made to Quinn and to the police under the corpus delicti rule. Absher claims the State did not present independent corroborating evidence to establish the corpus delicti of the charged crime. Specifically, that the State did not present corroborating evidence of his intent to deliver OxyContin.

Under the corpus delicti rule, a defendant's confession or admissions are not admissible unless independent corroborating evidence establishes the corpus delicti of the crime. State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996). Corpus delicti is

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

No. 66049-7-1/4

usually proven by the following two elements: “(1) an injury or loss (e.g., death or

missing property) and (2) someone's criminal act as the cause thereof.” City of Bremerton v. Corbett, 106 Wn.2d 569, 573-74, 723 P.2d 1135 (1986). However, attempt crimes do not require an injury or loss and the corpus delicti of an attempt crime involves proof that the crime charged was committed by a particular person. State v. Smith, 115 Wn.2d 775, 781, 801 P.2d 975 (1990).

We review the corpus delicti determination de novo. State v. Pineda, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000). The State's independent evidence may be either direct or circumstantial. The evidence need not establish the necessary elements of the corpus delicti beyond a reasonable doubt or even by a preponderance of the evidence; it is sufficient if the evidence prima facie establishes the corpus delicti. Aten, 130 Wn.2d at 656. “Prima facie” in this context of the corpus delicti rule means “ ‘evidence of sufficient circumstances which would support a logical and reasonable inference’ of the facts sought to be proved.” Aten, 130 Wn.2d at 656 (quoting State v. Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)).

In assessing the sufficiency of the State's corpus delicti evidence, a reviewing court must assume the truth of the State's evidence and view all reasonable inferences in the light most favorable to the State. Aten, 130 Wn.2d at 658.

To establish the corpus delicti in this case, the State had to present evidence that Absher (1) took a substantial step toward (2) possessing a controlled substance (3) with the intent to deliver. RCW 9A.28.020(1); RCW 69.50.401(1), (2)(a); see, e.g., Smith, 115 Wn.2d at 782. A “substantial step” is conduct strongly corroborative of the actor’s criminal purpose. Smith, 115 Wn.2d at 782 (citing State v. Workman, 90 Wn.2d

443, 451-52, 584 P.2d 382 (1978) (adopting Model Penal Code (Proposed Official Draft 1962) definition)).

The premise of Absher's argument is that the State may not use the statements he made to the confidential informant Quinn to establish the corpus delicti. However, as we held in State v. Dyson, 91 Wn. App. 761, 763, 959 P.2d 1138 (1998), the corpus delicti rule does not apply to statements that were made "as part of the crime itself."

In Dyson, the defendant argued that the statements he made while negotiating an agreement with an undercover officer should be suppressed as a confession under the corpus delicti rule. Dyson, 91 Wn. App. at 762. On appeal, we rejected Dyson's argument that the statements he made to the undercover officer should not be considered in establishing the corpus delicti because the statements were "made as part of the crime itself." Dyson, 91 Wn. App. at 762-63.

The statements were made as part of the crime itself. Dyson cites no authority for the proposition that statements made during the course of the crime amount to a confession or admission. By definition, a confession is an expression of guilt as to a past act. No such confession is involved in this case. The trial court did not err in admitting evidence of the statements.

Dyson, 91 Wn. App. at 763.²

Under Dyson, the corpus delicti rule does not apply to Absher's statements to Quinn. Those statements, as well as the other unchallenged corroborating evidence, were therefore properly considered as part of the State's independent evidence establishing the corpus delicti of the charged crime. The statements Absher made to Quinn on the telephone and while in her truck in the Walmart parking lot during the

² (Footnotes omitted.)

exchange of money for pills constituted a substantial step toward the commission of the charged crime. See, e.g., State v Roby, 67 Wn. App. 741, 743-44, 747, 840 P.2d 218 (1992) (requesting controlled substance from undercover officer and displaying cash constituted substantial step toward committing crime of possession of controlled substance). Viewing the reasonable inferences in the light most favorable to the State, independent corroborating evidence supports the conclusion that Absher negotiated a deal for the purchase of OxyContin pills, provided the agreed amount of cash, and took possession of what he believed to be OxyContin pills with the intention of distributing the pills.

Absher does not cite any support for his claim that statements like those he made to Quinn during negotiations and in the course of their transaction are subject to the corpus delicti rule. The cases he cites and relies on do not involve statements made during the course of or as part of the crime. See, e.g., Aten, 130 Wn.2d at 644-54, 657 (defendant in second degree manslaughter case made “several incriminating and somewhat contradictory statements” to various people after the child’s death); Corbett, 106 Wn.2d at 571-73 (defendants charged with driving under the influence or physical control of a vehicle under the influence made statements or admissions about whether they had been driving after accidents or interaction with officers); State v. Brockob, 159 Wn.2d 311, 318-21, 150 P.3d 59 (2006) (defendants made statements regarding intent after being found by officers to be in possession of controlled substances); State v. Dow, 168 Wn.2d 243, 247, 227 P.3d 1278 (2010) (defendant charged with child molestation made exculpatory statements during a police interview

after events surrounding alleged offense).

Because the State carried its burden of establishing the corpus delicti, the trial court did not err in denying the motion to suppress and admitting Absher's statements to the police.

Affirmed.

WE CONCUR:

Edington, J

Schiveller, J

Grosse, J