

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

DAVID TRUSILO
Appellant,

v.

Appeal No. CRC 10-00079 APANO
UCN ~~522010CT128897XXXXXX~~

STATE OF FLORIDA
Appellee.

522010AP000079XXXXCR

_____ /

Opinion filed _____.

Appeal from a judgment and sentence
entered by the Pinellas County Court
County Judge Robert G. Dittmer

Marc N. Pelletier, Esquire
Attorney for Appellant

Christopher M. Klemawesch, Esquire
Assistant State Attorney
Office of the State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, David Trusilo's, appeal from a conviction, after a jury trial, of Driving While Under the Influence of Alcohol or a

Controlled Substance in violation of § 316.193 Fla. Stat. (2007). After review of the record and the briefs, this Court affirms the judgment and sentence.

Factual Background and Trial Court Proceedings

The Appellant was the subject of a traffic stop after he was observed by a deputy sheriff driving twenty-nine miles per hour in excess of the speed limit, making a right turn from the middle lane and in the process he “actually cut the vehicle off” and for driving aggressively by “cutting in and out of traffic, going from left lane to right lane, back to the left lane and back to the right lane” in such a manner as to cause some drivers “to slow down to avoid an accident.” When the deputy made direct contact with Appellant, the deputy “noticed that his eyes were bloodshot and watery and his speech was slurred and his movements, when I asked him for his license, registration and insurance, were slow and sluggish.” In response to a question the Appellant told the deputy that “he had one beer earlier while he was having his fence installed.”

The deputy began a criminal DUI investigation. Field sobriety exercises were administered and Appellant’s performance indicated signs of impairment. During the investigation the Appellant stated that he had consumed four beers and had taken the medications *MS Contin* and *Lortab*. *Lortab* contains the controlled substance *hydrocodone*. At the conclusion of the investigation the deputy concluded that Appellant’s normal faculties were impaired. Specifically, his ability to walk, talk, make judgments, drive an automobile and perform mental or physical activities were all impaired. The deputy concluded that Appellant was under the influence of either alcohol or narcotics, or a combination. Appellant was placed under arrest for driving under the influence and taken to Central Breath Testing where he failed or refused to provide a

breath sample after being read the Implied Consent warning.

The case proceeded to jury trial. Before the trial started, Appellant moved the court to exclude his statement regarding the taking of *Lortab*. That motion was denied. At the close of the State's case Appellant moved for a judgment of acquittal arguing that any conviction would be based wholly on circumstantial evidence and that the evidence presented did not exclude every reasonable hypothesis of innocence. That motion was denied. The jury returned a verdict of guilty.

Issues

Appellant raises two issues on appeal. First, the trial court erred in not excluding the statement regarding the taking of the medication because of a lack of a foundation, specifically *corpus delecti*, and because the prejudicial effect of the statement outweighed its probative value. Second, the trial court erred in not granting the Motion for Judgment of Acquittal.

The Motion in Limine

1. *Standard of Review.* A trial judge's rulings on the admission or exclusion of evidence are reviewed under the abuse of discretion standard. *LaMarca v. State*, 785 So.2d 1209, 1212 (Fla.2001). Moreover, “[t]he standard of review of a lower court's ruling on a motion in limine is abuse of discretion. *Dessaure v. State*, 891 So.2d 455, 466 (Fla.2004) (citing *State v. Polak*, 598 So.2d 150 (Fla. 1st DCA 1992)).” *Dean v. State*, 916 So.2d 962, 964 (Fla. 4th DCA 2005). “Under the abuse of discretion standard, ‘[d]iscretion is abused only ‘when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no

reasonable [person] would take the view adopted by the trial court.” *Frances v. State*, 970 So.2d 806, 813 (Fla. 2007).

2. *Exclusion of Admissions Based upon Failure to Establish Corpus Delicti.* In the absence of an independently established *corpus delicti* the state may not offer in evidence an out of court confession or admission against interest to establish one of the elements of the charged offense. *Burks v. State*, 613 So.2d 441, 442 (Fla. 1993); *Harrison v. State*, 483 So.2d 757, 758 (Fla. 2nd DCA 1986).

The phrase “corpus delicti” means “body of the crime,” *Black's Law Dictionary* 344 (6th ed.1990), and refers generally to the proof that a crime has been committed. Florida law requires that the corpus delicti be established independently of any confession before the confession is admitted into evidence. *Bassett v. State*, 449 So.2d 803 (Fla.1984); *Frazier v. State*, 107 So.2d 16 (Fla.1958). In order to prove corpus delicti, the State must establish: (1) that a crime of the type charged was committed; and (2) that the crime was committed through the criminal agency of another. *State v. Allen*, 335 So.2d 823, 825 (Fla.1976). In regard to the first part—that a crime was committed—each element of the relevant offense must be shown to exist. *Burks v. State*, 613 So.2d 441, 443 (Fla.1993). With respect to the second part—the criminal agency of another—the proof need not show the specific identity of the person who committed the crime. *Id.* That is, it is not necessary to prove that the crime was committed by the defendant.

Franqui v. State, 699 So.2d 1312, 1316 -1317 (Fla. 1997). This rule obviously does not require the state to prove a defendant's guilt beyond a reasonable doubt before his or her confession may be admitted. *State v. Allen*, 335 So.2d 823, 825 (Fla. 1976). “The state has a burden to bring forth ‘substantial evidence’ tending to show the commission of the charged crime. ... This standard does not require the proof to be uncontradicted or overwhelming, ... but it must at least show the existence of each element of the crime.” *Allen*, 335 So.2d at 825, (internal footnotes omitted). Such proof may be in the form of circumstantial evidence. *Burks*, 613 So.2d at 443. The *corpus delicti* need be established only prima facie. *Hodges v. State*, 176 So.2d 91, 93 (Fla.1965).

3. *The Present Case.* In the present case the evidence, excluding Appellant's statement that he took the medication, established a prima facie showing that the charged offense had actually been committed and that Appellant was criminally responsible. *Corpus delicti* was independently established and the Appellant's statement was properly admitted into evidence.

The Remaining Issues

The remaining issues raised by the Appellant are without merit and will not be addressed in this opinion.

Conclusion

Based upon the foregoing, this court finds the Appellant's convictions were supported by competent, substantial evidence. There was no error by the trial court.

We affirm the judgment and sentence.

IT IS THEREFORE ORDERED that the convictions of the Appellant are affirmed.

ORDERED at Clearwater, Florida this 19 day of September, 2011.

Original order entered on September 19, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable Robert G. Dittmer
Marc N. Pelletier, Esquire
Office of the State Attorney