

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 PASCO COUNTY
APPELLATE DIVISION

STATE OF FLORIDA,
Appellant,

UCN: 512018AP000020APAXWS

Appeal No.: 18-AP-20

v.

L.T. No.: 17-CT-0307

TASHA MARIE MEAD,
Appellee.

On appeal from Pasco County Court,
Honorable Debra Roberts,

Oliver Luis Moll,
Assistant State Attorney,
for Appellant,

Frank D.L. Winstead, Esq.,
for Appellee.

ORDER AND OPINION

Because evidence must be offered to prove corpus delicti and the Appellant failed to offer any evidence during the hearing on the Appellee's motion in limine, the trial court's order granting the Appellee's motion in limine is affirmed under the tipsy coachman doctrine. While the trial court should not have permitted the corpus delicti issue to be decided via a non-evidentiary hearing, the Appellant failed to raise this issue in the Initial Brief.

STATEMENT OF THE CASE AND FACTS

On January 29, 2017, the Appellee was arrested for Driving Under the Influence (DUI). On February 3, 2017, a Uniform Traffic Citation (UTC) was filed charging the Appellee with DUI, a misdemeanor, in violation of section 316.193(2)(a), Florida Statutes (2016).

On Monday, March 26, 2018, the day that the case was set for trial, the Appellee filed in open court a motion in limine. The Appellee's motion argued, in relevant part, that her statements to law enforcement would be inadmissible at trial because, absent those

statements, the Appellant would be unable to prove that the Appellee had actual physical control of the vehicle and therefore would be unable to establish corpus delicti.¹ Specifically, the motion asserted that without the Appellee's statements, the only evidence was that two people were in the vehicle, the Appellee and another person, and that the Appellant would be unable to prove which person was in actual physical control.

The Appellant first asked for a brief recess to research the issues raised in the motion in limine. The trial court denied the request, stating that the Appellant had been provided oral notice the Friday before that a corpus delicti argument would be raised.

The motion was then immediately heard by the trial court. During the hearing, the Appellant summarized what evidence it believed would be put forth during trial, but did not actually adduce any evidence. At the conclusion of its proffer, the Appellant argued that the evidence it would produce at trial would establish that the Appellee had actual physical control of the vehicle, thus establishing corpus delicti. The Appellee argued that the Appellant's proffered evidence did not establish actual physical control and otherwise relied upon her written motion. The trial court orally granted the motion and suppressed the Appellee's statements to police.

The Appellant then moved to either re-address the corpus delicti issue or continue the trial because the Appellant was unable to proceed without evidence of the Appellee's statements to police. The trial court denied both motions. The Appellant then moved to continue a second time on the basis of appealing the trial court's order granting the Appellee's motion in limine. The trial court granted the second motion to continue. The next day, on March 27, 2018, the trial court issued a written order granting the Appellee's motion in limine. The Appellant timely appealed.

STANDARD OF REVIEW

An appellate court reviews a trial court's ruling on a motion in limine for abuse of discretion. *Patrick v. State*, 104 So. 3d 1046, 1056 (Fla. 2012). A trial court abuses its discretion if its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Id.*

¹ The motion also argued that the Appellee's testimony during a hearing on a previously-decided motion to suppress was inadmissible as evidence of guilt during trial. However, the Appellant does not appeal this portion of the trial court's order.

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). The appellate court reviews the trial court's application of the law to the facts of the case pursuant to a *de novo* standard. *Id.*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error." *Ornelas*, 517 U.S. at 699. *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

LAW AND ANALYSIS

I. Trial Court's Procedure in Ruling on Corpus Delicti Issue

Generally, corpus delicti is properly addressed during trial via evidentiary objection or, less frequently, motion for judgment of acquittal. *See J.B. v. State*, 705 So. 2d 1376, 1378 (Fla. 1998) ("We conclude that the allowance of a confession or admission against interest into evidence, without independent proof of the corpus delicti, requires a contemporaneous objection in order to preserve the issue for appeal . . . assuming arguendo that appellant's motion for judgment of acquittal at the close of the state's case preserved the issue, we find no trial court error").

Corpus delicti is rarely addressed in a pretrial motion in limine because evidence has to be presented before a trial court can determine if there is sufficient evidence of the body of the crime to permit the admission of a defendant's confession. *See e.g., State v. Holzbacher*, 948 So. 2d 935, 936-37 (Fla. 2d DCA 2007) ("This case is procedurally a little unusual because the issue of corpus delicti was raised not at trial, but by pretrial motion. At the hearing on his motion in limine, Holzbacher argued that his confession should not be admissible at trial because the corpus delicti of the charged offense would not be provable at trial. . . The evidence presented by Holzbacher at the hearing on his motion is probably different than the evidence that will ultimately be presented at trial").

While it is equally as rare as addressing it in motions in limine, corpus delicti is also sometimes addressed via motion to suppress. *See State v. Walton*, 42 So. 3d 902, 904 n.2 (Fla. 2d DCA 2010) ("We observe that his case is procedurally unusual because Mr Walton raised the issue of the State's ability to establish the corpus delicti in a pretrial motion to suppress rather than at trial"). This makes a little more sense than addressing corpus delicti in a motion in limine because motions to suppress are usually evidentiary hearings. Additionally, corpus delicti motions are similar to motions to suppress in that

they seek the suppression of a defendant's statements, albeit usually during trial rather than pretrial.

However, addressing corpus delicti in a pretrial motion to suppress is still rare because the evidence that will be adduced at trial is likely to be different and more extensive than the evidence adduced during a pretrial evidentiary hearing. *Id.* ("It seems to us that the evidence that the State presented at the hearing on the motion to suppress concerning the corpus delicti is likely different and less extensive than that which it may ultimately present at trial"). See also *Geiger v. State*, 907 So. 2d 668, 669-70 (Fla. 2d DCA 2005) (addressing corpus delicti via pretrial motion to dismiss).

Even on those rare occasions where the issue of corpus delicti is raised in a pretrial motion in limine, an evidentiary hearing must be held because a trial court needs evidence to make a corpus delicti determination. See e.g., *Holzbacher*, 948 So. 2d at 937 (noting that both the State and the defendant presented evidence during the motion in limine hearing); *Syverud v. State*, 987 So. 2d 1250, 1252 (Fla. 5th DCA 2008) ("Here, the trial court conducted an evidentiary hearing and, based upon the evidence presented, the trial court denied the motion in limine").

Because a pretrial corpus delicti motion requires an evidentiary hearing, the trial court should have required the Appellee to file the written motion prior to the day of trial, set the motion for an evidentiary hearing, and provide notice of the evidentiary hearing to the Appellant. See Fla. R. Crim. P. 3.060 ("A copy of any written motion which may not be heard ex parte and a copy of the notice of hearing therefor, shall be served on the adverse party a reasonable time before the time specified for the hearing").

Instead, by raising the corpus delicti via pretrial motion in limine, the Appellee essentially filed a motion to suppress her statements to law enforcement and served it on the Appellant at the last minute in open court on the Monday of trial. This was impermissible regardless of whether the Appellee gave the Appellant oral notice that it would be filing a written motion the Friday before. Verbally notifying the Appellant that the Appellee will be filing a written corpus delicti motion on the day of trial is not sufficient. The rules of criminal procedure require that a motion to suppress a confession must be in writing and filed before trial and the trial court must receive evidence on the motion. See Fla. R. Crim. P. 3.190(h)(3)-(4). Additionally, merely informing the Appellant that the

Appellee will be filing a corpus delicti motion does not lay out an argument for the Appellant to prepare to refute.

For these reasons, the trial court should not have permitted the Appellee to file a corpus delicti motion the day of trial without holding an evidentiary hearing and without giving the Appellant an opportunity to prepare for same. Or, in the alternative, the trial court could have reserved ruling on the corpus delicti issue until the point in the trial where the State would attempt to admit the Appellant's statements to law enforcement.

However, because the Appellant did not raise the trial court's procedure as an issue in the Initial Brief, the Court is unable to reverse on that basis. *M.S. v. Dep't of Children & Families (In the Interest of J.W.)*, 210 So. 3d 147, 152 (Fla. 2d DCA 2016) (holding that an appellant's argument was deemed waived because it was not addressed in her initial brief and she did not move to amend the initial brief when the issue was addressed in the appellee's answer brief).

II. Trial Court Order is Affirmed

The State bears the burden of establishing corpus delicti by sufficient evidence. *Sweetser v. State*, 258 So. 2d 287, 290 (Fla. 3d DCA 1972). The evidence does not need to be uncontradicted or overwhelming and it need not rise to the level of being proved by a preponderance of the evidence. *Walton*, 42 So. 3d at 906 (*quoting State v. Allen*, 335 So. 2d 823 (Fla. 1976)). It need only show the existence of each element of the offense. *Id.* The evidence can be circumstantial. *Id.* at 905-906.

In cases such as the one at bar, where there is more than one occupant of a vehicle, independent evidence of which occupant was actually driving or in actual physical control is sometimes, although not always, required to establish corpus delicti of DUI. *Walton*, 42 So. 3d at 905-908. If the independent evidence establishes all of the elements of DUI as to all vehicle occupants regardless of who was driving or in actual physical control, then there need not be independent evidence establishing which occupant was driving or in actual physical control. If, however, the independent evidence shows that not every element of DUI applies to all occupants, independent evidence regarding the identity of the person actually driving or in actual physical control is required to establish corpus delicti.

In the instant case, however, the Appellant put forth no evidence whatsoever, instead relying on a proffer by the Assistant State Attorney of the evidence the Appellant believed it would be able to adduce during trial. The Appellee's motion should have been granted on that basis. While the trial court granted the motion on the merits of the parties' arguments instead of the Appellant's failure to adduce any evidence, granting the Appellee's motion was still the correct result. See *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) (writing that the tipsy coachman doctrine "allows an appellate court to affirm a trial court that 'reaches the right result, but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record'"). While the Appellant's inability to put forth evidence was the result of the trial court not holding an evidentiary hearing, the Appellant's failure to raise this issue in the Initial Brief prevents reversal of the trial court's order. The order of the trial court is affirmed.

CONCLUSION

Because the Appellant failed to adduce any evidence to establish corpus delicti during the motion in limine, the Appellee's motion in limine should have been granted on that ground rather than granted based upon the merits of the parties' arguments. Therefore, the trial court's order granting the motion in limine is affirmed under the tipsy-coachman doctrine.

It is therefore ORDERED and ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ____ day of _____, 2019.

Original Order entered on February 4, 2019, by Circuit Judges Daniel D. Diskey, Linda Babb, and Kimberly Campbell.

Copies to:

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