

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000597-001 DT

05/17/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

SETH W PETERSON

v.

BRETT CLAY (001)

SCOTT C SILVA

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-0751-TR-2008-021071.

Defendant-Appellant Brett Clay (Defendant) was convicted in Scottsdale Municipal Court of driving under the influence, driving under the extreme influence, and false reporting to law enforcement agencies. Defendant contends the State did not present sufficient evidence of *corpus* for the trial court to consider his statement. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On June 27, 2008, the State filed a Complaint charging Defendant with driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); driving under the extreme influence, A.R.S. § 28-1382(A)(1); and false reporting to law enforcement agencies, A.R.S. § 13-2907.01(A). Prior to trial, the prosecutor asked the trial court for a pretrial ruling whether there was a *corpus* for Defendant's statement. (R.T. of Jun. 14, 2012, at 3.) Defendant's attorney opposed this request, stating the proper procedure would be to proceed with the trial and determine from the evidence the State presented whether the State had established the *corpus* for Defendant's statement. (*Id.* at 4-5.) After hearing the prosecutor's avowal of what the officer would say, the trial court ruled it would be a wise use of judicial court resources to determine how they were going to proceed before empaneling a jury. (*Id.* at 11.)

The prosecutor then called Officer Robert Rowley as a witness. (R.T. of Jun. 14, 2012, at 13.) He said he was on duty on May 31, 2008, and received a call of a single-vehicle collision. (*Id.* at 13-14.) When he got to the location, he saw a small dark colored sedan with the front end pushed into a fire hydrant. (*Id.* at 14.) Defendant was standing next to the vehicle, and another person, identified as Deron Green, standing closer to the house. (*Id.* at 16-17.) When Officer

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Rowley spoke to Defendant, he noticed Defendant had bloodshot, watery eyes, and had an odor of alcohol coming from him. (*Id.* at 20.) Defendant had blood on his lip and chin. (*Id.* at 24.) Defendant admitted to having four or five beers. (*Id.* at 20–21.) Officer Rowley had Defendant perform the HGN test, and Defendant showed six out of six cues. (*Id.* at 21.) Because Defendant nearly fell down while doing the HGN test, Officer Rowley did not have Defendant do any other field sobriety tests. (*Id.*)

Officer Rowley spoke to Defendant, who denied being Brett Clay and claimed Brett Clay was his younger brother. (R.T. of Jun. 14, 2012, at 19.) Defendant said he had gotten into an argument with a person in the house and decided to leave. (*Id.*) He said he was going to drive down the street and sleep in the car. (*Id.* at 20, 22.) He said the car belonged to his ex-girlfriend. (*Id.* at 21.) He said he started to drive down the street and must have hit the fire hydrant. (*Id.* at 20, 22, 24.)

After hearing argument of counsel, the trial court ruled the *corpus* had been met. (R.T. of Jun. 14, 2012, at 31.) Defendant then decided to submit the matter on the record, which included a stipulation that Defendant’s BAC was 0.219. (*Id.* at 32, 36.) The trial court found Defendant guilty of all four charges and that he had a prior DUI conviction, and imposed sentence. (*Id.* at 33, 42–43.) On June 26, 2012, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE STATE ESTABLISH SUFFICIENT *CORPUS* FOR THE ADMISSION OF DEFENDANT’S STATEMENT.

Defendant contends the State did not present sufficient evidence of a *corpus* to allow consideration of his statement. Although Defendant does not state as a separate issue on appeal the procedure the trial court followed, at trial he contended the trial court was not following the proper procedure in holding a pretrial hearing, and should instead have proceeded with trial and had the State present its evidence at trial. The Arizona Supreme Court has not specifically addressed the issues whether the question of *corpus* should be resolved at a pretrial hearing, but its decisions make clear *corpus* is an issue to be resolved in the context of the trial based on the evidence the state presents in its case in chief:

Furthermore, the State need not present evidence supporting the inference of *corpus delicti* before it submits the defendant’s statements “[a]s long as the State ultimately submits adequate proof of the *corpus delicti* before it rests.”

State v. Morris, 215 Ariz. 324, 160 P.3d 203, ¶ 34 (2007), citing *State v. Hall*, 204 Ariz. 442, 65 P.3d 90, ¶ 43 (2003), quoting *State v. Jones(Roche)*, 198 Ariz. 18, 6 P.3d 323, ¶ 14 (Ct. App. 2000).

“As long as the State ultimately submits adequate proof of the *corpus delicti* before it rests, the defendant’s statements may be admitted.”

Hall at ¶ 43, quoting *Jones(Roche)* at ¶ 14.

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The failure of the defendant to object to the introduction of his statements when they are offered does not waive his right to question their admissibility for the purpose of proving *corpus delicti*. A defendant might not object at the time the statements are offered on the theory the state will prove *corpus delicti* before resting its case.

State v. Gillies, 135 Ariz. 500, 505–06, 662 P.2d 1007, 1012–13 (1983).

When *corpus delicti* is later established, a variation in the order of proof does not constitute prejudice to the defendant.

State v. Gerlaugh, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982). The procedure as described by the Arizona Supreme Court is therefore as follows: The state presents its case-in-chief, including any statements the defendant had made. Once the State has rested its case, the defendant then would make a motion for judgment of acquittal contending the state had not presented sufficient evidence independent of the defendant's statement showing a crime had been committed and that someone had committed that crime. If the trial court concluded the state had failed to show a reasonable inference of *corpus delicti*, the trial court would grant an acquittal:

If the state fails to make this showing [of a reasonable inference of *corpus delicti*], the trial court should grant a motion for directed verdict of acquittal.

State v. Gillies, 135 Ariz. at 506, 662 P.2d at 1013. Thus, the trial court should not have held a pre-trial hearing, and should instead have allowed the State to present to the jurors its case (including Defendant's statements), and then addressed the issue of an inference of *corpus* by means of a motion for judgment of acquittal made by Defendant at the close of the State's case.

Some court of appeals cases have addressed the *corpus* issue when the trial court held a pre-trial hearing on the defendant's motion to dismiss. *See, e.g., State v. Nieves*, 207 Ariz. 438, 87 P.3d 851, ¶ 6 (Ct. App. 2004); *State v. Flores*, 202 Ariz. 221, 42 P.3d 1186, ¶ 3 (Ct. App. 2002). Other court of appeals cases have address the *corpus* issue when the trial court made its ruling after the defendant made a motion for judgment of acquittal at the close of the state's case. *See, e.g., State v. Sabin*, 213 Ariz. 586, 146 P.3d 577, ¶¶ 11, 33 (Ct. App. 2006); *State v. Morgan*, 204 Ariz. 166, 61 P.3d 460, ¶ 14 (Ct. App. 2002). And still other court of appeals cases have addressed the *corpus* issue when the trial court made its ruling both after a pretrial hearing on the defendant's motion to dismiss and after the defendant made a motion for judgment of acquittal at the close of the state's case. *See, e.g., State v. Barragan-Sierra*, 219 Ariz. 276, 196 P.3d 879, ¶ 13 (Ct. App. 2008). Thus, this Court has been unable to find any case that holds it is improper to hold a pretrial hearing on the *corpus* issue. However, in light of the Arizona Supreme Court cases discussed above, it appears the proper procedure is to address the issue at trial after the state has presented its case in chief.

In the present case, Defendant contends the trial court abused its discretion in ruling that the State had presented sufficient evidence of a *corpus* to allow consideration of his statement. The *corpus delicti* doctrine ensures a defendant's conviction is not based upon an uncorroborated

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confession or incriminating statement. *State v. Chappell*, 225 Ariz. 229, 236 P.3d 1176, ¶ 9 (2010); *Morris*, 215 Ariz. 324, 160 P.3d 203, ¶ 34; *Hall*, 204 Ariz. 442, 65 P.3d 90, ¶ 43. Thus, the State must show (1) a certain result has been produced, and (2) the result was caused by criminal agency rather than by accident or some other non-criminal action. *Chappell* at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43; *State v. Scott*, 177 Ariz. 131, 142–43, 865 P.2d 792, 803–04 (1993). Only a reasonable inference of *corpus delicti* need exist before the jurors may consider an incriminating statement, and circumstantial evidence may support such an inference. *Chappell* at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43. Furthermore, the state need not present evidence supporting the inference of *corpus delicti* before it submits the defendant’s statement as long as the state ultimately submits adequate proof of *corpus delicti* before it rests. *Morris* at ¶ 34; *Hall* at ¶ 43; *Gillies*, 135 Ariz. at 505–06, 662 P.2d at 1012–13 (1983); *Gerlaugh*, 134 Ariz. at 170, 654 P.2d at 806. If the State fails to make that showing, the trial court should grant a motion for judgment of acquittal. *State v. Gillies*, 135 Ariz. at 506, 662 P.2d at 1013.

A review of the evidence presented shows the State presented sufficient evidence to raise a reasonable inference of *corpus*. Defendant admitted to having four or five beers, said he was going to drive down the street and sleep in the car, and said he must have hit the fire hydrant. The other evidence presented showed Defendant had bloodshot, watery eyes and had an odor of alcohol, had blood on his lip and chin, and showed six out of six cues on the HGN test. The vehicle collided with the fire hydrant, which meant someone must have been driving it. This Court concludes that was sufficient other evidence to raise a reasonable inference of *corpus delicti*.

Defendant contends there was no other evidence to corroborate his statement that he was driving the vehicle. But the requirement is only a reasonable inference. There is no requirement that the state present sufficient evidence to prove each and every element of the case beyond a reasonable doubt separate and apart from the defendant’s statement because, if the state had evidence sufficient to prove the case beyond a reasonable doubt separate and apart from the defendant’s statement, the defendant’s statement would be superfluous.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not abuse its discretion in ruling that the State had presented sufficient evidence of a *corpus* to allow consideration of Defendant’s statement.

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IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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