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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CALVIN EARL BURKS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO.: 79,122

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

LOWER COURT
CASE NO.: 90-2340

PETITIONER'S BRIEF ON THE MERITS

The Petitioner, by and through his undersigned attorney, hereby files this Brief on the Merits on his behalf in the above cause, pursuant to Order of the Court dated December 26, 1991.

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I. STATEMENT OF THE CASE

This is an appeal from an adjudication of guilt of the felony offense of DUI Resulting in Death in violation of Florida Statute 316.193(3) rendered by the Honorable Robert R. Perry, Circuit Court, in and for Putnam County, Seventh Judicial Circuit of Florida, on November 13, 1990. References to the Record on Appeal will be by the letter "R" followed by a page reference.

An information charging the Appellant with the offense of Driving Under the Influence Resulting in Death, in violation of Florida Statute 316.193(3), was filed by the State Attorney's office in Putnam County, Florida, on May 2, 1990. (R.3)

The case was tried by a jury in Palatka, Florida, on September 24 and 25, 1990, and the Appellant was found guilty as charged by the jury. (R.19)

On November 13, 1990, Judge **Perry** Sentenced the **Appellant** to a term of 15 years in the Department of Corrections, provided that after the Appellant has served 5 years, he is placed on probation for a period of 10 years under the supervision of the Department of Corrections. (R.28)

On November 7, 1991, the Fifth District Court of Appeal affirmed Appellant's conviction, but certified the following question:

> May the State offer in evidence an admission against interest to establish one of the elements of the charged offense in the absence of an independently established corpus delicti? (See Appendix for full text of decision **below.**)

On November 20, Appellant filed a Motion for Rehearing, Motion for Rehearing En Banc (on the grounds that the decision

conflicted with State vs. Hepburn, 460 So.2d 422 (Fla. 5th DCA 1984), and Motion for Certification (of conflict with Farley vs. City of Tallahassee, 243 So.2d 161 (Fla. 1st DCA 1971)).

Appellant's Motions were each denied on December 11, 1991, and Appellant served Notice to Invoke Discretionary Jurisdiction of this Court on December 17, 1991.

This Brief on the Merits is filed pursuant to this Court's Order of December 26, 1991.

11. STATEMENT OF FACTS

The testimony at trial showed that on the morning of February 15, 1990, Florida Highway Patrol Trooper C. W. Heaton was dispatched to the scene of a traffic accident in Putnam County. (R.105) The Trooper was dispatched to the intersection of Comfort Road and U.S. 17 (State Road 15) and arrived at 4:55 A.M. Upon arrival, the Trooper observed a tractor-trailer across the northbound lanes of U.S. 17 facing from east to west, blocking the northbound lanes. The Trooper also observed a motorcycle lying in the roadway, At the time of the Trooper's arrival, there were volunteer firemen and some Sheriff's office personnel present. The Trooper also testified that the Appellant, CALVIN BURKS, was present. (R.106) Trooper Heaton initiated a traffic accident investigation and also determined that there was a deceased person present at the scene, Charles Courtemarche. (R.107)

After completing the traffic accident investigation, the Trooper advised the Appellant of his Miranda rights by reading from a standard law enforcement card. (R.108-109) Following the advice of rights, the Appellant made certain incriminating statements that he had been driving the tractor-trailer and had been drinking earlier. (R.109) Trooper Heaton also observed that the Appellant had the odor of an alcoholic beverage on his breath and that his eyes were bloodshot and watery.

The Florida Highway Patrol Traffic Homicide Investigator W. D. Kilpatrick was summoned by Trooper Heaton and arrived

subsequently. Upon Trooper Kilpatrick's arrival, it was decided to take the Appellant to the Putnam County Hospital for the purposes of drawing a blood sample to determine his blood alcohol level.

This was accomplished, and at the trial the lab chemist testified that the blood alcohol level contained within the blood sample drawn at the hospital was **0.14%**.

Trooper Kilpatrick testified that upon his arrival he observed the tractor-trailer sitting across the northbound lanes of State Road 15, that there was a motorcycle lying on its left side in the left lane of the northbound lanes of State Road 15, and a body of a white male, later identified as Charles Courtemarche, lying also in the other southbound lane. (R.125) He also testified that he observed the Appellant at the scene when he arrived. The Trooper testified that the condition of the road was dry and the weather was clear that morning. There were no skidmarks left on the highway, but there was a small mark on the roadway which the Trooper believed to be from the engine casing of the left side of the motorcycle. **R.125,128-129)**

In addition to the testimony of the lab technician who drew the blood at the Putnam County Hospital, there was also a stipulaton by the parties that the medical examiner's findings were that the identity of the body on the scene was that as alleged in the Information, namely, Charles Courternarche, and that he was deceased.

At that time the State rested its case and the Appellant moved for Judgment of Acquittal on the grounds that there was no evidence from which the jury could determine that the Appellant was the operator of the vehicle and that there was an absence of any evidence of causation. **(R.150-151)** Upon argument **of** the Motion, the Court agreed that there was no causation shown that the motorcycle and the truck had collided and that this had been the cause of the death of the deceased. **(R.151-152)**

Faced with the clear prospect that the Court was going to direct a Judgment of Acquittal, the State moved to reopen its case. The defense objected to this, but the Court permitted the State to reopen its case *so* that it could attempt to prove causation. **(R.153-154)**

Upon reopening its case, the State recalled Trooper Kilpatrick who testified that upon arriving at the scene the deceased had visible head and facial wounds and that he determined that the motorcyclist struck the left front hub of the tractor. **(R.155-156)** He bolstered **his** conclusions by a trail of lubricant leading from what appeared to be a point of impact to where the truck had rolled after the collision. The Trooper also testified on re-direct examination that the motorcycle was owned by the deceased, Charles Courtemarche. At that point, the State rested its case.

The Appellant renewed his Motion for Judgment of Acquittal on the previous grounds, including the lack of evidence that the

Appellant was driving any vehicle at the scene or any evidence that the deceased was driving any vehicle at the scene. In addition, the Appellant objected to the Statement of the Defendant having been admitted against him on the grounds that the corpus delicti of the crime had not been established nor had causation been established. (R.159) The Appellant had objected to the introduction of the statement of the Appellant at a side bar conference at the time those statements were first introduced by the State during the testimony of Trooper Heaton. At that time, the Court denied the Motion (made on the grounds that there was no corpus delicti) and the Court re-affirmed that this, in fact, had occurred during the argument on the Motion for Judgment of Acquittal. The Court also overruled the objection on the grounds of corpus delicti again during the Motion for Judgment of Acquittal. (R.152-163)

Upon denial of the Motion for Judgment of Acquittal, no further evidence was presented by the State, and the defense rested without presenting any evidence.

III. SUMMARY

The trial court erred in admitting incriminating statements made by the Appellant to the investigating officers, because the State failed to prove the corpus delicti of the crime charged. There is no evidence, direct or circumstantial, from which it could be inferred that the Appellant had been driving a vehicle or that an intoxicated driver had been at the wheel of any vehicle involved in the accident. Accordingly, the Appellant's conviction should be reversed and the Appellant discharged.

The trial court improperly failed to rule on the Appellant's Motion for Judgment of Acquittal when the State rested, when the evidence was clear that the State had failed to present any evidence of causation, which is an essential element of the crime charged. The trial court denied the Appellant due process of law and violated the requirements of Rule 3.380, Florida Rules of Criminal Procedure, by deferring ruling upon the Appellant's Motion for Judgment of Acquittal after same had been argued before the Court and the Court had concluded that the State had failed to prove causation, and by then allowing the State to reopen its case to introduce additional evidence.

Finally, the trial court erred in failing to suppress statements made by the Appellant on the grounds that said statements are privileged pursuant to Florida Statute 316.066, and because the State failed to show that the Appellant voluntarily and intelligently waived his rights to self-incrimination. The law enforcement officers, upon completing the

traffic accident investigation, commenced a traffic homicide investigation, but failed to advise the Appellant that they were investigating a possible homicide, that any report prepared by them would not be made a part of the traffic accident report to be filed in Tallahassee or that such report was in any way different from any other officers report prepared during the accident invesigation. Further, law enforcement officers did not advise the Appellant, and should be required to so advise persons in such situations, that the prior statements made by the Appellant during the accident investigation could not be used against him during the criminal investigation.

IV. ARGUMENT

POINT ONE: THE STATE NEVER ESTABLISHED THE CORPUS DELICTI OF THE CRIME CHARGED SO AS TO JUSTIFY THE ADMISSION OF THE APPELLANT'S INCRIMINATING STATEMENTS.

It has long been established that the State has the burden of proving by substantial evidence that a crime was commited before a defendant's confession is admitted into evidence. Holland vs. State, 39 Fla. 178, 22 So. 298 (1897); Frazier vs. State, 107 So.2d 16 (Fla. 1958); State vs. Allen, 335 So.2d 823 (Fla. 1976). In the Allen case, the Supreme Court stated the Rule as follows:

> The Rule of Law announced in Sciortino is to the effect that before confession is admitted the State has the burden of proving by substantial evidence that a crime was commited, and that such proof may be in the form of Circumstantial evidence.
>
> * * *
>
> A person's confession to a crime is not sufficient evidence of a crimnal act where no independent direct or circumstantial evidence exists to substantiate the occurrence of a crime. The judicial quest for truth requires that no person be convicted out of derangement, mistake or official fabrication. 335 So.2d at 824-825.

In the case of State vs. Hepburn, 460 So.2d 422 (Fla. 5th DCA 1984), the lower court indicated in the context of a charge of driving under the influence of alcohol, that a criminal element of the corpus delicti is proof that the defendant was in fact driving the automobile at the time of the offense:

> A, if not the, criminal element of the corpus delicti of the offense of driving while intoxicated is evidence that the defendant was driving at the time she allegedly commited the offense. 460 So.2d at 426.

In the Hepburn case, the facts indicated that a Highway Patrol Trooper was called to the scene of an accident in which an automobile had struck and injured certain pedestrians and had left the scene of the accident. There were no eyewitnesses to the accident, but the Trooper determined that a certain automobile registered in the name of a person other than the defendant (apparently a relative of the defendant's) had struck the pedestrians. Subsequently, the defendant made incriminating statements to the Trooper regarding her involvement in the accident, but the Court concluded that the State was unable to prove the corpus delicti of the offense, namely that the defendant had been driving the automobile at the time of the accident., without the use of the defendant's admissions. Accordingly, the use of the defendant's admissions were properly suppressed by the Court and affirmed on appeal in reference to the charge of driving under the influence of alcohol.

In Farley vs. City of Tallahassee, 243 So.2d 151 (Fla. 1st DCA 1971), the defendant was charged with driving under the influence of alcohol. The incident involved a vehicle owned and occupied by the defendant which ran off the side of the road and came to rest in a culvert. The vehicle was also occupied by the Petitioner's wife and daughter and no other vehicles were involved in the incident. When the police officers arrived at the scene, the defendant was not present but arrived some 30 minutes later. During this interim, the defendant's wife was placed in custody for apparently causing some disturbance

connected with the accident. Upon arrival at the scene, the investigating officer questioned the defendant and ascertained from him that he was the driver of the car when it went into the ditch. The defendant was thereafter ultimately arrested and charged with driving while intoxicated. The Court observed, aside from the defendant's admission at the scene that he was the driver, there was no other evidence on that critical element of the offense charged. Accordingly, the Court found there was no proof that the offense charged was ever commited by anyone without the evidence of the defendant's admissions, nor was there evidence of circumstances from which it would be inferred that a drunken driver was at the wheel of the car when it went into the ditch. Relying upon the well-settled rule that it is incumbent upon the State to prove the corpus delicti in every case and to rely on proof other than a confession or admission of the defendant, the Court reversed the conviction of the defendant and discharged him. In reaching its decision, the Court quoted with approval the following language from State vs. Joiner, 17 Fla. Supp. 84, as follows:

> There is no evidence other than the defendant's admission to the drunkometer technician, to show that the defendant, conceding her intoxicated state, was driving or had physical control of the Studebaker....Regardless of the number of intoxicated persons at the scene of an accident, even if they are car owners, there is no violation of the ordinance unless and until it be shown that an intoxicated person was driving or in physical control of a vehicle. In other words, without the admission by defendant that she was driving, there if no proof of the corpus delicti. 243 So.2d at 162.

In Anderson vs. State 467 So.2d 781 (Fla. 2nd DCA 1985), a case involving a charge of manslaughter by operating a motor vehicle while intoxicated, the Court found that the corpus delicti to sustain the admission of the defendant's statements was established by the following evidence: The State's evidence established that a truck traveling at a high rate of speed ran a stop sign at an intersection; that the truck struck a car traveling east in the intersection, causing the car to strike another car and killing the driver of the first car; that the truck took no evasive action prior to impact; that all three persons in the truck were thrown out as a result of the impact; that the defendant was found unconscious alongside the driver's side of the truck, and the other two occupants were found dead in the front of the truck; that beer cans were strewn on the ground around the truck, and several more beer cans and a Vodka bottle were found lying inside the truck; that the defendant was taken to the hospital where a blood sample was taken from him two hours after the accident indicating a blood alcohol level of .22. Based upon this evidence, the Court ruled that the death of the driver of the car was due to the criminal agency of someone who was driving the truck in an intoxicated manner. Since the defendant was found lying near the driver's side of the truck, the Court reasoned that it was most likely that he had been driving the truck and not his two dead companions. The Court then ruled that the trial court had commited no error in

admitting the defendant's statement in evidence on the manslaughter counts and in denying the defense motions for judgment of acquittal.

In County of Dade vs. Pedigo, 181 So.2d 720 (Fla. 3rd DCA 1966), when the arresting officer arrived at the scene of the accident, he found the defendant's car partly backed out onto a paved area in front of a bar with extensive damage to the left rear. The other automobile involved in the collision was in the highway in a position which would indicate it had been proceeding at right angles to the defendant's automobile and the second vehicle had extensive damage to its right side. At the time the officer arrived, he found the defendant standing at the left front fender of his vehicle, leaning against the car. He also stated that the defendant's walk was unsteady and the defendant had a strong alcoholic smell. Based upon this evidence, the Court found that the corpus delicti had been sufficiently established that a violation of law had occurred, to support the admission by the defendant that he was the operator of the vehicle. The Court concluded that the observations of the investigating officer when he first arrived on the scene did not indicate that anyone else was connected with the operation of the car.

In the case at hand, the State did not present the testimony of the initial officers to arrive upon the scene. Trooper Heaton indicated that he was the first Highway Patrolman to arrive, but at that time there were volunteer firemen and some Sheriff's

office personnel present. As to the condition of the scene, the only evidence the State introduced was that the Trooper found a tractor-trailer across the northbound lanes of U.S. 17 facing from east to west, blocking the northbound lanes. Also there was a motorcycle lying in the roadway and apparently the body of Charles Courtemarche also lying in another portion of the roadway. As to the presence of the Appellant, the only testimony introduced by the State was that the Appellant, CALVIN BURKS, was simply there. (R.106) There is no testimony whatsoever linking the Appellant with any of the vehicles at the scene. There is no testimony indicating that he was seen driving any of the vehicles involved, lying near any of the vehicles involved, leaning against any of the vehicles or otherwise associated with any of the vehicles. There were no eyewitnesses to the accident who testified at the trial to indicate that the Appellant was in any way associated with either of the vehicles at the scene. Unlike the Allen case, there was no evidence indicating the Appellant had been observed operating either of the vehicles at any time prior to the accident. Further, without the testimony of the first officers to arrive upon the scene, we do not know how long a period of time elapsed from the time of the alleged collision until Trooper Heaton arrived. We do not know how many people were first observed at the scene when the original officers arrived, nor is there any circumstantial evidence from which it could be concluded either that the Appellant was operating any of

the vehicles involved or that an intoxicated person was operating any of the vehicles found at the scene of the alleged accident.

As in the Hepburn case, there is no evidence in the case at hand that the Appellant was driving at the time he allegedly commited the offenses charged other than his own statements to Trooper Heaton. Unlike the Pedigo, case, there is no evidence that when the initial law enforcement officers arrived, that the Appellant and the deceased were the only persons on the scene and that the Appellant was even found leaning against any of the vehicles in question. Further, the Troopers testified that there were no skidmarks nor any evidence of any unlawful speed or reckless operation of any motor vehicle which they found at the scene of the alleged collision.

The Appellant objected to the introduction of his statement at the time Trooper Heaton began to testify concerning the statements in the trial. The objection was made at a side bar conference during the testimony of Trooper Heaton, and Judge Perry overruled the objection at that time. In the Record, Judge Perry confirmed there was a side bar conference at the time of Trooper Heaton's testimony on the corpus delicti objection and that he overruled the objection and he also overruled the same objection again on the Appellant's Motion for Judgment of Acquittal. (R.162-163) In the transcript of the testimony of Trooper Heaton, there is in fact a side bar discussion reported by the court reporter which is apparently when the Appellant's objection was made, as referred to by Judge Perry. (R.110)

The only evidence of corpus delicti offered by the State in this case was that upon arrival, Trooper Heaton found a tractor-trailer across the road, a motorcycle lying in the road, and the deceased lying in another portion of the road. The presence of the Appellant was not described, but he was only testified to as being present at the scene. There was no testimony as to the ownership of the Appellant of any of the vehicles involved in the incident. There was no testimony or evidence other than the admission of the Appellant himself, as to who was driving the vehicles at the time of the alleged accident. Based on the foregoing, the State failed in its burden of showing the corpus delicti of the offense of driving under the influence resulting in death, by substantial evidence, and accordingly the Appellant's conviction should be reversed.

POINT TWO: THE DISTRICT COURT'S REVIEW OF THE CORPUS DELICTI ISSUE WAS FACTUALLY AND LEGALLY INCORRECT, CONTRADICTS ITS EARLIER HOLDING IN STATE vs. HEPBURN, 460 So.2d 422, AND CONFLICTS WITH STATE vs. ALLEN, 335 So.2d 823 (Fla. 1983) AND FARLEY vs. CITY OF TALLAHASSEE, 243 So.2d 161 (Fla. 1st DCA 1971).

The District Court of Appeal below characterized the Appellant's statements introduced in evidence at trial as an "admission" instead of a "confession". In this manner the lower court then held that an "admission" of a defendant could be offered in evidence by the State without independent proof of the corpus delicti of the crime charged, unlike as required by case law for the admission of a "confession".*

Assuming for the moment that holding to be correct, the record nevertheless shows that the statements of the Appellant do in fact constitute a "confession" in the terminology employed by the Court. While being detained for a traffic homicide investigation and after advice of his Miranda Rights, the Appellant was interrogated by Trooper Heaton (R.107-110) and the following statements of the Appellant were elicited and introduced into evidence by the State through Trooper Heaton's testimony:

Q. Did he agree to speak with you?

A. Yes, sir.

Q. And what did he tell you about the accident?

A. At that point in time he advised me he had rolled through a stop sign and in order to cross the road and it was a common practice for semis to do that.

Q. Did he admit to you that he was the driver of that semi?

*See Appendix attached for complete copy of the Fifth District decision.

A. Yes sir, he did.

Q. What did he tell you at that time about drinking alcoholic beverages that night?

A. He had had some personel trouble and that he had been drinking real heavily that evening before. (R.109-110)

Trooper Heaton further testified at the time that the Appellant made these statements, he had "a strong alcoholic beverage smell on his breath, eyes were bloodshot and watery." **(R.108)**

Thus, even under the lower court's analysis, the Appellant's statements amounted to a confession, i.e., a disclosure of guilt of the crime charged which excluded the possibility of reasonable inference to the contrary. As a result, the Appellant's statements were not admissible under the principles announced in State vs. Allen, 335 So.2d 823 (Fla. 1976), Farley vs. City of Tallahassee, 243 So.2d 161 (Fla. 1st DCA 1971), Sciortino vs. State, 115 So.2d 93 (Fla. 2nd DCA 1959), and the lower court's own decision in State vs. Hepburn, 460 So.2d 422 (Fla. 5th DCA 1984), because the State failed to establish the corpus delicti of the DUI/manslaughter charge independent of the Appellant's own statements.

Secondly, the attempted distinction by the lower court of the admissibility of "admissions against interest" as authorized by F.S. 90.804 (2)(c), as opposed to the admissibility of "confessions", is not supported by case law.

In Hodges vs. State, 176 So.2d 91 (Fla. 1965), the Supreme Court reversed the defendant's conviction of larceny where the corpus delicti had not been established by other evidence introduced independent of the defendant's admissions against

interest. There is also a clear indication in the cases that the corpus delicti rule may be of even greater importance where a defendant's admissions are made to law enforcement officers. See, e.g., Parrish vs. State, 90 Fl. 25, 105 So. 130, 133 (1925), (indicating a distinction in the standards of admissibility in a criminal case applicable to a defendant's admissions to third-party lay witnesses, as opposed to admissions made to a law enforcement officer while a defendant is under arrest, charged with a crime, or "otherwise restrained"); and also, Nelson vs. State, 372 So.2d 949, (Fla. 2nd DCA 1979) (suggesting confessions made to police are not admissible to establish corpus delicti, while admissions or confessions made to lay persons are admissible to establish corpus delicti).

Thus, even if F.S. 90.804(2)(c) is applicable to statements of the Appellant under these circumstances, this Statute does not dispense with requirement in a criminal case that the corpus delicti be established prior to the admission in evidence of such statements. See also, (MDV vs. State, 469 So.2d 944 (Fla. 5th DCA 1985) (inculpatory statements (confession or admission) of an aider and abettor are properly admissible into evidence after proof of "corpus delicti"); and, State vs. Edwards, 536 So.2d 288 (Fla. 1st DCA 1988) (hearsay statemetns by co-conspirator were not admissible absent independent evidence of existence of conspiracy by both conspirators.).

The enforcement of the corpus delicti rule is particularly important where, as in the case at bar, the Appellant was

detained by a law enforcement officer for a criminal investigation, advised of his Miranda rights and subjected to interrogation during which the confessions or admissions were allegedly obtained. In light of the cases, the concerns of the corpus delicti rule (that no one be convicted out of derangement, mistake or official fabrication) would seem to clearly apply without distinction to both confessions or admissions obtained by law enforcement officers under such circumstances as in the case at hand.

Finally, the lower court's assertion in its decision that Trooper Heaton was advised that the Appellant was the driver of the truck (Appendix, p.1), was not testified to at trial (R.105-123), but was only mentioned during the pre-trial hearing on the Motion in Limine and to Suppress (R.50). Such hearsay evidence (while admissible at the suppression hearing in reference to probable cause) would not have been admissible or substantial evidence at trial to establish corpus delicti since it would not have been subject to cross-examination to determine whether it was based on accurate and admissible facts.

At trial, the State only proved that the tractor-trailer was found across the roadway, a motorcycle was lying on the road, the body of the victim was there, and a collision had occurred between the two (2) vehicles. As to the Appellant, however, the evidence was only that he was simply present at the scene at an unspecified time subsequent to the accident when Trooper Heaton arrived. Also present at this time were several other persons,

such as Sheriff's Deputies and firemen. (R.106,lines 13-25) But the State presented no independent evidence at the trial that the Appellant had in fact previously been driving, in possession of, or was even associated with, any vehicle found at the scene. The State could have called other witnesses who arrived at the scene earlier, e.g., the Sheriff's Deputy who met with Trooper Heaton, or the firemen, and thus might have been able to establish the necessary corpus delicti. However, the State did not call such witnesses and offered no explanation as to this failure. (Perhaps it may be presumed that this testimony would have produced no additional evidence favorable for the State.)

Independent proof that the Appellant was the driver of the truck (or likely was such driver) is essential to a conviction of the DUI/manslaughter charge. In this case, without the Appellant's confession, there is no evidence of this element. Anyone could have been driving that truck at the time of the accident. There is no evidence that the Appellant was even present at the accident scene when the first officers arrived. Without independent proof, there is no assurance that the Appellant is in fact the guilty party. Therefore, the Appellant's confession to Trooper Heaton was not admissible, and his conviction should be reversed under the principles of the cases cited above.

In Harrison vs. State, 483 So.2d 757 (Fla. 2nd DCA 1986), the Court applied the corpus delicti rule in a manner which is directly on point with this case. In Harrison, the defendant was

convicted of possession of a firearm by a convicted felon. However, at trial there was no independent proof by any witness that the defendant had in fact possessed a firearm at the date and time of an attempted robbery. There was only the defendant's "confession" to a law enforcement officer that he had possessed it. As a result, the Court held that the corpus delicti of the crime had not been established, an essential element of which was that the defendant had in fact possessed the firearm in question, and the conviction was reversed. Likewise, an essential element of the case before this Court is whether the Appellant was the driver of the vehicle involved in the accident. Without the Appellant's confession or admission, there is no proof of this element of the corpus delicti.

POINT THREE: THE COURT IMPROPERLY ALLOWED THE STATE TO REOPEN ITS CASE AFTER IT HAD RESTED AND THE APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL HAD BEEN ARGUED, TO THE PREJUDICE OF THE RIGHTS OF THE APPELLANT TO A FAIR TRIAL.

When the State rested its case in chief at trial (R.150), the Appellant moved for a Judgment of Acquittal on the grounds that there had been no evidence by which the jury could determine that the defendant was the operator of the vehicle and that there was an absence of any evidence of causation. (R.151) Causation is an essential element of the offense charged, in that the State must prove beyond a reasonable doubt that the death of the alleged victim, Charles Courtemarche, was caused by reason of the operation of a vehicle by the Appellant. (R.180) Upon argument of the Motion for Judgment of Acquittal, it was clear that the State had failed to present any evidence that the truck was in any way involved with causing the alleged victim to be dead on the pavement when he was found by the officers. The trial judge was very clear that the evidence was deficient in this point as follows:

THE COURT: Oh, no; no, sir, not in this courtroom and not this day. It has not done it. No, sir. The truck was there across the road, the motorcycle was on the road and the body was on the road. Bas not one witness and not one exhibit that I have seen in this courtroom said that this truck caused that man to be on the pavement. For all I know he got struck by lightning. No, sir.

MR. WETHINGTON: May I have a moment, your Honor?

THE COURT: Yes, sir, take all you like; but you'd better come up with some causation in a hurry, Mr. Wethington because you haven't put it on this case yet.

Further argument on the Motion continued, but it was clear that the Court knew that the State failed to prove any causation whatsoever in its case in chief. At that point, faced with the impending granting of a Motion for Judgment of Acquittal, the State moved to reopen its case to present additional evidence. The Appellant objected to the reopening of the case, but the Court permitted it and the jury was returned for further evidence. (R.153-154)

Upon reopening the case, the State presented further testimony from Trooper Kilpatrick which indicated that the victim had visible head wounds and facial wounds at the scene, which in his opinion suggested that the motorcycle had struck the left front hub of the tractor-trailer. The only evidence supporting the Trooper's conclusion was a trail of lubricant leaking from the hub of the tractor-trailer from an alleged point of impact to where the truck came to rest. However, there was no lubricant observed on the person of the deceased. The State also introduced testimony that the deceased was the owner of the motorcycle found on the road.

Following this testimony, the Court denied the Appellant's Motion for Judgment of Acquittal.

The Court, by allowing the State to reopen its case in the manner in which it did, prejudiced the Appellant and failed to rule upon the issue of law presented by the Appellant on the evidence presented before the Court and the jury. Rule 3.380, Florida Rules of Criminal Procedure, requires the Court to do this as follows:

> If, at the close of the evidence for the State or at the close of all the evidence in the cause, the Court is of the opinion that the evidence is insufficient to warrant a conviction, it may, and on Motion the prosecuting attorney or the defendant, shall enter a Judgment of Acquittal. Rule 3.380(a), Florida Rules of Criminal Procedure. (Emphasis added).

The Florida Courts have held that generally the questions of allowing the reopening of cases is one involving sound judicial discretion of the trial court, which discretion is rarely interfered with at the appellate level. Pitts vs. State, 185 So.2d 164 (Fla. 1966). It commonly occurs when either party requests the Court to reopen their case so that they may present evidence. But the courts have indicated there are limits to the discretion of the trial court in this regard. In Burk vs. State, 497 So.2d 731 (Fla. 2nd DCA 1986), the Court stated as follows:

> In exercising its discretion to reopen a case for additional evidence, the court should reconsider the timeliness of the Motion, the character of the testimony, and the effect of granting the Motion. United States vs. Walker, 772 F.2d 1172 (5th Cir. 1985). The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered. Walker; United States vs. Larsen, 596 F.2d 759 (8th Cir. 1979). 497 So.2d at 733-734.

The Appellant was prejudiced by the failure of the trial court to rule on his Motion for Judgment of Acquittal as required by Rule 3.380, when the State first rested its case. The courts have long held that it is the duty of the trial court to rule on a Motion for Judgment of Acquittal when made. Tipton vs. State, 97 So.2d 277, 295 (Fla. 1957). It has been held error for the trial court to hold such ruling in abeyance until the defendant has presented his case and both sides have rested. Adams vs. State, 102 So.2d 47 (Fla. 1st DCA 1958). The Second District stated that law as following in State vs. Rolle, 202 So.2d 867 (Fla. 2nd DCA 1967):

> Thus, it is clear that the trial court must either grant or deny the defendant's Motion for a directed verdict when it is made and cannot hold its ruling on the Motion in abeyance or refuse to make a ruling. 202 So.2d at 868.

The Court below clearly knew the evidence was insufficient to show any causation between the vehicle allegedly driven by the Appellant and the death of the deceased, Charles Courtemarche, and that this was an essential element of the offense the State failed to prove. The Court should have granted the Appellant's Motion at that point. Instead, the Court held its ruling in abeyance to allow the State to present additional evidence. Then the Court denied the Appellant's Motion after additional evidence was received. The Court failed to follow the law and demonstrated a lack of impartiality by favoring the State. (This has occurred in another case now pending for decision before this Court,

Rudolph McCaskill vs. State, Case No.: 90-2181, *see* Appellant's initial brief at pages 24-29.)

This is not a case where a party, upon resting its case, and prior to the argument of a Motion for Judgment of Acquittal, realizes additional evidence is needed and requests permission to reopen its case to introduce such evidence. In this case, the State rested its case, and the Appellant moved, pursuant to Rule 3.380, for a Judgment of Acquittal, which was fully argued before the Court. When it became apparent to the Court and the State that the State had failed to present a prima facia case on the element of causation, the State then moved to reopen its case in order to save itself and attempt to obtain a conviction. The Court concurred in this procedure, thereby failing to follow the requirements of Rule 3.380, and favoring the State instead of remaining impartial. The Court, in effect, gave the State a fourth strike at the ball, in order to help the State out and avoid a directed Judgment of Acquittal. In so doing, the Court failed to give the Appellant a fair and impartial trial and denied Appellant due process of law.

> ...Under our system, before one can be deprived of his liberty in a criminal proceeding he is entitled to a trial according to due course of law. Anything less is totally ineffective as a basis for detention. Cash vs. Culver, 122 So.2d 179, 187 (Fla. 1960).

In State vs. Rolle, supra, the Court condemned the procedure whereby the trial court withheld ruling upon a Motion for Directed Verdict presented at the close of the State's case where the Judge said he would defer his ruling until the defense had

presented and rested its case. There is no substantial distinction between the procedure condemned there, and that followed by the trial court in this case in which the Court withheld ruling until the State could present further evidence. In both cases, the Court is failing to follow the requirements of law and denying the Appellant due process of law.

Based on the foregoing, this Court should reverse the Appellant's conviction on the grounds that the State failed to prove causation, an essential element of the offense charged, at the time it rested its case, that the Appellant timely moved for a Judgment of Acquittal, and that the Court erred in failing to rule on the Appellant's Motion at the time it was presented and argued. Further, that this error by the trial court is not a mere abuse of discretion, but a failure to follow essential requirements of law and to accord the Appellant due process of law.

POINT FOUR: THE TRIAL COURT ERRED IN FAILING TO SUPPRESS THE STATEMENTS MADE BY THE DEFENDANT ON THE GROUNDS THAT SAID STATEMENTS ARE PRIVILEGED PURSUANT TO FLORIDA STATUTE 316.066.

The Appellant moved to exclude all statements made to the investigating officers on the grounds that these statements were privileged pursuant to the provisions of Florida Statute 316.066 (1990). A hearing was held before trial by the Court, and after receipt of testimony and argument of counsel, the Court denied the Appellant's motion.

The Court denied the motion of the Appellant on the grounds that the Troopers testified after completion of the accident investigation, they began a criminal investigation, told the defendant of this, and advised him of his Miranda rights, following which the defendant made statements which the State sought to introduce at trial. (R.95) The Appellant submits that the explanations given to the Appellant by the investigating troopers, and the Miranda rights read to him, were insufficient to waive the privilege afforded his statements under Florida Statute 316.066 or to support a waiver of his constitutional right against self-incrimination.

All persons accused of crime are afforded a constitutional privilege against being compelled to incriminate themselves. Fifth Amendment, United States Constitution; Article I, Section 9, Constitution of the State of Florida. This right attaches to all persons suspected of crime at the time they become the focus of a criminal investigation and are subjected to custodial

interrogation by law enforcement officers. Miranda vs. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Any statements obtained by a defendant pursuant to such questioning may not be offered in evidence unless the State has sustained its burden of proving by a preponderance of the evidence that the statements were obtained freely and voluntarily from the accused. Brewer vs. State, 386 So.2d 232 (Fla. 1980). Part of the evidence which the State must prove was that the defendant was advised of his Miranda rights, that he understood these rights and voluntarily elected to speak to law enforcement authorities. See, e.g., Rickard vs. State, 508 So.2d 736 (Fla. 2nd DCA 1987): St. George vs. State, 564 So.2d 152 (Fla. 5th DCA 1990).

Because of the unique situation under Florida Law applying to persons involved in traffic accidents, out of which criminal charges may be imposed, the Appellant contends that the advice of the Miranda rights alone is insufficient to safeguard a defendant's Constitutional right against self-incrimination, and that the additional explanations provided to the Appellant in the case at hand by the investigating officers failed to protect his constitutional rights in this regard.

Under Florida Statute 316.066, all persons involved in traffic accidents are required to make a full and complete statement of their involvement and participation in such matters to law enforcement officers investigating the accident. No exception to this requirement of providing testimonial evidence is afforded to defendants involved in traffic accidents out of which criminal charges may be imposed, While the Statute

provides that any statements so made shall not be used in evidence against the person making them in any trial, whether criminal or civil, the Statute nevertheless does not: relieve presons involved in accidents out of which criminal charges may be imposed against them from the obligation of making full and complete statements to investigating officers immediately on the scene.

In the case at hand, when Trooper Heaton arrived upon the scene, he initiated a traffic accident investigation by interrogating the Appellant as to his involvement in the apparent collision at the scene. While the Trooper understood that he was involved in a traffic accident investigation, he did not communicate this fact to the Appellant, nor did he advise the Appellant that it was mandatory for him to answer these questions, or that possible criminal charges might be imposed as a result of the death of the alleged victim. (R.69) During this time, Trooper Heaton took statements from the Appellant that he had been driving a *vehicle* involved, *and* also had been consuming alcohol previously that night. (R.56,69,114,61) These statements are also clearly incriminating in a criminal content.

Upon satisfying himself that the traffic accident investigation phase was completed, Trooper Heaton testified that he then began a criminal investigation, However, the only explanation offered to the Appellant was that Trooper Heaton advised he was now doing a criminal investigation and no longer doing a traffic accident investigation. In addition at that point, Trooper Heaton advised the Appellant of his standard

Miranda rights. (R.57,59,71,108,119) However, no written advice or rights of waiver form which utilized by the Trooper were signed by the Appellant. (R.63,80-81)

At this point, Trooper Heaton indicated that the Appellant advised him of substantially the same statements that were made pre-Miranda. While Trooper Heaton testified conclusorily that he carefully explained the difference between the two investigations to the Appellant, no testimony was introduced at the hearing below as to exactly what explanation this was, other than the simple fact that the traffic investigation had ended and the criminal investigation had begun. (R.60-61)

In the context of traffic accidents in the State of Florida, the advice of a defendant's Miranda rights is inadequate to safeguard a defendant's Constitutional right against self-incrimination. The reason for this is that the advice of Miranda rights comes after a defendant has been compelled to make a full and complete statement of his involvement in a potential criminal traffic incident. Once a defendant has made a full arid complete statement, the advice of the Miranda rights is a hollow and confusing Feature of a situation that is beyond the understanding of the average citizen. To the average citizen, after having made a full and campletc disclosure of his involvement in a traffic incident, the advice from Miranda rights must seem insufficient and strange. The only way to safeguard a defendant's Constitutional right against self-incrimination is if

the law enforcement officer is required at that point to clearly advise a defendant that anything that he has previously said regarding his involvement in the traffic incident in question to the investigator is privileged and may not be used against him in any criminal prosecution, but that thereafter, any statements which he may make about the incident can an3 will be used against him in such prosecutions.

Florida Statute 316.066 is in derrogation of A citizen's Constitutional right against self-incrimination. It is therefore imperative that the Courts fashion appropriate rules to adequately advise a citizen of his Constitutional right against self-incrimination, and that by complying with the Statute, at the scene of an incident-, he has not compromised his rights against self-incrimination. The Florida Supreme Court in the case of State vs. Coffey, 212 So.2d 632 (Fla. 1968), has clearly indicated that while an investigating officer may "change his hat" during the investigation of a traffic incident arid discontinue his investigation of the traffic accident and take up a criminal investigation, evidence thereafter obtained from the accused wi1.1 be admissible when "every precaution is taken to make sure that that accused's Constitutional rights are protected...". 212 So.2d at: 635.

Similar principles have been applied in previous cases. For example, in Nash Miami Motors, Inc., vs. Ellsworth, 129 So.2d 704 (€'La. 3rd DCA 1961), it was held that where a defendant was not

clearly advised that a traffic accident investigation had ended and a criminal investigation had begun, that his statements made thereafter were nevertheless privileged pursuant to the predecessor of F.S. 316.066 and not admissible in evidence. Similarly, in Elder vs. Robert J. Ackerman, Inc., 362 So.2d 999 (Fla. 4th DCA 1978), it was held that statements made by a defendant to a criminal accident investigator, even after advise of Miranda warnings, were not admissible where the criminal investigator did not make it clear that the accident investigation had terminated and a criminal investigation had commenced. Also, in Porter vs. Pappas, 368 So.2d 909 (Fla. 3rd DCA 1979), statements made by criminal defendant as a result of a traffic homicide investigation were not admissible, notwithstanding the fact that the defendant was read tier Miranda rights, where the investigating officer did not advise tho defendant that he was investigating for a possible homicide, or that his report would not be made a part of the traffic report to be filed in Tallahassee. Nor did the officer advise the defendant that his report was any different than any other police officers report prepared during the investigation of the accident. The officer did state, however, that his report was related to the traffic accident report. The trial court admitted the defendant's statements into evidence, over her objection; however, on appeal her conviction was reversed and the statements were held inadmissible.

Similarly, in the case at hand, there was no advice to the Appellant by Trooper Heaton (or subsequently by Trooper Kilpatrick) that when the accident investigation phase was completed that a possible homicide investigation was being investigated; that the report being prepared at that time would not be made a part of the traffic accident report to be filed in Tallahassee; or that this report was different than any other police officer's report prepared during the accident investigation. Therefore, based on established precedent, the advice rendered to the Appellant regarding the change in the investigation procedures being employed was insufficient and would warrant reversal of his conviction on the grounds that his statements were improperly admitted.

In addition, the Appellant would submit that law enforcement officers should be further required to advise defendants in situations such as the case at hand that all statements previously made by them in the accident investigation will not be part of a criminal investigation and cannot be used against them, but that any statements made thereafter will, in fact, be used against them. Only in this way, will the rights against self-incrimination of the defendants be protected in such situations, in light of the duties imposed upon drivers in the State of Florida to mandatorily make full and complete statements of their involvement in such traffic accidents regardless of the fact that criminal charges may be imposed as a result of a full investigation.

Accordingly, the Court should rule that the trial court erred in denying the Appellant's motion to exclude his statements because same are privileged under F.S. 316.066 and the State failed to show a voluntary and intelligent waiver by the Appellant of his right against self-incrimination. Thus, Appellant's conviction should be reversed and the Appellant should be discharged.

V. CONCLUSION

For the reasons argued above, the Appellant's conviction should be reversed and the Appellant should be discharged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, to Assistant Attorney General Judy Taylor Rush, 210 South Palmetto Avenue, Daytona Beach, Florida 32114, this 20th day of January, 1992.

Jeffrey L. Dees

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CALVIN EARL BURKS,

Petitioner,

vs.

STATE **OF FLORIDA,**

Respondent.

CASE NO.: 79,122

ON APPEAL FROM **THE** FIFTH DISTRICT **COURT** OF **APPEAL**

LOWER COURT CASE NO.: 90-2340

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JULY TERM 1991

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

CALVIN EARL BURKS,

Appellant,

v.

CASE NO. 90-2340

STATE OF FLORIDA,

Appellee.

Opinion filed November 7, 1991

Appeal from the Circuit Court
for Putnam County,
Robert R. Perry, Judge.

Jeffrey L. Dees, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Judy Taylor Rush,
Assistant Attorney General,
Oaytona Beach, for Appellee.

HARRIS, J.

Florida Highway Patrol Trooper C. W. Heaton was dispatched to the scene of a traffic accident. When he arrived he found a tractor-trailer blocking both northbound lanes of U. S. Highway 17. A motorcycle was laying in the roadway, and the body of the motorcyclist was laying near the truck.

Heaton was advised at the scene that Calvin Burks, standing outside the truck, had been the driver of the truck. Heaton conducted a traffic investigation in order to complete an accident report as required by section 316.066(4), Florida Statutes (1989). He then advised Burks that he was

terminating the traffic investigation and was about to conduct a criminal investigation. He gave Burks the Miranda warnings and conducted a criminal investigation. During the criminal investigation, Burks admitted that he was the driver of the truck and that he had been drinking heavily all evening. He was subsequently taken to the hospital for a blood test. His blood alcohol level was .14.

Burks was convicted of DUI manslaughter. He appeals contending that the *corpus delicti* was not established prior to admitting into evidence his admission that he was the driver of the truck; i.e., there was no evidence, other than his admission, direct or c rcumstantial, that placed him behind the wheel of the truck.[1] We disagree.

Burks cites many cases that hold that a confession may not be received until the *corpus delicti* has been established,[2] and, unfortunately, many of these cases do not distinguish between an admission against interest and a confession.

In *Farley v. City of Tallahassee,* 243 So.2d 161 (Fla. 1st DCA 1971) the court did hold that the defendant's admiss on that he was the driver of the vehicle in a DUI case was inadmissab e when that was the only proof as to the identity of the driver.

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[1] We find appellant's other points on appeal without merit.

[2] The rule was apparently first stated in Florida in *Lambright v. State,* 34 Fla. 564, 16 So. 582, 585 (Fla. 1894):

> It is also a fundamental rule, of ancient origin, that no person shall be convicted . . . without proof *aliunde* of the corpus delicti; and, before such confessions should be allowed to go to the jury, there should be proof before the court tending to show that the offense to which the confession relates has been comm tted.

In *Sciortino v. State,* 115 So.2d 93 (Fla. 2nd DCA 1959) the court held that the defendant's "admission" that he had only been back in the bolita business a couple of weeks and that the numbers in the box were lottery tickets and that they belonged to him could not be used to establish the *corpus delicti* of conducting a lottery. It is urged, however, that in *Sciortino,* the defendant's admission rose to the level of a confession that he committed the charged offense. Unfortunately this case did not discuss the distinction between confessions and admissions against interest.

Similarly, the court in *Alexander v. State,* 107 So.2d 261 (Fla. 2nd DCA 1958) would not permit the defendants "admission" that he was in the bolita business because there was no other independent evidence. Again the "admission" was, in fact, a confession to committing an illegal act.

In *State v. Hepburn, 460* So.2d 422 (Fla. 5th DCA 1984), this court would not permit the defendant's "confession" that she was involved in the hit and run accident in which three pedestrians were injured because there was no other evidence that she was the driver. However, we noted that because her exact statement was not in the record we could not tell if she had made a confession or merely a statement against interest. We assumed, for the purpose of that decision, that her statement was a confession.

The Fifth Edition of Black's Law Dictionary makes the following distinction between a confession and admission against interest:

> Confession: A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged[.] [Emphasis added.]
>
> A statement made by a defendant disclosing his quilt of crime with which he is charged and excluding possibility of a reasonable inference to the contrary[.] [Emphasis added.]

> Voluntary statement made by one who is a defendant in a criminal trial at a time when he is not testifying in trial and by which he acknowledges certain conduct of his own constitutina a crime for which he is on trial; a statement which: if true, discloses his guilt of that crime and excludes possibility of reasonable inference to contrary. [Emphasis added.]
>
> Admission against interest: A statement made by one of the parties to an action which amounts to a prior acknowledgment by him that one of the material facts relevant to the issues is not as he now claims . . . Any statements made by or attributable to a party to an action, which constitute admissions against his interest and tend to establish or disprove any material fact in the case. [Emphasis added.]

Therefore, to be a confession, the statement must acknowledge guilt of the crime charged. As stated in *People v. Beverly,* 233 Cal.App.2d 702, 43 Cal. Rptr. 743, 750, (Cal. Dist. Ct. App. 1965), *Cert. denied,* 384 U.S. 1014, 86 S.Ct. 1937, 16 L.Ed.2d 1035 (1966):

> A confession leaves nothing to be determined, in that it is a declaration of his [defendant's] intentional participation in a criminal act. . . . An admission as applied to criminal law is something less than a confession, and is but an acknowledgment of some fact or circumstances which in itself is insufficient to authorize a conviction, and which tends only toward the proof of the ultimate fact of guilt."

In the case at bar, Burks' admission that he was the driver of the truck -- before any arrest and before any charges were filed -- was an admission against interest tending merely to establish one material fact and did not acknowledge guilt.[3] The reason for the confession - *corpus delicti* rule (that one not be convicted out of derangement, mistake or official

[3] The fact that he also admitted drinking heavily that evening does not, in and of itself, change this admission into a confession. He did not "admit" that his faculties were impaired nor that his blood alcohol level was .1 or above.

fabrication -- *Allen, infra,* at *825)* does not apply to admissions against interest where the law presumes that the one making the statement would not have done so unless the statement was true.

Normally we would merely affirm based on this distinction.[4] However, we are confronted by *State v. Allen,* 335 So.2d 823 (Fla. 1976) in which the supreme court discussed defendant's "confession" that he was the driver of the vehicle at the time of the accident. Since driving a vehicle, in and of itself, was not a crime, this statement appears to have been a statement against interest and not a confession. Since the "confession" was not set out in full in the *Allen* decision, it is possible that Allen confessed guilt which would have included the fact that he was the driver. This case does not require us to decide whether the state may introduce one admission against interest in order to establish a *corpus delicti* when all of the admissions made by the defendant would, if fact, constitute a confession. In the case at bar there was no confession.

It should be noted that section 90.804(2)(c), Florida Statutes (1989) specifically permits the introduction of out-of-court statements against interest. There is no indication that in criminal cases the statute can only be used to establish redundant evidence.

In *Allen* the court held that it is the "confession to a crime" that could not be presented until independent evidence showed that a crime had been committed. This is consistent with past authority both here and in other

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[4] There is another reason why we affirm. We state it by footnote because we do not wish to detract from the issue that we hope the supreme court will address. In the case at bar there was other evidence that appellant was the driver. The trooper testified, without objection, that appellant's supervisor came to the scene and inquired if appellant "could drive his vehicle away and continue on his run."

states. Since *Allen* used the word confession throughout, and cited confession cases, it is doubtful that the court intended to equate admissions against interest with confessions in considering whether the *corpus delicti* must be established.[5] Because of the language in *Allen,* and in an abundance of caution, we certify the following question:

> MAY THE STATE OFFER IN EVIDENCE AN ADMISSION AGAINST INTEREST TO ESTABLISH ONE OF THE ELEMENTS OF THE CHARGED OFFENSE IN THE ABSENCE OF AN INDEPENDENTLY ESTABLISHED *CORPUS DELICTI?*

AFFIRMED.

COBB, J., concurs.
DIAMANTIS, J., concurs specially with opinion.

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5 In *Parrish v. State,* 90 Fla. 25, 105 So. 130 (Fla. 1925), in a case involving the voluntariness of certain statements, the supreme court did, in fact, recognize the distinction between confessions and admissions and held that they should be treated differently.

DIAMANTIS, J., concurring specially.

I concur in the result of the majority. The record contains evidence other than appellant's statements which proves that appellant was the driver of the tractor-trailer. Additionally, the record reveals that there is sufficient evidence which shows that the decedent died from injuries received in an intersection collision with the tractor-trailer which was driven by another, and that decedent's death occurred due to the unlawful operation of the tractor-trailer, in that it was blocking both northbound lanes of a four-lane highway as well as the median. The record also contains evidence that the decedent had the right-of-way and that appellant was intoxicated. Consequently, the state presented sufficient evidence of the ***corpus delicti*** of the crime of DUI manslaughter. Even assuming, *arguendo*, that the trial court erred in admitting into evidence appellant's admiss on that he was the driver, such **error** in this **case** would certainly be harmless beyond a reasonable doubt. See State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). Thus, **it is** not necessary to reach the issue that the majority primarily addresses and certifies to the Florida Supreme Court. The discussion of that issue **is *obiter dictum.*** However, by way of my *dictum,* I would add that if there was no other evidence that appellant was the driver and no sufficient evidence of the *corpus* ***delicti,*** I would concur with the majority that appellant's admission is admissible into evidence without requiring the state to present evidence ***aliunde*** of the *corpus* ***delicti*** of the offense of DUI manslaughter.