IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Petitioner/Appellee,	)	
	)	
versus	)	S.CT. CASE NO. SC02-1670
	)	
TONY ALLEN CARWISE,	)	DCA CASE NO. 5D00-2828
	)	
Respondent/Appellant.	)	
______________________________	)	

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERIT BRIEF OF RESPONDENT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

An information was filed against Respondent on December 23, 1999. The Respondent was charged with one count of conspiracy to commit armed robbery with a firearm, and one count of carrying a concealed firearm. (Record, page 41)

A jury trial was held on July 11, 2000. See (Trial transcripts in Record, Vol. II and III)

At the opening of the trial the defense counsel made a motion in limine regarding the State's burden of showing corpus delicti. The motion was denied. (Record, Vol. II, pages 5-9) This objection was renewed at several points during the trial.

Respondent was found guilty on both counts. (Record, page 60)

The sentence guideline range was 39.3 months to 20 years. The sentence given was announced at 39.3 months in prison, on both counts, sentences to run concurrently. (Record, pages 73-78 and 83-91)

A motion for a new trial was filed on July 20, 2000. (Record, pages 61-62) The motion was denied on September 13, 2000. (Record, page 95)

A notice of appeal was filed on September 26, 2000.

The Fifth District Court of Appeal issued an opinion on March 1, 2002, reversing Respondent's conspiracy conviction because the State presented insufficient evidence to establish the corpus delicti of the crime prior to admitting

the Respondent's confession. See Carwise v. State, 27 Fla. Law Weekly D508 (Fla. 5th DCA March 1, 2002). Following a motion for rehearing and motion for certification filed by the State, the Fifth District Court of Appeal certified the following question as one of great public importance:

> SHOULD FLORIDA REPLACE THE CORPUS DELICTI RULE WITH THE TRUSTWORTHINESS APPROACH PROMULGATED BY THE UNITED STATES SUPREME COURT IN OPPER V. UNITED STATES, 348 U. S. 84 (1954)?

At trial the State called two witnesses in its case in chief, and then called the same two witnesses as rebuttal witnesses. The defense called only one witness, the Respondent, who testified in his own behalf.

State's Witnesses:

OFFICER MARK EISNER (Record, pages 32-83), was a patrol officer with the Daytona Police Department. On December 2, 1999, at around 7:00 a.m., while on routine patrol, he approached the parking lot of a local hotel, where stolen cars had been found in the recent past. He approached a car in the lot he thought was suspicious because of the "mangled" condition of the temporary ID tag on the car. He thought the car was unoccupied at first.

As he got out of his patrol car, he saw one individual "pop" up in the front seat, passenger side. This individual turned out to be the Respondent. He saw the

front door passenger side open up and saw the Respondent "discharge a handgun underneath the vehicle." (Record, page 41) As he came closer to the car, he saw another individual (Mr. Earl Turner), lying down in the rear seat of the vehicle.

Another officer (Officer Naughton) arrived on the scene within minutes. Mr. Turner and the Respondent were separated, placed under arrest and questioned separately. The two officers recovered a handgun, a black knit ski mask from the car, and a piece of cloth, that was discovered to be a sleeve of a t-shirt, from the pants pocket of the appellant. The officers also retrieved the discarded handgun from underneath the car. Officer Eisner stated that the Respondent made statements such as they were at the hotel to "jack somebody" [street slang for robbing someone]. (Record, page 71)

On cross-examination, the officer admitted that the car was in plain sight, it was not running, and that once the Respondent came into the officer's view, he never was out of eyesight, and that he was unaware as to where in the car the discarded handgun came from. He also admitted that the Respondent did not furnish him with any details of the supposed robbery, and had told him that they were there waiting on an unnamed third person to arrive. (Record, page 78) The officer stated that the Respondent had originally told him that he was "along for the

ride"(Record, page 80), and that Mr.Turner and the unnamed third person were going to see to the details. (Record, page 80)

Officer Eisner admitted that the police made no effort to locate the whereabouts of this third person.

OFFICER RAYMOND NAUGHTON (Record, pages 85-101) was an officer with the Daytona Beach Police Department. He was the second officer on the scene that day. He responded to Officer Eisner's call for a backup unit. He placed the Respondent into the rear seat of Officer Eisner's vehicle, read the Miranda warnings, and then spoke with the Respondent. He said that the Respondent told him that they were there at the hotel to rob, someone or someplace, but gave no details. (Record, page 96) He admitted that he had not seen the Respondent place anything o the ground under the vehicle, but Officer Eisner told him that a gun was there and the Respondent told him that he had placed it there.

After the testimony of the two officers, the State rested its case. The defense counsel moved to strike the testimony of the defendant's statements (Record, page 104) and made a motion for a "directed verdict" on Count I and a judgment of acquittal on Count II. (Record, page 109) All motions were denied. (Record, page 115)

Defense Witnesses:

TONY A CARWISE (Record, pages 122-138), the Respondent, testified that his cousin Earl Turner picked him up in his car that day and was going to give him a ride to his job, at Greg's roofing company. There was another person in the car then, a friend of Earl's, whose name was unknown to the Respondent. They made a stop at the hotel so that the other individual could go inside and pick something up. While they were waiting for that person to return, the police came and arrested him and his cousin. The Respondent denied knowing anything about any guns that were found and denied making any incriminating statements to the police. He stated that this occurred at about 6:45 a.m. He admitted that he had a piece of cloth in his pocket that day, but it was something that he used at his roofing job, to protect him from tar fumes, and was not a mask to be used in a robbery.

After the testimony of the Respondent, the defense rested its case.

Rebuttal Witnesses for the State:

Officer Eisner (Record, pages 139-142) testified that he first saw the vehicle in the hotel parking lot at 8:43 a.m. (Record, page 140)

Officer Naughton (Record, pages 142-144) stated that the Respondent told him on the day of the arrest he was working for Wayne's Roofing in Holly Hill, Florida. (Record, page 143)

The defense counsel renewed its earlier motions to strike, and for judgment of acquittal (Record, page 146) which were denied. (Record, pages 146-147)

After closing arguments, the Respondent was found guilty on both counts. (Record, page 209)

SUMMARY OF THE ARGUMENT

This Court should not replace the corpus delicti rule with the trustworthiness approach used in the Federal courts. The State's argument is not one of first impression presented to this Court. While Justice Shaw called for abolishing the corpus delicti rule in a dissenting opinion in Burks v. State, 613 So. 2d 441 (Fla. 1993), this Court examined the identical arguments set forth by the Respondent in the instant case and rejected the same in the relatively recent decision rendered in J.B. v. State, 705 So. 2d 1376, 1378 (Fla. 1998), ruling:

> While we acknowledge that several jurisdictions have abandoned this rule, we conclude that the policy considerations set forth in Burks v. State, are still applicable and we reaffirm the requirement that an independent corpus delicti must be established when offering an admission against interest into evidence.

Id. at 1378.

There have been no new arguments put forth by the State or drastic changes in legal doctrine from the time this Court issued its opinion in J.B. v. State, supra, that would call into question the "policy considerations" underlying the corpus delicti doctrine.

ARGUMENT

THIS COURT SHOULD ADHERE TO THE CORPUS DELICTI RULE.

The corpus delicti rule has been part of the jurisprudence of this Court for the past century. Lambright v. State, 34 Fla. 564, 16 So. 582 (1894); Holland v. State, 39 Fla. 178, 22 So. 298 (1897). In Lambright v. State, the court stated that:

> [i]t is also a fundamental rule, of ancient origin, that no person shall be convicted without proof aliunde of the corpus delicti.

16 So. at 585.

Corpus delicti, which translates as "the body of a crime," is a common law legal doctrine that mandates that the prosecution must prove that a crime has been committed before permitting a defendant's extrajudicial confession to be admitted into evidence. There are three general policies that the rule is intended to further:

> 1) To protect mentally unstable individuals from instances wherein their untrue confessions lead to wrongful convictions;
>
> 2) Make certain that innocent individuals are not convicted due to involuntary or coerced confessions;
>
> and
>
> 3) To promote efficient and thorough law enforcement by requiring evidence beyond a statement of the accused.

This Honorable Court has sufficiently justified the existence of the rule as follows:

> The person's confession to a crime is not sufficient evidence of a criminal 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.

State v. Allen, 335 So. 2d 823, 825 (Fla. 1976).

Furthermore, the Fifth District Court of Appeal explained:

> The traditional purpose of the corpus delicti rule was to ensure that a defendant would not be convicted solely on a mistaken confession to a crime that did not occur.

Franklin v. State, 718 So. 2d 902 (Fla. 5th DCA 1998)(citing State v. Allen, 335 So. 2d 823, 825 (Fla. 1976).

This fundamental doctrine "exists to ensure a defendant does not admit to a crime that never happened." People v. Jones, (1998) 17 Cal. 4th 279, 301, 70 Cal. Rptr. 2d. 793, 949 P. 2d 890.) People v. Alvarez, 27 Cal. 4th 1161, 1183, 46 P. 3d 372, 386 (2002).

In Opper v. United States, 348 U. S. 84 (1954), the court established a trustworthiness doctrine which created a lesser-burden for the prosecution in Federal cases to meet when seeking to enter an out-of-court confession into evidence.

Respondent submits that the policy reasons underlying the corpus delicti rule continue to justify adherence to the same. In Burks v. State, 613 So. 2d 441, 443 (Fla. 1993), this Honorable Court provided:

> We explained the policy reasons for the corpus delicti rule: 'The judicial quest for truth requires that no person be convicted out of derangement, mistake or official fabrication.'

Id. at 825. '(quoting State v. Allen, 335 So. 2d 823, 825 (Fla. 1976).'

Justice McDonald's special concurring opinion in Burks v. State, supra, articulately set forth justification for adhering to the corpus delicti rule:

> I tend to believe that it is a good rule to require proof that a crime has been committed by means other than the utterance of an accused. The purpose is to avoid innocents from confessing to nonexistent crimes. In all but a few instances the State can independently prove that a crime has been committed.

Burks v. State, supra at 445, McDonald, Justice, specially concurring.

Respondent's request to replace the corpus delicti rule with the trustworthiness approach is not a new argument tendered to this Honorable Court. Although Justice Shaw called for abolishing the corpus delicti rule in his dissenting opinion in Burks v. State, supra, this Court specifically considered all aspects of that argument in a relatively recent case and rejected the invitation to adopt the trustworthiness approach in favor of the corpus delicti rule. J.B. v. State, 705 So. 2d 1376 (Fla. 1998).

Respondent submits that no new arguments have been set forth by the State to disturb the well-reasoned ruling of this Court four years ago when it stated:

> The State, on the other hand, not only asks that we approve the decision in J.B. v. State, but also asks that we eliminate altogether the requirement that an independent corpus delicti be established when offering a confession or admission against interest into evidence. This latter position of the State would require us to overrule our recent decision in Burks v. State, 613 So. 2d 441 (Fla. 1993).
>
> • * * *
>
> While we acknowledge that several jurisdictions have abandoned this rule, we conclude that the policy considerations set forth in Burks v. State, are still applicable and we reaffirm the requirement that an independent corpus delicti must be established when offering an admission against interest into evidence. As we stated in Burks v. State, the primary policy reason for the rule is that '[t]he judicial quest for truth requires that no person be convicted out of derangement, mistake or official fabrication.' Id. at 443 (quoting State v. Allen, 335 So. 2d 823, 825 (Fla. 1976)). We reject the State's invitation to abolish the rule.

J.B. v. State, supra at 1378.

Many other courts have addressed the same issue presented to this Court in J.B. v. State, supra, and similarly declined to adopt the trustworthiness approach. In People v. McMahan, 451 Mich. 543, 548, N.W. 2d 199 (1996), the Michigan Supreme Court considered whether or not to replace the corpus delicti rule with the trustworthiness doctrine and addressed concerns as to whether the corpus delicti rule

continued to serve the purposes for which the rule was created. The court expressly rejected the argument that the corpus delicti rule should be replaced with the Federal trustworthiness doctrine as the court:

> [R]emain[ed] unconvinced that the protection afforded an accused by the common-law corpus delicti standard is no longer needed . . . . We favor the common-law approach, because we continue to believe that an accused deserved the benefit of independent proof of the crime, ...

Id. at 201 n. 7.

As one commentator suggested:

> 'Michigan prefers to err on the side of caution with independent evidence to prove the statements reliability.'

Criminal Law-Michigan courts require proof of the corpus delicti to admit all extrajudicial confessions and reject use of the trustworthy doctrine. People v. McMahan, 548 N.W. 2d 199 (Mich. 1996), 74 U. Det. C.L. Mercy L. Rev. 407 at 9.

In State v. Ray, 130 Wash. H. 2d 673, 926 P. 2d 904 (1996), the Supreme Court of Washington similarly rejected replacement of the corpus delicti ruling of the trustworthiness approach. The court ruled:

> The State claims that times have changed, such that the traditional corpus delicti rule is unworkable with most modern crimes. The State's arguments are unconvincing. . . . . [T]his court has previously considered the arguments for adopting the 'trustworthiness' standard, and it has consistently declined to abandon the corpus delicti rule.

> State v. Aten, 130 Wash. 2d 640, 663, 927 P. 2d 210 (Wash. 1996); State v. Smith, 115 Wash. 2d 775, 784, 801 P. 2d 975 (1990); City of Bremerton v. Corbett, 106 Wash. 2d 569, 578, 72 P. 2d 1135 (1986). This Court unanimously applied the corpus delicti doctrine without question in other recent cases. See State v. Vangerpen, 125 Wash. 2d 782, 796, 888 P. 2d 1177 (1995); State v. Riley, 12 Wash. 2d 22, 32, 846 P. 2d 1365 (1993).
>
> • * * *
>
> ('[T]he corpus delicti doctrine is specifically designed to prevent convictions based solely on the defendant's sense of guilt . . . ..'), ...[t]he mere opportunity to commit a criminal act, standing alone, provides no proof that the defendant committed the criminal act.

Id. at 906-907.

In Baxter v. State, 586 So. 2d 1196, 1199 (Fla. 2d DCA 1991), the court provided:

> [T]he criminal justice system guards against convictions for imaginary conspiracies. . . . Thus, we hold that in order to establish corpus delicti of conspiracy the State must present substantial evidence that the defendant and a co-conspirator agreed to commit a crime and that the defendant intended to commit the offense.

The "policy considers" set forth in Baxter v. State, supra, and Burks v. State, supra, continue to resonate today. See J.B. v. State, supra at 1378.

CONCLUSION

BASED UPON the argument and authorities contained herein, Respondent respectfully requests that this Honorable Court should not replace the corpus delicti rule with the trustworthiness approach and should affirm the decision of the Fifth District Court of Appeal in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, in his basket at the Fifth District Court of

Appeal, and mailed to Tony Allen Carwise, 1612 Patrick Circle North, Daytona Beach, Florida 32114, on this 16th day of October, 2002.

____

For: LEONARD R. ROSS
Assistant Public Defender

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vs.) S.CT. CASE NO. SC02-1670
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TONY ALLEN CARWISE,) DCA CASE NO. 5D-00-2828
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Respondent/Appellant.)
______________________________)

A P P E N D I X

Opinion filed March 1, 2002 A

On Motion for Certification filed July 19, 2002 B

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	)	
Respondent/Appellant.	)	
________________________________	)	

CERTIFICATE OF FONT

I CERTIFY that the size and style of font used in the foregoing brief of Respondent is 14-point Times New Roman, a proportionately spaced font.

For: ________________________________
LEONARD R. ROSS
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