

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

TONY A. CARWISE,

Respondent.

Case No. SC02-1670
5th DCA No. 5D00-2828

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

RICHARD E. DORAN
ATTORNEY GENERAL

ANN M. PHILLIPS
Assistant Attorney General
Florida Bar No. 978698
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386)238-4990
Fax (386)238-4997

COUNSEL FOR PETITIONER

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SUMMARY OF THE ARGUMENT

Strict application of the corpus delicti rule is nearly impossible with respect to offenses that prohibit conduct, but that do not encompass a specific harm, loss, or injury - such as certain “attempt” crimes, conspiracy and income tax evasion. Under the “trustworthiness” standard, a defendant’s confession is sufficiently corroborated if the State introduces independent proof of such facts and circumstances as would tend to generate a belief that the confession is true. Thus, the trustworthiness standard is adaptable to any crime and still serves the same purpose as the corpus delicti rule of protecting accused persons against conviction for offenses out of derangement, mistake or official fabrication. This court should answer the certified question in the affirmative and replace the corpus delicti rule with the “trustworthiness” standard set forth by the United States Supreme Court in *Opper v. United States*, 348 U.S. 84 (1954).

ARGUMENT

ISSUE

THIS COURT SHOULD REPLACE THE
CORPUS DELICTI RULE WITH THE
TRUSTWORTHINESS APPROACH
PROMULGATED BY THE UNITED
STATES SUPREME COURT.

This Court adheres to the doctrine of stare decisis. *Puryear v. State*, 810 So. 2d 901 (Fla. 2002). Justice Shaw has aptly explained the underlying principle of stare decisis: [A] court when deciding a particular legal issue will pay due deference to its own past decisions on the same point of law. This is a judge-made rule created to assist courts in rendering decisions by making the work of judges easier, fostering stability in the law, and promoting public respect for the law as an objective, impersonal set of principles. *Perez v. State*, 620 So. 2d 1256, 1267 (Fla. 1993) (Shaw, J., dissenting). However, even the principle of stare decisis is not static and must yield when justice so dictates. *Brown v. State*, 719 So. 2d 882, 890 (Fla.1998) (Wells, J., dissenting) ("[I]ntellectual honesty continues to demand that precedent be followed unless there has been a clear showing that the earlier decision was factually or legally erroneous or has not proven acceptable in actual practice."). Petitioner contends that since the current corpus delicti rule has proven to be unwieldy in actual practice the time has come when the interests of justice dictate the adoption of an acceptable alternative, namely that of the trustworthiness standard.

This Court has stated that the primary policy reason for the corpus delicti rule is that "[t]he judicial quest for truth requires that no person be convicted out of derangement, mistake or official fabrication." *Burks v. State*, 613 So. 2d 441, 443 (Fla. 1993). However, a strict application of this rule makes it nearly impossible for the State to ever independently prove the corpus delicti of some crimes thereby preventing the State from utilizing an otherwise legal confession or admission.

Justice McDonald, while agreeing to uphold the corpus delicti rule, acknowledged that the State, in some instances, would not be able to independently prove the existence of a crime prior to the admission of a defendant's confession. *See Burks v. State*, 613 So. 2d at 445 (asserting the state can independently prove that a crime has been committed *in all but a few instances*)(McDonald, J. concurring opinion). The problem of independent proof arises where a defendant is charged with an inchoate crime or an attempted crime. In such a case, like the one at bar involving the crime of conspiracy, the State is powerless to prove a tangible corpus for there is no "body" to be found.

The State agrees that the rationale supporting the corpus delicti doctrine is both noble and necessary. However, the unintended result of the continued application of this outmoded doctrine is to prevent the use of an otherwise knowing and voluntary confession or admission despite its reliability or trustworthiness. Thus, the State is hindered, if not outright prevented, in seeking to prosecute suspects for these inchoate crimes. This is not justice and cannot be the intended result of the corpus delicti rule.

Adoption of the more flexible "trustworthiness" doctrine promulgated in *Opper v. United States*, 348 U.S. 84 (1954), would provide ample protection for the accused while not handcuffing the State in trying to prove a crime which has no tangible corpus. The requirement that the State to prove facts and circumstances which strengthen or bolster the defendant's confession would protect the defendant from being convicted on the basis of a false confession, and the State would be able to convict guilty parties of offenses that prohibit conduct, but that do not encompass a specific harm, loss, or injury - such as certain "attempt" crimes, conspiracy and income tax evasion.

Since the trustworthiness doctrine eliminates the problems posed by the corpus delicti rule regarding inchoate crimes, and can also be applied with equal force to other

crimes, Petitioner contends that this court should adopt the trustworthiness standard to all crimes. The rationale supporting the corpus delicti doctrine is given force and effect under the this more flexible approach without hindering the State's ability to fairly prosecute criminal behavior.

Accordingly, Petitioner requests this Court answer the certified question in the affirmative, reverse the decision of the district court and affirm the jury's finding of guilt on the count of conspiracy to commit armed robbery.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully requests this honorable Court adopt the “trustworthiness” standard in lieu of the corpus delicti standard for all criminal offenses, or at least in cases of attempt crimes, conspiracy crimes or other inchoate crimes. In the alternative, Petitioner requests this court reverse the ruling of the Fifth District Court of Appeal finding the State did not present sufficient evidence of the corpus delicti prior to admitting Respondent’s confession.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Merits Brief of Petitioner has been furnished by delivery to Leonard R. Ross, Assistant Public Defender, Seventh Judicial Circuit, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 5th day of November, 2002.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

RICHARD E. DORAN
ATTORNEY GENERAL

Respectfully submitted,

RICHARD E. DORAN
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No.618550
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386) 238-4990
Fax (386)238-4997

ANN M. PHILLIPS
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 978698
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386) 238-4990
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