

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 12 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE FELIPE O.)
) 2 CA-JV 2010-0097
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
)
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JV19388801

Honorable Javier Chon-Lopez, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Vince George

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly

Tucson
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K E L L Y, Judge.

¶1 Felipe O. appeals from the juvenile court's order adjudicating him delinquent based on five counts alleged in a delinquency petition that arose from a February 2010 incident in which he had been driving while intoxicated. He argues the court abused its discretion in denying his motion for judgment of acquittal based on the corpus delicti doctrine.

Background

¶2 “[W]e view the evidence in the light most favorable to sustaining the adjudication.” *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). In February 2010, Tucson police officer Sean Berube arrived at the scene of a traffic accident. Berube could still smell the dust from the vehicle's airbags which apparently had been deployed only moments before.

¶3 Felipe approached Berube as he was inspecting the vehicle and told Berube that he had been driving the vehicle and had caused the accident. Felipe appeared nervous and fidgety, had watery and bloodshot eyes, and had the odor of intoxicants on his breath. A second officer, Sean Cleary, then investigated whether Felipe had been driving under the influence of alcohol (DUI). Felipe exhibited six of six cues for intoxication on the horizontal gaze nystagmus (HGN) test and also performed poorly on the other field sobriety tests.

¶4 Cleary read Felipe the *Miranda*¹ warning and Felipe subsequently admitted he had consumed alcohol and had been driving the vehicle that was on the curb. He told Cleary that while driving with a female passenger he had “[s]tarted to screw around” by

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

accelerating the vehicle and had been unable to complete the turn into the apartment complex. Cleary arrested Felipe and administered breathalyzer tests that indicated Felipe had an alcohol concentration (AC) of .157 and .137.

¶5 The state charged Felipe by delinquency petition with DUI, DUI with an AC of .08 or higher, having physical control of a motor vehicle with spirituous liquor in his body while under twenty-one years of age, minor in possession/consuming alcohol, and reckless driving. The juvenile court adjudicated him delinquent on all counts and placed him on standard probation for twelve months. This appeal followed.

Discussion

¶6 Felipe argues “the [juvenile] court abused its discretion in denying [his] motion for directed verdict,” which was based on his argument that the state had failed to prove the corpus delicti independent of his statements to the officers. At his adjudication hearing, Felipe moved for a judgment of acquittal, arguing that his statements should not be admitted “because there [wa]s no other evidence,” and that “his statements [could not] be used as the sole evidence that he committed the act of driving while intoxicated.” The court denied the motion, finding “there [wa]s sufficient evidence that a reasonable inference can be made that the crime of DUI occurred.” “We review a ruling on the sufficiency of the evidence of corpus delicti for abuse of discretion.” *State v. Morris*, 215 Ariz. 324, ¶ 33, 160 P.3d 203, 212 (2007).

¶7 The doctrine of corpus delicti acts “to prevent a conviction based solely on an individual’s uncorroborated confession, the concern being that such a confession could be false and the conviction thereby lack fundamental fairness.” *State v. Flores*, 202 Ariz.

221, ¶ 5, 42 P.3d 1186, 1187 (App. 2002). The doctrine requires the state to provide “some proof (1) of a certain result, and (2) that someone is criminally responsible therefor.” *State v. Hernandez*, 83 Ariz. 279, 281, 320 P.2d 467, 468 (1958). Thus, to establish corpus delicti, the state must present evidence outside of the confession which tends to show “that someone committed the crime with which the defendant is charged” before his confession or admissions may be used against him. *Id.* Although the doctrine does not apply to DUI cases in which injury is alleged, A.R.S. § 28-1388(G), it has been applied in the non-injury DUI context, *see State ex rel. McDougall v. Superior Court*, 188 Ariz. 147, 149, 933 P.2d 1215, 1217 (App. 1996); *State v. Villa*, 179 Ariz. 486, 487, 880 P.2d 706, 707 (App. 1994).

¶8 In this case, Felipe asserts the state “failed to independently establish both that [he] was operating the car . . . and that the car was in that location for reasons other than an accident or vehicle malfunction.” According to him, his statements were the only evidence as to “control and operation of the vehicle”—essential elements of his DUI and reckless-driving offenses. *See* A.R.S. §§ 4-244(34), 28-693, 28-1381. First, we reject any argument that the state failed to establish corpus delicti because it did not present independent evidence that *Felipe* had been in control of the vehicle and committed the offenses. The state need not prove the *defendant* committed the offense to establish corpus delicti. *See State ex rel. McDougall*, 188 Ariz. at 149 n.1, 933 P.2d at 1217 n.1.

¶9 Furthermore, contrary to Felipe’s assertion, the state did provide sufficient evidence to establish corpus delicti. Corpus delicti may be established by circumstantial evidence, *State v. Hall*, 204 Ariz. 442, ¶ 43, 65 P.3d 90, 101 (2003), and that evidence

need only create “a reasonable inference that the crime charged was actually committed by some person,” *Hernandez*, 83 Ariz. at 282, 320 P.2d at 469. Once “such preliminary proof has been submitted the confession or statements may then be used to assist in proving the corpus delicti beyond a reasonable doubt, the degree necessary for conviction.” *Id.*

¶10 Officer Berube testified that when he arrived at the scene the vehicle was inoperable and stranded on a curb. This was sufficient evidence to create a reasonable inference that someone had been in control of the vehicle and had driven it onto the curb. Berube, who arrived at the scene of the accident “almost immediately,” also testified that he had smelled the powder from the air bag deployment, indicating the accident had occurred within “a couple minutes” of his arrival. And Felipe, who displayed visible signs of intoxication and was found to have had an AC of .157 and .137, was at the scene and approached Berube within “a minute” of the accident. Thus, the state also presented evidence, apart from Felipe’s statements, that created a reasonable inference that the car had been driven by the apparently intoxicated person who was near the vehicle within moments of the accident.

¶11 Thus, unlike the situation in *State v. Nieves*, 207 Ariz. 438, 87 P.3d 851 (App. 2004), on which Felipe relies, the state here presented evidence independent of Felipe’s statements that established a reasonable inference that someone had driven the car onto the curb and had done so while under the influence of an intoxicant. Having established such a reasonable inference, the state could then use Felipe’s statement that he had been driving the car for “the dual purpose of connecting him with the crime and

proving the corpus delicti beyond a reasonable doubt.” *State v. Turrubiates*, 25 Ariz. App. 234, 238, 542 P.2d 427, 431 (1975); *see also State v. Weis*, 92 Ariz. 254, 260, 375 P.2d 735, 739 (1962) (confession “may be used to assist in establishing the corpus delicti, but before such statements are admissible there must be independent evidence tending to prove corpus delicti. This evidence is sufficient if it will warrant a reasonable inference that the crime charged was actually committed by some person.”).

¶12 In view of his statements, Felipe’s reliance on *State v. Fair*, 23 Ariz. App. 264, 532 P.2d 536 (1975), is also misplaced. In *Fair*, the court concluded the state had not presented sufficient evidence to support a conviction for DUI. 23 Ariz. App. at 266, 532 P.2d at 538. But, in that case, unlike here, the defendant had not confessed to being the driver of the car. *See id.* at 265, 532 P.2d at 537. The *Fair* court did not address the corpus delicti doctrine, or whether the state’s evidence would have created a reasonable inference that Fair had been driving the vehicle. Rather, the court determined only that the state had not proven beyond a reasonable doubt that Fair had been in control of the vehicle.

¶13 In sum, because the state established corpus delicti, the juvenile court did not abuse its discretion in admitting Felipe’s statements or in denying his request for a judgment of acquittal pursuant to Rule 29(D)(2), Ariz. R. P. Juv. Ct. *See Douglas v. State*, 26 Ariz. 327, 332, 225 P. 335, 337 (1924) (A “confession, when freely and voluntarily made, the corpus delicti being established, even though by purely circumstantial evidence, is sufficient to sustain the conviction.”); *see also State v. Jones*,

198 Ariz. 18, n.7, 6 P.3d 323, 328 n.7 (App. 2000) (same). We therefore affirm the juvenile court's adjudication of Felipe as delinquent and the subsequent disposition.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge