

## ***West v. State, 75 P.3d 808 (Nev. 2003).***<sup>1</sup>

### **CRIMINAL LAW – CORPUS DELICTI – CIRCUMSTANTIAL EVIDENCE**

#### **Summary**

On February 5, 2001, the general manager of Canyon Gate Mini Storage discovered the decomposing body of Christine Smith in the storage unit owned by Smith and her daughter, appellant Brooke Lee West. Smith's body was sealed in a garbage can wrapped with duct tape, garbage bags and cellophane wrap. A white plastic bag, knotted at the back of her head, covered Smith's nose and mouth. Upon searching West's apartment, police discovered Smith's bank statements. The police determined that there were numerous ATM withdrawals on Smith's bank account after February 1998, when Smith was last seen alive. West was charged with murdering Smith by asphyxiation, suffocation, or manner or means unknown.

At trial, expert testimony was provided regarding the decomposed body of Smith. An expert for the state opined that the cause and manner of death was undeterminable due to the severity of decomposition. Yet, the finding of the plastic bag covering Smith's face was consistent with suffocation. The expert also stated that it was possible Smith was placed in the garbage can alive. Although West did not testify at trial, West's counsel stipulated that she admitted to placing Smith's body in the garbage can. West was convicted and sentenced to life in prison without parole for the murder of her mother, Christine Smith.

On appeal, West argued that there was insufficient evidence of criminal agency, the charging information was vague, the district court erroneously admitted gruesome photographic evidence, and the prosecutor committed misconduct during closing argument. The Nevada Supreme Court concluded that West's contentions lacked merit and affirmed the decision of the district court.

#### **Issue and Disposition**

##### **Issue**

Is corpus delicti established solely with circumstantial evidence, notwithstanding the lack of a body or lack of evidence of the actual cause of death due to decomposition or dismemberment of the body?

##### **Disposition**

Yes. Corpus delicti can be established by circumstantial evidence when the weight of the evidence creates a reasonable inference of death by criminal agency despite the fact that the cause of death can not be determined.

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## Commentary

### **State of the Law Before *West***

Prior to *West*, the Supreme Court of Nevada had firmly established the corpus delicti rule. To prove that a murder has been committed, the State must show: “(1) the fact of death, and (2) that death occurred by criminal agency of another.”<sup>2</sup> Based on direct or circumstantial evidence, it is the State’s burden to establish corpus delicti beyond a reasonable doubt.<sup>3</sup>

In *Frutiger*, the State offered the following evidence to demonstrate corpus delicti: defendant answered the door at the hotel room of the deceased; the motel manager observed a putrid smell in the room which was filled with garbage bags and flies; the police discovered the nude body of the deceased in the closet wrapped in a blanket and garbage bags and found the purse of the deceased with her driver’s license, credit cards and checks missing.<sup>4</sup> Expert testimony at trial revealed that the cause of death could not be determined because of the decomposition of the body.<sup>5</sup> The Supreme Court of Nevada determined that if the evidence had shown the death was caused by the criminal agency of another, the circumstantial evidence was enough to prove that the defendant committed the criminal act.<sup>6</sup> Yet, the court stated that whether or not there was sufficient evidence to link the defendant to the criminal act should have never gone to trial since it was not established beyond a reasonable doubt that the death was caused by the criminal agency of another.<sup>7</sup>

In *Middleton*, the court stated that it is not required that there be evidence to prove a specific cause of death.<sup>8</sup> The court further stated that in order to determine the question of death by criminal agency, the court must weigh and consider all of the evidence.<sup>9</sup> The court convicted the defendant in *Middleton* based on the circumstantial evidence even though it could not be determined, due to the decomposition of the bodies, how the victims’ actually died.<sup>10</sup>

### **Effect of *West* on Current Law**

In *West*, the court applied the holding from *Middleton* and balanced the circumstantial evidence to determine corpus delicti. The court disagreed with *West* that the evidence was insufficient to prove death by the criminal agency of another. Although the actual cause of death couldn’t be determined due to decomposition of Smith’s body, the court concluded that corpus delicti was established by the presented circumstantial evidence. Based on the admission that *West* put Smith in the garbage can, the manner and method of Smith’s body in the airtight can, and the discovery of the plastic bag

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<sup>2</sup> *Tabish v. State*, 72 P.3d 584, 596 (Nev. 2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Frutiger v. State*, 907 P.2d 158, 159-60 (Nev. 1995).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 161.

<sup>7</sup> *Id.*

<sup>8</sup> *Middleton v. State*, 968 P.2d 296, 306 (Nev. 1998).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

covering Smith's mouth and nose, the court determined that a reasonable inference could be drawn that Smith's death was a result of a criminal agency. Although West presented medical testimony that Smith's death was natural, the court stated that it was up to the jury to weigh this evidence with the evidence presented by the State to determine whether or not Smith died by criminal agency.

### **Survey of the Law in Other Jurisdictions**

The court's conclusion is consistent with holdings in other jurisdictions which have held that knowledge of the actual cause of death is not necessary to establish corpus delicti. Despite the fact that the actual cause of death is unknown, if a juror is convinced beyond a reasonable doubt of the defendant's guilt based on the circumstantial evidence, then corpus delicti is sufficiently established.<sup>11</sup>

### **Conclusion**

To prove a murder was committed and establish corpus delicti, the State must show the proof of death and that the death was caused by criminal agency of another. For corpus delicti, it is not necessary that the actual cause of death be known. If the evidence presented by the State weighed against the evidence presented by the defendant is sufficient to reasonably infer that the death was in fact caused by criminal agency of another, then corpus delicti is established.

Besides the contention that there was insufficient evidence to establish corpus delicti, West further challenged that the charging information was vague, the district court erroneously admitted gruesome photographic evidence, and the prosecutor committed misconduct during closing. On these claims, the court held that the State provided West with adequate notice in the charging information, the district court did not abuse its discretion in admitting the photographs and that the prosecutor did not commit misconduct.

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<sup>11</sup> See *State v. Williams*, 66 S.W.3d 143, 152-54 (Mo. 2001); *People v. Towler*, 641 P.2d 1253, 1257-58 (Cal. 1982); *Commonwealth v. Tallon*, 387 A.2d 77, 81 (Pa. 1978).