NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

OLIE OLRUN III,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13056
Trial Court No. 4BE-15-00350 CR

MEMORANDUM OPINION

No. 6895 — August 26, 2020

Appeal from the Superior Court, Fourth Judicial District, Bethel, Nathaniel Peters, Judge.

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth D. Friedman, Redding, California, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Eric A. Ringsmuth, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge ALLARD.

Olie Olrun III was convicted, following a jury trial, of first-degree sexual abuse of a minor for performing cunnilingus on his seven-year-old niece, C.J.[1] Olrun was sentenced to 40 years with 15 years suspended (25 years to serve).

Olrun now appeals, arguing that the superior court erred in denying his motion to dismiss his indictment on *corpus delicti* grounds. He also argues that the court erred when it failed to *sua sponte* order a new presentence report with more information about his background and upbringing. For the reasons explained here, we reject these claims of error and affirm Olrun's conviction and sentence.

*Factual background*

During the summer of 2011, Olrun reportedly sexually abused his niece C.J. repeatedly. C.J. reported the abuse to her father, who took her to a child advocacy center. During the child advocacy center interview, C.J. reported that her uncle, Olrun, touched and penetrated her "privates" with his hands and tongue.[2]

After C.J.'s disclosure, the troopers assigned to the case obtained a *Glass* warrant and recorded a telephone conversation between Olrun and his brother, C.J.'s father. In the conversation, Olrun admitted that he had touched C.J.'s "privates" and did "perverted things" to her, including touching her both in her "front" and her "butt." Olrun did not admit to doing anything other than touching C.J. with his hands.

During a later interview with troopers, Olrun again admitted to touching C.J.'s "privates" multiple times over her clothing. He also admitted that, on one occasion, he had "licked" her vagina.

---

[1] AS 11.41.434(a)(1).

[2] During the interview, C.J. also reported that a different uncle had also sexually abused her.

At the grand jury proceeding, C.J. testified that Olrun touched her "privates" with his "privates." She also testified that he touched her vagina (with his hands) over her clothing. However, she denied that Olrun had touched her "privates" with his tongue. C.J. remembered being interviewed at the child advocacy center, although she did not remember what she said.

The State did not introduce the audio recording of C.J.'s interview at the child advocacy center as a prior inconsistent statement. Instead, the State relied on testimony recounting the *Glass* warrant conversation in which Olrun had admitted to touching C.J.'s vagina and buttocks and the interview with the trooper in which Olrun had admitted to "licking" C.J.'s vagina on one occasion. Based on this evidence, the grand jury indicted Olrun on one count of first-degree sexual abuse of a minor for performing cunnilingus on C.J.

Olrun moved to dismiss the indictment, arguing that the State violated the *corpus delicti* rule when it relied on Olrun's confession that he performed cunnilingus on C.J. without presenting independent corroborating evidence that the cunnilingus actually occurred. The State opposed the motion to dismiss, arguing that the *corpus delicti* rule did not apply to grand jury proceedings, and that, even if it did, the rule was satisfied by C.J.'s testimony regarding the sexually inappropriate touching. As an exhibit to its opposition, the State also submitted the audio recording of the child advocacy center interview in which C.J. reported the cunnilingus.

The superior court denied Olrun's motion to dismiss, ruling that the *corpus delicti* rule did not apply to grand jury proceedings.

At Olrun's trial, unlike at grand jury, C.J. testified about both the improper touching and the cunnilingus. The State also introduced both the *Glass* warrant recording and the recording of the interview with troopers in which Olrun admitted to

"licking" C.J.'s vagina on one occasion. Lastly, the jury heard the audio recording of C.J.'s child advocacy center interview in which she first reported the cunnilingus.

The jury convicted Olrun. At sentencing, Olrun was sentenced to 40 years with 15 years suspended (25 years to serve). This appeal followed.

*Why we conclude that the superior court did not err when it denied Olrun's motion to dismiss*

On appeal, Olrun argues that the superior court erred in denying his motion to dismiss the indictment. Olrun argues that, contrary to the superior court's ruling, the *corpus delicti* rule does apply to grand jury proceedings, and he asserts that, in his case, the State presented insufficient corroborating evidence to the grand jury to satisfy the *corpus delicti* rule. The State contends that the *corpus delicti* rule does not apply to grand jury proceedings, and that, even if it does, C.J.'s grand jury testimony about Olrun's inappropriate sexual touching was sufficient to satisfy the *corpus delicti* rule.

The *corpus delicti* rule provides that "a criminal conviction can not rest on an uncorroborated confession."[3] Thus, when the State's case depends on the out-of-court confession of the defendant, it must also introduce "substantial independent evidence which would tend to establish the trustworthiness of the [defendant's] statement."[4]

---

[3] *Langevin v. State*, 258 P.3d 866, 870 (Alaska App. 2011) (quoting *Dodds v. State*, 997 P.2d 536, 538 (Alaska App. 2000)).

[4] *Id.* at 871 (alteration in original) (quoting *Armstrong v. State*, 502 P.2d 440, 447 (Alaska 1972)).

Historically, the *corpus delicti* rule applies to trials.[5] However, some jurisdictions have extended the rule to preliminary hearings.[6] Whether the *corpus delicti* rule applies to grand jury proceedings is an open question under Alaska law. In *Castillo v. State*, our Supreme Court declined to decide whether the *corpus delicti* rule applies to an indictment.[7] Instead, the Court assumed for purposes of the *Castillo* appeal that the *corpus delicti* rule applies to grand jury proceedings, and the Court concluded that there was sufficient corroboration in that case.[8]

We follow a similar approach here. That is, we need not decide whether the *corpus delicti* rule applies to grand jury proceedings under Alaska law because we conclude that, even assuming it does, it was satisfied in this case, given Alaska's "evidentiary foundation" approach to the *corpus delicti* rule.[9]

In *Langevin v. State,*[10] we explained that American jurisdictions tend to follow one of two approaches to *corpus delicti*:

> Some jurisdictions view *corpus delicti* as an evidentiary foundation that the government must lay in order to justify

---

[5] *See* 1 Kenneth S. Broun et al., *McCormick on Evidence* § 145 (8th ed. 2020) (citing *People v. Jones*, 949 P.2d 890, 902-03 (Cal. 1998) and *State v. Daugherty*, 845 P.2d 474, 477 (Ariz. App. 1992)).

[6] *See, e.g.*, *Rayyis v. Superior Court*, 35 Cal. Rptr. 3d 12, 16-21 (Cal. App. 2005); *Commonwealth v. Meder*, 611 A.2d 213, 215 (Pa. Super. 1992). *But see State v. Jones ex rel. County of Maricopa*, 6 P.3d 323, 328-29 (Ariz. App. 2000) (the *corpus delicti* rule does not apply to preliminary hearings); *State ex rel. Peterson v. Ward*, 707 P.2d 1217, 1219 (Okl. Crim. App. 1985) (same).

[7] *Castillo v. State*, 614 P.2d 756, 758 n.2 (Alaska 1980).

[8] *Id.*

[9] *See Langevin*, 258 P.3d at 870.

[10] *Langevin v. State*, 258 P.3d 866 (Alaska App. 2011).

> the introduction of the defendant's out-of-court confession. But other jurisdictions view *corpus delicti* as an implicit element of the government's proof (in cases where the government introduces evidence of the defendant's confession).
>
> Under the "evidentiary foundation" view, the trial judge decides whether the State has satisfied the *corpus delicti* rule (just as the judge decides other evidentiary questions). But under the "implicit element" view, the question of *corpus delicti* is decided at the end of the trial by the trier of fact (*i.e.*, by the jury, unless the defendant has consented to a bench trial).[11]

In *Langevin*, we construed Alaska law as following the "evidentiary foundation" approach to the *corpus delicti* rule.[12]

In *Leggett v. State*, we acknowledged that this approach was the minority approach.[13] We also held, consistent with other jurisdictions who follow the "evidentiary foundation" approach, that because *corpus delicti* is a foundational requirement that the judge decides, the corroborating evidence does not necessarily need to be presented to the jury.[14] Thus, if a defendant moves for a judgment of acquittal based on an alleged violation of the *corpus delicti* rule at trial, the State may successfully defend against the motion by providing the judge with sufficient corroborating evidence to allow the judge to conclude, under Alaska Evidence Rule 104(a), that an adequate evidentiary basis for the confession exists.[15]

---

[11] *Id.* at 869.

[12] *Id.* at 870; *see also Dodds v. State*, 997 P.2d 536, 539-43 (Alaska App. 2000).

[13] *Leggett v. State*, 320 P.3d 311, 314 (Alaska App. 2014).

[14] *Id.* at 314-15.

[15] *See id.*

Applying this same reasoning to the grand jury proceedings in the current case, we conclude that the State provided an adequate evidentiary foundation for the admission of Olrun's confession based on the combination of C.J.'s grand jury testimony and the later-submitted child advocacy center interview. Thus, assuming for purposes of this appeal that the *corpus delicti* rule applies to grand jury proceedings, we conclude that the rule was satisfied in this case.

*Olrun's challenge to his presentence report*

A presentence report was prepared prior to Olrun's sentencing. According to the report, a presentence worksheet was provided to Olrun, along with a cover letter explaining the purpose of a presentence report and Olrun's rights associated with it. Olrun never filled out the worksheet.

The author of the presentence report also contacted Olrun's trial attorney, to determine whether Olrun wanted to be interviewed for the report. Olrun's attorney replied that he did not know whether Olrun would want to participate, but that he would "let [the report author] know." Olrun's attorney never contacted the author to set up an interview.

The presentence report had sections entitled "education," "social/economic," and "medical," but under each section, it simply stated, "The defendant did not participate in a presentence interview and did not submit a presentence worksheet; therefore no . . . information was available."

At sentencing, Olrun's attorney objected to other sections of the presentence report, which the superior court modified pursuant to his objections. Olrun's attorney did not object to the report's representations about Olrun and his lack of participation in the preparation of the report, nor did he object to the report's lack of information about Olrun's background.

Now on appeal, Olrun claims the presentence report had insufficient information about his upbringing and health for the superior court to evaluate the *Chaney*[16] criteria and impose sentence. He argues that the presentence report author should have obtained his educational and medical records from the various institutions. Because Olrun did not object to the presentence report in the superior court, he concedes he must now show plain error.[17]

We do not find plain error here. It was primarily the responsibility of Olrun's trial attorney to ensure that whatever favorable information existed was presented at sentencing, regardless of whether Olrun participated in the presentence report process. We also note that educational and medical records are often privileged and generally may not be accessed without the permission of the student or patient. Olrun has not identified any authority that would allow the presentence report author or the court to access these records absent his consent. Nor did his trial attorney complain at the sentencing hearing about the lack of information in the report, or request that it be remedied.

Given these circumstances, we conclude that the superior court did not plainly err in relying on the information provided in the presentence report and sentencing Olrun.

*Conclusion*

The judgment of the superior court is AFFIRMED.

---

[16] *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970); *see* AS 12.55.005 (codifying the *Chaney* criteria).

[17] *See State v. Ranstead*, 421 P.3d 15, 23 (Alaska 2018).