

# Court of Appeals, State of Michigan

## ORDER

People of MI v Jeffrey Malmberg

Docket No. 300501

LC No. 10-003346-FC

Richard A. Bandstra  
Presiding Judge

David H. Sawyer

Joel P. Hoekstra  
Judges

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The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's October 4, 2010 order dismissing the charge of tampering with evidence and directs the circuit court to REINSTATE the charge. MCL 750.483a(5) makes it a felony to "[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding." The future proceeding in the present case is defendant's murder trial. So, in the context of the present case, the *corpus delicti* of the crime is that evidence of Jozlyn's murder, in particular, her dead body, was removed, concealed or destroyed. That must be established, by a preponderance of the evidence, and independent of defendant's statement that he put the body into a trash bag and then a dumpster, before the prosecution can use that statement in prosecuting the tampering with evidence charge. *People v Ish*, 252 Mich App 115, 116; 652 NW2d 257 (2003). There was no evidence that Jozlyn was abducted or that she was able to leave the house on her own volition. So, the evidence that defendant was the only person (other than her infant brother) with Jozlyn before she disappeared allows the inference that defendant removed her from the house. It does not establish that she was no longer alive when defendant removed her, and that is a necessary fact because the charge is that defendant tampered with evidence of murder. However, defendant's statement that he knelt on Jozlyn's chest until she died does establish that, and although not admissible to establish the *corpus delicti* of murder, it is admissible to establish that she was dead when he removed her from the house because it is a confession to the killing, not to the evidence tampering. The *corpus delicti* rule does not bar every confession to any crime for the purpose of establishing the *corpus delicti* of any crime; it precludes the use of a confession to a particular crime as the sole basis on which to establish the *corpus delicti* of that very crime.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT - 7 2010

Date

*Sandra Schultz Mengel*  
Chief Clerk