

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2011

SUNCRUZ CASINOS, LLC,

Appellant,

v.

Case No. 5D09-987

DANNY STOUT,

Appellee.

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Decision filed February 18, 2011

Appeal from the Circuit Court  
for Volusia County,  
Richard S. Graham, Judge.

Hinda Klein, of Conroy, Simberg, Ganon,  
Krevans, Abel, Lurvey, Morrow & Schefer,  
P.A., Hollywood, for Appellant.

Christopher V. Carlyle and Shannon McLin  
Carlyle of The Carlyle Appellate Law Firm,  
The Villages, for Appellee.

PER CURIAM.

AFFIRMED.

PALMER, J., concurs.

COHEN, J., concurs specially, with opinion.

TORPY, J., dissents, with opinion.

COHEN, J., concurring.

One might think that in a case where a verdict in excess of \$550,000 was rendered, Appellant would provide a complete trial transcript to permit a full review. Instead, only excerpts were prepared until Appellant filed a transcript as an appendix to its initial brief. Because the transcript was not part of the record on appeal, it cannot be considered. Miller v. Miller, 767 So. 2d 532 (Fla. 5th DCA 2000).

To prevail on appeal based upon the denial of a proposed jury instruction, the proponent of the instruction must establish that "the requested jury instruction contained an accurate statement of the law, that the facts of the case support the giving of the instruction, and that the instruction was necessary for the jury to properly resolve the issues in the case." Giordano v. Ramirez, 503 So. 2d 947, 949 (Fla. 3d DCA 1987). Dealing with trial excerpts is problematic; we have no transcript establishing the entirety of the facts placed before the jury, only a partial transcript of the charge conference, and no transcript of the jury instructions provided to the jury. Given the state of the record, I agree that Appellant cannot establish reversible error and that affirmance is required.

TORPY, J., dissenting.

I would reverse because the trial court failed to adequately instruct the jury on the defense theory. In this slip and fall case, Appellant claimed that Appellee was an “undiscovered trespasser,” as defined by statute—a status that affects Appellant’s duty. Although the trial court acknowledged a fact dispute on this issue, it denied a proposed special instruction that would have given the jury the legal framework to resolve this issue.