STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant/Cross-Appellee,	UNPUBLISHED June 9, 2009
v	No. 282097 Oakland Circuit Court
JACK LEE BURDINE, JR., Defendant-Appellee/Cross-Appellant.	LC No. 2007-214471-FH

Before: Saad, C.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

I. Introduction

The prosecution charged defendant with operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(1); MCL 257.625(9), a felony, and failure to stop at the scene of a property damage accident, MCL 257.618, a misdemeanor. The prosecution appeals the trial court's order of dismissal, entered after the trial court granted defendant's motion to quash the information. Defendant cross-appeals the trial court's order denying his motion to suppress evidence. For the reasons set forth below, we reverse the trial court's order that granted defendant's motion to quash the information, we reverse the trial court's denial of defendant's motion to suppress evidence, and remand for further proceedings consistent with this opinion. Specifically, we hold that the corpus delicti rule did not bar the admission of defendant's statements for purposes of his bindover by the district court, but that the trial court should have granted defendant's motion to suppress defendant's statements to Oakland County Sheriff's Deputy Eric Rymarz as fruits of the warrantless entry into defendant's house.

II. Corpus Delicti

We agree with the prosecution that the corpus delicti rule did not prevent the district court from considering defendant's statements during his preliminary examination.[1] Under the

[1] This Court reviews "a circuit court's decision to grant or deny a motion to quash a felony information de novo to determine if the district court abused its discretion in ordering bindover." (continued…)

rule, "proof of the corpus delicti of a crime is required before the prosecution may introduce a defendant's inculpatory statements." *People v Schumacher*, 276 Mich App 165, 180; 740 NW2d 534 (2007).[2] Here, Oakland County Sheriff's Deputy Craig Hanselman's testimony established the corpus delicti of leaving the scene of a property damage accident. MCL 257.618. At the preliminary examination, Deputy Hanselman testified that he discovered a vehicle that had apparently driven off of Benstein Road and into a ditch. Deputy Hanselman observed that the car had sustained substantial front-end damage, and that there was nobody in the vehicle, or around the vehicle. This was sufficient to establish the corpus delicti of leaving the scene of a property damage accident, and the corpus delicti rule did not prevent the district court from considering defendant's statements in binding him over on that charge. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

With respect to the charge of operating a motor vehicle while intoxicated, the corpus delicti rule did not bar defendant's statements because his statements did not amount to a confession that he committed the crime. MCL 257.625. The corpus delicti rule only applies to statements made by a defendant that amount to a confession of guilt. *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991). In other words, if "the fact admitted does not of itself show guilt but needs proof of other facts, which are not admitted by the accused, in order to show guilt, it is not a confession . . . ." *People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934).

Under MCL 257.625, the prosecution had to establish not only that defendant had been drinking and was driving on a public highway, but also that defendant had either been driving "under the influence of" intoxicating liquor, or that defendant's blood alcohol content exceeded the legal limit. Defendant told Deputy Rymarz that he drove his car off the road and into a ditch and that he had spent the previous evening with friends in Novi. These are statements of fact rather than a confession to the crime of drunk driving. *Rockwell*, *supra* at 407. Significantly, the record does not show that defendant admitted to Deputy Rymarz that he consumed an excessive number of alcoholic beverages and then drove his car. Rather, Deputy Rymarz suspected that defendant had driven his vehicle while intoxicated because he was difficult to awaken, he staggered and slurred his speech, and an odor of alcoholic intoxicants emanated from defendant. Moreover, defendant was arrested after two preliminary breath tests both revealed an alcohol level of .18. Accordingly, the trial court incorrectly ruled that the corpus delicti rule should have prevented the district court from binding defendant over for trial.

(…continued)

People v Northey, 231 Mich App 568, 574; 591 NW2d 227 (1998). An abuse of discretion occurs where the lower court's decision results in an outcome falling outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). This Court does not afford any deference to the circuit court's analysis regarding the district court's decision to bind a defendant over for trial. *Id.*

[2] The issue of whether the prosecution sufficiently established the corpus delicti of the crime is question of law that this Court reviews de novo. *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). We also review for an abuse of discretion a court's decision to admit evidence in satisfaction of the corpus delicti rule. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998); *People v Biggs*, 202 Mich App 450, 455; 509 NW2d 803 (1993).

III. Warrantless Search

However, we further hold that the trial court erred when it denied defendant's motion to suppress his statements to Deputy Rymarz on the basis of a violation of his Fourth Amendment rights.[3] Both the Michigan and United States Constitutions afford protection against unreasonable searches and seizures and, as a general rule, a warrantless search is considered unreasonable. *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). However, a grant of consent to conduct a search obviates the warrant requirement, so long as the consent is granted freely, unequivocally, and intelligently. *People v Galloway*, 259 Mich App 634, 648; 675 NW2d 883 (2003). Consent is valid if granted by the person whose property is subject to the search, or from a third party possessing common authority over the property. *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990). An entry may also be valid if a third person without actual common authority consents to the search if the police officer reasonably believed that the third person had authority to consent. *Id*. at 186. "The burden of establishing that common authority rests upon the State." *Id*. at 181. Furthermore, in Michigan, the prosecution is required to demonstrate, by clear and convincing evidence, that "consent was freely and voluntarily given" under the totality of the circumstances. *People v Raybon*, 125 Mich App 295, 303; 336 NW2d 782 (1983). Evidence obtained in violation of the Fourth Amendment's protections against illegal searches and seizures is subject to the exclusionary rule, which precludes the prosecution from presenting the evidence at trial. *People v Goldston*, 470 Mich 523, 528; 682 NW2d 479 (2004), citing *Mapp v Ohio*, 367 US 643, 665, 660; 81 S Ct 1684; 6 L Ed 2d 1081 (1961).

Here, the prosecution failed to demonstrate, by clear and convincing evidence, that overnight guest Eric Estrada's alleged "invitation" for Deputy Rymarz to enter was a free and voluntary consent. *Galloway*, *supra* at 648; *Raybon*, *supra* at 303. At the evidentiary hearing on defendant's motion to suppress, Deputy Rymarz did not testify that he asked Estrada for permission to enter defendant's residence. Instead, Deputy Rymarz based his conclusion that Estrada had invited him inside entirely on his observation that "the door opened a little bit more and that to me, I took as an invitation and I stepped inside to get [defendant]." Estrada testified that he did not invite Deputy Rymarz into the house and that he made no indication that Deputy Rymarz was welcome to enter. Because there is no evidence that Deputy Rymarz sought or was granted consent from anyone before entering, Deputy Rymarz violated defendant's Fourth Amendment rights when he entered defendant's house without a warrant, consent, or other applicable exception to the warrant requirement. *Galloway*, *supra* at 648.

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[3] A trial court's ultimate decision on a motion to suppress the evidence is reviewed by this Court de novo. *People v Dunbar (After Remand)*, 264 Mich App 240, 243; 690 NW2d 476 (2004). The trial court's findings of fact in a suppression hearing are reviewed for clear error. *Id*. "A finding of fact is clearly erroneous if, after review of the entire record, an appellate court is left with a definite and firm conviction that a mistake had been made." *People v Wilkens*, 267 Mich App 728, 732; 705 NW2d 728 (2005), quoting *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001). A trial court's decision regarding the validity and scope of a consent to search is reviewed for clear error. *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999). Additionally, this Court affords deference to the trial court's decisions with respect to conflicting evidence and the credibility of witnesses. *Id*.

Were we to find that Deputy Rymarz reasonably concluded that Estrada invited him to enter the house, the prosecution failed to establish that Estrada had the requisite "common authority" to consent to the entry. *Rodriguez, supra* at 181. Generally, an overnight guest does not have the actual authority to consent. *People v Wagner*, 104 Mich App 169, 177; 304 NW2d 517 (1981). Though some evidence showed that Estrada was babysitting at defendant's house the day before, the prosecution presented no evidence that Estrada had joint access or control over the property to establish that he had actual authority to consent. *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 2d 242 (1974).

We also reject the prosecution's assertion that Deputy Rymarz had an objectively reasonable belief that Estrada had actual authority to consent. Deputy Rymarz testified that, when he knocked on defendant's door, Estrada was sleeping on the sofa. It is undisputed that Deputy Rymarz did not ask Estrada to identify himself before he entered the house, but instead merely asked Estrada if he was defendant. Further, Deputy Rymarz did not ask Estrada if he lived at the house or why he was there. Thus, were we to conclude that Estrada consented to the entry, a reasonable person would not believe that Estrada had the requisite common authority to consent. Rather, Deputy Rymarz should have realized that further inquiry regarding Estrada's authority to consent to the search was necessary under the circumstances.

Furthermore, the trial court's ruling that the contact between Deputy Rymarz and defendant was an "informational encounter" that did not implicate defendant's Fourth Amendment rights was based on a clearly erroneous factual determination that failed to take into account that Rymarz entered defendant's residence without consent in order to initiate that encounter. *Wilkens, supra* at 732. We are convinced that the trial court erred when it concluded that Deputy Rymarz merely asked defendant to voluntarily answer questions when Deputy Rymarz had entered defendant's house without a warrant and where no exception to the warrant requirement applied. Because Deputy Rymarz violated defendant's Fourth Amendment protection against unreasonable searches and seizures, we reverse the trial court's order denying defendant's motion to suppress this evidence.

For the reasons set forth above, we reverse the portion of the trial court's order that granted defendant's motion to quash the information, and we reverse the trial court's denial of defendant's motion to suppress evidence obtained in violation of the Fourth Amendment. Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra