[J-11-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 44 WAP 2006
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered December 30, 2005, at No.
	:	169 WDA 2004, reversing the Order of the
v.	:	Court of Common Pleas of Allegheny
	:	County entered January 5, 2004, at Nos.
	:	CP-02-CR-0016578-2000 and CP-02-CR-
LAWRENCE STATES,	:	0017056-2000.
	:	
Appellee	:	2005 PA Super 434, 891 A.2d 737 (2005)
	:	
	:	ARGUED: March 6, 2007
	:	RESUBMITTED: April 2, 2007

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: DECEMBER 27, 2007**

I join Mr. Justice Castille's dissenting opinion. The trial court had one duty — determine whether the evidence warranted a verdict of guilty or not guilty on the Accidents Involving Death charge. The court was not empowered to bind the jury by finding specific facts. This case does not come to this Court in the posture of evaluating the evidence that may support a finding of guilt on the other charges, which were before the jury — there is no conviction against which to test that sufficiency. The question here is collateral estoppel.

There were 13 fact-finders here. As to one count, the trial court was the fact-finder — as to the other counts, the 12-person jury was the fact-finder. While the 12 jurors were unable to reach a unanimous verdict, we do not know on what issues that inability was based. It may be that all 12 found appellee was the driver, but disagreed on other elements of the charges. To foist upon these 12 the findings of the one fact-finder not involved in those charges is inappropriate.

The majority notes collateral estoppel, in the criminal context, "bar[s] redetermination in a second prosecution of those issues necessarily determined between the parties in a first proceeding …." Majority Slip Op., at 4 (quoting Commonwealth v. Smith, 540 A.2d 246, 251 (Pa. 1988) (citation omitted)). The trial court here did not "necessarily determine" driving was not proved — it found appellee not guilty, then went beyond its obligation and stated the reasons for its determination. See Trial Court Opinion, 7/15/04, at 3 ("[T]his [c]ourt admitted at the hearing on the motion to dismiss that the reason for its verdict of not guilty was that there was insufficient evidence to prove beyond a reasonable doubt … [appellee] had been driving the vehicle at the time of the accident." (citation omitted)).

Simply put, the "finding" that driving was not proved is not something found in a criminal verdict. Had the jury found appellee guilty, and been hung on other charges, would the matter of driving be "necessarily determined?" Yes, for it necessarily was proved beyond a reasonable doubt, witness the convictions. At a retrial for the unresolved charges, would proof of driving be necessary? One must assume it would, for it is an element of the crime, and the determination of one fact-finder should not bind another.

If the court wished to direct a verdict on the other counts, for want of proof of driving, it could have done so, but that is not the question before us. The question is collateral estoppel — there is no practice equivalent to civil practice in a criminal prosecution. Here, the specific findings in the verdict slip are limited to one ultimate question: "guilty" or "not guilty." In a criminal verdict, there simply are no "necessary determinations" made that estop anything.

Based on the foregoing, I would affirm the trial court's order denying appellee's pre-trial motion to dismiss the charges against him on double jeopardy grounds.