STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 7, 2000
v	No. 212484 Oakland Circuit Court
CHARLES F. TIMMRECK, Defendant-Appellant.	LC No. 96-149462-FH

Before: Wilder, P.J., and Holbrook Jr., and McDonald, JJ.

PER CURIAM.

Defendant was convicted by a jury of operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(7)(d); MSA 9.2325(7)(d), driving with a suspended license, second offense, MCL 257.904; MSA 9.2604, and driving with expired license plates, MCL 257.255; MSA 9.1955. Defendant also pleaded guilty of providing false identification, MCL 257.324; MSA 9.2024. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12; MSA 28.1084, to 1½to 20 years in prison for the OUIL conviction, one year in jail for driving with a suspended license, and two jail terms of ninety days each for driving with expired license plates and furnishing false identification. Defendant appeals as of right. We affirm.

Defendant argues that the evidence was insufficient to sustain his OUIL conviction. We disagree. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of OUIL are: (1) the defendant was operating a motor vehicle upon a highway or other place open to the public and (2) while driving, the defendant was under the influence of alcohol, i.e., as a result of drinking alcohol, his mental or physical condition was significantly affected and he was

no longer able to operate a vehicle in a normal manner. MCL 257.625(7)(d); MSA 9.2325(7)(d); *People v Raisanen*, 114 Mich App 840, 844; 319 NW2d 693 (1982). The evidence at trial showed that defendant told the deputies that he had just hit a curb and pointed toward Livernois. An examination of the guardrail at that location revealed that the guardrail had been recently struck by a vehicle the same color as defendant's car. The officer at the scene testified that defendant's breath smelled of alcohol and his appearance and conduct at the scene indicated that he was intoxicated. Subsequent tests confirmed that defendant's blood alcohol level was above the level necessary to establish a presumption that defendant was under the influence of alcohol. See MCL 257.625a(9)(c); MSA 9.2325(1)(9)(c). Viewed in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant committed the charged offense.

Defendant next claims that his on-the-scene statement to the officer that he had hit a curb was erroneously admitted as evidence because there was insufficient evidence to establish the corpus delicti of the charges. We disagree. This Court reviews a trial court's evidentiary ruling for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); *People v Howard*, 226 Mich App 528, 542; 575 NW2d 16 (1997).

The corpus delicti of a crime cannot be established by the extrajudicial confession of the defendant. *People v Allen*, 91 Mich App 63, 66; 282 NW2d 836 (1979). Proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statement of the defendant. *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996). The corpus delicti of a crime other than murder requires proof of the occurrence of the specific injury and some criminal agency as the source of the injury. *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995). Once this showing is made, a defendant's confession may be used to establish identity, intent, or aggravating circumstances. *People v Cotton*, 191 Mich App 377, 394; 478 NW2d 681 (1991). The corpus delicti rule is limited to admissions which are confessions and not to admissions of fact which do not amount to confessions of guilt. *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991); *People v Johnson*, 93 Mich App 667, 673; 287 NW2d 311 (1979). If the fact admitted necessarily amounts to a confession of guilt, it is a confession. If the fact admitted does not itself show guilt but needs proof of other facts, which are not admitted by defendant, it is not a confession but an admission. *People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934); *Johnson ,supra*.

In this case, defendant admitted to the police at the scene that he hit a curb down the road, from which a reasonable inference can be drawn that defendant was driving the vehicle. However, this statement, alone, did not establish that defendant was under the influence of alcohol at the time he hit the curb, or that he otherwise committed the offense of OUIL. Therefore, defendant's statement was an admission of fact (i.e., that he had been driving), not a confession of guilt. *Porter, supra* at 290; *Rockwell, supra* at 407. The offense of OUIL is not established merely be showing that the defendant was driving a vehicle; rather, the prosecution must also prove that defendant was under the influence of alcohol while driving. Because defendant's statement to the officer, alone, was not a confession of guilt or wrongdoing, and proof of other facts was needed to obtain a conviction, the statement was

admissible to establish the corpus delicti of the crime. *Porter, supra*; *Rockwell, supra*. The trial court properly denied defendant's motion to suppress his statement.

Defendant also claims that his blood test result indicating his blood alcohol level was erroneously admitted as evidence at trial. We disagree.

According to the plain language of MCL 257.625a(6)(a); MSA 9.2325(1)(6)(a), chemical test results are admissible into evidence in any criminal proceeding, and are assumed to be a reasonable approximation of defendant's blood alcohol level at the time of the offense, withtout reference to the interval of time before the test is performed. *People v Wager*, 460 Mich 118, 121; 594 NW2d 487 (1999); *People v Campbell*, 236 Mich App 490, 496; 601 NW2d 114 (1999). Contrary to defendant's contention, the prosecutor is not required to prove through expert testimony that the test was performed within a reasonable time after the commission of the offense or defendant's arrest. *Wager, supra* at 126; *Campbell, supra* at 502. "To the extent that the passage of time reduces the probative value of the test, the diminution goes to weight, not admissibility, and is for the parties to argue before the finder of fact." *Wager, supra* at 125-126. "[T]he only prerequisite to admission of blood alcohol test results is a threshold relevancy requirement, as codified in MRE 401, 402, and 403." *Campbell, supra* at 502. Pursuant to these principles, we conclude that a two and a half hour delay between the offense and the blood test, caused in large part by defendant's refusal to submit to testing and his initial presentation of false identification, was not so long that we can say that the test result did not have some tendency to make the fact of defendant's intoxication at the time of the incident more or less probable. See *id.* at 506. Defendant's test result was relevant to the case, and the district court properly denied defendant's motion to suppress the result. "Any further discussion regarding the effect of the delay should take place at trial, where it will properly influence the weight given to the result by the trier of fact." *Id*.

Defendant next contends that the trial court invaded the province of the jury and improperly instructed the jury when it told the jurors "that in regard to [the charge of] providing a police officer false identification, the defense has agreed that that has been proven, and should not have to be read to you, and therefore, that's not for your consideration." Although defendant lodged a general objection to "the way" that the trial court instructed the jury, he failed to cite a specific objection to a particular instruction.[1] MRE 103(a). In the absence of a particular objection to alleged instructional error, this Court will only review the claim for manifest injustice. *People v Cross*, 202 Mich App 138, 143; 508 NW2d 144 (1993). Further, because defendant has not cited any authority in support of his contention that the trial court's instruction is improper and warrants reversal, this issue may be deemed waived. *People v Weathersby*, 204 Mich App 98, 113; 514 NW2d 493 (1994).[2] In any event, we do not find

[1] At the conclusion of the trial court's instruction to the jury, defense counsel stated, "I'll acknowledge that you read the instructions, your Honor. However, you did not read them in any way that I would like you to." The record does not reflect that any other objection to the instructions was made.

[2] In support of defendant's bare assertion that the trial court's instruction "deprived [defendant] of a fair and impartial trial," he simply asserts, without factual or legal support, that "[t]he jurors could have

that the trial court's remark to the jury not to consider the charge of providing false identification, taken in context, was improper or that defendant was deprived of a fair and impartial trial as a result. See *People v Paquette*, 214 Mich App 336, 340; NW2d (1995). The instruction was clearly given to inform the jury that it was not going to be instructed on one of the offenses that it had initially been told it would be called upon to consider. See *People v Davis*, 216 Mich App 47, 50-52; 549 NW2d 1 (1996). Accordingly, we find no manifest injustice.

Lastly, we reject defendant's contention that he was entitled to credit for time served on the OUIL sentence. Generally, a defendant is entitled to sentence credit for time spent in jail prior to sentencing where he is unable to furnish bond for the offense of which he is convicted. MCL 769.11b; MSA 28.1083(2); *People v Scott*, 216 Mich App 196, 199; 548 NW2d 678 (1996). However, in this case, defendant remained incarcerated in jail before sentencing because he had violated his parole, not because he was unable to post bond. See *Scott, supra*. Moreover, because defendant committed the crime while he was on parole, any credit for time served was to be applied against the sentence for the paroled offense. *People v Johnson*, 205 Mich App 144, 146-147; 517 NW2d 273 (1994); *People v Watts*, 186 Mich App 686, 687, 690-691; 464 NW2d 715 (1991). Accordingly, we find no error.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

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understood the court's statement to mean that Mr. Timmreck [defendant] was less than honest, and was admitting to his wrongdoing."