

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JIMMIE ALLEN NELSON,

Defendant-Appellee.

UNPUBLISHED

December 23, 2008

No. 271768

Iosco Circuit Court

LC No. 06-002623-AR

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Plaintiff appeals, by leave granted, the circuit court's order denying leave to appeal the district court's refusal to bind defendant over on an open murder charge. We reverse and remand.

On August 3, 1980, Cherita Thomas disappeared. Defendant was seen with Thomas that night, but denies that he kidnapped or murdered her. Defendant initially testified, pursuant to an investigative subpoena, that he spoke briefly to Thomas at a local bar on the night she disappeared. He also stated that he went home after leaving the bar at around midnight, and did not see Thomas again. But defendant later testified that he remembered seeing Thomas again that night, and she told him that she was having car trouble. Defendant testified that he took Thomas to her friend's apartment, and then to a nearby restaurant. However, the friend testified that Thomas did not have a key to her apartment, and would not have been able to gain entry to it. More, the restaurant owner testified that his restaurant would have been closed well before defendant said he took Thomas there. The district court concluded that the corpus delicti of the open murder charge had not been established. Specifically, the court found that plaintiff had not established that Thomas died as the result of criminal agency. The circuit court denied leave to appeal.

This Court reviews a district court's decision to bind over a defendant for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). A lower court's decision regarding the establishment of the corpus delicti of a crime is also reviewed for an abuse of discretion. *People v King*, 271 Mich App 235, 239; 721 NW2d 271 (2006).

The "corpus delicti" is the "body of the crime," meaning the "fact of a transgression" or the "physical evidence of a crime." Black's Law Dictionary (7th ed). The corpus delicti rule

“prohibits a prosecutor from proving the corpus delicti based solely on a defendant’s extrajudicial statements.” *Id.* In *People v Williams*, 422 Mich 381, 388; 373 NW2d 567 (1985), our Supreme Court stated that “[t]he history of the development of the common-law corpus delicti rule demonstrates that in homicide cases . . . the purpose for the rule is satisfied if it is shown, independent of the defendant’s statement, that the named victim is dead as a result of some criminal agency.”

In *People v Rockwell*, 188 Mich App 405; 470 NW2d 673 (1991), this Court stated: “the corpus delicti of a crime must be established by evidence independent of an accused’s confession. This rule is limited, however, to admissions which are confessions, and not to admissions of fact which do not amount to confessions of guilt.” *Id.* at 407 (citations omitted).

Rockwell cited *People v Porter*, 269 Mich 284; 257 NW2d 705 (1934). *Porter* states that the corpus delicti “rule is confined to confessions.” *Id.* at 289. *Porter* cited with approval the following from 16 CJ, p 716. “Although it may be received in evidence, an admission by word or act of an inculpatory fact from which the jury may or may not infer guilt, but which falls short of being an acknowledgment of guilt, is not a confession. Also an admission of one, but not of all, the essential elements of the crime is not a confession.” *Id.* at 291.

In *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996), our Supreme Court held that “proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statements of an accused.” The lower courts in this case concluded that, by this statement, *McMahan* overruled *Porter* and *Rockwell*’s formulation of the rule. We disagree.

Although the language in *McMahan* is not precise, we conclude that the Supreme Court did not intend *McMahon* to have the unusual effect of overruling, sub silentio, the settled precedent of *Porter*.¹ Had the *McMahan* court intended to overrule *Porter* and *Rockwell*, it would have said so.²

The lower courts erred as a matter of law in concluding that *McMahan* overruled *Porter* and *Rockwell*. An error of law is an abuse of discretion. *People v Giovannini*, 271 Mich App 409, 417; 722 NW2d 237 (2006).

Reversed and remanded to the district court for reconsideration, in light of the proper legal standard, of whether to bind defendant over on the open murder charge. This Court retains no further jurisdiction.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter

¹ Indeed, *McMahan* later states that proof of the corpus delicti “must consist of evidence that is independent of the accused’s *confessions*.” *McMahan*, *supra* at 549 (emphasis added).

² Interestingly, neither of the two major cite-checking services (Westlaw’s KeyCite and Lexis’s Shepard’s) indicates that *Porter* or *Rockwell* has been overruled.