

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
ALAN HARRIS,		
Appellant		No. 761 MDA 2012

Appeal from the Judgment of Sentence Entered April 5, 2012
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0000096-2011

BEFORE: MUSMANNO, J., BENDER, J., and COLVILLE, J.*

MEMORANDUM BY BENDER, J.:

Filed: January 11, 2013

Appellant, Alan Harris, appeals from the judgment of sentence of sixty days' incarceration and a fine of \$1,000, imposed after he was convicted of driving while his operator's license was suspended or revoked. On appeal, Appellant argues that an inculpatory statement he made to police was improperly admitted and considered by the trial court in determining his guilt. For the following reasons, we are compelled to agree and, thus, we reverse.

Appellant was convicted of the above-stated summary offense by a magisterial district court. He filed an appeal of that conviction with the trial court and a summary appeal hearing was conducted. At that proceeding,

* Retired Senior Judge assigned to the Superior Court.

the Commonwealth presented the testimony of Pennsylvania State Police Trooper Stephen Sovich. Trooper Sovich stated that on August 17, 2011, he responded to the scene of a vehicle crash at the intersection of Second and Presqueisle Streets in Philipsburg Borough. N.T. Summary Appeal Hearing, 2/9/12, at 4. At the scene, Trooper Sovich determined that the accident occurred when an "All Terrain Vehicle" (ATV) drove through a stop sign and into the path of an oncoming car. *Id.* at 8. The trooper spoke with the driver of the vehicle that struck the ATV, as well as with Appellant, who at the time Trooper Sovich arrived, was sitting on the steps of a business located "in the 200 block of Presqueisle Street." *Id.* at 9. Trooper Sovich asked Appellant if he "was the operator of the ATV." *Id.* at 5. Appellant informed the trooper that he was driving the ATV and, when asked for his driver's license, Appellant admitted to Trooper Sovich that his license had been suspended. *Id.* The trooper confirmed that Appellant's license was suspended after entering his name in the police system and obtaining a certified copy of his driving record. *Id.* at 5-6.

At the close of Trooper Sovich's testimony, Appellant moved for a dismissal of the charge pending against him, arguing that absent his inculpatory statement, there was no other evidence proving that a crime had been committed. In other words, Appellant alleged that the Commonwealth failed to satisfy the *corpus delicti* rule. The trial court disagreed, denied Appellant's motion, and found him guilty of driving with a suspended license.

On April 5, 2012, Appellant was sentenced as stated *supra*. He filed a timely notice of appeal, as well as a timely concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he presents three issues in the "Statement of the Questions Involved" portion of his brief:

- I. Whether the court erred in denying [Appellant's] motion for acquittal based on the *corpus delicti* rule?
- II. Whether the court erred in its application of the *corpus delicti* rule in that it admitted [Appellant's] admission to driving without there first being evidence presented to show a crime had been committed?
- III. Whether the evidence at trial was insufficient to sustain a conviction for Driving While Operating Privilege is Suspended or Revoked?

Appellant's Brief at 5. While Appellant delineates three separate issues in his "Statement of the Questions Involved," in the "Argument" portion of his brief he does not differentiate between these assertions. Thus, we will address Appellant's issues together.

Before delving into the specifics of Appellant's arguments, we begin with a discussion of the *corpus delicti* rule. Recently, in ***Commonwealth v. Hernandez***, 39 A.3d 406 (Pa. Super. 2012), we explained:

Our standard of review for a challenge to the *corpus delicti* rule is well-settled.

The *corpus delicti* rule is designed to guard against the "hasty and unguarded character which is often attached to confessions and admissions and the consequent danger of a conviction where no crime has in fact been committed." The *corpus delicti* rule is a rule of evidence. Our standard of review on appeals challenging an evidentiary ruling of

the trial court is limited to a determination of whether the trial court abused its discretion. The *corpus delicti* rule places the burden on the prosecution to establish that a crime has actually occurred before a confession or admission of the accused connecting him to the crime can be admitted. The *corpus delicti* is literally the body of the crime; it consists of proof that a loss or injury has occurred as a result of the criminal conduct of someone. The criminal responsibility of the accused for the loss or injury is not a component of the rule. The historical purpose of the rule is to prevent a conviction based solely upon a confession or admission, where in fact no crime has been committed. The *corpus delicti* may be established by circumstantial evidence. Establishing the *corpus delicti* in Pennsylvania is a two-step process. The first step concerns the trial judge's **admission** of the accused's statements and the second step concerns the fact finder's **consideration** of those statements. In order for the statement to be admitted, the Commonwealth must prove the *corpus delicti* by a preponderance of the evidence. In order for the statement to be considered by the fact finder, the Commonwealth must establish the *corpus delicti* beyond a reasonable doubt.

Commonwealth v. Young, 904 A.2d 947, 956 (Pa.Super.2006), *appeal denied*, 591 Pa. 664, 916 A.2d 633 (2006), (quoting *Commonwealth v. Rivera*, 828 A.2d 1094, 1103–04, n. 10 (Pa.Super.2003)[,] *appeal denied*, 577 Pa. 672, 842 A.2d 406 (2004)) (internal quotation marks omitted) (emphasis in original).

Additionally,

The *corpus delicti* rule is an evidentiary one. On a challenge to a trial court's evidentiary ruling, our standard of review is one of deference.

The admissibility of evidence is solely within the discretion of the trial court and will be reversed only if the trial court has abused its discretion. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.

Commonwealth v. Herb, 852 A.2d 356, 363 (Pa.Super.2004) (citations omitted).

Hernandez, 39 A.3d at 410-11.

Instantly, Appellant argues that the Commonwealth failed to present any evidence, other than his inculpatory statement to Trooper Sovich, that proved by a preponderance of the evidence, or beyond a reasonable doubt, that he was driving the ATV. Therefore, he contends that the court erred in admitting and considering that statement in determining his guilt. Appellant maintains that without that statement, the evidence was insufficient to sustain his conviction.

The trial court, however, disagreed with Appellant's assertions, concluding in its Pa.R.A.P. 1925(a) opinion that the evidence was adequate to satisfy the *corpus delicti* rule. In making this determination, the court contrasted Appellant's case to ***Commonwealth v. Buck***, 626 A.2d 176 (Pa. Super. 1993), where this Court held that the *corpus delicti* rule had not been satisfied. Describing the factual background and holding of ***Buck***, the trial court stating:

In ***Buck***, a police officer who was investigating an automobile accident approached a woman who was not involved in the accident to ask what she had observed. In the course of their discussion, the woman revealed that she had driven to the area the previous day, and described where her car was parked. [***Buck***, 626 A.2d at 177]. The police officer subsequently learned that her driving privileges had been revoked or suspended and the woman was charged with driving with a suspended license based on her statement that she had driven her car the day before the accident. ***Id.*** In holding the *corpus delicti* rule had been violated, the Superior [C]ourt found there

was “not a shred” of independent evidence presented to suggest that a crime were committed. *Id.* The [C]ourt stressed:

Appellant was not standing close to her car; it was parked in a different location. No witness was presented who observed appellant driving. She was convicted solely on the basis of her statement, made during the course of a criminal investigation of a different incident, that she drove to the area the day prior to the incident.

Id.

Trial Court Opinion (T.C.O.), at 1-2 (unnumbered pages).

The trial court went on to distinguish the facts of Appellant’s case from those in *Buck*, explaining:

In the present case, the [c]ourt is satisfied that there was sufficient evidence to suggest that a crime had occurred. Here, unlike in *Buck*, [Appellant] was found sitting near his vehicle at the scene of the accident. The officer who spoke with [Appellant] was investigating the accident in which [Appellant] had been involved, and the record suggests that the collision may have occurred due to unlawful conduct, namely, a driver running a stop sign. The [c]ourt believes that this evidence, **along with [Appellant’s] admission**, constitutes adequate evidence of his crime, and that his sentence was properly entered.

Id. at 2 (unnumbered pages; emphasis added).

We find the court’s analysis flawed in several respects. First, as evinced by the above-emphasized language, the court considered Appellant’s statement in determining if the *corpus delicti* had been established. This directly contravenes our decision in *Commonwealth v. Chambliss*, 847 A.2d 115 (Pa. Super. 2004), where we expressly stated that “the factfinder *may not* consider the extra-judicial confession of the defendant until it has

been determined that the Commonwealth established the *corpus delicti* beyond a reasonable doubt." *Id.* at 121 (emphasis added).¹

Moreover, the trial court's implication that the "unlawful conduct...[of] a driver running a stop sign" satisfied the *corpus delicti* is also misplaced. Appellant's statement to Trooper Sovich made no mention of his running a stop sign; rather, it was incriminating to the extent that he admitted he was driving the ATV with a suspended license. Therefore, for his statement to be admitted or considered in determining his guilt of the crime of driving with a suspended license, the Commonwealth had to prove the *corpus delicti* of *that* offense. Whether the Commonwealth proffered sufficient evidence to establish the *corpus delicti* of running a stop sign is irrelevant.

Finally, our review of the evidence presented by the Commonwealth refutes the court's conclusion that the *corpus delicti* rule was satisfied. The only evidence suggesting that Appellant *may have* been driving the ATV was his presence at the scene. While the trooper's testimony implied that Appellant and the driver of the other vehicle were the only individuals at the scene of the accident, the trooper never explicitly stated that fact. Moreover, the Commonwealth offered no witnesses who saw Appellant driving the ATV (such as the driver of the second vehicle), or any other evidence tying Appellant to that vehicle (such as ownership or registration

¹ Our holding in *Chambliss* overruled, in part, our prior decision in *Commonwealth v. Friend*, 717 A.2d 568, 570 (Pa. Super. 1998).

documents in Appellant's name). In fact, the Commonwealth did not even offer any evidence indicating how far Appellant was sitting from the ATV when Trooper Sovich arrived at the scene, other than the trooper's general statement that Appellant was sitting "in the 200 block of Presqueisle Street." N.T. Summary Appeal Hearing at 9. Finally, Trooper Sovich did not testify regarding how long after the accident occurred he had arrived at the scene, or state any observations of Appellant that would tie him to the accident, such as scrapes or bruises on Appellant's person.

In sum, other than Appellant's mere presence at the scene of the accident and the implication that he and the other driver were the only individuals there when Trooper Sovich arrived, the Commonwealth offered no evidence establishing that Appellant drove the ATV. Consequently, we conclude that the Commonwealth failed to prove by a preponderance of the evidence, or beyond a reasonable doubt, the *corpus delicti* of driving with a suspended license. Accordingly, the trial court abused its discretion in admitting Appellant's statement to Trooper Sovich, and in considering that statement in determining his guilt. Absent Appellant's admission, the evidence was insufficient to support his conviction and, thus, we reverse.

Judgment of sentence reversed. Jurisdiction relinquished.

Judge Colville files a concurring memorandum.