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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000634-001 DT 03/29/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

ANDREA A GUTIERREZ

v.

KRISTINE DENISE BENNETT (001)

LAWRENCE KOPLOW

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 14006300.

Defendant-Appellant Kristine Denise Bennett (Defendant) was convicted in Phoenix Municipal Court of driving under the influence. Defendant contends the State did not present sufficient evidence supporting the inference of *corpus delicti* for the trial court to consider Defendant's incriminating statements. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On October 1, 2011, Defendant was cited for driving under the influence, A.R.S. § 28–1381(A)(1) & (A)(2). Prior to trial, Defendant's attorney filed a document entitled Anticipated Trial Objections, wherein he "requests that the State be ordered to meet the foundational requirements of corpus delicti prior to introducing any statements made by Ms. Bennett." The trial court held a pre-trial hearing on Defendant's request, and the prosecutor played for the trial court the 9-1-1 call made by a witness. (R.T. of Mar. 26, 2012, at 9.) The 9-1-1 call was as follows:

> PHOENIX POLICE OPERATOR [PPO]: Phoenix Police. How may I help you?
>
> MS. ORAHA [Ms. O.]: Hi. I have—my car was parked in—Seventh Street and Union Hills in a private property. And a lady hit my car. And I believe she is, she is drunk. And I don't know what to do. I don't know if you—I should—you guys should send a police out here to do a report.
>
> PPO: Is she there?
>
> Ms. O.: Yes, she is.
>
> PPO: What makes you think that she is drunk?

Ms. O.: Because there is a bar right next to where we work and she smells like it when she was talking to me.

PPO: Okay. Where are you at?

Ms. O.: Seventh Avenue and Union Hills.

PPO: What's the name of it?

Ms. O.: Magic Cut. In front of Magic Cut. The address is 717 West Union Hills.

PPO: 717 West Union Hills?

Ms. O.: That's correct.

PPO: Okay. And your name?

Ms. O.: Marlene.

PPO: Last name?

Ms. O.: O-r-a-h-a.

PPO: Phone number?

Ms. O.: [Deleted by this Court.]

PPO: What kind of car are you in?

Ms. O.: It's actually not my car. It's my friend's car but she doesn't speak English. That's why I'm calling. It's a Nissan Xterra. It's silver. It's a two thousand—

PPO: What kind of vehicle was it hit by?

Ms. O.: It was hit by—it's a compact car. I believe it's a Chrysler.

PPO: What color?

Ms. O.: White.

PPO: Two-door, four-door, passenger car, SUV?

Ms. O.: It's a four-door.

PPO: All right. We will send somebody out there. But the only reason I'm going to send out is because you think that they're going to be drunk. I can't guarantee the officers are going to take any kind of report.

Ms. O.: Okay.

PPO: Okay?

Ms. O.: How long is it going to take?

PPO: When somebody is available.

Ms. O.: Because she seems like she is getting antsy.

PPO: All right. Well, if she leaves, I don't want you to follow her. The officers will be out there as soon as they are available.

Ms. O.: Okay. Thank you.

The State presented Officer Thomas Barilla, who testified he received a call at 6:48 p.m. on October 1, 2011, to respond to a collision at 717 West Union Hills Road. (R.T. of Mar. 26, 2012, at 11.) He said a witness had detected some type of alcohol ingestion for the person driving the vehicle. (*Id*.) When he arrived, one of the officers there identified the driver of the vehicle, so he spoke to her. (*Id*. at 12.) He identified Defendant as the person to whom he spoke. (*Id*.) He asked her what happened, and she said she was pulling into a parking spot and that she turned too much and struck another vehicle. (*Id*. at 12–14.) He noticed she had bloodshot, watery eyes and a moderate odor of alcohol on her breath. (*Id*. at 14.) No one else indicated they were driving, and the vehicle was registered to Defendant. (*Id*.) He viewed the damage to the vehicles, and that damage was consistent with what Defendant described. (*Id*. at 14–15.) On cross-examination, Officer Barilla acknowledged he did not see the collision happen. (*Id*. at 15.)

Officer William Bennett testified his involvement in this matter was to draw Defendant's blood on October 1, 2011. (R.T. of Mar. 26, 2012, at 20–21.) When he first saw Defendant, he noticed she had a moderate odor of alcohol and bloodshot, watery eyes, and some of her words were run together. (*Id*. at 22.) As part of the interview, he asked her if she was driving a vehicle that night, and she said she was the driver and was pulling into a parking space when she hit a bumper. (*Id*. at 23.) He asked her if she had been involved in a collision, and she said "yes." (*Id*. at 23–24.)

Officer Steven Nicks testified he received a call at 6:45 p.m. on October 1, 2011, to respond to a collision at 717 West Union Hills Road. (R.T. of Mar. 26, 2012, at 25–26.) Once he arrived, Officer Oliver told him the driver of a white vehicle had misjudged the turn when pulling into a parking space and had hit the vehicle parked directly next to that space. (*Id*. at 26–27.) The damage he observed was consistent with that description. (*Id*. at 27.)

The prosecutor said she had spoken to the person who made the 9-1-1 call (Ms. Oraha), and she was on her way to the courthouse, but the prosecutor did not think she needed that witness. (R.T. of Mar. 26, 2012, at 28–29.) The State had no other witnesses. (*Id*. at 29.)

The prosecutor argued the evidence raised a reasonable inference that a crime had taken place. (R.T. of Mar. 26, 2012, at 29.) Defendant's attorney argued the witness on the 9-1-1 call had not seen the collision, and no one saw Defendant driving. (*Id*. at 30–32.) The prosecutor argued, when a person collides with a parked vehicle, it shows the person does not have proper control of their vehicle. (*Id*. at 33–34.) Defendant's attomey again argued no one saw Defendant driving. (*Id*. at 34.)

The trial court took a recess to review the 9-1-1 call. When the trial court returned, it ruled as follows:

> [T]he court finds the State has shown by independent evidence that a reasonable inference exists that the crime here charged of driving under the influence was committed by some person. The defendant's objection is therefore denied.

(R.T. of Mar. 26, 2012, at 35.)

Defendant's attorney then invoked the "Rule" for the remainder of the proceedings. (R.T. of Mar. 26, 2012, at 35.) By then, Ms. Oraha had arrived. (*Id*.) The trial court advised the witnesses and ordered them to remain outside the courtroom until needed, so the witnesses then left the courtroom. (*Id*. at 36–37.) The trial court and the attorneys selected the jurors, and the trial court gave the preliminary instructions. (*Id*. at 41–110, 124–32.) The attorneys then gave their opening statements. (*Id*. at 132, 138.)

The State's first witness was Marlene Oraha, who testified as follows:

> . . . I witnessed Ms. Bennett and her friend and some other people, the commotion around my friend's car, and I simply asked what happened, and they didn't respond.
>
> I asked again. I said, "What happened?" Ms. Bennett's friend said, "She, my friend, hit her car, this car, this guy's car." And I said, "It's not that guy's car" that was standing there. "It's my friend's car. Let me go get her." So I walked inside to get my friend to come outside, telling her that her car got hit, and we walked outside. Nobody was there except Ms. Bennett and her friend.
>
> And she kept saying, "Well"—I said, "Should we call the police?" And she said, "No, the police won't come here because it's private property. We'll just exchange insurances and here is my insurance. I'll get my insurance if I can get her insurance." I said, "My friend doesn't speak any English. I'm just translating."

(R.T. of Mar. 26, 2012, at 144–45.) Ms. Oraha described the further exchange, smelling alcohol on Defendant, and calling 9-1-1. (*Id*. at 145–46.) The following exchange then took place:

> Q. And did she say anything about the fact that—that she had hit the car?
>
> A. Yes, she said, "I hit the car. I'm just going to call my insurance company in the morning and I'm going to make sure that your car gets fixed."

(R.T. of Mar. 26, 2012, at 146–47.) The trial court then played the 9-1-1 tape for the Jurors. (*Id*. at 148.) Ms. Oraha identified Defendant as the person who struck her friend's car. (*Id*. at 148–49.)

On cross-examination, Ms. Oraha acknowledged she never saw Defendant driving her vehicle. (R.T. of Mar. 26, 2012, at 153, 155.) The following exchanges then took place:

> Q. Did [Defendant] say, "No, I didn't do that" or anything like that or did she just stand there and kind of, you know, go with the flow?
>
> A. Her friend said it to me twice that she hit the car—this guy's car. And I said, "Which guy?" She said, "This guy. She hit this guy's car." And I said, "It's not that gentleman's car. It's my—my friend's car. Let me go get her."

(R.T. of Mar. 26, 2012, at 157.)

> Q. Now, at some point—now, at some point, you did speak to Kristine; correct?
>
> A. Yes.

Q. Okay. And are you certain that you heard her say the words that she was the driver of the car in some way, shape or form?

A. Yes.

(R.T. of Mar. 26, 2012, at 159–60.)

The next day, Defendant's attorney told the trial court he wanted to "reiterate my corpus motion." (R.T. of Mar. 27, 2012, at 8.) The basis of that motion was that Ms. Oraha's testified she never saw Defendant driving her vehicle. (*Id*. at 8–9.) The trial court denied that motion and indicated it was considering both Ms. Oraha's testimony prior to the start of the trial and her testimony given at the trial. (*Id*. at 11–12.)

The State presented the testimony of its witnesses, who testified about the following. Officer Nicks described his investigation of the collision and identified Defendant. (R.T. of Mar. 27, 2012, at 37–46, 58.) Officer Barilla identified Defendant and described his DUI investigation. (*Id*. at 61, 62–82.) Officer Bennett identified Defendant and described taking her blood, her appearance, and the statements she made. (*Id*. at 143, 143–62.) James Hoban described testing the sample of Defendant's blood and the results of his testing, which showed she had a BAC of 0.133. (*Id*. at 201–11.)

After Mr. Hoban finished testifying, the State rested. (R.T. of Mar. 27, 2012, at 246–47.) Defendant's attorney did not make a motion for judgment of acquittal at that time, and instead presented Defendant's witness. (*Id*. at 247.) After presenting that witness, the defense rested. (R.T. of Mar. 28, 2012, at 24.) The State then presented Officer Barilla as a rebuttal witness. (*Id*. at 25–35, 44–46.) Once the State concluded with its rebuttal witness, Defendant's attorney said, "I'll renew my Rule 20 as I previously filed." (*Id*. at 46.) He then argued the trial court should suppress Officer Bennett's testimony and the blood test evidence. (*Id*. at 47–48.) The trial court denied Defendant's motion. (*Id*. at 48.)

The trial court instructed the jurors, the attorneys made closing arguments, and the jurors deliberated. (R.T. of Mar. 28, 2012, at 51, 59, 73, 90, 102, 104.) After deliberating, the jurors found Defendant guilty of both charges. (*Id*. at 104–05.) On April 24, 2012, the trial court imposed sentence. On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE STATE PRESENT SUFFICIENT EVIDENCE, APART FROM DEFENDANT'S STATEMENTS, THAT A CRIME HAD BEEN COMMITTED.

Defendant contends the State failed to present sufficient evidence, apart from Defendant's statements, to establish *corpus delicti*, that is, that a crime had been committed. The *corpus delicti* doctrine ensures a defendant's conviction is not based upon an uncorroborated confession or incriminating statement. *State v. Chappell*, 225 Ariz. 229, 236 P.3d 1176, ¶ 9 (2010); *State v. Morris*, 215 Ariz. 324, 160 P.3d 203, ¶ 34 (2007); *State v. Hall*, 204 Ariz. 442, 65 P.3d 90, ¶ 43 (2003). Thus, the State must show (1) a certain result has been produced and (2) the result was caused by criminal agency rather than by accident or some other non-criminal action. *Chappell*

at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43; *State v. Scott*, 177 Ariz. 131, 142–43, 865 P.2d 792, 803–04 (1993). Only a reasonable inference of *corpus delicti* need exist before the jurors may consider an incriminating statement, and circumstantial evidence may support such an inference. *Chappell* at ¶ 9; *Morris* at ¶ 34; *Hall* at ¶ 43. Furthermore, the state need not present evidence supporting the inference of *corpus delicti* before it submits the defendant's statement as long as the state ultimately submits adequate proof of *corpus delicti* before it rests. *Morris* at ¶ 34; *Hall* at ¶ 43; *State v. Gillies*, 135 Ariz. 500, 505–06, 662 P.2d 1007, 1012–13 (1983); *State v. Gerlaugh*, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982). If the State fails to make that showing, the trial court should grant a motion for judgment of acquittal. *State v. Gillies*, 135 Ariz. at 506, 662 P.2d at 1013. The issue then is whether the State presented sufficient evidence to raise an inference that (1) a certain result had been produced and (2) the result was caused by criminal agency rather than by accident or some other non-criminal action.

In the present case, the State presented the 9-1-1 call, wherein the caller said (1) a woman was driving, (2) the woman was drunk, and (3) the woman hit a parked car. This Court concludes this was sufficient to raise an inference that a certain result had been produced, and the result was caused by criminal agency. Moreover, Ms. Oraha testified Defendant's friend said Defendant hit the parked car. Thus, although it was only necessary for the State to raise an inference that a certain result had been produced by criminal activity and did not have to raise an inference that Defendant was the one who caused that certain result, this testimony was sufficient to raise an inference that Defendant was the one who caused that certain result. The trial court therefore correctly denied Defendant's motion for judgment of acquittal.

Defendant notes her attorney filed a pre-trial objection requesting that the State meet the foundational requirements of *corpus delicti* prior to introducing any statements made by Defendant, and the trial court ruled Defendant's statements were admissible. Defendant contends the issue is whether the trial court abused its discretion in its pre-trial ruling, and thus contends this Court may not consider the evidence presented at trial. This Court acknowledges the trial court held a pre-trial hearing and made a pre-trial ruling, but concludes the trial court did not follow the procedure as stated by the Arizona Supreme Court. As noted above, the Arizona Supreme Court has provided that the State would present all its evidence at the trial, including the defendant's statement, then at the close of the State's case, the defendant could make a motion for judgment of acquittal, and the trial court would determine whether the State had presented sufficient evidence to raise a reasonable inference of *corpus delicti*:

> Furthermore, the State need not present evidence supporting the inference of *corpus delicti* before it submits the defendant's statements "[a]s long as the State ultimately submits adequate proof of the *corpus delicti* before it rests."

Morris at ¶ 34, *citing Hall* at ¶ 43, *quoting State v. Jones (Roche)*, 198 Ariz. 18, 6 P.3d 323, ¶ 14 (Ct. App. 2000).

> "As long as the State ultimately submits adequate proof of the *corpus delicti* before it rests, the defendant's statements may be admitted."

Hall at ¶ 43, *quoting Jones (Roche)* at ¶ 14.

> The failure of the defendant to object to the introduction of his statements when they are offered does not waive his right to question their admissibility for the purpose of proving corpus delicti. A defendant might not object at the time the statements are offered on the theory the state will prove corpus delicti before resting its case.

Gillies, 135 Ariz. at 505–06, 662 P.2d at 1012–13.

> When corpus delicti is later established, a variation in the order of proof does not constitute prejudice to the defendant.

Gerlaugh, 134 Ariz. at 170, 654 P.2d at 806. Once the State has rested its case, the defendant could make a motion for judgment of acquittal, and if the State has failed to show a reasonable inference of *corpus delicti*, the trial court would grant an acquittal:

> If the state fails to make this showing [of a reasonable inference of *corpus delicti*], the trial court should grant a motion for directed verdict of acquittal.

State v. Gillies, 135 Ariz. at 506, 662 P.2d at 1013. Thus, the trial court should not have held a pre-trial hearing, and should instead have allowed the State to present its case (including Defendant's statements) to the jurors, and then addressed the issue of an inference of *corpus delicti* by means if a motion for judgment of acquittal made by Defendant at the close of the State's case.

An appellate court is, however, obliged to affirm the trial court when any reasonable view of the facts and law might support the judgment of the trial court, even when the trial court has reached the right result for a different reason. *State v. Canez*, 202 Ariz. 133, 42 P.3d 564, ¶ 51 (2002); *State v. LaGrand*, 153 Ariz. 21, 29, 734 P.2d 563, 571 (1987); *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985); *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984); *State v. Chavez*, 225 Ariz. 442, 239 P.3d 761, ¶ 5 (Ct. App. 2010); *State v. Rumsey*, 225 Ariz. 374, 238 P.3d 642, ¶ 4 (Ct. App. 2010); *State v. Childress*, 222 Ariz. 334, 214 P.3d 422, ¶ 9 (Ct. App. 2009); *State v. Waicelunas*, 138 Ariz. 16, 20, 672 P.2d 968, 972 (Ct. App. 1983). Because the evidence the State presented at trial raised a reasonable inference of *corpus delicti*, the trial court properly allowed the State to present to the jurors Defendant's statements. The trial court therefore correctly denied Defendant's pre-trial motion, and correctly denied Defendant's renewed motion made after the trial began. (R.T. of Mar. 26, 2012, at 35; R.T. of Mar. 27, 2012, at 11–12.)

Moreover, even if this Court were to consider the correctness of the trial court's pre-trial ruling and thus consider only the evidence the State presented at the pre-trial hearing, this Court would still affirm the ruling of the trial court. As discussed above, the State establishes *corpus delicti* by presenting evidence sufficient to raise an inference that a certain result had been produced by criminal activity, and does not have to raise an inference that Defendant was the one who produced that result. In the 9-1-1 call, the caller said (1) a woman was driving, (2) the woman was drunk, and (3) the woman hit a parked car. This Court concludes that was sufficient to raise an inference that a certain result had been produced, and the result was caused by criminal agency. Thus, the trial court ruled correctly on Defendant's pre-trial motion.

III. CONCLUSION.

Based on the foregoing, this Court concludes the State presented sufficient evidence to raise an inference that a certain result had been produced by criminal activity, thus the trial court correctly denied Defendant's motion for judgment of acquittal and Defendant's pre-trial motion.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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