SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/04/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-001674

FILED: _____

STATE OF ARIZONA

LISA B BARNES

v.

LISA MARIA SIMPSON

MICHAEL J WICKS

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8965308; 5653375

Charge: DUI; FAILURE TO CONTROL VEHICLE AVOID COLLISION

DOB: 08/01/66

DOC: 07/19/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument since its assignment on September 6, 2002. This decision is

made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the exhibits made of record, and the Memoranda submitted by counsel.

Appellant, Lisa Maria Simpson, filed a timely Notice of Appeal after her convictions for the crimes of: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); and Failure to Control her Vehicle to Avoid a Collision, a civil traffic violation in violation of A.R.S. Section 28-701(A). The issues raised by Appellant on appeal include an allegation that the trial court erred in finding that the State had established *corpus delicti* and that there was insufficient evidence to warrant Appellant's convictions. The State claims in its memorandum that Appellant has waived any objection to hearsay used to establish *corpus delicti* by Appellant's failure to object in a timely fashion.

1. The *corpus delicti* issue:

The State of Arizona as Appellee herein, correctly points out that the general rule is that the failure to specifically raise an issue before the trial court will preclude an Appellant from arguing that issue on appeal.[1] However, where the error amounts to fundamental error, an appellate court may address the issue regardless whether Appellant has objected to the error during the trial.[2] The Arizona Supreme Court has defined "fundamental error" as an error that:

[1] State v. Claxton, 122 Ariz. 246, 594 P.2d 112 (App. 1979).
[2] See State v. Van Adams, 194 Ariz. 408, 984 P.2d 16, cert.denied, 120 S.Ct. 1199, 145 L.Ed.2d 1102 (1999); State v. Gallegos, 178 Ariz. 1, 870 P.2d 1097, cert.denied, 513 U.S. 934, 115 S.Ct. 330, 130 L.Ed.2d 289, appeal after remand 185 Ariz. 340, 916 P.2d 1056, cert.denied 519 U.S. 996, 117 S.Ct. 489, 136 L.Ed.2d 382 (1994); State v. Valles, 162 Ariz. 1, 780 P.2d 1049 (1989).

> ...reaches the foundation of the case or takes from the Defendant a right essential to his defense, or is in error of such dimension that it cannot be said it is possible for a Defendant to have had a fair trial.[3]

Generally, any error regarding the admissibility of material statements from a Defendant would be "error of such dimension" that it must be presumed to be fundamental error.[4] Therefore, this court will address the *corpus delicti* error alleged by Appellant, even though Appellant failed to object at the trial court level.

Appellant alleges that the trial court erred in allowing hearsay statements from a Mr. Burdick to be admitted through the testimony of Phoenix Police Sargent Lee in support of the corpus delicti. Both parties acknowledge in their well-written memoranda that Arizona law is well settled that proof of the *corpus delicti* independent of a suspect's confession is required as a prerequisite to the admissibility of statements by a suspect.[5] The *corpus delicti* requirement is met in a criminal case when the State offers evidence of facts to support a reasonable inference that the crime which is charged was actually committed by some person.[6] *Corpus delicti* evidence must be independent of the statements from the suspect, which the State seeks to offer as evidence.[7] The State need only prove a "reasonable inference" that a crime was committed and that some

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[3] State v. King, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988).
[4] Id.
[5] State ex rel. McDougall v. Superior Court, 188 Ariz. 147, 933 P.2d 1215 (1996); State v. Weis, 92 Ariz. 254, 375 P.2d 735 (1962), cert.denied, 389 U.S. 899, 88 S.Ct. 226, 19 L.Ed.2d 221 (1967).
[6] State ex rel. McDougall v. Superior Court, supra; State v. Hernandez, 83 Ariz. 279, 320 P.2d 467 (1958).
[7] Id.

person committed the crime.[8] The evidence that establishes *corpus delicti* may be entirely circumstantial.[9]

In this case, the trial judge permitted Phoenix Police Sargent Lee to testify about statements made by a Mr. Burdick, that Burdick observed Appellant driving a vehicle that was involved in an accident. Burdick observed the accident. Such hearsay evidence is admissible to resolve preliminary questions of the admissibility of evidence. Rule 104(a), Arizona Rules of Evidence, provides:

> Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination, it is not bound by the rules of evidence except those with respect to privileges.

Hearsay evidence may be admitted for the limited purpose of determining the admissibility of evidence, such as the evidence of Burdick's statements to Sargent Lee. This hearsay evidence is admissible for the limited purposes of establishing *corpus delicti*.

Secondly, Appellant contends that insufficient evidence was presented to the trial judge to establish the *corpus delicti*. The trial judge, the Honorable George Logan, Phoenix City Court Judge, made the following findings in regard to the *corpus delicti* issue:

> I've reviewed the testimony, and

[8] State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983).
[9] State ex rel. McDougall v. Superior Court, supra; State v. Rivera, 103 Ariz. 458, 445 P.2d 434 (1968), cert.denied, 395 U.S. 929, 89 S.Ct. 1790, 23 L.Ed.2d 238 (1969).

> my notes from our previous hearing, and the references to the law that have been provided to the court. And its my conclusion that the accident coupled with Sargent Brian Lee's, independent observation of the Defendant who was identified as the driver is sufficient to establish the *corpus* in this case, not withstanding or outside of any statements she (the Defendant) had made.
>
> There was certainly indication of alcohol intoxication that reasonably could have (been) believed to have occurred before the Defendant drove the vehicle that was involved in the accident. I am going to, therefore, deny Defendant's Motion to Dismiss on grounds of lack of *corpus*.[10]

This Court finds that the trial judge's conclusions are supported by the record and that a "reasonable inference" that the crimes charged were committed by some person is supported by the testimony presented to the trial judge.

2. Sufficency of the Evidence to warrant conviction.

The second issue raised by the Appellant concerns the sufficiency of the evidence to warrant her conviction. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[11] All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved

[10] R.T. of November 26, 2001, at page 74.
[11] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey,* 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown,* 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission,* 94 Ariz. 113, 382 P.2d 226 (1963).

against the Defendant.[12] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.[13] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[14] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[15] The Arizona Supreme Court has explained in *State v. Tison*[16] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[17]

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgments of guilt and responsibility and those sanctions and sentence imposed.

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[12] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[13] *State v. Guerra*, supra; *State v. Girdler,* 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[14] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[15] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[16] SUPRA.
[17] Id. At 553, 633 P.2d at 362.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.