NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. PEDRO MARTINEZ, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1620 MDA 2014

Appeal from the Judgment of Sentence of August 15, 2014
In the Court of Common Pleas of Berks County
Criminal Division at No.: CP-06-CR-0006015-2012

BEFORE: BENDER, P.J.E., ALLEN, J., and WECHT, J.

MEMORANDUM BY WECHT, J.: **FILED JULY 31, 2015**

Pedro Martinez, Jr., appeals his judgment of sentence, which was imposed following his conviction of driving under the influence of alcohol ("DUI") pursuant to 75 Pa.C.S. § 3802(b).[1] We affirm.

The evidence adduced at trial, viewed in the light most favorable to the Commonwealth as verdict-winner, supports the following account of the factual history of this case. On October 2, 2012, at approximately 3:00 A.M., Officer Lance Lonsinger and Officer Stacie Courtesis were dispatched to a motor vehicle accident on the 300 block of South Eighth Street in Reading, Pennsylvania. Upon arrival, Officer Lonsinger and Officer Courtesis noticed Officer Jorge Gonzalez already present at the scene of the accident.

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[1] Martinez was found not guilty of careless driving, 75 Pa.C.S.§ 3714(a), and required financial responsibility, 75 Pa.C.S. § 1786.

The accident, the officers observed, involved a white vehicle that had crashed into a parked vehicle on the east side of South Eighth Street. Martinez was standing in front of the white vehicle, and the hood to that vehicle was open. Officer Lonsinger noticed another individual, later identified as Michael Vasquez, standing at the corner of the street approximately thirty feet away from the vehicles. At this time, Officers Lonsinger, Courtesis, and Gonzalez collectively approached Martinez. At some point during the officers' interaction with Martinez, Officer Gonzalez observed a third individual walk past the vehicles on the opposite side of the road. Believing this third individual to be uninvolved with the accident, Officer Gonzalez ordered the individual to disperse from the area, and the individual left. Martinez, apparently attempting to fix the white vehicle, appeared visibly intoxicated. Officer Lonsinger noted that Martinez' speech was slurred and that he smelled of alcohol.

Officer Lonsinger asked Martinez if he had been driving the white vehicle. Martinez admitted that he was driving the vehicle and that he was responsible for the vehicle. Subsequently, Officer Lonsinger administered a field sobriety test on Martinez. During the field sobriety test, Vasquez approached the officers and interrupted Officer Lonsinger during the administration of the test on Martinez. Intoxicated and unwilling to disperse from the area, Vasquez was arrested. Shortly after, Martinez was arrested

and transported to a local hospital to have his blood alcohol level tested, which revealed that Martinez possessed a blood alcohol content of 0.16%.[2]

On April 17, 2013, prior to his non-jury trial, Martinez filed an *omnibus* pretrial motion to suppress the statement that he made to police on the evening that he was arrested. Martinez sought to suppress his confession that he was the individual driving the vehicle. The trial court denied that motion at a pretrial hearing on August 20, 2013. After a one-day non-jury trial, Martinez was convicted of DUI on August 15, 2014. On that same day, Martinez was sentenced to forty-eight hours to six months' imprisonment.

On August 25, 2014, Martinez filed a post-sentence motion, which the trial court denied on September 12, 2014. Martinez filed a notice of appeal on September 26, 2014. On October 21, 2014, the trial court directed Martinez to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), which Martinez timely filed on November 6, 2014. On January 12, 2015, the trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) in response to Martinez' concise statement.

Martinez raises the following issues on appeal:

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[2] In order to pursue a DUI charge under 75 Pa.C.S. § 3802(b), which requires a blood alcohol content level of at least 0.10% but less than 0.16%, instead of the 75 Pa.C.S. § 3802(c), which requires a blood alcohol content level of at least 0.16%, the parties stipulated that Martinez' blood alcohol content was 0.159%.

1. Did the trial court err in finding [Martinez] guilty of driving under the influence of alcohol or a controlled substance (75 Pa.C.S.A. 3802(b)),[]as the Commonwealth presented insufficient evidence to sustain the verdict of guilty of said charges as [Martinez'] mere statement that he was the driver of the vehicle in question or that he was responsible for the vehicle in question, where there were no eye-witnesses to [Martinez] driving, operating[,] or being in actual physical control of the vehicle, is sufficient to establish said charge?

2. Did the trial court err in denying [Martinez'] post sentence motion that the court's verdict of guilty on the charge of driving under the influence of alcohol or a controlled substance was contrary to the weight of the evidence, as the evidence showed that [Martinez] was not the driver of the vehicle, where the responding officer testified that [Martinez] stated that he was responsible for the vehicle which belonged to his significant other, the affiant testified that [Martinez] indicated that he was taking the charge for someone else; there was no testimony that there were any eye-witnesses to the vehicle accident in the case; there was no testimony that anyone saw [Martinez] driving, operating[,] or being in actual physical control of a motor vehicle; and there was testimony that there were two other civilians present in the vicinity of the accident on or around the time police arrived at the scene who where [*sic*] not questioned by police?

Brief for Martinez at 6-7 (capitalization omitted).

In his first issue, Martinez challenges the sufficiency of the evidence developed by the Commonwealth to convict him of DUI. ***Id.*** at 13. Martinez, in his brief, argues that his statement to the police admitting that he was driving the vehicle the evening he was arrested should not have been considered by the fact-finder pursuant to the *corpus delicit* rule.[3] ***Id.***

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[3] The *corpus delicti* rule is rooted in the hesitancy to convict a person of a crime solely based upon an out-of-court confession of the accused and provides that a criminal conviction may not stand merely on that confession. *(Footnote Continued Next Page)*

at 16. Further, Martinez claims that without that statement, "there was insufficient evidence to establish that [he was] the driver of the vehicle beyond a reasonable doubt." ***Id.***

When examining a challenge to the sufficiency of the evidence:

> [t]he standard we apply . . . is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa. Super. 2011) (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa. Super. 2005)). Accordingly, our review of Martinez' challenge to the sufficiency of the evidence reflects all of the evidence, including Martinez' statement, admitted at trial.

(Footnote Continued) ———————————

Commonwealth v. Cuevas, 61 A.3d 292, 295 (Pa. Super. 2013). The *corpus delicti* rule also prevents a case from going to a fact-finder where independent evidence does not suggest that a crime has occurred. ***Id.***

Martinez was convicted of DUI under Section 3802(b), which provides:

> **(b) High rate of alcohol.—**An individual may not drive, operate[,] or be in actual physical control of the movement of a vehicle after the imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated[,] or been in actual physical control of the movement of the vehicle.

75 Pa.C.S. § 3802(b). "The term 'operate' requires evidence of actual physical control of either the machinery of the motor vehicle or the management of the vehicle's movement, but not evidence that the vehicle was in motion." ***Commonwealth v. Johnson***, 833 A.2d 260, 263 (Pa. Super. 2003) (quoting ***Commonwealth v. Wilson***, 660 A.2d 105, 107 (Pa. Super. 1995)).

"[Martinez] concedes that at the time of testing and at the time of his arrest, the evidence adduced by the Commonwealth establishes the second element of sufficient intoxication [pursuant to 75 Pa.C.S. § 3802(b)]. Brief for Martinez at 14. Accordingly, we need not review the trial court's finding that Martinez was sufficiently intoxicated pursuant to 75 Pa.C.S. § 3802(b).

Rather, Martinez argues that he was not in actual physical control of the vehicle at the time he was intoxicated. ***Id.*** Martinez' claim hinges exclusively upon the argument that his statement to police admitting to driving the vehicle should not have been considered by the fact-finder pursuant to the *corpus delicti* rule. ***Id.*** at 14. However, as established above, our review of a challenge to the sufficiency of the evidence

encompasses a review of **all of the evidence admitted at trial** in a light most favorable to the Commonwealth as verdict winner, even that erroneously admitted. ***Hansley***, 24 A.3d at 416 (emphasis added).[4] Thus, we have considered all of the evidence, including Martinez' confession, and concluded that evidence is sufficient and supports the conviction.

Officers Lonsinger, Courtesis, and Gonzalez, upon arrival to the accident, witnessed Martinez standing in front of the white vehicle, which was positioned directly behind a parked, damaged vehicle. Notes of Testimony ("N.T."), 9/9/2014, at 7, 33, 59. Standing in front of the open hood of the white vehicle, Martinez appeared to be attempting to fix the vehicle. ***Id.*** Although there were two other individuals present at the scene of the accident, considering these individuals' proximity to the vehicles in conjunction with Martinez' admission, the evidence was sufficient to prove that Martinez was the individual in actual physical control of the vehicle. Viewing all of the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of DUI, 75 Pa.C.S. 3802(b), including actual physical control, beyond a reasonable doubt.

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[4] Notably, Martinez relies upon his *corpus delicti* argument only in support of his sufficiency and weight challenges. He does not list the issue as a separate and independent basis for relief.

In his second issue, Martinez claims that his guilty verdict of DUI was against the weight of the evidence. Brief for Martinez at 17.[5] Our review to a challenge that verdict is against the weight of the evidence is well-settled:

> An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. ***Commonwealth v. Dupre***, 866 A.2d 1089, 1101 (Pa. Super. 2005), (citing ***Commonwealth v. Sullivan***, 820 A.2d 795, 805–806 (Pa. Super. 2003), (quoting ***Commonwealth v. Widmer***, 744 A.2d 745, 751–752 (Pa. 2000))). The Pennsylvania Supreme Court has explained that "[a]ppellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence." ***Widmer***, 744 A.2d at 753 (citation omitted). To grant a new trial on the basis that the verdict is against the weight of the evidence, this Court has explained that "the evidence must be 'so tenuous, vague and uncertain that the verdict shocks the conscience of the court.'" ***Sullivan***, 820 A.2d at 806 (quoting ***Commonwealth v. La***, 640 A.2d 1336, 1351 (Pa. Super. 1994)).
>
> [This Court shall not undertake to reassess credibility of witnesses, as] it is well settled that we cannot substitute our judgment for that of the trier of fact. ***Commonwealth v. Holley***, 945 A.2d 241, 246 (Pa. Super. 2008). Further, the finder of fact was free to believe the Commonwealth's witnesses and to disbelieve the witness for the Appellant. ***See Commonwealth v. Griscavage***, 517 A.2d 1256 (Pa. 1986) (the finder of fact is free to believe all, none, or part of the testimony presented at trial).

Commonwealth v. Bozic, 997 A.2d 1211, 1223-24 (Pa. Super. 2010) (citing ***Commonwealth v. Manley***, 985 A.2d 256, 262 (Pa. Super. 2009)) (citations modified).

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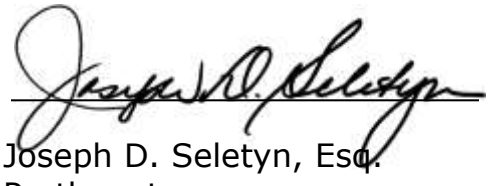
[5] Pursuant to Pa.R.Crim.P. 607(A)(3), Martinez preserved his weight challenge in his post-sentence motion.

To support his weight of the evidence claim, Martinez essentially reiterates his sufficiency arguments and contends that the fact-finder should not have considered his statement pursuant to the *corpus delicti* rule. Brief for Martinez at 17-18. Further, Martinez challenges the validity of his admission because he was intoxicated at the time he made the statement. ***Id.*** However, the fact that a defendant was under the influence of alcohol when he initially made his admission to an arresting officer that he was the driver of the vehicle does not affect the admissibility of the admission, but, rather, goes only to the weight which the jury could give to the admission. ***Commonwealth v. Slout***, 432 A.2d 609, 612 (Pa. Super. 1981).

While some inconsistencies existed in the testimony produced at trial, the fact-finder was free to believe, or not to believe, all, none, or part of that testimony. Having reviewed the record, the record supports the fact-finder's verdict, and we discern no basis upon which to conclude that the trial court abused its discretion by concluding that the verdict failed to shock that court's conscience.

Judgment of Sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/31/2015