

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH EUGENE MORRIS,

Defendant-Appellant.

UNPUBLISHED
September 16, 2003

No. 240028
Saginaw Circuit Court
LC No. 01-020491-FH

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of operating a vehicle under the influence of intoxicating liquor, third offense (OUIL 3rd), MCL 257.625(1). Defendant was sentenced to five years' probation and one year in the PLUS program¹ with credit for four days, and his van was immobilized for one year. We affirm.

First, defendant argues that the prosecution failed to present sufficient evidence for a jury to find him guilty beyond a reasonable doubt because the only evidence submitted that defendant was driving the vehicle were his own statements, and those statements could not be used to prove the elements of the crime under the corpus delicti rule. Challenges to the sufficiency of the evidence are reviewed de novo. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002).

In *People v Ish*, 252 Mich App 115, 116; 652 NW2d 257 (2002), we set forth the purpose of the corpus delicti rule:

The purpose of the corpus delicti rule is to prevent the use of a defendant's confession to convict him of a crime that did not occur. *People v Konrad*, 449 Mich 263, 269; 536 NW2d 517 (1995). The rule bars the prosecution from using a defendant's confession in any criminal case unless it presents direct or circumstantial evidence independent of the defendant's confession that the

¹ Under the PLUS program, a jail sentence is served at home. Defendant is allowed to go to work, but is not allowed to engage in recreational activity outside the home.

specific injury or loss occurred and that some criminal agency was the source or cause of the injury.

We therefore concluded in *Ish* that “it is not necessary that the prosecution present independent evidence of every element of the offense before a defendant’s confession may be admitted.” *Id.* at 117, citing *People v Williams*, 422 Mich 381, 391; 373 NW2d 567 (1985).

The corpus delicti rule is limited to admissions that are confessions of guilt and not to mere admissions of fact. *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991). “If the fact admitted necessarily amounts to a confession of guilt, it is a confession.” *People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934). If the fact admitted does not itself show guilt, but needs proof of other facts that are not admitted by defendant, it is admissible as an admission of fact. *Id.*

In this case there was sufficient evidence to convict defendant beyond a reasonable doubt without violating the corpus delicti rule. First, because defendant’s statements to the police and witnesses did not alone establish his guilt of OUIL 3rd, his statements were factual and not confessions. *Porter, supra*. Additionally, there was evidence independent of these statements, which established that an injury occurred and that some criminal element was involved. Indeed, the prosecution presented evidence of the collision, that the smell of alcohol emitted from defendant’s breath, that he failed field sobriety tests, and that he was the owner of the vehicle that collided with the parked vehicle. Hence, there was sufficient evidence to convict defendant beyond a reasonable doubt, and the corpus delicti rule was not violated.

Next, defendant seems to argue that the trial court erred in denying his pretrial motion to suppress his statements made to a police officer. However, defendant premised that motion on the ground that his statements should be suppressed because he was intoxicated and unable to knowingly and voluntarily waive his *Miranda*² rights. Defendant’s brief to this Court does not argue in any fashion why his statements to the police were taken in violation of *Miranda*. A party may not leave it to this Court to search for the factual or legal basis to sustain or reject his position. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001). An appellant’s failure to properly address the merits of an assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Therefore, this issue was not properly preserved. Where an issue is unpreserved, a criminal defendant may only obtain relief if the error is plain and affected substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant has not shown entitlement to relief under *Carines*. Defendant only sought to suppress his statements to the police officer and not to the other two witnesses. Defendant’s statements to the other two witnesses also support a reasonable inference that he was operating the vehicle at the time of the incident. Therefore, suppressing only the statements made to the police officer would not have significantly impacted defendant’s case or affected his substantial rights. *Carines, supra*.

² *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Affirmed.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray