

WHAT CONSTITUTES THE *CORPUS DELICTI* OF AN OFFENSE?

Johnson v. State
Supreme Court of Indiana, 1995
653 N.E.2d 478

OPINION

On appeal is the sole issue of whether the trial court erred in determining that independent evidence established the *corpus delicti* for robbery and that evidence of extrajudicial confessions by the defendant was thereby admissible. We affirm.

I

Seventy-four-year-old Florence Hoke called her niece, Nancy Whiteman, at 8:30 A.M. on April 10, 1990, and told Whiteman that she was going to get license plates for her car. At 12:30 P.M., Whiteman called Hoke twice, but Hoke did not recognize her. Whiteman went to Hoke's apartment, where she discovered Hoke sitting in a chair holding her head. Whiteman called "911." [R. 233] Richard Bourdon, a paramedic, arrived and observed that Hoke was disoriented and unable to communicate. He observed a small bruise and a bump on the back of Hoke's head. At the hospital later that day, Whiteman observed bruises on Hoke's knees and on one elbow.

Hoke was diagnosed as suffering a subdural hematoma, "a collection of blood that forms under the external cover of the brain." The treating physician testified that subdural hematomas are caused by trauma, which could result from "a blow to the head, a fall, [or] any type of force." Doctors performed a craniotomy, but Hoke never regained consciousness, and died approximately two months later from pneumonia and infection. Hoke's new license plates were found in her apartment, but her purse was missing. A leather bow resembling one that was on Hoke's purse was found on the ground near where Hoke's car was parked.

On April 10, 1990, Margaret Jackson resided with Homer Frison. Andre D. Johnson visited that morning and left with Frison. The two told Jackson that when they returned they "would either have some money or would have a way of making some money." When Frison and Johnson later met up with Jackson, they had a purse and a wallet containing credit cards belonging to Hoke. The trio went shopping, Jackson purchased cigarettes with the credit cards, and the trio sold the cigarettes to obtain money to purchase drugs.

Following a jury trial, Johnson was convicted of robbery, a class A felony, and of a being habitual offender. The trial court sentenced Johnson to fifty years for the robbery conviction, to be served concurrently with the sentence imposed for an unrelated offense. For the habitual offender conviction, the trial court sentenced Johnson to twenty-five years, to be served consecutive to the robbery sentence.

At issue in this case is whether the trial court erred in admitting the testimony of four witnesses, Odie Miller, Anthony Taylor, Darrell Vaughn, and Detective Sergeant Michael Swanson, regarding confessions made by Johnson. A defendant's extrajudicial confession may be introduced into evidence only if the State establishes the *corpus delicti* of the crime by independent evidence.¹ *Willoughby v. State* (1990), Ind., 552 N.E.2d 462, 466. *Corpus delicti* consists of a showing of "1) the occurrence of the specific kind of injury and 2) someone's criminal act as the cause of the injury." *Id.*

In particular, at trial Miller responded to the question "what did [Johnson] tell you about Florence Hoke?" by stating that Johnson had told Miller that "he and Homer were trying to find a way to get some money to buy some drugs and that they came around the corner and they seen [Hoke] walking down the sidewalk and they got out of the car to snatch her purse and she fell and he said a couple of months later that he read in the newspaper" that Hoke had died. [R. 384-85]

Taylor testified that he and Johnson were watching a "Crime Stoppers" show featuring an elderly woman being robbed of her purse. Taylor testified that Johnson told him "that what was on T.V., that he had done with someone else." Specifically, Taylor claimed that Johnson said that he and Frison were near the mall, that they saw a lady, and that he jumped out of a car. "He ran towards the lady and when he tried to get the purse from her, she struggled and then that's when he hit her with a forearm and from that point, the other individual came up and took the purse and they fled the scene." [R. 409-10]

Vaughn testified that Johnson confided in him that he and Frison "snatched" an elderly woman's purse, and that the woman was in the hospital. Johnson allegedly said that it went "kind of crazy" because "the old lady tried to hold on and Homer hit her—not Homer—Johnson hit her." [R. 439] Detective Sergeant Swanson testified that he interrogated Johnson as part of his investigation into the Hoke case. Johnson told him that he would not "go on tape. I will talk to you and I will just tell you that Homer and I did it." Detective Sergeant Swanson also testified that Johnson stated "Homer and I had did it and you guys can't prove it anyway." [R. 469]

As Johnson virtually concedes, the *corpus delicti* for the crime of theft exists based upon Johnson's possession of Hoke's purse, wallet, and credit cards. Johnson contends, however, that no *corpus delicti* exists for the crime which he was convicted of, namely, robbery.² Essentially he argues that the independent evidence does not adequately demonstrate that someone took Hoke's purse by force or threat of force or by putting Hoke in fear. Regarding Hoke's physical injuries, Johnson argues that it is possible that Hoke fell by accident, thus causing the subdural hematoma and other bruises.³

We have held that "[t]he independent evidence need not be shown beyond a reasonable doubt nor demonstrate *prima facie* proof as to each element of the charged offense, but must support an inference that the crime was committed." *Willoughby*, 552 N.E.2d at 467. In this case, the evidence does not conclusively establish that Hoke's purse was taken forcibly from her. The evidence does, however, support an inference that she was robbed.⁴ We specifically reject Johnson's contention on appeal that "[t]here is no evidence here of violent injury." In the most analogous Indiana case, the defendant was convicted of murder committed during the commission of a "purse-grab" robbery of an eighty-two-year-old woman. *Hayden v. State* (1964), 245 Ind. 591, 199 N.E.2d 102, *cert. denied*, 384 U.S. 1013 (1966). The victim was found lying on the ground near her apartment with blood flowing from her mouth, ears, and nose. *Id.* at 596. This Court noted that the victim's "body had many marks of violence upon it. Evidence from police and medical authorities indicated that the victim could have been assailed and pushed against the door of the apartment building, thus causing the injuries and marks of violence. The woman later died of these injuries." *Id.* at 596-597. Additional independent evidence showed that the victim had a purse with money and personal items on her person prior to the alleged attack, and that the purse, without the money, was later found in a nearby alley. *Id.* at 597. We determined that because ordinary people "might reasonably conclude that the deceased did not die of natural causes and that the injuries from which she died were inflicted in the course of a robbery," the *corpus delicti* for a robbery-murder charge existed. *Id.* at 597. Significantly, the evidence in *Hayden* tended only to show that the victim "could have" been assailed, not that her injuries could have only been caused by force exerted during a robbery. Even though, as in *Hayden*, the independent evidence here does not conclusively establish the cause of Hoke's injuries, this does not preclude a *corpus delicti* for robbery since a reasonable person could conclude that Hoke's injuries were the product of a robbery.

Johnson's reliance upon *Parker v. State* (1949), 228 Ind. 1, 88 N.E.2d 556, is misplaced. In that case, this Court reversed the defendant's conviction for murder in the second degree based upon the absence of *corpus delicti*. Parker confessed to killing the alleged victim, dismembering her, and burying her in three different places. *Id.* at 5. Police discovered human remains in the places designated, but could not identify the remains as the missing person's or determine the cause of death. *Id.* at 10. As such, the only evidence that the alleged victim had been murdered aside from Parker's extrajudicial confession was the alleged victim's disappearance. *Id.* This Court deemed the independent evidence insufficient to establish the *corpus delicti* for murder. *Id.*

Parker is wholly different from the instant case because here evidence identifies Hoke as the victim of theft and demonstrates that Hoke incurred injuries caused by force. Whether Johnson caused the injuries or another force was at work is a question different in kind and degree than whether unidentifiable human remains adequately prove that a particular missing person was murdered.

We thus reject Johnson's argument that the State failed to prove the *corpus delicti* and that the trial court erred in admitting the testimony of Miller, Taylor, Vaughn, and Swanson into evidence. We affirm the judgment of the trial court.

Footnotes

1. This rule is designed to "reduce the risk of convicting a defendant based on his confession for a crime that did not occur," prevent coercive interrogation tactics, and encourage thorough criminal investigations. *Willoughby*, 552 N.E.2d at 466. We previously observed, however, that the rule's efficacy in meeting these objectives has been seriously questioned. *Id.*; see generally 1 *McCormick on Evidence* 145, at 563 (John W. Strong ed., 4th ed. 1992).
2. By statute, a person who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear; commits robbery, a class C felony. However, the offense is a class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a class A felony if it results in serious bodily injury to any person other than a defendant. Ind. Code Ann. 35-42-5-1 (West 1986).
3. Johnson observes that Hoke "could have slipped or tripped or lost her balance. She could have fallen on the stairs or on the sidewalk or at the license bureau or in the parking lot getting into or out of her car." Additionally Johnson points out that it is possible that Hoke did not sustain the head trauma and the bruises contemporaneously.
4. The independent evidence supporting the *corpus delicti* need not preclude every possible explanation of the circumstances. For example, one court held that a *corpus delicti* for attempted armed robbery existed when evidence showed that a person was shot to death at 1 A.M. and that the shooter fled, even though other explanations, such as a dispute between the two persons, were possible, since the independent evidence "sufficiently corroborated the defendant's confession of attempted armed robbery." *People v. Montes*, 549 N.E.2d 700, 705 (Ill. App. Ct. 1989).

FOR PURPOSES OF CRIMINAL ATTEMPT, WHAT CONSTITUTES A "SUBSTANTIAL STEP" TOWARD COMMISSION OF THE TARGETED OFFENSE?

Tennessee v. Reeves

Supreme Court of Tennessee, 1996

917 S.W.2d 825

FACTS: The defendant, Tracie Reeves, appeals from the Court of Appeals' affirmation of the trial court's order designating her a delinquent child. The trial court's delinquency order, which entered following a jury trial, was based on the jury's finding that the defendant had attempted to commit second degree murder—a violation of Tenn. Code Ann. Section(s) 39-12-101. The specific issue for our determination is whether the defendant's actions constitute a "substantial step," under Section(s) 39-12-101(a)(3), toward the commission of that crime. For the following reasons, we hold that they do, and therefore affirm the judgment of the Court of Appeals.

FACTS AND PROCEDURAL HISTORY: On the evening of January 5, 1993, Tracie Reeves and Molly Coffman, both twelve years of age and students at West Carroll Middle School, spoke on the telephone and decided to kill their homeroom teacher, Janice Geiger. The girls agreed that Coffman would bring rat poison to school the following day so that it could be placed in Geiger's drink. The girls also agreed that they would thereafter steal Geiger's car and drive to the Smoky Mountains. Reeves then contacted Dean Foutch, a local high school student, informed him of the plan, and asked him to drive Geiger's car. Foutch refused this request.

On the morning of January 6, Coffman placed a packet of rat poison in her purse and boarded the school bus. During the bus ride Coffman told another student, Christy Hernandez, of the plan; Coffman also showed Hernandez the packet of rat poison. Upon their arrival at school, Hernandez informed her homeroom teacher, Sherry Cockrill, of the plan. Cockrill then relayed this information to the principal of the school, Claudia Argo.

When Geiger entered her classroom that morning she observed Reeves and Coffman leaning over her desk; and when the girls noticed her, they giggled and ran back to their seats. At that time Geiger saw a purse lying next to her coffee cup on top of the desk. Shortly thereafter Argo called Coffman to the principal's office. Rat poison was found in Coffman's purse, and it was turned over to a Sheriff's Department investigator. Both Reeves and Coffman gave written statements to the investigator concerning their plan to poison Geiger and steal her car.

Reeves and Coffman were found to be delinquent by the Carroll County Juvenile Court, and both appealed from that ruling to the Carroll County Circuit Court. After a jury found that the girls attempted to commit second degree murder in violation of Tenn. Code Ann. Section(s) 39-12-101, the "criminal attempt" statute, the trial court affirmed the juvenile court's order and sentenced the girls to the Department of Youth Development for an indefinite period. Reeves appealed from this judgment to the Court of Appeals, which affirmed the judgment of the trial court. Reeves then applied to this Court for permission to appeal pursuant to Tenn. R. App. P. 11. Because we have not addressed the law of criminal attempt since the comprehensive reform of our criminal law undertaken by the legislature in 1989, we granted that application.

PRIOR AND CURRENT LAW OF CRIMINAL ATTEMPT: Before the passage of the reform legislation in 1989, the law of criminal attempt, though sanctioned by various statutes, was judicially defined. In order to submit an issue of criminal attempt to the jury, the State was required to present legally sufficient evidence of: (1) an intent to commit a specific crime; (2) an overt act toward the commission of that crime; and (3) a failure to consummate the crime. *Bandy v. State*, 575 S.W.2d 278, 281 (Tenn. 1979); *Gervin v. State*, 212 Tenn. 653, 371 S.W.2d 449, 451 (1963); *Dupuy v. State*, 204 Tenn. 624, 325 S.W.2d 238, 240 (1959).

Of the elements of criminal attempt, the second, the "overt act" requirement, was by far the most problematic. By attempting to draw a sharp distinction between "mere preparation" to commit a criminal act, which did not constitute the required overt act, and a "direct movement toward the commission after the preparations had been made," *Dupuy*, 325 S.W.2d at 239, 240, which did, Tennessee courts construed the term "overt act" very narrowly. The best example of this extremely narrow construction occurred in *Dupuy*. In that case, the Memphis police sought to lay a trap for a pharmacist suspected of performing illegal abortions by sending a young woman to request these services from him. After the woman had made several attempts to secure his services, he finally agreed to perform the abortion. The pharmacist transported the young woman to a hotel room, laid out his instruments in preparation for the procedure, and asked the woman to remove her clothes. At that point the police came into the room and arrested the pharmacist, who then admitted that he had performed abortions in the past. The defendant was convicted under a statute that made it illegal to procure a miscarriage, and he appealed to this Court.

A majority of this Court reversed the conviction. After admitting that the defendant's "reprehensible" court of conduct would doubtlessly have resulted in the commission of the crime "had he not been thwarted in this efforts by the arrival of the police," *Dupuy*, 325 S.W.2d at 239, the majority concluded that: "While the defendant had completed his plan to do this crime the element of attempt [overt act] does not appear in this record. The proof shows that he did not use any of the instruments and did not touch the body of the girl in question. Under such facts we do not think that the defendant is guilty under the statute." *Dupuy*, 325 S.W.2d at 240. To support its holding, the *Dupuy* court quoted a treatise passage concerning actions that constituted "mere preparation," as opposed to actions that would satisfy the overt act requirement:

"In a general way, however, it may be said that preparation consists in devising or arranging the means or measures necessary for the commission of the offense and that the attempt [overt act] is the direct movement toward the commission after the preparations are made. Even though a person actually intends to commit a crime, his procurement of the instrumentalities adapted to that end will not constitute an attempt to commit the crime in the absence of some overt act. *Id.* (quoting 14 Am. Jur. Section(s) 68 (1940)). To further illustrate the foregoing principle, the majority provided the following example: "the procure-

ment by a prisoner of tools adapted to breaking jail does not render him guilty of an attempt to break jail." *Id.*

As indicated above, the sharp differentiation in *Dupuy* between "mere preparation" and "overt act," or the "act itself," was characteristic of the pre-1989 attempt law. See, e.g., *Gervin v. State*, 212 Tenn. 653, 371 S.W.2d 449 (1963) (criminal solicitation does not constitute an attempt); *McEwing v. State*, 134 Tenn. 649, 185 S.W. 688 (1915) (conviction for attempted rape affirmed because defendant actually laid hands on the victim). In 1989, however, the legislature enacted a general criminal attempt statute, Tenn. Code Ann. Section(s) 39-12-101, as part of its comprehensive overhaul of Tennessee's criminal law. In that statute, the legislature did not simply codify the judicially created elements of the crime, but utilized language that had up to then been entirely foreign to Tennessee attempt law. Section 39-12-101 provides, in pertinent part, as follows:

- a. *A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:*
 1. *Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;*
 2. *Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or*
 3. *Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believe them to be, and the conduct constitutes a substantial step toward the commission of the offense.*
- b. *Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense. . . .*

THE SUBSTANTIAL STEP ISSUE: As stated above, our task is to determine whether the defendant's actions in this case constitute a "substantial step" toward the commission of second degree murder under the new statute. The "substantial step" issue has not yet been addressed by a Tennessee court in a published opinion, and the question is made more difficult by the fact that the legislature declined to set forth any definition of the term, preferring instead to "leave the issue of what constitutes a substantial step [to the courts] for determination in each particular case." Section(s) 39-12-101, Comments of Sentencing Commission.

In addressing this issue, we first note that the legislature, in enacting Section(s) 39-12-101, clearly looked to the criminal attempt section set forth in the Model Penal Code. That section provides, in pertinent part, as follows:

1. *Definition of attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:*
 - a. *purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or*
 - b. *when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result, without further conduct on his part; or*
 - c. *purposely does or omits to do anything which, under the circumstances as he believes them to be, is a substantial step in a course of conduct planned to culminate in his commission of the crime. (Model Penal Code, Section 5.01.)*

The State argues that the striking similarity of Tenn. Code Ann. 39-12-101 and the Model Penal Code evidences the legislature's intention to abandon the old law of criminal attempt and instead adopt the Model Penal Code approach. The State then

avers that the model code contains examples of conduct which, if proven, would entitle, but not require, the jury to find that the defendant had taken a "substantial step;" and that two of these examples are applicable to this case. The section of the model code relied upon by the State, Section(s) 5.01(2), provides, in pertinent part, as follows:

1. *Conduct which may be held substantial step under paragraph (1)(c). Conduct shall not be held to constitute a substantial step under paragraph (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law. . . .*
 - e. *possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;*
 - f. *possession, collection, or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection, or fabrication serves no lawful purpose of the actor under the circumstances;*

The State concludes that, because the issue of whether the defendant's conduct constitutes a substantial step may be a jury question under the model code, the jury was justified in finding her guilty of attempting to commit second-degree murder.

The defendant counters by arguing that despite the similarity of Tenn. Code Ann. Section(s) 39-12-101 and the Model Penal Code's attempt provision, the legislature intended to retain the sharp distinction between "mere preparation" and the "act itself" characteristic of such decisions as *Dupuy*. She supports this assertion by pointing out that although the legislature could have easily included the examples set forth in Section(s) 5.01(2) of the model code, the Tennessee statute does not include the examples. The defendant concludes that the new statute did not substantially change Tennessee attempt law and that her conviction must be reversed because her actions constitute "mere preparation" under *Dupuy*.

Initially, we cannot accept the argument that the legislature intended to explicitly adopt the Model Penal Code approach, including the examples set forth in Section(s) 5.01(2). Although Section(s) 39-12-101 is obviously based on the model code, we agree with the defendant that the legislature could have, if it had so desired, simply included the specific examples in the Tennessee statute. That it did not do so prohibits us from concluding that the legislature explicitly intended to adopt the model code approach in all its particulars.

This conclusion does not mean, however, that the legislature intended to retain the distinction between "mere preparation" and the "act itself." Moreover, while we concede that a strong argument can be made that the conviction conflicts with *Dupuy* because the defendant did not place the poison in the cup, but simply brought it to the crime scene, we also are well aware that the *Dupuy* approach to attempt law has been consistently and effectively criticized. One persistent criticism of the endeavor to separate "mere preparation" from the "act itself" is that the question is ultimately not one of kind but of degree¹; the "act itself" is merely one of the termini on a continuum of criminal activity. Therefore, distinguishing between "mere preparation" and the "act itself" in a principled manner is a difficult, if not impossible, task.² See *United States v. Dworken*, 855 F.2d 12, 19 (1st Cir. 1988); *United States v. Brown*, 604 F.2d 347, 350 (5th Cir. 1979); Levenbook, Prohibiting Attempts and Preparations, 49 U.M.K.C. L. Rev. 41 (1980); Hall, Criminal Attempt: A Study of Foundations of Criminal Liability, 40 Yale L. J. 789, 821-22 (1940).

The other principal ground of criticism of the *Dupuy* approach bears directly on the primary objective of the law—that of preventing inchoate crimes from becom-

ing full-blown ones. Many courts and commentators have argued that failing to attach criminal responsibility to the actor—and therefore prohibiting law enforcement officers from taking action—until the actor is on the brink of consummating the crime endangers the public and undermines the preventative goal of attempt law. See *People v. Terrell*, 459 N.E.2d 1337, 1341 (Ill. 1984); *United States v. Prichard*, 781 F.2d 179, 182 (10th Cir. 1986); *United States v. Stallworth*, 543 F.2d 1038, 1040 (2d Cir. 1976). See generally Wechsler, Jones, & Korn, *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Colum. L. Rev. 571, 586–611 (1961).

The Shortcomings of the *Dupuy* rule with respect to the goal of prevention are particularly evident in this case. As stated above, it is likely that under *Dupuy* no criminal responsibility would have attached unless the poison had actually been placed in the teacher's cup. This rigid requirement, however, severely undercuts the objective of prevention because of the surreptitious nature of the act of poisoning. Once a person secretly places a toxic substance into a container from which another person is likely to eat or drink, the damage is done. Here, if it had not been for the intervention of the teacher, she could have been rendered powerless to protect herself from harm.

After carefully weighing considerations of *stare decisis* against the persuasive criticisms of the *Dupuy* rule, we conclude that this artificial and potentially harmful rule must be abandoned. We hold that when an actor possesses materials to be used in the commission of a crime, at or near the scene of the crime, and where the possession of those materials can serve no lawful purpose of the actor under the circumstances, the jury is entitled, but not required, to find that the actor has taken a "substantial step" toward the commission of the crime if such action is strongly corroborative of the actor's overall criminal purpose.³ For the foregoing reasons, the judgment of the Court of Appeals is affirmed. . . .

Footnotes

1. Judge Holmes noted this point by stating: "Preparation is not an attempt. But some preparations may amount to an attempt. It is a question of degree." *Commonwealth v. Peaslee*, 177 Mass. 267, 272, 59 N.E. 55, 56 (1901).
2. This conclusion was drawn long ago by Judge Learned Hand, who stated that "the decisions [addressing when preparation has become attempt] are too numerous to cite, and would not be much help anyway, for there is, and obviously can be, no definite line." *United States v. Coplon*, 185 F.2d 629, 633 (2d Cir. 1950). Interestingly, Judge Hand also rejected the defendant's argument that no attempt responsibility attached until the moment of consummation of the criminal act, stating that "[t]o divide 'attempt' from 'preparation' by the very instant of consummation would be to revert to the old [rejected English] doctrine." *Id.*
3. This decision is limited to the facts of this case; we do not specifically adopt any of the examples set forth in Section(s) 5.01(2) of the Model Penal Code, but simply agree with the reasoning underlying subsections (e) and (f). However, we do note that several courts charged with the responsibility of defining "substantial step" have adopted or applied the examples in the Model Penal Code. . . .

CAN A PRIVATE CORPORATION BE HELD LIABLE FOR THE CRIME OF HOMICIDE?

Commonwealth v. McIlwain School Bus Lines
Superior Court of Pennsylvania, 1980
283 Pa. Super. 1, 423 A.2d 413

This is an appeal by the Commonwealth from an order quashing an information. The principal issue is whether a private corporation may be held criminally liable for homicide by vehicle. On April 3, 1978, a school bus owned by the McIlwain School Bus Lines, Inc. [hereinafter, the corporation] and operated by one of its employees, ran over and killed 6-year-old Lori Sharp; she had just gotten off the bus and was walking in front of it when she was run over. On May 26, 1978, the corporation was charged with homicide by vehicle. The corporation waived its right to a preliminary hearing, but subsequently filed a motion to quash the information against it. One ground of the motion was that the statute defining the offense of homicide by vehicle did not apply where the particular regulation

allegedly violated involved the equipment required on a vehicle (its front and rear view mirrors) and not the operation of the vehicle. A second ground of the motion was that by definition, the offense could only be committed by a natural person, not by a corporation. By order filed on March 16, 1979, the lower court granted the corporation's motion to quash. The court did not rule on the first ground of the motion. Instead, the court held, *sua sponte*, that the information issued against the corporation was insufficient. The court did not rule on the second ground of the motion, and held, as argued by the corporation, that the offense of homicide by vehicle could not be committed by a corporation. . . .

The criminal law has not always regarded a corporation as subject to criminal liability. Indeed, it was once widely accepted that a corporation was incapable of committing a criminal offense.

This doctrine of non-liability for crime arose from the theory that a corporation, being an intangible entity, [*New York Cent. & H. River R. Co. v. United States*, 212 U.S. 481, 29 S. Ct. 304, 53 L. Ed. 613; *Sutton's Hospital Case*, 10 Coke 23, 32], could neither commit a crime nor be subjected to punishment, because any illegal act of a corporate agent was done without authority of the corporation and *ultra vires*. [*Music Box, Inc. v. Mills*, 10 La. App. 6765, 121 S. 196] [10 *Fletcher Cyc. Corp.* § 4942 (Perm. Ed. 1978) p. 620.]

Today, however, it is generally recognized that a corporation may be held criminally liable for criminal acts performed by its agents on its behalf. See, e.g., *United States v. Wise*, 370 U.S. 405, 82 S. Ct. 1354, 8 L. Ed. 2d 590 (1962) (conspiracy, violation of Sherman Act); *United States v. Johns-Manville Corporation*, 231 F. Supp. 690 (E. D. Pa. 1964) (antitrust, conspiracy); *People v. Schomig*, 74 Cal. App. 109, 239 P. 413 (1925) (violation of legislation regulating real estate brokerages); *West Valley Estates, Inc. v. Florida*, Fla. App., 286 So. 2d 208 (1973) (violation of statute proscribing dredging of lands); *Southern Ry. Co. v. State*, 125 Ga. 287, 54 S.E. 160 (1906) (violation of state penal code re: operation of passenger cars); *State v. Adjustment Dept. Credit Bureau, Inc.*, 94 Idaho 156, 483 P.2d 687 (1971) (extortion); *People v. Duncan*, 363 Ill. 495, 2 N.E.2d 705 (1936) (violation of Motor Fuel Tax Act); *Golden Guernsey Farms v. State*, 223 Ind. 606, 63 N.E.2d 699 (1945) (violation of Uniform Food, Drug & Cosmetic Act); *G. & H. Cattle Co. v. Commonwealth*, 312 Ky. 315, 227 S.W.2d 420 (1950) (nuisance, pollution); *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294, 52 N.E. 445 (1898) (criminal contempt); *State v. Worker's Socialist Pub. Co.*, 150 Minn. 406, 185 N.W. 931 (1921) (criminal syndicalism); *Department of Health of State of New Jersey v. Borough of Fort Lee*, 108 N. J. Eq. 139, 154 A. 319 (1931) (criminal contempt); *People v. Canadian Fur Trappers' Corp.*, 248 N.Y. 159, 161 N.E. 455 (1928) (larceny); *Hardeman King Co. v. State*, 29 Okl. Cr. 319, 233 P. 792 (1925) (violation of laws re: selling agricultural seeds); *Commonwealth v. American Baseball Club of Philadelphia*, 290 Pa. 136, 138 A. 497 (1927) (violation of Sunday laws); *Love v. Nashville Agricultural & Normal Institute*, 146 Tenn. 550, 243 S.W. 304 (1922) (nuisance); *Postal Tel. Cable Co. v. City of Charlottesville*, 126 Va. 800, 101 S.E. 357 (1919) (violation of intrastate telegraph laws); *Vulcan Last Co. v. State*, 194 Wis. 636, 217 N.W. 412 (1928) (attempt to influence votes of employees in referendum election).

As early as the 1860s Pennsylvania courts have recognized that a corporation may be subject to criminal liability. Corporations in Pennsylvania have been indicted or convicted of maintaining public nuisances, unlawful manufacture or possession of intoxicating liquors, violation of Sunday laws, and violation of the Unlawful Collection Agency Practices Act. For a time, the Pennsylvania courts were unwilling to extend corporate criminal liability to crimes involving specific intent or homicide. In *Commonwealth v. Punxsutawney*, 24 Pa. C. C. 25, 48 Pittsb. Leg. J. 42 (1900), the court of common pleas of Jefferson County refused to hold a street railway company criminally liable for the crime of assault in ejecting a passenger.

Some courts have shown a tendency to enlarge on the criminal liability of corporations but no court has gone as far as we are urged to go in this case. Hence, not a single case is to be found to sustain this indictment. We should make haste slowly when it is in the direction of holding either an individual or a corporation criminally liable for a crime committed by an employee without his or its knowledge or consent. Moreover, the criminal act here alleged is so far ultra vires as to contravene all the accepted rules in the criminal law for making it the act of the principal. 48 P.L.J. at 42.

And in *Commonwealth v. Peoples Natural Gas Co.*, 102 P.L.J. 348 (1954), the court of common pleas of Allegheny County granted a corporation's motion to quash an indictment charging involuntary manslaughter, then the common law offense; the court reasoned that the phrase, "the killing of another," implied that the killer had to be of the same nature as the killed ("another"). Courts in other jurisdictions, however, have abandoned this limitation.

For example, the Supreme Court of New Jersey has held that a corporation may be held criminally liable for involuntary manslaughter. In *State v. Lehigh Valley R. Co.*, 90 N.J.L. 372, 103 A. 685 (1917), in denying a corporation's motion to quash an indictment for involuntary manslaughter, the court said:

"It has long been settled in this state that a corporation aggregate may in a proper case be held criminally for acts of malfeasance as well as for nonfeasance. *State v. Morris and Essex Railroad Co.*, 23 N. J. Law 360; *State v. Passaic County Agricultural Society*, 54 N. J. Law 260, 23 Atl. 680. So well settled is the general rule that in the later cases it has not even been questioned. *States [State] v. Erie Railroad Co.*, 83 N. J. Law 231, 84 Atl. 698; *Id.* 84 N. J. Law 661, 87 Atl. 141, 46 L.R.A. 117, *State v. Lehigh Valley Railroad Co.*, 89 N. J. Law 48, 97 Atl. 786; *Id.* 90 N. J. Law 340, 100 Atl. 167. [90 N. J. Law at 373, 103 A. at 685.]"

The court went on to say that "[w]e can think of no reason why it [the corporation] should not be held for the criminal consequences of its negligence or its nonfeasance." 90 N. J. Law at 374, 103 A. at 686. In *United States v. Van Schaick et al.*, 134 F.592 (C.C.S.D.N.Y. 1904), the court held that a corporate owner of a steam vessel could be guilty of manslaughter for "fraud, connivance, misconduct or violation of the law" resulting in loss of life. The charge was that as owner, the corporation had failed to equip the vessel with life preservers and fire fighting equipment. In *People v. Ebasco Services, Incorporated et al.*, 77 Misc. 2d 784, 354 N.Y.S.2d 807 (1974), the Supreme Court of New York (Queens County) held that a corporation could be guilty of negligent homicide. The court held that although the statute's use of the word "person" in referring to the victim of a homicide naturally meant a human being, the statute did not require that the "person" committing the act of homicide also be a human being.

There is, however, no manifest impropriety in applying the broader definition of "person" to a corporation in regard to the commission of a homicide particularly in view of the statement by the Court of Appeals in *People v. Rochester Railway & Light Co.* (*supra*) that the Legislature is empowered to impose criminal liability upon a corporation for a homicide. Accordingly, the court concludes that although a corporation cannot be the victim of a homicide, it may commit that offense and be held to answer therefore. [77 Misc. 2d at 787, 354 N.Y.S.2d at 811.]

The law of Pennsylvania has developed in a manner consistent with these New Jersey and New York decisions. With the enactment of the Crimes Code, Act of Dec. 6, 1972, P.L. 1482, No. 334, § 1 *et seq.*, eff. June 6, 1973, 18 Pa. C.S.A. § 101 *et seq.*, the criminal liability of corporations was codified, as follows:

(a) *Corporations generally.*—A corporation may be convicted of the commission of an offense if:

(1) the offense is a summary offense or the offense is defined by a statute other than this title in which a legislative purpose to impose liability

on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply;

- (2) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
- (3) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment.

(b) *Corporations, absolute liability.*—When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation shall be assumed, unless the contrary plainly appears. 18 Pa.C.S.A. § 307(a) and (b).

We recently had occasion to apply this provision, in *Commonwealth v. J. P. Mascaro and Sons, Inc.*, 266 Pa. Super. 8, 402 A.2d 1050 (1979), where we held that under subsection (a)(3) of section 307, a corporation could be convicted of theft by deception, deceptive business practices, and unsworn falsification to authorities arising out of false reports pertaining to rubbish hauled pursuant to a contract between the corporation and a county. Cases such as *Commonwealth v. Punxsutawney*, *supra*, and *Commonwealth v. Peoples Natural Gas Co.*, *supra*, therefore no longer have any precedential value.

When section 307 of the Crimes Code is applied to the present case, it is apparent that the critical words are that “[a] corporation may be convicted of the commission of an offense if: (1) the offense is . . . defined by a statute other than this title in which a legislative purpose to impose liability on corporations plainly appears. . . .” 18 Pa. C.S.A. § 307(a)(1). Here, the offense—homicide by vehicle—is “defined by a statute other than [the Crimes Code]”; it is defined by the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, § 1, eff. July 1, 1977, 75 Pa. C.S.A. § 3732. The question that we must decide, therefore, is whether from that definition “a legislative purpose to impose liability on corporations plainly appears.”

The statute provides that homicide by vehicle may be committed by “[a]ny person who unintentionally causes the death of another person while engaged in the violation of . . . [etc.]” (Emphasis added.) Section 102 of the Vehicle Code defines “person” as “[a] natural person, firm, co-partnership, association or corporation.” 75 Pa. C.S.A. § 102. It therefore “plainly appears” that homicide by vehicle may be committed by a corporation. This conclusion is made even more plain by the opening paragraph of Section 102, which provides:

“Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the content clearly indicates otherwise, the meanings given to them in this section [75 Pa. C.S.A. § 102.]”

“Person” is one of the “following words” thus referred to. There are no “additional definitions” of “person” in Section 3732, defining homicide by vehicle. Therefore, “unless the content [of Section 3732] clearly indicates otherwise [emphasis added],” the meaning given “person” in Section 3732 shall be the meaning given it in Section 102, i.e., as including a corporation.

The lower court acknowledged that Section 102 defined "person" as including a corporation, but held, nevertheless, that as used in Section 3732, "person" did not include a corporation. Said the court:

"If 'person' was to include a corporation, Section 3732 semantically and grammatically should have read 'any person who or which unintentionally causes the death. . . .' In modern usage *who* refers to actual persons (human beings). *Which* refers to the unnatural, artificial or inanimate as a corporation. [Webster's Collegiate 5th Edition Dictionary.]

The Latin 'qui' means *who* referring to the natural or human, and 'quod' means *which* referring to the unnatural, artificial or inanimate. (The New Century Dictionary Foreign Words and Phrases) [Slip op. at 3.]"

We are not persuaded by this reasoning. Initially, it may be noted that the argument from Latin is not persuasive, for reference to another language would have shown that the word for "who" and the word for "which" may be the same. Nor is the argument from grammar persuasive; indeed, it cuts just the other way. The phrase, "any person who or which," is not only extremely awkward but sounds wrong, for in ordinary usage, "person" refers only to a natural person and therefore takes only "who," not "which." Accordingly, no legislative draftsman wants to resort to the phrase, "any person who or which." Instead, the draftsman will make a choice. One choice is to avoid definitions. With respect to the Vehicle Code, that would mean that throughout the statute there would appear the phrase, "Any natural person, firm, co-partnership, association or corporation who or which . . . [does one of the many acts proscribed by the Code]." This is clear but cumbersome. A second choice, therefore, is to avoid being cumbersome by using one word instead of many, and still be clear by giving that one word a definition that includes the many. This is the choice usually made when the statute in question is long and divided into many sections. Here, the draftsman of the Vehicle Code made this second choice. Having done so, he wished to be grammatical, and not offend the reader with an awkward phrase. He therefore said, "Any person who . . .," knowing that by reference to the definitions in Section 102, the reader could learn what "person" referred to, and did not say, "Any person who or which . . .," which would not only be awkward and sound wrong, but because of Section 102, was unnecessary.

Other jurisdictions have similarly applied criminal statutes defining the word "person" as including corporation. For example, in *Vulcan Last Co. v. State*, 194 Wis. 636, 217 N.W. 412 (1928), the Supreme Court of Wisconsin held that a corporation is liable to prosecution under a statute prohibiting any "person" from attempting to influence a voter, where the statute provided that "person" included a corporation. In *State v. Workers' Socialist Pub. Co.*, 150 Minn. 406, 185 N.W. 931 (1921), the Supreme Court of Minnesota held that a corporation was criminally liable under a statute prohibiting "any person" from advocating violence to gain political ends, where the statute provided that the word "person" included a corporation. See also *State v. Adjustment Dept. Credit Bureau, Inc.*, 94 Idaho 156, 483 P.2d 687 (1971); *Paragon Paper Co. v. State*, 19 Ind. App. 314, 49 N.E. 600 (1898).

The lower court also gave the following reasons for its decision:

"The Homicide by Vehicle Section 3732 nowhere contains the word corporation; no Pennsylvania courts have applied this section to corporations; the penalty of the section providing jail is not corporately oriented; the revocation of one's license is not corporately applicable; and the section (as with the entire Vehicle Code Serious Offense Section 3731 to 3734, inclusive) is strictly natural person solely operational driver oriented. [Slip op. at 2.]"

It is true that Section 3732 does not use the word "corporation." However, given the definition of the word "person," there is no need for it to do so. It is also true—at least so far as we know—that no court in Pennsylvania has applied Section 3732 to a corporation; the present case appears to be of first impression. However, given the fact that the section did not become effective until July 1, 1977, the fact that no case other than this one has been brought against a corporation for homicide by vehicle is hardly conclusive proof that the section may not be so applied. Neither are we persuaded by the next two reasons of the lower

court—that since a corporation cannot be put in jail or have its license revoked, Section 3732 does not apply to corporations.

The offense of homicide by vehicle is a misdemeanor of the first degree. 75 Pa. C.S.A. § 3732. It is true that one of the punishments that may be imposed for committing a misdemeanor of the first degree is a term of imprisonment:

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

"(1) Five years in the case of a misdemeanor of the first degree. [18 Pa. C.S.A. § 1104.]"

It is also true that another possible punishment for homicide by vehicle is the revocation of one's driving license:

The department shall revoke the operating privilege of any driver for one year upon receiving a certified record of the driver's conviction of any of the following offenses: . . . Section 3732 (relating to homicide by vehicle). 75 Pa. C.S. 1532(a)(3).

However, a third possible punishment is the imposition of a fine:

"A person who has been convicted of any offense may be sentenced to pay a fine not exceeding:

(1)

(2)

(3) \$10,000, when the conviction is of a misdemeanor of the first degree. [18 Pa. C.S.A. § 1101.]"

Where alternate punishments are provided for a crime, the court may in appropriate circumstances impose the fine only:

"Fine only.—The court may, as authorized by law, sentence the defendant only to pay a fine, when, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices. [18 Pa. C.S. § 1326(a).]"

In *United States v. Hougland Barge Line, Inc.*, 387 F. Supp. 1110 (W. D. Pa. 1974), the court held that a statute requiring any "person in charge" of a vessel to notify the United States Coast Guard of oil discharges from the vessel applied to corporations as well as individuals, and that when applied to a corporation, only a fine may be imposed:

"The defendant also argues that as a corporation it cannot be imprisoned, and therefore, this would indicate that it [the statute in question] was not intended to apply to corporations. Innumerable federal penal statutes prohibit certain activities, including business entities, and provide penalties for violation of such prohibited acts. Both individuals and corporations are penalized even though a corporation may not be imprisoned. Thus, as illustrated by antitrust cases and Internal Revenue cases, where a statute calls for imprisonment, when imposed against a defendant corporation, only the fine portion of the penalty may be imposed. *United States v. Hilton Hotel [Hotels] Corporation*, *supra* [467 F.2d [1000] (9th Cir. 1972) *cert. Denied*, 409 U.S. 1125, [93 S. Ct. 938, 35 L. Ed. 2d 256] (1973)]; *United States v. Swift & Company*, 189 F. Supp. 885 (D. C. Ill. 1960), *affirmed*, 367 U.S. 909, 81 S. Ct. 1918, 6 L. Ed. 2d 1249 (1961). [387 F. Supp. at 1114.]"

Courts in other jurisdictions have similarly applied this principle, recognizing that to do otherwise would in effect confer upon the corporation immunity for its criminal acts. Thus, the Supreme Court of Illinois has said:

"Where the statutory penalty is both fine and imprisonment, the corporate offender can be punished by imposing a fine, inasmuch as the two penalties are independent. *United States v. Union Supply Co.*, [215 U.S. 50, 30 S. Ct. 15, 54 L. Ed. 87] *supra*; 7 R.C.L. § 784. The theory is that a court shall apply the appropriate penalty in such instances as far as possible, in order that the corporate defendant shall not escape all punishment. [*People v. Duncan*, 363 Ill. 495, 2 N.E.2d 705 (1936).]"

The Supreme Court of North Carolina has said:

"It is true that, when the statute imposes a penalty of a fine or imprisonment, only the fine can be placed upon a corporation. But this is no reason why that should not be imposed. The corporation should not be wholly exempted from punishment, because it cannot be imprisoned. . . . *State v. Ice & Fuel Co.*, 166 N.C. 366, 369, 81 S.E. 737, 738 (1914)."

And in *United States v. Van Schaick et al.*, *supra*, the Circuit Court for the Southern District of New York reached a similar conclusion:

"But it is said that no punishment can follow conviction. This is an oversight in the statute. Is it to be concluded, simply because the given punishment cannot be enforced, that Congress intended to allow corporate carriers by sea to kill their passengers through misconduct that would be a punishable offense if done by a natural person?"

A corporation can be guilty of causing death by its wrongful act. It can with equal propriety be punished in a civil or criminal action. It seems a more reasonable alternative that Congress inadvertently omitted to provide suitable punishment for the offense when committed by a corporation, than it intended to give the wrongdoer impunity simply because it happened to be a corporation. 134 F. at 602.

Finally, we are unable to accept the lower court's conclusion that Section 3732 "is strictly natural person solely operational driver oriented." For the reasons we have given, it appears to us equally to include corporations.

Reversed.

[footnotes omitted]