THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARVIN J. BENNEFIELD	)	
Defendant-Below,	)	
Appellant,	)	
	)	No. 0411014352
v.	)	
	)	
STATE OF DELAWARE	)	
Appellee.	)	

Date Submitted: October 5, 2005
Date Decided: January 4, 2006

OPINION

***On Appeal from a Decision of the Court of Common Pleas* - AFFIRMED**

T. Andrew Rosen, Esquire, Office of the Public Defender, 820 North French Street, Wilmington, Delaware 19801, Counsel for the Appellant.

Colleen K. Norris, Esquire, Supervising Attorney. Deputy Attorney General and Erik A. Zarychta (Admitted Rule 55) Assistant Attorney General, Department of Justice, 820 North French Street, Wilmington, Delaware 19801, Counsel for the Appellee.

JURDEN, J.

I. ***NATURE AND STAGE OF THE PROCEEDINGS***

This appeal from the Court of Common Pleas stems from an October 24, 2004 traffic stop and the resulting arrest of Marvin J. Bennefield (the "Appellant") for Driving Under the Influence of Alcohol and/or Drugs. On December 7, 2004, the Appellant was charged in the Court of Common Pleas with one count of Failure to Stop at a Red Light in violation of 21 *Del. C.* § 4108(a)(3)a and one count of Driving Under the Influence of Alcohol and/or Drugs in violation of 21 *Del. C.* § 4177(a). At the conclusion of a May 5, 2005 bench trial, the Court of Common Pleas found the Appellant guilty of one count of Failure to Stop at a Red Light and one count of Driving a Vehicle While Under the Influence of Alcohol and/or Drugs ("DUI"). On May 17, 2005, the Appellant timely noticed his appeal of the DUI conviction.[1] Briefing on this appeal concluded on October 5, 2005.[2]

After consideration of the briefs and record on appeal, this Court finds that there is sufficient evidence to support the Trial Court's finding that the Appellant violated 21 *Del. C.* § 4177(a). Accordingly, for the reasons set forth below, the judgment of the Court of Common Pleas is **AFFIRMED**.

II. ***FACTS***

On October 24, 2004, at approximately 7:30 p.m., Delaware State Police Trooper Brian Ritchie was on routine patrol in a fully marked patrol vehicle, headed westbound on Delaware Route 40, near Walther Road in New Castle County.[3] As Trooper Ritchie approached this location, he turned his patrol vehicle from the left through lane into the left turn lane, slowed and finally

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[1] The Defendant's conviction on the single count of Failure to Stop at a Red light is unchallenged on appeal.
[2] D. I. 7, 8, 9.
[3] State's Ans. Br., *Bennefield v. State*, No. 0411014352 (Sep. 27, 2005), at 2.

stopped for a red light.[4] Shortly thereafter, all the traffic lights on the through lanes of Route 40 changed to red. "One or two seconds later," a westbound Mercedes traveled past Trooper Ritchie's vehicle and through the red light at the intersection of Walther Road.[5] This prompted Trooper Ritchie to carefully enter the intersection, activate his police vehicle's lights and pull behind the Mercedes. The Mercedes, later observed by Trooper Ritchie to be operated by the Appellant as its sole occupant, pulled to the right shoulder of Route 40. In so doing, the Appellant stopped so abruptly that Trooper Ritchie had "to brake hard" to avoid a collision.[6]

After Trooper Ritchie approached the Appellant, and confronted him with the above observations, the Appellant admitted that he was "in the wrong" for trying "to beat" the red light.[7] During this interaction, Trooper Ritchie noticed the Appellant's eyes were very glassy, bloodshot and watery and that he had a very strong odor of alcohol on his breath.[8] In response to Trooper Ritchie's question as to whether the Appellant had consumed any alcohol, the Appellant initially denied any consumption.[9] He then recanted, admitting that he drank one beer and hoped for a break because it was "Eagle's Sunday."[10] At this point, Trooper Ritchie asked the Appellant to exit the vehicle. Upon exiting, Appellant further recanted his original story by admitting that he drank two beers and knew he would be over the legal limit.[11]

With the Appellant outside the vehicle, Trooper Ritchie administered a battery of four field sobriety tests recommended by the National Highway Traffic Safety Association ("NHSTA"): the

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[4] Tr. Trial, *State v. Bennefield*, No. 0411014352 (May 5, 2005), at 8; State's Ans. Br., at 2. (D. I. 5, 8).
[5] State's Ans. Br., at 2.
[6] Tr. Trial, at 26; State's Ans. Br., at 2.
[7] Tr. Trial, at 11; State's Ans. Br., at 2.
[8] Tr. Trial, at 13; State's Ans. Br., at 2.
[9] Tr. Trial at 13-14.
[10] *Id*. at 13-14.
[11] *Id*. at 14.

"alphabet" test, "counting" test, "walk and turn" test and "one leg stand" test.[12] It is uncontested that Trooper Ritchie is certified in the standardized administration of the NHSTA field sobriety tests.[13] The Appellant failed three of these four tests, passing only the "alphabet" test.[14] Using standard operating procedures, Trooper Ritchie then administered the portable breath test to the Appellant, which the Appellant also failed.[15]

Based on these observations, Trooper Ritchie suspected the Appellant was under the influence of drugs or alcohol and arrested him.[16] Consequently, the Appellant was transported to Delaware State Police Troop Two where Trooper Richie observed him for eighteen minutes before performing the Intoxilyzer 5000 blood test.[17] Following this test, Trooper Ritchie issued a citation to the Appellant for Failure to Stop at a Red Light and DUI.[18]

III. ***SUMMARY OF THE APPELLANT'S ARGUMENT***

On appeal, the Appellant seeks the reversal of the Trial Court's finding of guilt. Though he acknowledges that Appellee made its *prima facie* case, the Appellant argues that insufficient evidence was proffered at trial for the court to find beyond a reasonable doubt that he committed the violation charged.[19] Specifically, the Appellant contends that Trooper Ritchie's failure to properly administer the Intoxilyer 5000 blood test and his failure to administer a horizontal-gaze

[12] *Id*. at 16-21.
[13] Appellant's Opening Br., *Bennefield v. State*, No. 0411014352 (Aug. 31, 2005), at 7.
[14] Tr. Trial, at 16-21.
[15] *Id*. at 21.
[16] *Id*. at 22.
[17] *Id*. at 3-7, 38. The Appellant was observed for less than twenty minutes, so the parties stipulated that the Intoxilyzer 5000 blood test results were inadmissible at trial pursuant to *Clawson v. State*, 867 A.2d 187 (Del. 2005).
[18] State's Ans. Br., at 4.
[19] Appellant's Opening Br., at 6.

nystagmus test raised doubts about his credibility, as the sole testifying trial witness.[20] The Appellant argues that the Trial Court had only "the subjective impressions of an officer who failed to properly follow … procedures" to consider, which should have left it with reasonable doubt as to the Appellant's guilt.[21]

IV. ***STANDARD OF REVIEW***

11 *Del. C.* § 5301(c) provides statutory authority for Superior Court appellate review of Court of Common Pleas decisions in criminal actions. Such appeals "to the Superior Court shall be reviewed on the record and shall not be tried de novo."[22] Thus, in its review of appeals from Court of Common Pleas decisions, this Court sits as an intermediate appellate court.[23] Accordingly, its purpose reflects that of the Supreme Court.[24] Hence, this Court's role on appeal is to "correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."[25]

In reviewing the appeal of a conviction, this Court does not apply the "beyond a reasonable doubt" standard of proof.[26] The "test" on appeal "is not whether the defendant is guilty … beyond a reasonable doubt, but whether there is sufficient evidence to support the findings of the Trial Court."[27] "Under the standard of review, this Court must defer to findings if 'any rational trier of fact could have found the evidence sufficient to establish the essential elements of the offense

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[20] Appellant's Reply Br., *Bennefield v. State*, No. 0411014352, at 2, 4-5 (Oct. 5, 2005). The Court notes that probable cause is not at issue on appeal, although the phrase "subjective impression" appears in the briefing.
[21] Appellant's Reply Br., at 5.
[22] 11 *Del. C.* § 5301(c).
[23] *DiSabatino v. State,* 808 A.2d 1216, 1220 (Del. Super. Ct. 2002); *aff'd* 810 A.2d 349 (Del. 2002).
[24] *Disabatino*, 808 A.2d at 1220 (citing *State v. Huss*, 1993 WL 603365, at *1 (Del. Super.)).
[25] *Disabatino*, at 1220 (citing *Steelman v. State,* 2000 WL 972663 (Del. Super.)).
[26] *State v. Cagle*, 332 A.2d 140, 142 (Del. 1974).
[27] *Cagle*, 332 A.2d at 142 (citing *Levitt v. Bouvier*, 287 A.2d 671 (Del. 1972)).

beyond a reasonable doubt.'"[28] Thus, "if substantial evidence exists for a finding of fact this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations."[29] This Court may "only" make contradictory findings of fact in reaching its own determination "when the record below indicates that the trial judge's findings are 'clearly wrong'" and the Court "'is convinced that a mistake has been made which, in justice, must be corrected.'"[30] As the Supreme Court explained in *State v. Cagle*:

> [a]n appeal from a decision of the Court of Common Pleas ..., sitting without a jury, is upon both the law and the facts. In such appeal, the Superior Court has the authority to review the entire record and to make its own findings of fact in a proper case. However, … the Superior Court may not ignore the findings made by the Trial Judge. The Superior Court has the duty to review the sufficiency and to test the propriety of the findings below. If such findings are sufficiently supported by the record and are the product of an orderly and logical deductive process, the Superior Court must accept them, even though independently it might have reached opposite conclusions. The Superior Court is only free to make findings of fact that contradict those of the Trial Judge when the record reveals that the findings below are clearly wrong and the Appellate Judge is convinced that a mistake has been made which, in justice, must be corrected. Findings of fact will be approved upon review when such findings are based on the exercise of the Trial Judge's judicial discretion in accepting or rejecting 'live' testimony. If there is sufficient evidence to support the findings of the Trial Judge, the Superior Court sitting in its appellate capacity must affirm, unless the findings are clearly wrong. (*citation omitted*).[31]

V. ***DISCUSSION***

21 *Del. C.* § 4177(a)(1) provides, in pertinent part, that "[n]o person shall drive a vehicle … when the person is under the influence of alcohol." Before a defendant may be found guilty under this statute, "the State must prove both of the following two elements beyond a reasonable doubt: First, that the defendant drove a motor vehicle at or about the time and place charged; [and]

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[28] *Casey v. State*, 2000 WL 33179684, at *3 (Del. Super.) (citing *Williams v. State*, 539 A.2d 164, 168 (Del. 1988)).
[29] *Fiori v. State*, 2004 WL 1284205, at *1 (Del. Super.) (citing *Johnson v. Chrysler*, 213 A.2d 64, 66 (Del. 1965)).
[30] *Fiori*, 2004 WL 1284205, at *1 (citing *Bracy v. State,* 1994 WL 466224, at *2 (Del. Super.)).
[31] *Cagle*, 332 A.2d, at 142-43.

Second, that the defendant was under the influence of alcohol while he drove the motor vehicle."[32] The Appellant challenges the proof offered of this second element, attacking the sufficiency and credibility of Trooper Ritchie's unrebutted testimony concerning his observations of the Appellant during the sobriety tests.[33]

According to the Supreme Court, the evidence proffered "must show that the person has consumed a sufficient amount of alcohol to cause the driver to be less able to exercise the judgment and control that a reasonably careful person in full possession of his or her faculties would exercise under like circumstances."[34] It is unnecessary that the defendant be "drunk" or "intoxicated" to be found guilty of driving while under the influence.[35] "Nor is it required that impaired ability to drive be demonstrated by particular acts of unsafe driving."[36] "What is required is that the person's ability to drive safely was impaired by alcohol."[37] Finally, an accused may be convicted under this statute based on admissible evidence "*other than the results of a chemical test* of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs."[38]

After its review of the record on appeal, this Court finds sufficient evidence to support the Trial Judge's findings that the Appellant was under the influence of alcohol while he drove the motor vehicle. The transcript of the bench trial reveals that the Trial Judge took into account

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[32] *Lewis v. State*, 626 A.2d 1350, 1355 (Del. 1993); *State v. Baker*, 720 A.2d 1139, 1142 (Del. 1998).
[33] Appellant's Opening Br., at 6-7.
[34] *Lewis*, 626 A.2d 1350, at 1355 (stating that a jury "charge substantially in the following language is appropriate in a case of driving under the influence of alcohol ….").
[35] *Lewis*, 626 A.2d 1350, at 1355.
[36] *Lewis*, at 1355.
[37] *Id*.
[38] 21 *Del. C*. § 4177(g)(2)(*emphasis added*); *see Lewis*, 626 A.2d 1350, at 1355-56; *Clawson*, 867 A.2d 187, at 193 (explaining that "[a]lthough defendant's separate conviction under 21 *Del. C.* § 4177(a)(1) did not require a test result, admission of a non-compliant test result jeopardized the fairness of trial on that separate charge.").

evidence that any "rational trier of fact" could have found sufficient to establish that the Appellant committed the second element of the DUI offense "beyond a reasonable doubt."[39]

The record also shows that after hearing the admissible evidence other than the excluded blood test, the judge logically deduced that the Appellant violated 11 *Del. C.* § 4177(a)(1) based on the following: his admitted running of the red light and the inference arising therefrom, his subsequent abrupt stop, his bloodshot and glassy eyes, his conduct and demeanor during interactions with Trooper Ritchie, his unrebutted admissions that he consumed alcoholic beverages and could be over the legal limit, his recanted story, the strong odor of alcohol that emanated from him, his failure of the portable breathalyzer test and three of the four field coordination tests.[40]

On appeal this Court does not make its own credibility determinations and, because these findings of fact are plainly based on the Trial Judge's exercise of judicial discretion in accepting the live testimony of Trooper Ritchie, the Trial Judge's findings must be approved.

VI. ***CONCLUSION***

Nothing in the record indicates to this Court that the Trial Court made a mistake or that the Trial Court's findings were clearly wrong. Consequently, the Court of Common Pleas decision finding the Appellant guilty of Driving Under the Influence of Alcohol and/or Drugs in violation of 21 *Del. C.* § 4177(a), is found to be the product of an orderly and logical deductive process and it is hereby **AFFIRMED**.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

[39] *Casey*, 2000 WL 33179684, at *3; Tr. Trial, at 39-42.
[40] Tr. Trial, at 40-42.