

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ERICK M. GRAVES,)
)
 Defendant-Below,)
 Appellant,)
 v.) I.D. No. 0411021298
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

Submitted: January 4, 2006
Decided: February 2, 2006

ON APPEAL FROM A DECISION FROM THE
COURT OF COMMON PLEAS. **AFFIRMED.**

Cathy A. Jenkins, Esquire, and Regina E. Gray, Esquire, Wilmington,
Delaware, attorneys for the Appellant.

Samantha J. Lukoff, Esquire, Wilmington, Delaware, attorney for the
Appellee.

ABLEMAN, J.

This is an appeal from the conviction and sentencing Order issued by the Court of Common Pleas on March 29, 2005. Following a bench trial, the Court found the defendant, Eric Graves (“Appellant” or “Graves”), guilty of Driving a Vehicle while License is Revoked, in violation of 21 *Del. C.* § 2756. The issue before this Court is whether the Court of Common Pleas properly admitted into evidence faxed copies of Appellant’s driving record, an official notice of revocation, and an affidavit of the supervisor of the revocation section of the Division of Motor Vehicles (“DMV”). Because there was no genuine issue regarding the documents’ authenticity, the decision of the Court of Common Pleas is hereby **AFFIRMED**.

Statement of Facts

Officer Ronda was on patrol when he saw a vehicle with suspicious tags. The officer stopped the car and requested the driver’s license, registration, and proof of insurance. On further inspection, Officer Ronda discovered that the driver’s license had been revoked and issued a citation.

At trial the State offered into evidence faxed copies of Appellant’s driving record, official notice of revocation, and an affidavit from an employee of the DMV swearing that she had mailed Appellant a copy of the notice of revocation. Officer Ronda testified that, when he received the summons to appear as a witness in this trial, he called the Department of Motor Vehicles in Dover, requested Appellant’s motor

vehicle records, and subsequently received the documents in question by fax.

Graves objected to the evidence, arguing that the documents had not been authenticated. Graves argued that the State could not establish a chain of custody for the copies, that the State could not prove who faxed the documents, or from where, and that the copies were not certified. The Court of Common Pleas found that the documents were reproductions of certified copies and that, based on Officer Ronda's testimony, there was no genuine issue of authenticity.

On appeal, Graves argues that 21 *Del. C.* § 2736(e) requires that copies of a defendant's driving record be certified to sustain a conviction under the motor vehicle code. Appellant therefore contends that the Court of Common Pleas erred as a matter of law in admitting the faxed documents into evidence.

Standard of Review

In reviewing appeals from the Court of Common Pleas, the Superior Court sits as an intermediate appellate court, and as such, its function is the same as that of the Supreme Court.¹ Therefore, while findings of law are reviewed *de novo*,² findings of fact are reviewed only to confirm and verify that they are supported by substantial evidence.³ The

¹ See, e.g., *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985); *Barks v. Herzberg*, 206 A.2d 507 (Del. 1965); *State v. Richards*, 1998 WL 732960 (Del. Super. Ct.); *State v. Huss*, 1993 WL 603365 (Del. Super. Ct.).

² *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

³ *Shahan v. Landing*, 643 A.2d 1357, 1359 (Del. 1994).

question of admissibility of evidence is reviewed on appeal under an abuse of discretion standard.⁴ A court commits an abuse of discretion if it has “exceeded the bounds of reason in view of the circumstances, [or]... so ignored the rules of law or practice so as to produce injustice.”⁵

Discussion

The Delaware Rules of Evidence provide that the original writing is generally required to prove the content of the writing.⁶ DRE 1003 provides, however, that duplicates are admissible to the same extent as the original unless there is a genuine question as to the authenticity of the original, or it would be unfair under the circumstances to admit the duplicate in lieu of the original. The question of authenticity is merely a question of whether the document in question is what the proponent claims.⁷ A piece of evidence may be authenticated by a person with sufficient knowledge of the matter in question, without requiring absolute verification that the record is accurate.⁸ In order for a genuine question of authenticity to exist, a party would need to present facts or testimony sufficient to bring the issue into contention. For example, in *Reagan v. Randell* the plaintiff testified that she did not sign the document in question, moved for leave to admit the testimony of an

⁴ *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994).

⁵ *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988).

⁶ DRE. 1002.

⁷ DRE 901(a).

⁸ *State v. Booker*, 547 A.2d 618 (Del. Super. Ct. 1988) (testimony of security officer that security recording reflected what he saw on the security monitor sufficient to authenticate videotape even though there was no independent verification that the transmission accurately reflected the scene being transmitted); *Fountain v. State*, 2004 WL 1965196 (Del. Supr.) (holding that the State is required to eliminate possibilities of misidentification and adulteration, not absolutely, but as a matter of reasonable probability).

expert handwriting witness at trial, and detailed other evidence indicating that the signature on the document was a fraud.⁹

In this instance, however, it is obvious to this Court, as it was to the trial court, that the documents entered into evidence are exactly what the State claims them to be, i.e., certified copies of Defendant's driving record and license revocation. The reproductions do not appear to have been altered, and indicate at the top of the page that the fax was received from 'Driver Improvement,' together with a telephone number known to be the fax number of the records department of DMV. Additionally, Defendant has adduced no evidence or facts that bring into question the authenticity of the faxed copies of the records. Accordingly, the State successfully authenticated the documents within reasonable probability and Defendant has failed to show an abuse of discretion.

Finally, Defendant argues that 21 *Del. C.* § 2736(e) *requires* certified copies of a defendant's driving record in any prosecution under the motor vehicle laws. That statute provides:

In any prosecution under this Code, a conviction record as maintained in the Division of Motor Vehicles, which has been certified by the Director of the Division of Motor Vehicles, may be admitted into evidence and shall be competent evidence that the person named therein was duly convicted of each offense enumerated therein and of the status of that persons' driving license and/or privileges. It shall be unnecessary for any employee or agent of the Department to personally appear for the admission into evidence of such conviction record in any proceeding under this Code.

⁹ *Reagan v. Randell*, 2002 WL 1402233 (Del. Ch.).

Clearly, the intent of the statute is to aid prosecution of motor vehicle violations, not override the admission of duplicates as permitted by DRE 1003. The statute was evidently intended to track the language of DRE 1005, which provides that the contents of an official record may be proved by certified copy or by the testimony of a witness. Such a rule is not exclusive of the other rules of evidence. Therefore, a reproduction of a certified copy of a public record is admissible under both DRE 1005 and 1003. In this case, the reproductions at issue are admissible under both 21 *Del. C.* § 2736(e) and DRE 1003.

For the foregoing reasons, the decision of the Court of Common Pleas is **AFFIRMED**.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary