

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

TIMOTHY M. MCMONIGLE,)
)
 Defendant – Appellant,)
)
 v.) I.D. # 0607008906
)
 STATE OF DELAWARE,)
)
 Appellee.)

Date Submitted: September 15, 2008
Date Decided: January 6, 2008

OPINION

Upon Appeal of the Decision of the Court of Common Pleas.
AFFIRMED.

Joseph A. Hurley, Esquire, 1215 King Street, Wilmington, Delaware 19801,
attorney for Defendant-Appellant.

Kevin M. Carroll, Deputy Attorney General, Department of Justice, 820
North French Street, Wilmington, Delaware 19801, attorney for Appellee.

Jurden, J.

I. INTRODUCTION

This appeal arises from the bench trial conviction of Timothy McMonigle (“McMonigle”) in the Court of Common Pleas on the charge of Driving a Vehicle While License is Suspended or Revoked¹ (“Driving While Suspended”). For the reasons discussed below, this Court affirms the decision of the Court of Common Pleas.

II. PROCEDURAL AND FACTUAL BACKGROUND

On June 29, 2006, while conducting a mounted horse patrol on Wilton Boulevard in New Castle, Delaware, Corporal Hoff of the New Castle County Police Department observed McMonigle driving without a seatbelt. Corporal Hoff stopped McMonigle and asked him to produce his driver’s license. McMonigle was unable to produce a valid driver’s license. When Corporal Hoff conducted a DELJIS check, she found that McMonigle’s license had been suspended because of a prior conviction of driving with a suspended or revoked license. McMonigle was arrested for Driving While Suspended. McMonigle was convicted in the Court of Common Pleas for his second such offense. He was sentenced to 60 days at Level V, followed by one year of Level I probation and a \$1,000 fine. McMonigle timely appealed his conviction. On appeal, he argues that the Court of Common

¹ 21 Del. C. § 2756.

Pleas erred in admitting his Certified Motor Vehicle Record (“the vehicle record”) and that there was insufficient evidence to establish his guilt beyond a reasonable doubt.²

III. STANDARD AND SCOPE OF REVIEW

Statutory authority provides for appellate review by the Superior Court of decisions rendered by the Court of Common Pleas.³ Questions of law are reviewed *de novo*, while factual findings are reviewed under a “clearly erroneous” standard.⁴ In other words, this Court’s role 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.”⁵ All evidence is viewed in the light most favorable to the State.⁶ Furthermore, this Court reviews the lower court’s evidentiary rulings for abuse of discretion.⁷

² Appellant’s Opening Br. at 2, Docket Item (“D.I.”) 6.

³ 11 *Del. C.* § 5301; *see also* DEL. CONST. art. IV, §28. In reviewing appeals from the Court of Common Pleas, this Court sits as an intermediate appellate court. *Disabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) (citing *State v. Richards*, 1998 WL 732960, at *1 (Del. Super. May 28, 1998)). Accordingly, its purpose reflects that of the Supreme Court. *Shipkowski v. State*, 1989 WL 89667, at *1 (Del. Super. July 28, 1989).

⁴ *See e.g. State v. Karg*, 2001 WL 660014, at *1 (Del. Super. May 31, 2001).

⁵ *Disabatino*, 808 A.2d at 1220 (citing *Steelman v. State*, 2000 WL 972663, at *1 (Del. Super. May 30, 2000)).

⁶ *Karg*, 2001 WL 660014, at *1.

⁷ *Lilly v. State*, 649 A.2d 1055 (Del. 1994); *see also Clawson v. State*, 867 A.2d 187 (Del. 2005).

IV. DISCUSSION

A. Admissibility of the Vehicle Record

This Court is not persuaded that the Court of Common Pleas abused its discretion in admitting McMonigle's vehicle record into evidence. McMonigle argues that the lower court erred in admitting the vehicle record because the State did not properly notify McMonigle that his driving privileges were either suspended or revoked, as required by statute.⁸ Specifically, McMonigle argues that the driving record did not properly list his home address, and therefore lacked the proper foundation for admissibility.⁹ 21 *Del. C.* § 2736(b) states:

Such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit of such notice in the United States mail in an envelope with postage prepaid, addressed to such person *at the person's address as shown by the records of the Department.*¹⁰

The statute is clear that the Notice of Revocation ("Notice") is to be sent to the address reflected in the records of the Department of Motor Vehicles ("DMV").

McMonigle's argument as to its admissibility is misplaced. Admissibility of evidence and the weight of such evidence in establishing

⁸ 21 *Del. C.* § 2736.

⁹ Appellant's Opening Br. at 4-6.

¹⁰ § 2736 (emphasis added).

guilt are separate issues. For purposes of *admissibility* of the vehicle record, the statute states:

(c) In any prosecution under this chapter, proof of the giving of notice of suspension or revocation in a manner provided for by subsection (b) of this section may be made by:

- (1) The certificate of any office or employee of the Department;
- (2) An affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof; *or*
- (3) A computer generated list of those persons whose suspension and/or revocation notices have been electronically processed through a computer interface system of the Department and a court, such list having been generated electronically at the same time the notice is processed by the computer system.

(d) In the event that 1 of the means of proof of the giving of notice enumerated in subsection (c) of this section is utilized, then it shall be *unnecessary for any employee or agency of the department to appear personally in court.*¹¹

As required under § 2736(c)(2), the State submitted a notarized affidavit of a DMV employee, Kathryn M. Richards, who swears that she is over 18 years of age, and that on February 9, 2006, she mailed an envelope with postage prepaid address to:

TIMOTHY MICHAEL MCMONIGLE
49 ALEXIS DR
CHAPMAN WOODS
NEWARK, DE 19702¹²

¹¹ § 2736(c), (d) (emphasis added).

¹² App. to State's Answering Br. at B5, D.I. 7; *see also* Partial Trial Trans. at 30, D.I. 4.

Richards further avers that the envelope contained an Official Notification of Withdrawal of Driver's License and/or Driving Privileges, which stated that McMonigle's driving privileges were revoked, effective February 13, 2006.¹³ This affidavit satisfies section 2736(c)(2).

McMonigle argues that the State must also submit a "computer generated list" in order to comply with § 2736(c)(3).¹⁴ The Court disagrees. The word "or" that separates § 2736(c)(2) from (3) makes the requirements disjunctive; the State need only satisfy (1), (2), *or* (3) in order to have the evidence deemed authentic without the live testimony of a DMV employee. This Court is satisfied that the trial court did not abuse its discretion in admitting the driving record.

McMonigle further argues, in the context of his admissibility claim, that the driving record did not adequately satisfy the notice requirement. This argument is misplaced in terms of admissibility, but is relevant to McMonigle's claim that the State did not meet its burden to convict him.

B. Sufficiency of the Evidence

This Court is satisfied that, viewing the evidence in the light most favorable to the State, the State has established McMonigle's guilt beyond a reasonable doubt. To establish that a defendant is guilty of Driving While

¹³ App. to State's Answering Br. at B5; *see also* Partial Trial Trans. at 30.

¹⁴ Partial Trial Trans. at 25.

Suspended, the State is required to prove three elements: (1) that there was a revocation of the license to drive a motor vehicle; (2) that it was a legal revocation; and (3) that during the period of such revocation, the accused operated a motor vehicle on the public highway.¹⁵ The only element in dispute is whether the revocation was legal.

In order for one to be convicted of Driving While Suspended, the State must properly notify an accused of the revocation of his or her driving privileges.¹⁶ As McMonigle correctly asserts, the purpose of this requirement, at least in part, is to “give a person fair notice of the revoked state of privileges.”¹⁷ However, this Court disagrees with McMonigle’s understanding of the means by which the State can provide “fair notice.”

McMonigle claims that the records introduced by the State indicate where he resided in July 2007, but not where he resided as of February 9, 2006 – the date that the DMV claims it notified McMonigle of the revocation. McMonigle argues that no one can know, with absolute certainty, where the Notice was sent and whether he received it.¹⁸ He asserts that the State must prove beyond a reasonable doubt that the Notice was sent

¹⁵ 21 *Del. C.* § 2756(a); *Fuentes v. State*, 2002 WL 32071656, at *2 (Del. Super. Dec. 20, 2002) (Ridgely, Pres. J.).

¹⁶ *See State v. Dennis*, 306 A.2d 729, 731 (Del. 1973).

¹⁷ Appellant’s Opening Br. at 5.

¹⁸ *Id.* at 6 (claiming it is a “matter of conjecture whether or not [he] lived at the same address on February 9, 2006 as he did in July of 2007.”)

to the defendant at his address at the time of mailing, and claims it failed to meet this burden. The record reflects otherwise.

The trial court's factual findings are logical and sufficiently supported by the record, which indicates that the DMV mailed the Notice to McMonigle to the most current address the DMV had on file. Contrary to McMonigle's claim, the affidavit need not contain any "magical words" for the trial court to make this finding; rather, it can be deduced circumstantially.¹⁹ The trial court's record contains: (a) an affidavit that avers that notice was mailed to McMonigle on February 9, 2006, to 49 Alexis Drive; (b) an Official Notice of Revocation that lists McMonigle's address at 49 Alexis Drive; and (c) a State of Delaware Certified Driving Record that indicates that the address it had on file, as of February 9, 2006 was 49 Alexis Drive. It was logical for the trial court to deduce that this was McMonigle's "address as shown by the records of the Department."²⁰

¹⁹ Partial Trial Trans. at 26, 28:

MR. HURLEY: The affidavit doesn't say, I deposited in the mail, to this person at Alexis Drive, the address maintained in the Division of Motor Vehicles. You are being asked, to connect the dots on behalf of the State and to make the assumption that that was his address. All that affidavit had to say was the last known address or the official address on our records, and they'd met the statute. They didn't do that.

THE COURT: All right. You're saying that because it doesn't say in here somewhere that, in this affidavit, that this, in fact, is the address of the Delaware Driver at the time of the mailing?

MR. HURLEY: Exactly.

²⁰ 21 *Del. C.* § 2736 (b); Partial Trial Trans. at 31-32.

It is an individual's burden to update the DMV with one's most current contact information.²¹ If McMonigle was living at another address, the DMV would have had no way of knowing that information or fact unless he submitted a change of address form.²² There is evidence to suggest that McMonigle knew of his obligation to update his records in that he changed his address with the DMV on July 23, 1999. This change reflected the address that was on file when the DMV sent out the Notice. Because the address to which the DMV sent the Notice was an address provided by McMonigle, it was reasonable to believe that McMonigle would receive the Notice. Therefore, the trial court properly concluded that the DMV sent the Notice to the appropriate address on record, where it was reasonable to believe McMonigle would receive it. The Notice was properly admitted. This, along with Corporal Hoff's testimony was sufficient to establish McMonigle's guilt beyond a reasonable doubt of Driving While Suspended.

V. CONCLUSION

The Court of Common Pleas did not abuse its discretion in admitting the appellant's Certified Motor Vehicle Record. The trial court correctly

²¹ 21 *Del. C.* § 315:

Whoever, holding an operator's license issued to such person under the laws of this State or having a motor vehicle or tractor registered in such person's name under the laws of this State, fails or neglects within 1 month after any change of such person's address to notify the Department of any such change of address shall be fined, for the first offense, not less than \$10 nor more than \$50.

²² DMV Change of Address Form, available at

http://www.dmv.de.gov/forms/driver_serv_forms/pdfs/dr_frm_chgadr.pdf.

determined that there was sufficient evidence to establish McMonigle's guilt beyond a reasonable doubt. Wherefore, the decision of the Court of Common Pleas is hereby **AFFIRMED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge