

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

GREGORY J. SMITH,

Defendant.

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Case No.: 1008014745

Submitted: November 21, 2011

Decided: December 29, 2011

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DECISION AFTER TRIAL

Defendant Gregory J. Smith is charged by information with Driving Under the Influence of Alcohol in violation of 21 *Del. C.* § 4177(a); and Inattentive Driving in violation of 21 *Del. C.* § 4176(b). Trial was held on October 3, 2011, adjourned, and completed on November 9, 2011. The Court reserved decision and ordered the parties to submit post-trial memorandum to supplement closing arguments. This is the Court's decision after trial.

FACTS

On January 30, 2010 at approximately 1:15 a.m., Ryan Manuel ("Manuel") was driving on Limestone Road in New Castle County, Delaware. Manuel stopped at the stop light controlling the intersection of Limestone Road and Kirkwood highway. Manuel testified at trial that a dark grey or black Jeep Grand Cherokee ("Jeep") was stopped in front of him at the traffic light and another

vehicle was stopped next to the Jeep. Manuel testified that the Jeep's brake lights were on at this time. When the light turned green, the other vehicle pulled away, but the Jeep did not move. Manuel waited approximately 20 seconds and drove around the Jeep. Manuel testified that when he passed the Jeep he looked inside the vehicle and the driver appeared to be "asleep or nodding off," and that he did not observe any other occupants in the vehicle. Manuel continued driving on Limestone Road in the right lane at a speed of approximately 65 or 70 miles per hour ("mph"). Approximately 15 or 20 seconds later, Manuel looked in his rear view mirror and saw headlights approaching quickly behind him. He moved from the right to left lane of Limestone Road to avoid the vehicle and the vehicle passed. Manuel testified that this vehicle was the same Jeep he previously observed stopped at the intersection of Limestone Road and Kirkwood Highway.

Manuel then testified that he observed the vehicle approach the intersection of Limestone Road and Linden Hill Road. The light at that intersection had just turned green and a tractor trailer that was stopped at the light began moving forward. Manuel testified that the Jeep continued driving at the same rate of speed and struck the back of the tractor trailer. Manuel testified that the Jeep's brake lights did not turn on immediately prior to the accident, nor did the Jeep appear to take any evasive action to avoid impact. After the accident, Manuel pulled over to the side of Limestone Road to wait for emergency services to arrive. He did not approach the Jeep or observe the driver. Manuel observed another person approach the Jeep, talk to the driver, and held the driver's hand. Shortly thereafter, emergency services arrived and removed the driver from the vehicle.

Also on January 30, 2010 at approximately 1:15 a.m., Tyler Johnson ("Johnson") testified he was stopped at the traffic light for Limestone Road and Kirkwood Highway. Johnson was the driver of the vehicle that Manuel testified was stopped next to the Jeep. Johnson stated he could not see inside the Jeep. Johnson testified that he pulled away from the intersection when the light turned green. Then he looked in his rear view mirror and noticed that the Jeep had not moved. Moments

later, Johnson saw headlights approaching quickly in his rear view mirror. He saw Manuel move from the right to left lane to avoid the vehicle. Johnson identified this vehicle as a dark grey or black Jeep. Johnson then observed the Jeep crash into the back of the tractor trailer and did not see the Jeep's brake lights turn on. After the accident, Johnson called emergency services, but did not approach the Jeep. Johnson testified that he observed another person approach the Jeep, pry open the driver's side door, hold the driver's hand, and talk to the driver. However, Johnson did not observe the driver of the Jeep.

Candace Checchi ("Checchi") also testified that on January 30, 2010 at 1:15 a.m. she was driving on Linden Hill Road waiting to make a left hand turn onto Limestone Road. Checchi saw the Jeep go through the intersection and crash into the back of a tractor trailer. Checchi did not see the Jeep's brake lights. After the accident, Checchi turned onto Limestone Road, got out of her vehicle, and waited for emergency services. She did not approach the Jeep or observe the driver.

At 1:17 a.m. Corporal Bridget Harris ("Harris") was dispatched and responded to the scene of the accident. Harris testified that when she got to the scene the tractor trailer was in the right lane and the Jeep was wedged underneath it. The fire department was on location. The only person in the Jeep was the driver. Harris testified that she observed EMTs extract the driver from the Jeep, put him on a stretcher, and then place him in an ambulance.

Harris testified that she ran a DELJIS vehicle registration search based on the Jeep's license plate number¹ to determine the owner of the vehicle. Harris testified that DELJIS vehicle registration searches provide not only the name of the registered owner of each vehicle searched, but also the owner's picture. Harris' search revealed that the Jeep was registered to two individuals, and provided both of their pictures. One of these individuals was "Gregory J. Smith" ("Defendant").

¹ Delaware License Plate No. 53875.

After running the DELJIS search, Harris responded to Christiana Hospital to continue her investigation. The purpose of Harris' visit was to find and question the driver of the Jeep. At Christiana Hospital, Harris met with the person who was extracted from the Jeep. This individual was severely injured, but matched the picture of Defendant produced by her earlier DELJIS vehicle registration search. Further, the individual provided Harris with his drivers' license. The name on the drivers' license was Gregory J. Smith. The picture on the drivers' license matched the individual in the hospital and the DELJIS picture for Defendant.

Harris then asked the hospital staff to perform a blood draw on Defendant. Stephen Seiler ("Seiler") is a nurse employed at Christiana Hospital. At 3:51 a.m., Seiler performed the blood draw. Harris gave Siler a sealed blood kit to perform the draw. Seiler broke the seal on the kit, removed the contents, and performed the blood draw. Seiler then filled out the paperwork contained in the kit, placed the vial and paperwork inside the envelope, and resealed the envelope. Next, Seiler returned the kit to Harris. Harris brought the kit to Delaware State Police Troop 6 and placed it in the locked evidence refrigerator. The front of the blood kit envelope provides:

Kit No: Y-1773

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Complaint Number: 06-10-008029

Subject's Name: Gregory J. Smith

Type of Case: DUI – 10 – 10 Alcohol

Investigating Officer's Name: Cox (802)

Witness' Name: Harris (1107)²

Harris testified that Y-1773 is the correct kit number for the blood kit used in the blood draw performed at 3:51 a.m. on Defendant. Further, the Delaware State Police Chemical Test Report sheet filled out by Harris provides:

² State's Exhibit # 1.

Name of Subject: Gregory J. Smith
Date: 1. 30. 2010.
Time Taken: 0351
Type of Case: DUI
Kit Number: Y-1773
Exp. Date. Aug. 31, 2010
Type of Sample: Blood
Analysis: Alcohol
Witness: Harris (1107)
Police Agency or Troop: DSP Troop 6
Person Taking Sample: Stephen Seiler, RN (CER)
Complaint #: 06-10-008029
Investigating Officer: Cox (802)³

Harris was subject to rigorous cross examination concerning the accuracy of these documents. Harris admitted that in her police report she listed the kit number as “T-1773” rather than Y-1773. Harris testified that this was a typographical error.

Delaware State Police Lieutenant Matthew Cox (“Cox”) also responded to the scene of the accident. Cox has served as a Delaware State Police trooper for 22 years. Cox testified that when emergency medical services respond to the scene of a motor vehicle accident where a driver needs to be removed from the vehicle, they place a white sheet over any occupants that need to be extracted from the vehicle to protect said occupant(s). Cox testified that after the accident in this case the driver was extracted in this manner.⁴ Through Cox, the State introduced two photographs into evidence. The first shows the passenger side of the Jeep without a white sheet placed over it.⁵ The second shows what Cox testified was a portion of the driver’s side seat of the Jeep. There is blood, a hat, and broken glass on the seat.⁶

³ State’s Exhibit # 2.

⁴ State’s Exhibits # 3, 4.

⁵ State’s Exhibit # 5.

⁶ State’s Exhibit # 6.

Cox also testified that he is responsible for transporting biological specimens from the evidence refrigerator at Delaware State Police Troop 6 to the Office of the Medical Examiner. On February 16, 2010, Cox transported blood kit Y-1773 to the Office of the Medical Examiner. Cox testified that this kit was still sealed at this time. Like Harris, Cox was subject to rigorous cross examination because in his police report he twice listed the kit number as “T-1773” rather than Y-1773. Cox testified that this was a typo that probably occurred because he used Harris’ report to refresh his recollection before preparing his own report. When Cox delivered blood kit Y-1773 to the Medical Examiner, he was given and signed an evidence receipt that provided:

Tuesday, February 16, 2010	Type of Case: DUI
Subject Gregory Smith	Lab No F 10-0089
Complaint No. 0610008029	Arresting Officer Harris
Police Dept. DSP 6	Time 1:06P
Received Date 2/16/2010	

...

Container: One Sealed Envelope
Contents: Blood⁷

Cox testified that a kit numbered T-1773 was never used during the investigation of the incident at issue, and he never brought a kit to the Medical Examiner’s office numbered T-1773.

Heather Wert (“Wert”) is employed at the toxicology unit of the Office of the Medical Examiner. She has been employed in this capacity for approximately two years. Her job duties include logging DUI case specimens and routine testing of biological specimens. Wert testified that when biological specimens are received by the Office of Medical Examiner they are reviewed by an evidence specialist, logged into the Office of Medical Examiner computer system, placed in a “secure specimen” office wide evidence refrigerator, and then are given to the toxicology unit, given a separate toxicology unit number, and are placed in the toxicology unit’s secured specimen evidence refrigerator. Wert testified that Sarah Meyer (“Meyer”) logged kit number Y-1773 into the office

⁷ State’s Exhibit # 7.

wide computer system and placed it in the secure specimen refrigerator. Meyer is an evidence specialist employed by the Office of Medical Examiner. Meyer logged the kit into the system at 1:15 p.m. on February 16, 2010.⁸

On February 17, 2010 at 9:45 a.m., Meyer removed the sealed blood kit numbered Y-1773 from the secure specimen storage and brought it to the toxicology unit of the Office of Medical Examiner.⁹ At 10:20 a.m., Wert logged the kit into the toxicology unit and gave the kit an additional identification number, “F10-089.”¹⁰ Wert also confirmed that the kit was properly sealed, that the specimen tube remained intact, and filled out a form including this information.¹¹ At this time, Wert noted that there was no name on the blood vial.¹² Wert placed a sticker on the tube to identify the tube as “F10-089,” and assigned the tube for testing. At 10:30 a.m., Wert placed the kit into the toxicology unit’s own secured storage refrigerator. The forms documenting each of these steps also listed the “complaint number” for blood kit Y-1773 as “0610008029.”¹³

Christine Griffin (“Griffin”) is employed by the Office of Medical Examiner in the toxicology unit. Griffin has been employed in this capacity since 2008. When she began her employment, she was trained in testing samples for ethanol content, observed others performing these tests, and completed several proficiency examinations. Since 2008, Griffin has performed blood ethanol alcohol concentration analyses on over 4000 samples and has attended numerous continuing education seminars. Griffin testified that the Office of Medical Examiner uses a gas chromatograph with flame ionization detector machine to perform blood alcohol content analyses.

⁸ State’s Exhibit # 8.

⁹ State’s Exhibit # 8.

¹⁰ State’s Exhibit # 8.

¹¹ State’s Exhibit # 9 .

¹² State’s Exhibit # 9.

¹³ State’s Exhibit # 8, 9.

Griffin testified that this machine is generally accepted in the scientific community.¹⁴ On February 17, 2010, Griffin tested sample F10-089. The blood alcohol content of the blood in this vial was 0.220%.¹⁵

DISCUSSION

21 *Del. C.* § 4177(a)(4) provides that: “[n]o person shall drive a vehicle . . . when the person’s alcohol concentration is, within 4 hours after the time of driving .08 or more.” Thus, in order to find a defendant guilty under this statute the State is required to prove beyond a reasonable doubt¹⁶ that, first, the defendant drove a motor vehicle at or about the time and place charged; and second, that the defendant’s blood alcohol concentration was .08% or more within four hours after the time of driving.¹⁷ Further, 21 *Del. C.* § 4176(b) provides that: “[w]hoever operates a vehicle and who fails to give full time and attention to the operation of the vehicle, or whoever fails to maintain a proper lookout while operating the vehicle, shall be guilty of inattentive driving.”

a. The State Established Beyond a Reasonable Doubt that Defendant Drove at the Time and Place Charged.

Proof beyond a reasonable doubt may be established solely by circumstantial evidence.¹⁸ In order for the State to meet its burden to prove each and every element of the charged offense beyond a reasonable doubt, the facts established by such evidence must be such as to exclude any other reasonable conclusion.¹⁹ “Reasonable doubt does not mean a vague, speculative doubt, nor a mere possible doubt, but a substantial doubt; it is such a doubt as intelligent, reasonable and

¹⁴ The Court approved Griffin as an expert in Forensic Chemistry and Blood Alcohol Analysis.

¹⁵ State’s Exhibit # 10, 11, 12, 13.

¹⁶ 11 *Del. C.* § 301; *State v. Matushefske*, 59 Del. 163 (Del. Super. 1965).

¹⁷ 21 *Del. C.* 4177(a)(4).

¹⁸ *Matushefske*, 59 Del. at 171-72.

¹⁹ *Id.* at 171.

impartial men may honestly entertain after a careful and conscientious consideration of the evidence in the case.”²⁰

Accordingly, the element of driving, required by 21 *Del. C.* § 4177(a)(1), may be proven solely by circumstantial evidence.²¹ For example, in *Commonwealth v. Johnson*, police responded to the scene of a two car accident.²² The defendant was outside of one of the vehicles, leaning on the driver’s side door.²³ The occupants of the other vehicle were inside the vehicle.²⁴ The responding officer testified that she did not see anyone else within roughly three blocks of the accident.²⁵ The defendant had difficulty locating his license and registration.²⁶ However, review of the registration indicated that the vehicle was registered to the defendant.²⁷ The court noted that while there was no direct evidence that the defendant was driving, circumstantial evidence was sufficient to establish that the defendant was the driver because proof beyond a reasonable doubt does not require that the State disprove each unsupported possible explanation of the facts argued by the defendant.²⁸

In this case, Harris was the only witness who provided an in court identification of Defendant as the driver of the Jeep. Harris’ testified that she observed an individual being removed from the Jeep by emergency services and that this individual was then placed in an ambulance. Harris recorded the license plate number for the Jeep and ran a DELJIS vehicle registration search. This search revealed that the vehicle had two registered owners and provided their pictures. Harris then responded to Christiana Hospital to conduct further investigation into the cause of the crash. She met Defendant and recognized him as Gregory J. Smith, one of the registered owners from her

²⁰ *Id.* at 172.

²¹ *Cox v. State*, 281 A.2d 606, 608 (Del. 1971).

²² *Commonwealth v. Johnson*, 833 A.2d 260 (Pa. Super. Ct. 2003).

²³ *Id.* at 261.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 262-66.

prior DELJIS search. She obtained Defendant's drivers license. The drivers' license picture and information matched the information obtained from her prior DELJIS search. Manuel testified that he only observed one occupant in the Jeep, the driver. Moreover, Cox testified that when emergency services forcibly extract someone from a vehicle after an accident, they place a white sheet over the person to protect them from injuries potentially caused by debris. Cox testified that only one white sheet was used in responding to this accident and that it was used on the driver's side door of the vehicle. A white sheet was not left on any other door of the Jeep.

While these facts perhaps create some vague or speculative doubt as to whether Defendant was the driver of the vehicle, the State has met its burden to establish that Defendant was driving beyond a reasonable doubt. Harris, Manuel, and Cox's testimony each indicates that there was only one driver of the vehicle. Further, when Harris responded to Christiana Hospital to conduct further investigation of the accident, she found Defendant. It would have been helpful if the State had asked Harris on direct examination how she was able to locate Defendant at Christiana Hospital. However, the only reasonable explanation is that Harris responded to the hospital, told Hospital staff that she was investigating an accident that had occurred at 1:15 a.m. at the intersection of Limestone Road and Linden Hill Road, and that the hospital staff directed her to Defendant because only one injured person was forcibly extracted from the Jeep by emergency services and transported via ambulance to the hospital. Upon encountering Defendant, this information was confirmed when Defendant and the driver's license he provided matched the picture and information generated by Harris' DELJIS vehicle registration search performed based on the license plate number of the Jeep. Therefore, the State has established that Defendant was the driver of the Jeep beyond a reasonable doubt.

b. The State Established Beyond a Reasonable Doubt that Defendant was Under the Influence of Alcohol when he Drove the Motor Vehicle.

In this case, the blood kit identified as Y-1773 was tested by the Office of Medical Examiner and was found to have a blood alcohol content of 0.220%. Defendant does not challenge the accuracy of this test, but rather contends that the State has not met its burden to establish the proper chain of custody for the blood sample. More specifically, Defendant argues that the State has failed to meet its burden because both Cox and Harris admitted that they referred to two different blood kit numbers in their police reports, Y-1773 and T-1773.

“To establish chain of custody, the ‘State [is] required to eliminate possibilities of misidentification of adulteration, not absolutely, but as a matter of reasonable probability.’”²⁹ This is a lenient burden.³⁰ The determination of whether the State has established chain of custody is a matter within the Court’s discretion.³¹

For example, in *Tilghman v. State*, the Court held that the State met its burden to establish chain of custody despite a two-day gap between when cocaine and marijuana seized at the time of arrest were placed in evidence storage and when they were actually logged into the evidence record.³² In that case, the arresting officer testified at trial that the evidence was the same evidence that he placed in the evidence locker, and the forensic chemist testified that there was no sign of tampering.³³ Accordingly, the Court held that there was no evidence to suggest that the evidence was either misidentified or adulterated and that the State established chain of custody to a reasonable probability.³⁴ Similarly, in *State v. McDowell*, the court found that the State established chain of custody despite the fact that the police officer who witnessed the blood draw testified that the blood

²⁹ *Tilghman v. State*, 734 A.2d 160, *1 (Del. 1999) (TABLE) (citing *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987)).

³⁰ *Id.*

³¹ *Id.* at *2.

³² *Id.* at *1.

³³ *Id.* at *2.

³⁴ *Id.*

draw occurred at 5:12 a.m. while the sealed blood kit provided that it was taken at 5:18 a.m.³⁵ Specifically, the Court noted that “a six-minute difference does not of itself indicate tampering or misidentification . . . [t]he burden on the State to prove proper handling of evidence is a lenient one, and the State only has to show to a reasonable probability that the evidence was not tampered with.”³⁶

In this case, the State has met its burden to establish chain of custody. Harris testified that her police report referred to blood kits Y-1773 and T-1773 because she made a typographical error. Cox testified that he probably made the same typographical error because he used Harris’ report when he prepared his own report. Both testified that a kit numbered T-1773 has never been associated with this case. All of the Delaware State Police and Office of Medical Examiner chain of custody documents at trial agree with respect to the complaint number, officers involved, type of case, and relevant times. Besides the police reports, there is no mention in any of these documents of a blood kit numbered T-1773. Moreover, there was no evidence introduced indicating that the evidence was mishandled or tampered with in any way.

Therefore, the State has met its burden to establish chain of custody and as such, the Court accepts the blood test of 0.220%. Manuel, Johnson, and Checchi each testified that they observed the Jeep driving on January 30, 2010 at 1:15 a.m. The blood draw was performed at 3:51 a.m., within the four hour window required by 21 *Del. C.* § 4177(a)(4).³⁷ Accordingly, the State has met its burden to prove beyond a reasonable doubt that the Defendant was under the influence of alcohol when he drove his motor vehicle.

³⁵ *State v. McDowell*, 2000 WL 33114375 (Del. Super. Dec. 11, 2000).

³⁶ *Id.* at *3.

³⁷ State’s Exhibit # 1, 2.

c. The State Established Beyond a Reasonable Doubt that Defendant Drove in an Inattentive Manner in Violation of 21 Del. C. § 4176(b).

Manuel and Johnson both testified that on January 31, 2010, they saw the Jeep driving at a fast speed on Limestone Road, and he accelerated past them. Finally, Manuel, Johnson, and Checchi all testified that Defendant did not brake or take any evasive action to avoid hitting the tractor trailer. Therefore, the State has met its burden to establish that Defendant failed to give full time and attention to the operation of his vehicle or to maintain a proper lookout.

CONCLUSION

Based on the above conclusions, I find that the State has proved both charges beyond a reasonable doubt.³⁸ *Therefore*, the Defendant is found GUILTY of Driving Under the Influence of Alcohol and Inattentive Driving.

The Clerk will schedule the matter for sentencing.

IT IS SO ORDERED

Alex J. Smalls
Chief Judge

cc: Clerk, DUI Case Processing

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³⁸ 11 Del. C. § 301.