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

STATE OF DELAWARE,	)	
	)	
v.	)	Cr. ID No. 1002004182
	)	
JULIO A. HERNANDEZ,	)	
	)	
Defendant.	)	

Submitted: March 30, 2011
Decided: May 2, 2011

MEMORANDUM OPINION AND ORDER

Kevin Trey, Esquire, Deputy Attorney General, State of Delaware Department of Justice, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

Leo J. Ramunno, Esquire, Red Clay Center at Little Falls, 2961 Centerville Road, Suite 302, Wilmington, Delaware 19808. Attorney for the Defendant Julio A. Hernandez.

DAVIS, J.

Defendant Julio Hernandez was arrested and charged on February 10, 2010 with Driving Under the Influence of Alcohol ("DUI") in violation of 21 *Del. C.* § 4177 (a) (1). A bench trial was held in the Court of Common Pleas on March 30, 2011 and the Court reserved decision. This is the Court's Memorandum Opinion and Order following trial. For the reasons set forth below, Mr. Hernandez is Guilty of the offense of DUI.

I. BACKGROUND

A. Procedural Background

On the evening of February 10, 2010, Mr. Hernandez and an unidentified acquaintance were drinking beers while seated in a vehicle located in a parking lot located adjacent to Philadelphia Pike in Claymont Delaware. At that time, the Governor of Delaware had declared a State of Emergency because of a significant snow storm in the region. Only essential personnel were permitted to travel on the roadways during the State of Emergency. Mr. Hernandez was observed by a Delaware State Police Trooper in the driver's seat of a vehicle, located in a parking lot, with its engine running. The Trooper, Corporal Hogate, made contact with Mr. Hernandez to offer assistance. During this encounter, Corporal Hogate became suspicious that Mr. Hernandez was under the influence of alcohol. Corporal Hogate subsequently arrested and charged Mr. Hernandez with DUI.

A trial was held in the Court of Common Pleas on March 30, 2011. The State offered the testimony of one witness, Corporal Hogate, in its case against Mr. Hernandez. Mr. Hernandez did not present any witnesses in his case. Neither the State nor the Mr. Hernandez offered any documentary evidence. The Court reserved decision on the issues of whether: (i) certain statements made by Mr. Hernandez and offered by the State at trial are admissible on the ultimate issue of guilt; (ii) the information filed by the State was sufficient to support a verdict against Mr. Hernandez; and (iii) the State has met its burden of proof beyond a reasonable doubt that Mr. Hernandez was in violation of 21 *Del. C.* § 4177 (a) (1).

B. Factual Background

The Court's understanding of the facts of this case is derived solely from the testimony of Corporal Hogate. Corporal Hogate was on patrol in a Delaware Department of Transportation

pick-up truck on Philadelphia Pike during the State of Emergency on February 10, 2011. While on patrol at approximately 12:44 a.m., he noticed an occupied sport utility vehicle with its lights on and engine running in a parking lot behind a closed business adjacent to Philadelphia Pike. Corporal Hogate then approached the vehicle to inquire whether the occupants were in need of assistance. The driver of the vehicle, Mr. Hernandez, responded that he did not need assistance and that he was having an argument with the passenger. Corporal Hogate then asked Mr. Hernandez what the argument was about. Instead of responding, Mr. Hernandez stared at Corporal Hogate and then rolled up the window.

Due to the attendant weather emergency and Mr. Hernandez's conduct, Corporal Hogate exited his vehicle and approached the driver side of Mr. Hernandez's vehicle at which time Mr. Hernandez rolled the window down again. Corporal Hogate noted that several beer cans were discarded in the snow outside of the driver's side of the vehicle. Corporal Hogate also detected a strong smell of alcohol coming from Mr. Hernandez and noticed that his eyes were bloodshot.

Corporal Hogate ordered Mr. Hernandez to place the vehicle in park; however, Mr. Hernandez did not comply. Because Mr. Hernandez did not comply, Corporal Hogate reached into the open window to put the vehicle in park. While Corporal Hogate was placing the vehicle in park, the passenger of the vehicle grabbed Corporal Hogate's arm. Corporal Hogate summoned additional assistance and immediately placed the passenger in handcuffs. During trial, Corporal Hogate candidly testified that he does not recall the exact chronological sequence of the events which followed.

At some point while Mr. Hernandez was still at the scene of the vehicle stop, Corporal Hogate attempted to perform the alphabet and counting field sobriety tests on the Defendant. Corporal Hogate explained the alphabet test first, confirmed that Mr. Hernandez understood the

test, and then instructed him to begin the test. According to Corporal Hogate, Mr. Hernandez was instructed to begin reciting the alphabet at the letter "e" and stop at the letter "r." Mr. Hernandez began the test by stating the letter "e" and then stated to Corporal Hogate that he was done with that test. Moreover, Mr. Hernandez informed Corporal Hogate that he would not perform the counting test but did not specify the reason for his refusal to perform the test.

Additional field sobriety tests would have been difficult to perform at the scene due to the accumulation of snow. Therefore, Corporal Hogate transported Mr. Hernandez to Delaware State Police Troop One (the "Troop") for further investigation of DUI. Corporal Hogate placed Mr. Hernandez in handcuffs for officer safety during the ride back to the Troop because the pick-up truck did not have a barrier between the back and front seat. Corporal Hogate recalls informing Mr. Hernandez of his *Miranda*[1] rights sometime while transporting Mr. Hernandez back to the Troop; however, Corporal Hogate does not recall whether Mr. Hernandez indicated that he understood or waived his rights.

After arriving at the Troop, Corporal Hogate attempted to perform National Highway Traffic Safety Administration ("NHTSA") field sobriety tests. The first test administered was the Horizontal Gaze and Nystagmus ("HGN") test. During the HGN test, Corporal Hogate observed six out of six clues indicating impairment. Mr. Hernandez declined to perform the Walk and Turn and One Leg Stand field tests. Mr. Hernandez did submit to a portable breath test which produced a result indicating impairment.[2] At some point during this part of the encounter, Corporal Hogate asked Mr. Hernandez what color his eyes were, to which Mr. Hernandez responded "shit brown."

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).
[2] For purposes of determining whether Mr. Hernandez is guilty of DUI, the Court did not consider the result of the portable breath test. *See Price v. Voshell*, 1991 WL 89866 (Del. Super. Ct. May 10, 1991)(holding that test results from a portable breath test device should not be admitted in evidence on the ultimate issue of guilt).

Corporal Hogate observed Mr. Hernandez for the twenty minute observation period prior to the administration of an Intoxilyzer breath test. After the observation period, Corporal Hogate requested that the Defendant submit to the Intoxilyzer test. Mr. Hernandez declined to take the test. Corporal Hogate read Mr. Hernandez the implied consent card to inform him of the license revocation consequences if he did not submit to the Intoxilyzer test. Mr. Hernandez indicated that he did not understand the implied consent form and he stated that he would not take the test because he was not driving. At some point during their time at the Troop, Mr. Hernandez informed Corporal Hogate that he was out on the roadways because he had a four wheel drive vehicle and wanted to go for a ride in the snow. Corporal Hogate also testified that Mr. Hernandez admitted consuming a few beers at some point in time prior to his being formally charged with DUI.

Corporal Hogate testified that Mr. Hernandez was one of the most difficult DUI defendants he had ever encountered because of his attitude and demeanor. Mr. Hernandez was described as difficult because he was "combative, insulting and cocky." Corporal Hogate specified that Mr. Hernandez was never physically combative but he was generally uncooperative and used vulgar language.

On cross examination, Defense Counsel elicited testimony to emphasize that the vehicle was observed at a location in a private parking lot, and no driving was observed on Philadelphia Pike prior to the arrest. Corporal Hogate also admitted that he does not remember many specific details from the arrest of Mr. Hernandez. Those specific details include: who removed Mr. Hernandez from his vehicle, how many cans of beer were outside of the vehicle, what time Mr. Hernandez was transported to the Troop, when the handcuffs were removed from Mr. Hernandez, whether statements made by Mr. Hernandez occurred before or after *Miranda* rights

were read, and whether Mr. Hernandez indicated that he understood and waived his *Miranda* rights.

Mr. Hernandez's Counsel objected to the admission of any statements made by Mr. Hernandez after he was placed in handcuffs at the scene of the vehicle stop. These statements include Mr. Hernandez's response that his eyes were "shit brown," his admission to having consumed alcohol prior to the arrest, and his statement that he was out for a ride in the snow because he had a four wheel drive vehicle. During closing arguments, Defense Counsel argued that the information did not provide sufficient details to sustain a conviction against the Defendant and that the State did not prove that Mr. Hernandez was guilty of DUI beyond a reasonable doubt.

II. ANALYSIS

In order for a defendant to be found guilty of DUI, the State must prove the following two elements beyond a reasonable doubt: (a) that the defendant drove a motor vehicle at or about the time and place charged; and (b) that the defendant was under the influence of alcohol while he drove the motor vehicle.[3] The State is required to prove each element of the charge beyond a reasonable doubt.[4]

During trial, it became clear that the Court needed to determine three issues before rendering its verdict. Those issues included whether: (i) the charging document, or the information, was sufficient to support a conviction based on the facts of this case, (ii) any statements made by Mr. Hernandez after the initial vehicle stop should be suppressed, and (iii) the State provided enough evidence to find beyond a reasonable doubt that Mr. Hernandez was guilty of DUI.

[3] *Lewis v. State*, 626 A.2d 1350 (Del. 1993).
[4] 11 *Del. C.* § 301.

A. Sufficiency of the Information

Mr. Hernandez's Counsel argued during closing that the information filed by the State was insufficient to sustain a conviction in this case. Specifically, Mr. Hernandez claims that the information alleges that he drove a vehicle on Philadelphia Pike, Claymont, Delaware while under the influence of drugs or alcohol. The facts presented by the State at trial show that the Defendant was charged with DUI after being found in a stationary vehicle located in a parking lot adjacent to Philadelphia Pike. Mr. Hernandez argues that he was neither driving nor on Philadelphia Pike when he came in contact with Corporal Hogate. The State argued that the information was sufficient to put the Defendant on notice of the charges against him. Neither the State nor the Defendant offered any case law in support of their argument.

A charging document, or information, is sufficient if it alleges adequate facts concerning the commission of the crime charged to put the accused on full notice of what he is charged with, and of what he will be called upon to defend.[5] An information must contain a plain, concise, and definite written statement of the essential facts constituting the offense charged.[6] The plain, concise, and definite statement of facts is designed to fulfill two purposes: (i) to sufficiently acquaint the defendant with the offense charged to prepare a defense; and (ii) to bar effectively subsequent prosecutions against the defendant for the same offense.[7]

The information filed in this case was sufficient to put Mr. Hernandez on notice of the crime in which he was accused of violating. The information contained a citation to the portion of the Delaware Code in which Mr. Hernandez was accused of violating, the date of the alleged offense, and the location of the offense. Mr. Hernandez argues that the information is insufficient because he was not observed "driving" and the vehicle was not on Philadelphia Pike.

[5] *Holland v. State*, 56 Del. (7 Storey) 551 (Del. 1963).
[6] Ct. Com. Pl. Crim. R. 7(c).
[7] *State v. Di Maio*, 185 A.2d 269 (Del. Super. 1962).

This argument must fail based on case law and Court Rules addressing the necessary contents of a charging document. The information filed by the State against Mr. Hernandez accomplishes the purposes that it was designed to fulfill. Mr. Hernandez was on notice of the offense charged and the information provided sufficient facts to allow him to prepare a defense to the charge.

B. Applicability of *Miranda* to Mr. Hernandez's Statements

During trial the State sought to admit into evidence statements made by Mr. Hernandez during the DUI investigation. The statements were offered during the State's direct examination of Corporal Hogate. Defense Counsel objected to the introduction of the statements on the basis of the State's failure to lay the proper foundation as set forth in *Miranda*.[8] The Court noted on the record at trial that the Defendant had not filed a motion to suppress the statements. Defense Counsel argued that the statements at issue were unknown to Mr. Hernandez prior to trial as the statements were not included in the police report, which was produced during discovery. Because the Court was also functioning as the fact finder in this case, the Court permitted the statements to be introduced and it reserved decision on the admissibility of the statements.

Miranda warnings are required when a suspect faces custodial interrogation.[9] To determine whether a suspect is subject to custodial interrogation, the Court must apply an objective reasonable person standard considering the totality of the circumstances.[10] In this case, Mr. Hernandez objected to the introduction of any statement made after he was placed in handcuffs to be transported back to the troop. The statements at issue include: (i) Mr. Hernandez's description of the color of his eyes as "shit brown;" (ii) Mr. Hernandez's admission that he had consumed alcohol prior to his arrest; and (iii) Mr. Hernandez's statement that he had been out driving in the snow because he had a four wheel drive vehicle.

[8] *Miranda*, 384 U.S. 436.
[9] *Id.*
[10] *Marine v. State*, 607 A.2d 1185, 1193 (Del. 1992).

Statements obtained by the police during custodial interrogation are only admissible if the State can demonstrate procedural safeguards (the *Miranda* warnings) to secure the privilege against self incrimination.[11] Any statement made in response to custodial interrogation is only admissible after a recitation of the rights laid out in *Miranda* and a clear waiver of those rights.[12] The first step in analyzing the objection to the proffered statements is to determine at what point during the investigation Corporal Hogate placed Mr. Hernandez into custody.

The concept of custody has been well defined by prior cases. "The ultimate test is simply whether there was restraint on freedom of movement of the degree associated with formal arrest."[13] The concept of custody has been extended to locations beyond the police station and can be said to apply in situations where the defendant, subject to questioning, "is under arrest and not free to leave."[14] However, a defendant is not in custody during a temporary detention for an ordinary traffic stop.[15] The United States Supreme Court does not consider detentions for routine traffic stops custodial in nature because the detention is temporary and brief, the stop is performed in a public place, the confrontation typically involves only one or two officers, and the stop is similar to the detention in a "*Terry* stop."[16] There is no bright line test used to determine the point in which a defendant is considered to be in custody.[17] The determination of whether a detention amounts to custody is a decision for the Court based on the totality of the circumstances.[18]

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[11] *Bradley v. State*, 559 A.2d 1234, 1244 (Del. 1989).
[12] *Marine v. State*, 607 A.2d 1185, 1192 (Del. 1992).
[13] *Id*. (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).
[14] *Id*. (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)).
[15] *Fuentes v. State*, 2002 WL 32071656 at *2 (Del. Super. Ct. Dec. 30, 2002) (citing *State v. Bonner*, 1995 WL 562162 (Del. Super. Ct. Aug. 30, 1995)).
[16] *State v. Bonner*, 1995 WL 562162 at *2 (Del. Super. Ct. Aug. 30, 1995) (citing *Berkemer v. McCarty*, 468 U.S. 420 (1984)); *See Terry v. Ohio*, 392 U.S. 1 (1968).
[17] *Bonner*, 1995 WL 562162 at *2.
[18] *Id.*

The instant case is factually distinguishable from prior Delaware cases involving ordinary traffic stops where courts have held that *Miranda* warnings are not required.[19] Specifically, in *State v. Bonner*, *Miranda* warnings were not required where a defendant was stopped for a motor vehicle violation and moved to the rear of a police vehicle for police questioning at the scene of the motor vehicle stop.[20] During the police questioning in *Bonner*, the investigating officer acquired information that led the officer to believe the defendant was in possession of illegal drugs. A subsequent search of the vehicle revealed illegal drugs and the investigating officer immediately informed the defendant of his *Miranda* rights prior to any further questioning.[21] Similarly, in *State v. Fuentes*, statements made to an investigating officer at the scene of a motor vehicle accident were admissible despite the lack of *Miranda* warnings. The court held that while the defendant was not free to go until the investigation had concluded, the defendant was not subject to the type of accusation or custodial interrogation contemplated by *Miranda*.[22]

In both *Bonner* and *Fuentes*, the defendants were temporarily detained during investigations into motor vehicle violations. At the time the statements were made in each of those cases, the defendant would have been free to go upon conclusion of the investigation and neither defendant would have been transported to the police station for further questioning. In the present case, Mr. Hernandez was placed in handcuffs, moved to Corporal Hogate's vehicle, and transported to the Troop for further investigation.

Corporal Hogate testified that he did not believe Mr. Hogate was technically under arrest until he was issued a citation for DUI after the investigation had concluded. However, an officer's subjective view is not determinative for the purpose of deciding the point in which a

[19] *See Bonner*, 1995 WL 562162; *Fuentes*, 2002 WL 32071656.
[20] *Bonner*, 1995 WL 562162 (the defendant was not handcuffed when he was removed from his vehicle, which contained three other passengers, and placed in a patrol car for officer safety).
[21] *Id*.
[22] *Fuentes*, 2002 WL 32071656.

defendant is in custody.[23] For the purposes of applying *Miranda* here, the Court finds that Mr. Hernandez was in custody once he was placed in handcuffs. When Mr. Hernandez was placed in handcuffs he was no longer free to go. Thus, the next step in the analysis to resolve the admissibility of the statements involves a determination of whether the Defendant was subject to interrogation at the time the statements were made.

Statements made by a suspect while in custody are not necessarily inadmissible in the absence of *Miranda* warnings. The warnings are only required for situations where a suspect is subject to police questioning. The definition of police questioning accepted by the Delaware Supreme Court is "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."[24] The Court must analyze each of the three statements at issue to determine whether Mr. Hernandez was subject to police questioning.

The first statement regarding the color of Mr. Hernandez's eyes was not the result of police action that was likely to produce an incriminating response. In addition, the State does not rely on the content of that statement (or that it was an admission of guilt) in its case against Mr. Hernandez. Rather, the State desires to use the statement as evidence of the uncooperative demeanor of Mr. Hernandez during the DUI investigation. This statement is not testimonial in nature and will be considered by the Court for the limited purpose of evidence of the demeanor of Mr. Hernandez.

The second and third statements were elicited at the Troop in response to Corporal Hogate's questions in a manner likely to produce an incriminating response. Because Mr.

[23] *Bonner*, 1995 WL 562162 at *2 (quoting *Stansbury v. California*, 511 U.S. 318, 323 (1994)).
[24] *Tolson v. State*, 900 A.2d 639 (Del. 2006) (quoting *Upshur v. State*, 844 A.2d 991 (Del. 2004) (TABLE)).

Hernandez was in custody and the statements were the product of police questioning, the Court must next determine whether there was a valid waiver of Mr. Hernandez's *Miranda* rights.

A suspect may waive his *Miranda* rights "provided the waiver is made voluntarily, knowingly and intelligently."[25] The waiver must be made voluntarily and the suspect must have a full awareness of the right being abandoned and the consequences of abandoning it.[26] The State carries the burden of proving by a preponderance of the evidence that a defendant has made a knowing and intelligent waiver.[27]

The State has not proffered any evidence that Mr. Hernandez made a knowing and intelligent waiver. Therefore, the State has failed to meet its burden to prove that Mr. Hernandez waived his Fifth Amendment right against self-incrimination. The second and third statements – Mr. Hernandez's admission that he had consumed alcohol and that he was out driving in the snow because he had a four wheel drive vehicle – are not admissible and will not be considered by the Court in reaching its decision of whether the Defendant is guilty of DUI.

C. The State Carried its Burden to Prove that Mr. Hernandez is Guilty of DUI

The State charged Mr. Hernandez with driving a vehicle while under the influence of alcohol in violation of 21 *Del. C.* §4177 (a) (1). Before the Court can find a defendant guilty violating 21 *Del. C.* § 4177, the State is required to prove 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 second, that the defendant was under the influence of alcohol while he drove the motor vehicle.[28]

[25] *Marine*, 607 A.2d at 1195 (quoting *Colorado v. Spring*, 479 U.S. 564, 573 (1987)).
[26] *Bennett v. State*, 992 A.2d 1236 (Del. 2010) (TABLE) (citing *Moran v. Burbine*, 475 U.S. 412 (1986)).
[27] *Marine*, 607 A.2d at 1195.
[28] *Lewis*, 626 A.2d at 1355.

While Mr. Hernandez was not observed when the vehicle was in motion, his Counsel did not argue that the element of driving was not supported by the evidence. The term drive encompasses driving, operating, or having actual physical control of a vehicle.[29] The evidence adduced at trial clearly proves that Mr. Hernandez was in the driver's seat of his vehicle while the engine was running. These facts are sufficient to satisfy the first element that Mr. Hernandez drove a motor vehicle at or about the time and place charged. The issue in dispute is whether the State proved, beyond a reasonable doubt, that the defendant was under the influence of alcohol at the time while he drove the motor vehicle.

The State may rely on evidence other than the results of a chemical test to prove that the defendant was under the influence of alcohol.[30] It is not necessary that the driver be "drunk" or "intoxicated."[31] "Nor is it required that impaired ability to drive be demonstrated by particular acts of unsafe driving."[32] What the State must prove beyond a reasonable doubt is that the defendant's ability to drive safely was impaired by alcohol.[33] Specifically, the State must show that the defendant "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]

The State has met its burden of proving beyond a reasonable doubt that Mr. Hernandez's ability to operate a vehicle was impaired by alcohol at or about the time and place charged. The evidence considered by the Court in reaching its conclusion that Mr. Hernandez was under the influence includes: (i) discarded beer cans located on the ground outside the driver's side door of

[29] *Bodner v. State*, 752 A.2d 1169 (Del. 2000) (quoting 21 *Del. C.* § 4177 (c)(3)).
[30] *Bennefield v. State*, 2006 WL 258306 at *3 (Del. Super. Ct. Jan. 4, 2006).
[31] *Lewis*, 626 A.2d at 1355.
[32] *Id*.
[33] *Id*.
[34] *Id*.

the vehicle which Mr. Hernandez was operating; (ii) a strong odor of an alcoholic beverage on Mr. Hernandez's breath; (iii) Mr. Hernandez's bloodshot eyes; (iv) Mr. Hernandez's uncooperative demeanor during the DUI investigation; (v) Mr. Hernandez's performance on the HGN and alphabet tests; (vi) Mr. Hernandez's refusal to take other tests -- the counting, walk and turn, one leg stand and Intoxilyzer tests; and (vii) the fact that Mr. Hernandez was out during a governmentally declared snow emergency at 12:44 a.m. In addition, the Court considered Mr. Hernandez's refusal to take certain of the tests as evidence of consciousness of guilt.[35]

Although the Court did not consider Mr. Hernandez's admission to having consumed alcohol, the Court is satisfied by other evidence in the record that he had consumed alcohol prior to his arrest. The other evidence in the record indicating consumption of alcohol includes discarded beer cans outside of the vehicle, the strong odor of alcohol detected on the Defendant's breath and bloodshot eyes.

During closing arguments, Mr. Hernandez's Counsel argued that the State did not produce enough evidence to satisfy its burden because it only offered evidence of the results of a few field tests and did not produce any evidence that the Defendant had a difficult time walking, producing his identification, or driving.

The Court is not persuaded by this argument. The Court is satisfied that the evidence actually produced by the State during trial proves beyond a reasonable doubt that Mr. Hernandez consumed a sufficient amount of alcohol to cause him 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. The evidence in the record shows that Mr. Hernandez (i) was consuming beer at, or just before, Corporal Hogate first established contact with him, (ii) did not satisfactorily perform any of the three tests administered, (iii) refused to take additional tests and

[35] *See Church v. State*, 11 A.3d 226 (Del. 2010) (TABLE).

(iv) had a physical condition and demeanor that indicated that he was intoxicated. Mr. Hernandez's performance on the field tests and his refusal to take other tests are strong evidence that his ability to drive safely was impaired by alcohol. Moreover, the fact that Mr. Hernandez was out at 12:44 a.m. during a snow emergency further demonstrates that Mr. Hernandez lacked the type of judgment and control that a reasonable man in full possession of his faculties would exercise in similar circumstances. Therefore, the Court finds that the Mr. Hernandez was under the influence of alcohol while he drove the motor vehicle.

III. CONCLUSION

In order for the Court to find the Defendant guilty of DUI, the State must prove beyond a reasonable doubt that Mr. Hernandez drove a motor vehicle at or about the time and place charged and that Mr. Hernandez was under the influence of alcohol while he drove the motor vehicle. For the reasons stated in this opinion, the State has met its burden on each and every element of the charged offense. Therefore, the Court finds Julio A. Hernandez **GUILTY** of DUI.

The Clerk of the Court shall set this matter for sentencing.

IT IS SO ORDERED.

/s/ Eric M. Davis
Eric M. Davis
Judge