

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

STATE OF DELAWARE)
)
 v.) Cr.A. No. MN01030427, 28, 29,
) 30, and 31
 CARLOS RODRIGUEZ,)
) Case No: 0102007324
 Defendant.)

Submitted: November 23, 2001
Decided: February 7, 2002

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DECISION AFTER TRIAL

The defendant was stopped by Officer Michael Gifford of the Wilmington Police on February 8, 2001 in the vicinity of Franklin and Pleasant Streets, Wilmington, Delaware. Officer Gifford testified they were conducting a drug [interdiction] operation when they observed the occupants of a beige Nissan Maxima automobile appear to have a hand-to-hand drug transaction with a pedestrian. They attempted to stop the Nissan automobile and the pedestrian. The pedestrian ran and the Nissan attempted to speed away. They were eventually able

to stop the Nissan where defendant Carlos Rodriguez was the driver. Carlos Rodriguez was unable to provide a valid registration, a valid insurance card, or a valid driver's license. A computerized check with Division of Motor Vehicles revealed the tag displayed on the Nissan was actually registered to a Toyota Camry. A check of the defendant's license indicated that he had been previously declared an Habitual Offender in the Court of Common Pleas for the State of Delaware. Rodriguez was issued citations for Driving After Judgment Prohibited, in violation of 21 Del. C. § 2810; Driving While Suspended or Revoked, in violation of 21 Del. C. § 2756(a); Operating an Unregistered Vehicle, in violation of 21 Del. C. § 2101. Fictitious or Cancelled Registration Card, Plate or Tag, in violation of Del. C. § 2115(c) and Failure to Have Insurance, in violation of 21 Del. C. § 2118(p).

At trial on October 17, 2001, the State relies upon three documents in its case-in-chief to support the charges. A motor vehicle printout which indicated the Delaware tags for the vehicle were temporarily surrendered and the vehicle was registered in Pennsylvania. (State Exhibit #1) The second document was a request by defendant for rescheduling of the habitual offender hearing which list his address as 6 East Edinburgh Drive, New Castle, Delaware 19720. Finally, the State relies upon a certified copy of the Court's order dated July 26, 2000 declaring defendant a habitual. (State Exhibit #2). Defendant testified he did not receive notice of the habitual offender hearing and did not realize his license was suspended.

In an ancillary proceeding on October 8, 2001, defendant filed a motion to vacate the order declaring him a habitual alleging he did not receive adequate notice. That motion has not been resolved. In this proceeding, defendant relies upon the return envelope in the Court of Common Pleas' file which indicates that the defendant was not known and the letter was returned undelivered. Therefore, the defendant moves to vacate the habitual determination and for judgment of acquittal on the Driving After Judgment Prohibited Offense.

At the conclusion of the trial held October 17, 2001, the Court found facts which proved beyond a reasonable doubt the charges of operating an unregistered motor vehicle, Operating a Motor Vehicle with a Fictitious Registration Tag, and Operating A Motor Vehicle Without Insurance. On the charge of Driving a Motor Vehicle After Judgment Prohibited, in violation of Title 21 Del. C. § 2810, the Court reserved decision. The parties were given an opportunity to submit written arguments on the motion to vacate the habitual determination. This is the Court's decision following written submissions.

Defendant's primary argument is that the declaration of habitual offender determination should be vacated because he did not receive notice of hearing. Therefore, since he did not receive notice he was never given an opportunity to have his day before the Court. While defendant recognize that under the motor vehicle code notice may be effectuated by two means under 21 Del. C. § 2805. That is, notice may be accomplished either by personal delivery, 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 Division of Motor Vehicles. The notice by mail is complete upon the expiration of four (4) days after such deposit of such notice.

A review of the records indicate that as of December 19, 1999 the Division of Motor Vehicles records indicates the defendant's address was 6 E. Edinburgh Drive, Coventry, New Castle, Delaware 19720. Additionally, when the defendant requested a continuance in the pending habitual offender proceeding he listed the same address. However, he now argues that since the notice was returned to the Court with the notation "Return to Sender: Attempted Not Known" there was not proper notice. In advancing this argument defendant reasons that while the statute does not require actual notice, because the consequence of conviction there is substantial period of incarceration, such notice must meet a level of due process to withstand constitutional muster.

Relying on this argument defendant further reasons that while the statute is ostensibly civil, it imposes criminal sanctions and thus must meet standards of due process. But as the State correctly points out, habitual offender proceedings are civil in nature, State vs. Kamalski, Del. Super., 429 A.2d 1315 (1981), and there is no protected liberty interest in one's driving privileges, however, it must meet the requirements of procedural due process. State vs. Bergmann, Del. Super., 1994 WL 380988 (1994).

Procedural due process requires notice and an opportunity to be heard. Here, the defendant was given notice, and thereafter he requested a continuance, which was granted. A second notice was sent which was returned, but he was aware of the pending proceedings. Now after not following up on these proceedings and being arrested while driving a motor vehicle, he now claims defect in the process.

It appears from the record that proper notice was given to defendant of the petition to declare him a habitual under the provisions of 21 Del. C. § 2805. Further, the facts also indicate the defendant was aware the petition was pending, which is evident by his motion for a continuance. In that motion, it listed the address where the notice was mailed. There was compliance with the statute and thus proper notice. Accordingly, the motion to vacate the habitual offender declaration entered on July 26, 2000 is denied. The defendant is adjudged guilty of Driving After Judgment Prohibited. The clerk will schedule the matter for sentencing.

SO ORDERED this 7th day of February, 2002

Alex J. Smalls
Chief Judge