



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREY ZHURBIN,)

Defendant-Below,)
Appellant)

v.)

No. 681, 2013

STATE OF DELAWARE)

Plaintiff-Below,)
Appellee.)

APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW CASTLE
COUNTY

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DATE: June 25, 2014

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I. THE TRIAL COURT’S FAILURE TO ENTER A JUDGEMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT ON THE CHARGE OF LEAVING THE SCENE OF AN ACCIDENT WAS SO CLEARLY PREJUDICIAL TO ZHURBIN’S SUBSTANTIAL RIGHTS THAT IT JEOPARDIZED THE FAIRNESS AND INTEGRITY OF HIS TRIAL.

The language of both § 4101 and § 4201 is plain and clear. Therefore, this Court must presume that the statutes say what the Legislature meant and that the Legislature meant what the statutes say. *In re Visteon Corp.*, 612 F.3d 210, 220 (3d Cir. 2010) (*quoting Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). In other words, the Court must give meaning to every word in the statutes. However, the State’s argument that § 4201 should be read to apply not only to vehicles on public highways but also to those on private roadways would render the very specific language in § 4101 meaningless.

The State says that in 1988 the Legislature amended § 4201 as it did so as to broaden its application to vehicles on private roadways. The State then attempts to explain away the application of § 4101 by asserting that the Legislature missed the very clear language in § 4101 that dictates how Title 21 should be read. However, the Legislature is presumed to know the existence of other provisions of the law when it makes amendments. Section 4101 provided the Legislature with clear guidance as to how to amend § 4201 so that it applies to vehicles on private roadways. It should have either

“specifically referred” to a place different from highways in the section or delineated in § 4101 (a) that the section at issue “shall apply on highways and elsewhere.” *See* § 4101 (a) (1) and (2).

Section 4101 has been amended at least 9 times since the 1988 amendment the State discusses. Accordingly, that provision has been the center of the Legislature’s attention at least 9 times in the last 26 years. The decision not to amend § 4101 and/or § 4201 to take into account the highway limitation in 4101 reveals an intent to allow for the harmonious reading of the two statutes which is consistent with not applying § 4201 to vehicles on private roadways. “[A] failure to defer to the clearly expressed statutory language of Congress runs contrary to the bedrock principles of our democratic society.” *In re Visteon Corp.*, 612 F.3d 210, 220 (3d Cir. 2010). Here, the failure to defer to the plain language allows the State to pick and choose the additional motor vehicle provisions that apply to private roadways even though the Legislature has already specified which provision apply.

Finally, the State’s argument that the “highway” restriction in § 4101 does not apply to § 4201 because § 4201 does not involve the operation of vehicles lacks merit. The State asserts that § 4201 addresses a driver’s duties *after* he has operated the vehicle and not *while* he is operating the

vehicle. First, § 4201 does involve the operation of vehicles in that it dictates that the driver “immediately stop such vehicle” and that “[s]aid stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary.” Obviously, this involves the operation of a motor vehicle. Second, § 4201 applies to provisions “*relating to the operation of vehicles.*” Thus, § 4101 contemplates more than just actual operation. And, finally, § 4201 is contained within Part III of the motor vehicle code which is entitled “operation and equipment.”

Because the scene of the collision Zhurbin allegedly left was not on a public highway, his conviction of Leaving the Scene of an Accident must be vacated.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Zhurbin's convictions should be reversed.

\s\ Nicole M. Walker
Nicole M. Walker, Esquire

DATE: June 25, 2014