

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

STATE OF DELAWARE,	)	
	)	
v.	)	Case No. 1103004911
	)	
MIGUEL BURGOS,	)	
Defendant.	)	

Submitted: December 18, 2012
Decided: January 29, 2013

**On Defendant's Motion for Judgment of Acquittal
DENIED**

Daniel B. McBride, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, 7th Floor, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

Louis B. Ferrara, Esquire, Ferrara & Haley, 1716 Wawaset Street, Wilmington, Delaware, 19806. Attorney for Defendant.

ROCANELLI, J.

Defendant Miguel Burgos was charged by information with Driving Under the Influence of Alcohol in violation of 21 Del. C. § 4177(a).¹ The Court presided at a non-jury trial on November 19, 2012. First, the Court heard Defendant's motion to suppress, which was denied. After the close of evidence, Defendant moved for judgment of acquittal on the grounds that the State failed to request the admission into evidence of all non-hearsay evidence after the motion to suppress was denied. On the State's motion, the record was re-opened and all non-hearsay evidence was admitted into evidence. The State then rested for a second time.

¹ Defendant was also charged with Inattentive Driving and Failure to Provide Proof of Insurance. No evidence was presented by the State with respect to these alleged violations.

Defendant moved again for judgment of acquittal on the grounds that the State failed to identify Miguel Burgos as the individual who was involved in the incident in question. According to defense counsel, the State failed to prove an essential element of the case beyond a reasonable doubt, i.e. that Defendant Miguel Burgos was the driver who operated a motor vehicle while impaired in violation of 21 Del. C. § 4177(a). The State opposed Defendant's motion. The Court reserved decision and the parties submitted legal memoranda.

Defendant argues that no rational fact-finder could find Defendant guilty because the State failed to establish that Miguel Burgos drove under the influence of alcohol. According to Defendant, Corporal John Breen merely referred to Miguel Burgos as "defendant" and never actually identified Miguel Burgos in the courtroom during Corporal Breen's trial testimony. Defendant relies upon *Walls v. State* in which the Delaware Supreme Court held that, when identification is at issue, a jury instruction regarding identification is properly given to the jury.² According to the *Walls* Court, the instruction given to the jury when identity is at issue should include the following: "you, must, of course, be satisfied beyond a reasonable doubt that the defendant has been properly identified and was indeed the one that did the act charged . . . If there is any doubt about this identification, then you must give that defendant the benefit of such doubt, and find him not guilty."³ In the case before the Court, Defendant contends that,

² *Walls v. State*, 560 A.2d 1038, 1043 (Del. 1989).

³ *Id.*

because the State did not expressly identify Defendant in the courtroom, the State failed to prove that it is Miguel Burgos who is guilty of DUI.

The State counters that it was established beyond a reasonable doubt that Defendant Burgos committed the offense of Driving Under the Influence. Specifically, the State points to the testimony of Corporal Breen and to the State's introduction of the intoxilyzer report into evidence that contains the name and date of birth of Miguel Burgos. The State's position is that Miguel Burgos' identity was never in dispute during trial and there is no case law or statute that requires an in-court identification. Additionally, the State claims that Delaware law allows the State to rely on circumstantial evidence to prove identification.⁴

IDENTIFICATION OF MIGUEL BURGOS BY CORPORAL BREEN

On May 6, 2011, at 5:40 a.m., Corporal John Breen of Delaware State Police Troop Two responded to the scene of a single car accident at Route 141 and Route 13 in New Castle County, Delaware. Corporal Breen observed a disabled vehicle that was missing a bumper and observed an individual on a cell phone, no more than twenty feet away from the vehicle. This individual was the sole person at the scene. Additionally, the individual was staggering around, unbalanced, had watery, blood shot eyes, and exhibited slurred speech. Corporal Breen observed an odor of alcohol.

⁴ For this proposition, the State relies upon *Weber v. State*, 971 A.2d 135 (Del. 2009) and *Vouras v. State*, 452 A.2d 1165 (Del. 1982).

During the course of his sworn testimony, Corporal Breen identified Miguel Burgos by name several times. The first time Corporal Breen identified Defendant by name at trial, his testimony was as follows (emphasis added):

STATE: Now your conversation. You mentioned that his speech was mumbled or slurred, were you able to communicate with the *Defendant*?

CORPORAL BREEN: Yes, I had asked him number one if he was OK and if he needed an ambulance and he said that he was fine and didn't need an ambulance. When I asked him what had happened, he informed me that he did not know exactly what happened.

STATE: He couldn't tell you how the accident occurred . . . Did you do a pre-cursory investigation?

CORPORAL BREEN: Yes . . . I could not find any indication that there was another vehicle involved and *when I talked to Mr. Burgos* at the scene, he had no indication that another vehicle was involved.

Corporal Breen testified that, because of the odor of alcohol and other factors, he decided to conduct field sobriety tests. Corporal Breen asked Defendant to recite the alphabet, letters E-N. Defendant could not complete this test stating, "I can't. I'm drunk." In response to whether he would perform field tests, Defendant stated, "Sure, but I'm drunk." Corporal Breen decided to transport Defendant to Troop Two to conduct additional field sobriety tests. According to Corporal Breen, Defendant had not been placed under arrest at this point.

Corporal Breen testified that, at Troop Two, he advised Defendant of his rights and Defendant waived his Miranda rights. Corporal Breen then asked Defendant several questions. According to Corporal Breen, Defendant responded that he was on his way

home from Wilmington when the accident occurred. When asked if he had been drinking, Defendant said that he had consumed about five or six cans of Coors Light and had stopped drinking around 2:00 a.m. Corporal Breen also testified that, when asked if he was under the influence, Defendant said, “yes.” Defendant also admitted to being involved in the accident and stated, “I was driving.”

When Corporal Breen discussed Defendant’s performance on the field sobriety tests, he identified Miguel Burgos several times as follows (emphasis added):

CORPORAL BREEN: During the instruction phase *Mr. Burgos* was unable to maintain balance and raised his arms several times

CORPORAL BREEN: *Mr. Burgos* began the test, he missed heel toe on every step and stepped off-line

CORPORAL BREEN: He stated that he understood the instructions. . . *Mr. Burgos* began the test by raising his right leg and he immediately lost balance at 1001 and he also raised his arms at that time. . . *Mr. Burgos* again raised his arms.

Next, Defendant consented to an intoxilyzer test. According to Corporal Breen, Corporal Breen interviewed Defendant to fill out the information for the intoxilyzer test. As a result of this interview, the intoxilyzer card contains Defendant’s full name, Miguel A. Burgos, along with Mr. Burgos’ date of birth, sex, and driver’s license number.⁵ After obtaining the intoxilyzer results, Corporal Breen placed Defendant under arrest for Driving Under the Influence of Alcohol in violation of 21 *Del. C.* § 4177(a).

⁵ State’s Ex. 3.

DISCUSSION

Motions for judgment of acquittal are governed by CCP Criminal Rule 29(a), which provides that the Court, either upon motion or *sua sponte*, must enter a judgment of acquittal of an offense “if the evidence is insufficient to sustain a conviction of such offense.”⁶ A motion for acquittal will only be granted where the State has offered insufficient evidence to sustain a verdict of guilt.⁷ In determining whether to grant the motion, the Court must consider all evidence in a light most favorable to the State.⁸

The Court was the trier of fact at Defendant’s non-jury trial and, therefore, the Court is the sole judge of the credibility of witnesses and is responsible for resolving any conflicts in testimony.⁹ In deciding the motion before the Court, the Court must determine whether a reasonable fact-finder could conclude that Defendant Miguel Burgos was Driving Under the Influence after construing the evidence most favorably to the State. Specifically, the Court must decide whether the State provided sufficient evidence to identify Defendant Miguel Burgos as the driver of the vehicle. The Court is guided by the jury instruction addressed to the identity of the defendant which was cited favorably by the *Walls* Court. The Court agrees that identification of the defendant must be proven beyond a reasonable doubt.

⁶ CCP Crim. R. 29(a).

⁷ *State v. Biter*, 119 A.2d 894, 898 (Del. Super. 1955)

⁸ *Id.*

⁹ *Knight v. State*, 690 A.2d 929, 932 (Del. 1996).

There was absolutely no conflicting trial testimony that Miguel Burgos was the driver at trial. Additionally, not once on cross examination did the defense raise an issue of Miguel Burgos' identification. The Court finds that Corporal Breen was a credible witness. Evidence was admitted during trial without objection that established Defendant's identity as Miguel Burgos. The intoxilyzer report lists the subject of the test as Miguel Burgos, with the accompanying date of birth and driver's license number. Corporal Breen established that Miguel Burgos was the sole person at the accident scene and that Miguel Burgos admitted to driving, being involved in the accident, and being drunk. Furthermore, Corporal Breen, as the arresting officer, testified numerous times that he spoke with *Mr. Burgos* at the scene and at the police station.

Neither the State nor Defendant cited any case law for or against the proposition that the State is required to identify the defendant in the courtroom. Moreover, it is well-established that "Delaware law allows the State to convict an individual solely on circumstantial evidence."¹⁰ This is not a case where it is necessary to rely upon circumstantial evidence, however, because direct evidence was presented that Miguel Burgos was properly identified as the person who committed the DUI which is now before the Court.

¹⁰ *Vincent v. State*, 996 A.2d 777, 779 (Del. 2010) (Steele, C.J.).

CONCLUSION

Based on the findings and conclusions stated herein, Defendant's Motion for Judgment of Acquittal is hereby **DENIED**. This matter shall be scheduled to conclude the trial.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli