

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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

OPINION

Submitted: December 2, 2013

Decided: March 31, 2014

*On Appeal from a Decision of the
Court of Common Pleas, **AFFIRMED.***

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Attorney for Defendant.

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MEDINILLA, J.

INTRODUCTION

This case comes before this Court on appeal from a decision of the Court of Common Pleas (“CCP”) finding Defendant, Miguel Burgos (“Defendant”), guilty of Operating a Motor Vehicle While Under the Influence of Alcohol in violation of 21 Del. C. § 4177. For the reasons set forth below, this Court finds that Defendant’s arguments do not warrant a reversal of the trial court’s decision. Therefore, the CCP’s decision is **AFFIRMED**.

PROCEDURAL AND FACTUAL BACKGROUND

On March 6, 2011 Corporal John Breen of the Delaware State Police (“Cpl. Breen”) responded to the scene of a single car accident at the corner of Route 141 and Route 13 in New Castle County, Delaware. Cpl. Breen observed Defendant near the disabled vehicle. Defendant was unbalanced and exhibited slurred speech and an odor of alcohol. Cpl. Breen confronted Defendant, who first confessed to being intoxicated and then failed to complete field sobriety tests. Defendant was arrested by Cpl. Breen and charged with Operating a Motor Vehicle While Under the Influence of Alcohol, Inattentive Driving, and Failure to have Insurance Identification in violations of 21 Del. C. §§ 4177, 4176 and 2118, respectively.

On November 19, 2012, the trial judge heard and denied Defendant’s Motion to Suppress and presided over a non-jury trial immediately thereafter. On

February 25, 2013, after hearing Defendant's oral Motions for Judgment of Acquittal and Re-argument, Defendant was found guilty of Operating a Motor Vehicle While Under the Influence of Alcohol.

Defendant filed an Opening Brief for this appeal on July 1, 2013. Defendant asserts three independent arguments in support of this appeal: (1) Defendant was not properly identified, (2) the trial court improperly admitted evidence in violation of CCP Rule 16, and (3) the trial judge improperly advocated on behalf of the State.

In response, the State filed its Answering Brief on July 26, 2013. Defendant filed a Reply Brief on August 5, 2013. Oral arguments were presented to this Court on December 2, 2013.

STANDARD OF REVIEW

As an intermediate appellate court, the function of this Court in its review of appeals from the CCP mirrors that of the Supreme Court.¹ As such, this Court has an obligation to correct errors of law and to review findings of fact "to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."² Questions of law receive *de novo* review, whereas

¹ See *Baker v. Connell*, 488 A.2d 1303, 1309 (Del.1985).

² See *J.S.F. Props., LLC v. McCann*, 2009 WL 1163494, at *1 (Del.Super.Apr.30, 2009).

questions of fact are reviewed under a “clearly erroneous” standard.³ The trial court's findings must be supported by substantial evidence, or in other words, such evidence as a “reasonable mind might accept to support a conclusion.”⁴ If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.⁵

DISCUSSION

I. In-Court Identification Not Required

Defendant argues that the State did not prove Defendant’s guilt beyond a reasonable doubt because the State failed to identify Defendant in court. In lieu of providing legal authority to support his position, Defendant argues that this requirement “is so axiomatic that it has never been brought before a Delaware Appellate Court.”⁶ This Court finds Defendant’s argument to be without merit.

It is the State’s burden to prove, beyond a reasonable doubt, all facts necessary to establish each element of any crime charged.⁷ Although not an explicit and independent statutory element, “[i]dentity is an element common to all

³ *Id.*

⁴ *Trader v. Wilson*, 2002 WL 499888, at *3 (Del.Super.Feb.1, 2002), *aff’d*, 804 A.2d 1067, 2002 WL 1924649 (Del.2002) (TABLE).

⁵ *Johnson v. Chrysler*, 213 A.2d 64 (Del.1965).

⁶ Defendant’s Opening Brief, Case No. 1103004911, at 6 (Del. Super. July 1, 2013).

⁷ 11 Del. C. § 301.

crimes.”⁸ The issue of identity is whether the trial judge could have rationally found sufficient evidence to conclude beyond a reasonable doubt that the defendant committed the crime charged.⁹ In this case, there was ample identification evidence presented at trial from which the trial judge properly made such determinations. Cpl. Breen identified Defendant by name several times while testifying regarding his investigation of the incident and his various interactions with this particular individual. Additional evidence considered by the trial judge, including an intoxilyzer card containing Defendant’s full name, date of birth, sex and driver’s license number, corroborated the State’s position and Cpl. Breen’s testimony regarding the identification of Defendant. Further, there was no testimony that Defendant had been improperly identified.

The State’s evidence was sufficient to show that Defendant was properly identified. While the State did not elicit testimony from Cpl. Breen to confirm that Defendant was sitting next to his defense attorney, Defendant provides no precedent to support the proposition that an in-court identification is required. This Court recognizes that the absence of an in-court identification is relevant to the sufficiency of identification evidence, but will not adopt the *per se* requirement

⁸ *Sanchez v. State*, 2012 WL 5381405 (Del. Super. Aug. 31, 2012).

⁹ *Vincent v. State*, 996 A.2d 777, 779 (Del. 2010).

advocated by Defendant.¹⁰ As such, this Court finds that the evidence, as set forth and presented at trial, was sufficient for the trial judge to determine beyond a reasonable doubt that Defendant was properly identified.

II. Admitting Evidence Contained in Cpl. Breen's Undisclosed Field Notes was Not Reversible Error

Defendant next argues that the State committed a CCP Rule 16 discovery violation by failing to turn over an arresting officer's field notes and that the trial judge committed reversible error in failing to suppress evidence contained in said notes.¹¹ This Court disagrees.

CCP Rule 16(a)(1)(C) states in pertinent part:

Upon request of the defendant the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.¹²

A trial judge's application of rules relating to discovery is reviewed for an abuse of discretion.¹³ Even if a violation has occurred, this Court will only reverse

¹⁰ See *Weber v. State*, 971 A.2d 135, 155-56 (Del. 2009).

¹¹ Defendant explicitly stated in a February 22, 2013 letter to the Court that he is not making a missing evidence argument pursuant to *Deberry v. State*. 457 A.2d 744, 747 (Del. 1983).

¹² Del. Super. Ct. Crim. R. 16.

¹³ *Oliver v. State*, 60 A.3d 1093, 1095 (Del. 2013).

“if substantial rights” of the accused are prejudicially affected.¹⁴ This Court uses a three-part test to analyze the prejudice of a discovery violation: (1) the centrality of the error to the case, (2) the closeness of the case, and (3) the steps taken to mitigate the results of the error.¹⁵

Defendant filed a discovery request on March 17, 2011 that included a specific request for Cpl. Breen’s “field notes.” The State’s discovery response included a copy of Cpl. Breen’s Alcohol Influence Initial Report (“AIIR”), but did not include the field notes. Cpl. Breen testified that the field notes were destroyed prior to trial, but likely existed at the time of the discovery request.¹⁶ Cpl. Breen also testified that the AIIR contained all of the information included in the field notes.¹⁷

In determining whether reversal is warranted, this Court must determine if, under the three-part test, Defendant’s substantial rights have been prejudicially affected. In support of his position, Defendant relies on *Johnson v. State*, wherein the State’s failure to produce field notes resulted in a reversible error.¹⁸ In

¹⁴ *Id.* at 1096-97.

¹⁵ *Id.*

¹⁶ The trial judge denied Defendant’s oral motion to exclude all evidence contained in Cpl. Breen’s field notes. Defendant filed a motion for re-argument on this issue and a hearing was held on February 25, 2013. The trial judge denied the motion.

¹⁷ Transcript at 49.

¹⁸ *Johnson v. State*, 550 A.2d 903, 911 (Del. 1988). *Oliver v. State*, cited in Defendant’s Motion, and *Valentin v. State*, relied on by Defendant at Oral Argument, are similarly distinguishable

Johnson, the State affirmatively misled the defendant by stating it possessed no written evidence of the defendant's statements, and then introduced the investigating officer's field notes in order to rebut the defendant's testimony.¹⁹ In what the *Johnson* Court described as "sandbagging," on the part of the prosecution, the Supreme Court found that the defendant had been prejudiced in those particular circumstances.²⁰ This Court finds the facts of this case distinguishable from *Johnson*.

Unlike *Johnson*, Defendant in this case was provided with an AIIR. Cpl. Breen testified that the content of the AIIR mirrored that of his field notes. Defendant did not testify or present any evidence to suggest that the content of the field notes would have differed in any way from that of the AIIR. Instead, Defendant argues that the field notes *may* have differed from the AIIR, and could hypothetically have been used to impeach Cpl. Breen's testimony. This purely speculative argument, far from the actual prejudice demonstrated in *Johnson*, fails to establish that Defendant was prejudiced or misled.

based on the evidence of prejudice presented therein. *Valentin v. State*, 74 A.3d 645 (2013) (finding prejudice where defendant's testimony, which contradicted that of the arresting officer, and would have been supported by an undisclosed audio recording); *Oliver v. State*, 60 A.3d 1093 (Del. 2013) (finding prejudice where defendant received no pre-trial notice of discoverable material relating to forensic evidence presented at trial).

¹⁹ *Johnson*, 550 A.2d at 911.

²⁰ *Id.* at 913.

Since Defendant fails to establish that the alleged violation resulted in the requisite level of prejudice to warrant reversal, this Court finds that the trial judge did not commit reversible error.²¹

III. Trial Court’s “Suggestion” to Reopen the Case Did Not Constitute Improper Judicial Advocacy

Defendant lastly argues that his conviction should be reversed because the trial judge improperly advocated on behalf of the State.²² In support of his position, Defendant submits *Price v. Blood Bank of Delaware, Inc.* as an instructive example of improper judicial advocacy and asks this Court to find that the trial judge’s conduct in this case was similarly inappropriate to warrant reversal.²³ This Court finds Defendant’s argument is without merit.

In *Price* the Supreme Court of Delaware found a trial judge’s “aggressive and pointed” questions of an expert witness to be improper.²⁴ The Supreme Court

²¹ Although the State additionally argues that there was no Rule 16 violation whatsoever, this Court declines to rule on that issue. *See State v. Hollis*, 1990 WL 1098718 (Del. Super. May 8, 1990) (declining to analyze whether a discovery violation occurred when “any discovery violation was a highly technical one at best.”); *Black v. State*, 582 A.2d 934 (Del. 1990) (“is unnecessary to determine whether Black’s statement that his name was Antonio Roberts was the type of statement contemplated by Rule 16(a) because Black was not prejudiced by the State’s introduction of that evidence.”); *Polite v. State*, 687 A.2d 196 (Del. 1996) (“Moreover, even assuming *arguendo* that the State’s failure to produce the log constituted a technical violation of Rule 16, Polite has failed to demonstrate any prejudice resulting from this violation.”).

²² Although there was some dispute at trial as to whether the trial court was procedurally permitted to re-open the case, on appeal, Defendant has not pursued this argument and this Court does not address this issue.

²³ *Price v. Blood Bank of Delaware, Inc.*, 790 A.2d 1203, 1211 (Del. 2002).

²⁴ *Id.*

reversed after finding that the trial judge acted as an “activist judge who [took] over the cross-examination of a witness.”²⁵ This Court does not find the actions of the trial judge in this case analogous to *Price*.

All evidence in this case was presented during the suppression hearing, which occurred immediately before trial. At trial, prior to closing arguments, defense counsel noted that the State had not moved in its evidence from the suppression hearing into and during its case-in-chief. Defense counsel then moved to exclude all non-hearsay testimony presented during the suppression hearing. The State argued that a formal motion was not necessary for the Court to admit the evidence from the suppression hearing. The judicial conduct challenged by Defendant stems from the trial judge’s inquiry to both parties regarding the necessity of re-opening the record in order to consider evidence from the suppression hearing. After hearing from both sides, the trial judge granted the State’s motion to admit the evidence presented during the suppression hearing.²⁶

This Court finds that the trial judge’s questions posed to counsel in this case are clearly distinguishable from the facts in *Price*.²⁷ The *Price* Court was

²⁵ *Id.*

²⁶ Transcript at 103-04.

²⁷ Defendant commented during Oral Arguments that the audio recording of the trial would elucidate his claim. However, this was not mentioned in briefing, nor was a time-citation provided during the hearing. This Court will not perform a *sua sponte* review to find support of Appellant’s claim that has not been otherwise identified.

concerned with the jury's perception of judicial neutrality as a result of that judge's suggestive and controlling interaction with an expert witness. Neither a jury nor an expert witness was present in this case nor were this judge's comments suggestive or controlling.

This Court's understanding of the proper role of the judiciary is informed by the District Court's instruction in *United States v. Ramos*.²⁸ In finding that a trial judge did not err by "urging the prosecution to introduce further evidence," the *Ramos* Court stated "[t]he judge may not sit back with 'disinterestedness' as defendant's counsel would have him do. He is properly interested in seeing that all salient facts are presented to the jury to bring about a just result."²⁹ This Court finds that the trial judge's actions here were well within the permissible realm of judicial conduct and reversal is not warranted.

CONCLUSION

Based on the above, the decision of the CCP is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ Vivian L. Medinilla

Judge Vivian L. Medinilla

²⁸ *United States v. Ramos*, 291 F. Supp. 71, 73 (D.R.I. 1968) *aff'd*, 413 F.2d 743 (1st Cir. 1969).

²⁹ *Id.* at 73.