

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: **Neel Dattanie v. State of Delaware**
ID # 1110009544

Submitted: August 21, 2013
Decided: November 20, 2013

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

Dear Counsel:

I. INTRODUCTION

Neel Dattanie (“Appellant”) appeals his conviction in the Court of Common Pleas for Driving Under the Influence in violation of 21 Del. C. § 4177(a) based on several arguments relating to the admission of evidence and the behavior of the trial judge. This Court finds none of the arguments presented by Appellant,

individually or collectively, warrant the decision of the Court of Common Pleas to be reversed.

The judgment of the Court of Common Pleas dated October 16, 2012 is therefore **AFFIRMED**.

II. STATEMENT OF BASIC FACTS¹

On October 14, 2011, at 1:38 a.m., Trooper Mac Evans (“Trooper Evans”) of the Delaware State Police was dispatched to the scene of an accident at the intersection of Delaware Routes 7 and 72.² The weather conditions were rainy. When Trooper Evans arrived at the scene, he saw one car with heavy front-end damage and deployed airbags in the left lane of Route 7³ and another car with signs of damage located slightly off the roadway.⁴ Appellant was standing next to his car.⁵ During discussion with Trooper Evans Appellant made certain incriminating statements indicating that he was the driver.⁶ Trooper Evans administered field sobriety tests to Appellant and subsequently arrested him for Driving Under the Influence.⁷

III. PROCEDURAL POSTURE

A hearing on a Motion to Suppress filed by Appellant was held on October 16, 2012. The court denied the Motion as well as a subsequent “Motion for a Mistrial” (so styled by Appellant) to vacate the ruling on the Motion to Suppress, and a bench trial ensued.⁸ Appellant was found guilty of driving under the influence of alcohol in violation of 21 Del. C. § 4177(a). This appeal followed.⁹

IV. PARTIES’ CONTENTIONS

a. Appellant’s Contentions

Appellant makes two arguments in support of his appeal. First, Appellant argues that the State never established that Appellant was the driver of the vehicle

¹ Additional facts are set forth as needed *infra*.

² Appellant’s Opening Br. at 2.

³ *Id.*

⁴ Appellee’s Ans. Br. at 2.

⁵ *Id.*

⁶ Although the record is unclear, this ruling assumes the accident report was not formally introduced into evidence. Both parties discuss it in their briefs and so the Court addresses it here as well.

⁷ Appellant’s Opening Br. at 2; Appellee’s Ans. Br. at 4.

⁸ Appellant’s Opening Br. at 1.

⁹ The Court notes that despite being notified by letter of January 18, 2013 from the Prothonotary of the briefing schedule, which included the filing by Appellant of a Reply Brief, Appellant’s counsel notified the Prothonotary that he would not be filing a Reply Brief. The Court directed Appellant’s counsel to file a Reply Brief.

involved in the accident. Appellant contends that the only evidence presented is a single statement in the accident report that does not identify him by name, but as “Operator 2.” Appellant argues that this statement alone is not enough to establish *corpus delicti*, contending that Trooper Evans never witnessed Appellant driving the vehicle or asked if he was the driver. Appellant also points out there were other people at the scene that plausibly could have been driving at the time of the accident. Appellant argued during the Motion to Suppress that all evidence that Appellant was the owner of the vehicle is not evidence of operation.¹⁰

Appellant’s second argument is that the trial court abused its discretion by considering evidence that was outside the record and by using that evidence to “advoca[te] on behalf of the State.”¹¹ Specifically, Appellant takes issue with the trial court’s reliance upon the National Highway Traffic Safety Administration (“NHTSA”) manual as a basis, in part, for denying Appellant’s Motion to Suppress insofar as Trooper Evans’ administration of the field tests were concerned.¹²

b. Appellee’s Contentions

First, the State argues that all of the evidence, taken together, is enough to establish *corpus delicti* of the crime. The State contends the scene itself, Appellant’s appearance and behavior, documents as to the ownership of the vehicle, and the statement made by Appellant were all enough to establish that Appellant was driving at the time of the accident. Appellant quotes Trooper Evan’s accident report as stating “Operator 2 (Dattanie) stated that vehicle 1 turn [sic] right in front of his vehicle. Operator 2 stated that as a result there was nothing he could do and vehicle 1 struck his vehicle.”¹³ “Operator 2” was identified as Appellant. Appellee argues this statement, taken with all of the other evidence, is sufficient to establish Appellant was the driver.

Second, the State argues the trial court acted properly when it consulted a NHTSA manual during the suppression hearing particularly because Appellant’s counsel cited to the manual in support of his suppression motion. The State contends that during the suppression hearing there was much discussion, instigated by Appellant’s counsel, about whether or not the field sobriety tests administered

¹⁰ Hearing/Trial Tr. at 51.

¹¹ Appellant’s Opening Br. at 8.

¹² Appellant brought up an additional issue during Oral Argument that will be briefly addressed here. Appellant contends in a short aside in his Opening Brief and during Oral Argument that Appellant was never identified as the person at the defense table during the hearing or trial. Appellant’s Opening Br. at 4; *State v. Dattanie*, ID # 1110009544, at 3-4 (Del. Super. Aug. 21, 2013) (TRANSCRIPT) (hereinafter Oral Argument Tr.). A review of the trial transcript reveals Appellant was identified as being in the courtroom by Trooper Evans during Mr. McBride’s direct examination. *State v. Dattanie*, ID # 1110009544, at 199 (Del. Com. Pl. Oct. 16, 2012) (TRANSCRIPT) (hereinafter Hearing/Trial Tr.). Also, and although not testimonial evidence, Mr. Ferrara referred to Appellant Neel Dattanie during his cross-examination of Trooper Evans as the person “sitting next to me.” Hearing/Trial Tr. at 200.

¹³ Appellant’s Opening Br. at 6.

by Trooper Evans abided by NHTSA guidelines. The State contends that Appellant wanted to refer to the manual throughout trial to attack the evidence, but unfairly objected to the court's consideration of it once the trial judge "refer[ed] to it in an attempt to make an appropriate decision."¹⁴

V. STANDARD OF REVIEW

Appeals from the Court of Common Pleas to this Court "shall be reviewed on the record and shall not be tried *de novo*."¹⁵ The Superior Court's function when addressing an appeal from the Court of Common Pleas is similar to that of the Delaware Supreme Court.¹⁶ The Superior Court must limit its review to correcting errors of law and determining whether the lower court judge's factual findings "are adequately supported by the record and are the product of orderly and logical deductive process."¹⁷ If a decision of the Court of Common Pleas is supported by sufficient evidence, it must be accepted by the Delaware Superior Court.¹⁸

Legal conclusions of the trial judge are examined "*de novo* for errors in formulating or applying legal precepts."¹⁹ Evidence admissibility issues are reviewed under an abuse of discretion standard.²⁰ "An abuse of discretion occurs when the trial court has 'exceeded the bounds of reason in view of the circumstances' or 'so ignored recognized rules of law or practice so as to produce injustice.'"²¹

VI. DISCUSSION

a. Appellant's confession taken with other evidence at the scene is enough to establish the *corpus delicti* in this case.

Trooper Evans came upon Appellant very early in the morning after being dispatched to a motor vehicle collision.²² Two cars with varying degrees of damage were present at the scene.²³ Appellant was standing next to a car that was

¹⁴ Oral Argument Tr. at 38.

¹⁵ 10 *Del. C.* § 1326(c).

¹⁶ *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).

¹⁷ *Romain v. State Farm Mut. Auto. Ins. Co.*, 1999 WL 1427801, at *1 (Del. Super. Ct. Dec. 2, 1999) (citing *Wyatt v. Motorola, Inc.*, 1994 WL 714006, at *2 (Del. Super. Ct. Mar. 11, 1994)).

¹⁸ See *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

¹⁹ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

²⁰ *Webb-Buckingham v. State*, 2009 WL 147020, at *2 (Del. Super. Jan. 22, 2009) (citing *Zimmerman v. State*, 693 A.2d 311, 313 (Del. 1997)).

²¹ *Id.* (quoting *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (internal quotation marks omitted)).

²² Appellee's Ans. Br. at 2.

²³ *Id.*

owned and insured by him.²⁴ Two other adults, Appellant's parents, were also present but did not speak to Trooper Evans other than a comment about towing Appellant's vehicle.²⁵ At no time did Appellant deny driving the car, nor did either of his parents admit to being the driver. Trooper Evans' accident report quoted in the briefs contains incriminating statements attributed to Appellant."²⁶

Appellant primarily relies on *Nelson v. State* to assert that the confession alone is not enough to establish *corpus delicti*.²⁷ In *Nelson*, the Court held "the prevailing rule in this country [is] that a confession alone is insufficient to prove the corpus delicti, and that some proof of the corpus delicti is required in addition to the confession."²⁸ However, the opinion goes on to state "that it is enough if there is some evidence of the corpus delicti corroborating the confession, provided that all the evidence taken together proves the corpus delicti beyond a reasonable doubt."²⁹ The State responds with several cases with similar facts in which *corpus delicti* was established; most persuasive among these is *State v. Madura*.³⁰

In *Madura*, a police officer came upon an accident scene late at night after the accident had occurred and did not witness the defendant driving.³¹ The officer spoke to the defendant after he was removed from the vehicle.³² He smelled of alcohol and was extremely unsteady on his feet.³³ The defendant admitted to driving the vehicle at the accident scene.³⁴ Later, the defendant objected to the admission of his statements on the basis that they alone were not enough to establish *corpus delicti*.³⁵ He also objected to the admission of the intoxilyzer test on the theory that the State failed to prove that the defendant was the driver of the vehicle.³⁶ The court found that the facts above were "enough evidence that a trier of fact should be permitted to consider a subsequent confession or admission" when determining whether he was driving the vehicle.³⁷ The court held when

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ Appellant's Opening Br. at 8.

²⁷ 123 A.2d 859 (Del. 1956).

²⁸ *Id.* at 861.

²⁹ *Id.* at 862.

³⁰ 1976 WL 168388 (Del. Super. May 18, 1976).

³¹ *Id.* at *1.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at *3.

interpreting “some proof” “all that is required in the way of quantum of evidence ... is any evidence which tends to show the existence of the crime charged.”³⁸

Appellant contends that *Madura* is distinguishable because that case involved a single car accident with only one person who could possibly be the driver.³⁹ While it is true that in the case at bar Appellant’s parents were at the scene and could conceivably have driven the car, the Court finds this argument unpersuasive.⁴⁰ The *Madura* facts closely mirror the facts in this case and this case’s additional circumstances also tend to “show the existence of the crime charged.” Therefore, the Court finds that the evidence as set forth above amounts to “some evidence” under the *Nelson/Madura* standard and with the statement is therefore sufficient to establish that Appellant was the driver.

b. The trial court did not abuse its discretion by consulting a 2002 NHTSA manual.

The second issue is whether it was an abuse of discretion for the trial court to have taken judicial notice of or to refer to portions of the NHTSA manual in connection with its ruling on the Motion to Suppress. Appellant’s Motion to Suppress was predicated in part on his contention that the field sobriety tests were not conducted in accordance with the NHTSA standards, largely because of the cold and rainy conditions under which they were administered.⁴¹ As support in part for the denial of the Motion, the trial judge read from the NHTSA manual, which indicated that such conditions do not act as per se invalidation of the tests performed.⁴² The trial judge read the following:

THE COURT: Preface; the procedures outlined in this manual describe how the standardized field sobriety tests are to be administered under ideal conditions. We recognize that the tests will not always be administered under ideal conditions in the field because such conditions will not always exist. Even when administered under less than ideal conditions they will generally serve as valid and useful indicators of impairment. Slight variations from the ideal i.e., the inability to find a perfectly smooth surface at roadside may have some effect on the evidentiary weight given to the results, however, this does not necessarily make the tests invalid.⁴³

³⁸ *Id.* at *2.

³⁹ Oral Argument Tr. at 18.

⁴⁰ It is worth noting, again, that although it is not evidence, Appellant’s counsel admitted during Oral Argument that Appellant’s parent’s car was present at the scene. Despite being record evidence, the Court gives this no weight in its determination that “some evidence” has been presented. Oral Argument Tr. at 21.

⁴¹ Appellant’s Opening Br. at 3.

⁴² *Id.*

⁴³ Hearing/Trial Tr. at 106-07 (internal quotation marks omitted).

1. The trial court appropriately took judicial notice of the NHTSA manual.

A court may take judicial notice of a fact that is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”⁴⁴ And a court may take judicial determination of a fact that is “not subject to reasonable dispute . . . [because it is] generally known within the territorial jurisdiction of the court.”⁴⁵ Therefore, a court is not limited to the pleadings in making its findings; it may rely on “documents integral to a plaintiff’s complaint, or incorporated by reference.”⁴⁶

The State quite predictably points out that in *Lefebvre v. State* the Delaware Supreme Court referred to and cited portions of the NHTSA when it had not been introduced into evidence at trial.⁴⁷ The State argues that a trial court can do this too. Appellant argues there is a difference between such judicial notice at the appellate level as opposed to during a trial.⁴⁸ Appellant contends:

In its answering brief, the State asserts that it was acceptable for the Trial Judge to go outside the record, in making her ruling, because the Delaware Supreme Court did so in *Lefebvre v. State*. Appellant asserts that there is a major difference between an appellate Court referencing the NHTSA manual in a written opinion and a Trial Judge relying upon and reading directly from the manual during the guilt or innocence phase of the proceedings. A Trial Judge, sitting as the sole trier of fact, should not be permitted to take it upon herself to research an issue, not presented by or argued by the State, or subjected to cross-examination, in making her ruling. In doing so, she abandons her role as the impartial trier of fact and instead becomes an assistant to the prosecutor. Cases must be decided on the facts presented by the party with the burden of proof. A Judge cannot assist the State by relying on evidence outside the record, never subjected to cross-examination.⁴⁹

The trial court in this case simply consulted a 2002 edition of the manual that Appellant used in his argument in support of his Motion to Suppress. This is a correct exercise of judicial notice, which is “proper where sufficient notoriety

⁴⁴ *Fawcett v. Delaware*, 697 A.2d 385, 388 (Del. 1997) (citing D.R.E. 201(b)).

⁴⁵ *Id.* (internal quotation marks omitted).

⁴⁶ *Wilmington Sav. Fun Soc., FSB v. Steward Guar. Co.*, 2012 WL 5450830, at *2 (Del. Super. Aug. 31, 2012) (citing *In re Santa Fe Pac. Corp. S’holders Litig.*, 669 A.2d 59, 69-70 (Del. 1995)). *But see Barks v. Herzberg*, 206 A.2d 507, 509 (Del. 1965) (finding that a trial court’s use of “medical periodicals and treatises which were not in evidence, and had not been used in cross-examination” in the trial court’s opinion was improper).

⁴⁷ 19 A.3d 287, 294, 296 (Del. 2011). It appears that the *Lefebvre* court implicitly took “judicial notice” of the NHTSA manual but the opinion does not explicitly say so.

⁴⁸ Appellant’s Reply Br. at 2.

⁴⁹ *Id.*

attaches to the fact to make it proper to assume its existence without proof.”⁵⁰ If the NHTSA manual is acceptable for the Appellant to reference in his arguments, then it is certainly acceptable for consultation by the court. At a minimum, Appellant has waived his right to object to consultation of the NHTSA manual under the circumstances of this case.

2. Assuming that the trial court inappropriately took judicial notice of the NHTSA manual, the error was harmless because sufficient other evidence supported the trial court’s denial of the Motion to Suppress.

A Motion to Suppress an intoxication test is properly denied “when there is probable cause to believe that an offense which involves driving under the influence of alcohol has been committed. . . .”⁵¹ Probable cause exists in the context of a Driving Under the Influence arrest when:

The totality of the circumstances presented reveals that based upon [the police officers'] observations, their training, their experience, their investigation, and rational inferences drawn therefrom, the police possessed a quantum of trustworthy factual information, *sufficient in themselves* to warrant a [person] of reasonable caution to conclude that probable cause existed to believe [the defendant] was driving under the influence of alcohol at the time of the accident.⁵²

Harmless error is “[a]ny error, defect, irregularity or variance which does not affect substantial rights [and] shall be disregarded.”⁵³ “[T]he reviewing court must consider both the importance of the error and the strength of the other evidence presented. . . .”⁵⁴

The trial court denied the Motion to Suppress because it found probable cause for arrest based on the evidence of record.⁵⁵ The trial court stated in its denial of the “Motion for Mistrial” that, even if the issue that caused it to consult the NHTSA manual in the first place (whether the road was wet or dry) was

⁵⁰ Fawcett, 697 A.2d at 388 (citing *Communist Party of United States v. Peek*, 127 P.2d 889, 896 (Cal. 1942) (internal quotation marks omitted)).

⁵¹ See *Glass v. State*, 543 A.2d 339, 1998 WL 61582, at *1 (Del. June 13, 1988) (ORDER) (affirming Motion to Suppress blood alcohol test results due to established probable cause).

⁵² *State v. Iyer*, 2011 WL 976480, at *6 (Del. Super. Feb. 23, 2011) (quoting *State v. Maxwell*, 624 A.2d 926, 931 (Del. 1993) (internal quotations omitted)).

⁵³ Super. Ct. Crim. R. 52(a).

⁵⁴ *Van Arsdall v. State*, 524 A.2d 3, 10 (Del. 1987).

⁵⁵ Hearing/Trial Tr. at 106-07.

removed, there is adequate evidence to establish probable cause for the intoxilyzer test. The trial court cites “[s]pecifically that there was an accident, that the defendant had bloodshot, glassy eyes, that he had a strong odor of alcohol, his speech was slow and slurred, he did not properly perform the counting test and that two clues were observed on the walk and turn” as ample evidence of probable cause.⁵⁶ This Court agrees that a “person of reasonable caution” could conclude from the totality of the circumstances that Appellant was driving under the influence. Sufficient evidence supported the Motion to Suppress and the Court finds it was properly denied. Assuming, *arguendo*, that judicial notice of the NHTSA manual was inappropriate, the error does not affect Appellant’s substantial rights. The error was unimportant in the face of the other, strong evidence of probable cause. Any error in referring to the NHTSA manual is therefore harmless and should be disregarded.

The trial court committed no legal error and did not otherwise abuse its discretion. Therefore, for the reasons stated above, the decision from the Court of Common Pleas is hereby **AFFIRMED**.

Richard R. Cooch, R.J.

cc: Prothonotary
Clerk, Court of Common Pleas

⁵⁶ *Id.* at 133.