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

STATE OF DELAWARE,)
)
v.) C.A. No.: 1303010013
DANIEL G. HOFFMAN,)
Defendant.)
)

Submitted: October 15, 2013 Decided: November 6, 2013

David H. Holloway, Esquire Deputy Attorney General 820 N. French Street, 8TH Floor Wilmington, DE 19801 Attorney for the State of Delaware Thomas A. Foley, Esquire 1905 Delaware Avenue Wilmington, DE 19806 Attorney for Defendant

DECISION AFTER TRIAL

On March 13, 2013, Defendant Daniel G. Hoffman ("Hoffman") was arrested and charged with: (1) driving under the influence of alcohol in violation of 21 *Del. C.* § 4177(a) (the "DUI Offense"); (2) inattentive driving in violation of 21 *Del. C.* § 4176; (3) leaving the scene of a property collision accident in violation of 21 *Del. C.* § 4201; (4) failure to provide information at collision scene resulting in property damage in violation of 21 *Del. C.* § 4201, and; (5) failure to have insurance identification in possession (the "Insurance Identification Offense") in violation of 21 *Del. C.* § 2118.

A non-jury trial was held on October 15, 2013. The State orally entered a *nolle prosequi* on count five, the Insurance Identification Offense, and trial proceeded on the four remaining counts. At the close of the State's case-in-chief, the defense moved for a dismissal of all charges on the grounds that there was no testimony establishing where or when Hoffman was driving. The Court reserved decision. For the reasons discussed herein, the Court need not address Hoffman's motion to dismiss. This is the Court's decision after trial.

FACTS

At trial, the State's first witness was Trooper David Armstrong. Trooper Armstrong has been employed by the Delaware State Police for two years, and he is assigned to patrol duties. On March 13, 2013, Trooper Armstrong started his shift at 6:00 a.m. He was tasked with responding to complaints and traffic enforcement. At 7:30 a.m., Trooper Armstrong was dispatched to a collision on Summit Bridge Road in Middletown, Delaware. About one hour later, Trooper Armstrong arrived at a home in Bear, Delaware, where he observed an SUV with heavy front-end damage parked in the driveway. Trooper Armstrong ran the SUV's plates, and determined it was registered to Daniel G. Hoffman. Attempting to contact the registered owner of the SUV, Trooper Armstrong knocked on the door of the home. A female answered the door,

and identified herself as Hoffman's wife, Sharon Hoffman ("Sharon"). Trooper Armstrong informed Sharon that there had been an accident involving the SUV parked in the driveway, and asked to speak to the registered owner. Sharon directed Trooper Armstrong to Hoffman, who was asleep in bed.

Trooper Armstrong attempted to verbally awaken Hoffman, to no avail. Ultimately, Trooper Armstrong woke Hoffman by gently shaking him. Trooper Armstrong observed that Hoffman was fully clothed, and he detected an odor of alcohol on Hoffman's breath. Trooper Armstrong asked Hoffman if he was aware of an accident, to which Hoffman responded "no." Hoffman stated that he had been home for several hours. Trooper Armstrong escorted Hoffman outside to view the damaged SUV, at which point Hoffman stated that he had one shot prior to leaving work. Trooper Armstrong asked Hoffman whether he "had anything else," to which Hoffman responded, "no." Trooper Armstrong attempted to perform a field sobriety test, however, Hoffman needed assistance in standing upright; thus, Trooper Armstrong was unable to perform any field sobriety tests.

Approximately 40 minutes after initiating contact with Hoffman, Trooper Armstrong took him into custody. Trooper Armstrong observed Hoffman for a period of 20 minutes, during which Hoffman did not eat, drink, burp, or hiccup. After 20 minutes of observation, Trooper Armstrong administered the Intoxilyzer to Hoffman.¹ The Intoxilyzer showed that Hoffman's blood alcohol concentration was 0.214. Over defense counsel's objection, the Intoxilyzer printout card was admitted into evidence.²

¹ Trooper Armstrong testified that he was trained in using the Intoxilyzer, and he followed that training when he administered the Intoxilyzer to Hoffman.

² Defense counsel objected to the introduction of the Intoxilyzer printout card on the basis that the State failed to show that the test was administered within four hours of Hoffman driving. The admissibility of the Intoxilyzer results are governed by *Delaware Rules of Evidence* 104(b),

On cross examination, Trooper Armstrong testified that Hoffman said he owned a bar. Hoffman admitted that he had one shot before he left the bar, but claimed to have had no alcohol thereafter. Hoffman maintained that he had been home for hours. Trooper Armstrong conceded that Hoffman did not say what time he left the bar.

The second witness called to testify for the State was Hoffman's wife, Sharon. Although Sharon initially appeared indeterminate of when Hoffman came home, as her testimony developed, she insisted that Hoffman was already in bed when she woke up. Sharon testified that she was certain she woke up between 7:00 and 7:15 a.m. to get her children ready for school, and Hoffman was in bed at that time. Sharon claimed that she was unsure what time Hoffman went to bed; she was only certain that he was there by the time she woke up.

Trooper Armstrong asked Sharon whether they kept alcohol in the home, and she responded that they did not. It was not until after Trooper Armstrong left that Sharon discovered a bottle of rum sitting in the kitchen, along with two glasses. Sharon testified that the bottle of rum was at home to make jello shots for St. Patrick's Day for the bar. Sharon did not contact Trooper Armstrong to notify him of this discovery.

DISCUSSION

Delaware law requires that the State prove beyond a reasonable doubt each element of the crime charged.³ "Reasonable doubt does not mean a vague, speculative doubt, nor a mere

which provides: "[w]henever the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or in the court's discretion subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition." *D.R.E.* 104(b); *see Fiori v. State*, 2004 WL 1284205, at *3 (Del. Super May 26, 2004). The Court allowed the introduction of the Intoxilyzer printout card, with the expectation that the State would still be required to establish the necessary condition; however, the State never proved that the test was administered within four hours of Hoffman driving. Accordingly, the Court gave this evidence the appropriate weight.

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³ *Mills v. State*, 732 A.2d 845, 849-850 (Del. 1999) (citations omitted).

possible doubt, but a substantial doubt; it is such a doubt as intelligent, reasonable and impartial men may honestly entertain after a careful and conscientious consideration of the evidence in the case."⁴ For the Court, as the trier of fact, to find Hoffman guilty of driving under the influence of alcohol in violation of 21 *Del. C.*§ 4177(a)(5),⁵ the State must prove, beyond a reasonable doubt, that Hoffman: (1) was driving; (2) with a blood alcohol concentration of .08 or more within four hours after the time of driving; (3) that alcohol concentration is the result of alcohol present in, or consumed by Hoffman when he was driving.⁶

First, the State must prove that Hoffman was driving. The evidence presented by the State as to this element is equivocal at best. It is undisputed that, on the morning in question, Hoffman was at his bar and had a shot of alcohol before he left the bar. It is also undisputed that, by the time Trooper Armstrong encountered Hoffman between 7:30 and 8:00 a.m., Hoffman appeared to be intoxicated. However, the State failed to prove Hoffman traveled home from the bar that morning in a vehicle driven by himself. None of the testimony or documentary evidence presented places Hoffman behind the wheel of a car. The Stated failed to prove, beyond a reasonable doubt, that Hoffman actually drove a vehicle.

Even if the Court were to find that Hoffman was driving a vehicle, the State failed to present any evidence that Hoffman's blood alcohol concentration was .08 or more within four hours after he drove. To prove the second element of the DUI Offense, the State must establish what time Hoffman was driving. The State attempted to establish a timeline of events through the testimony of Trooper Armstrong. Trooper Armstrong testified that he was dispatched to a

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⁴ State v. Matushefske, 215 A.2d 443, 449 (Del. Super. 1965).

⁵ The information filed by the State does not specify which of the five subsections of 21 *Del. C.* § 4177(a) the State intended to pursue. At trial, the evidence presented indicated that the State sought a conviction under 21 *Del. C.* §4177(a)(5).

⁶ 21 *Del. C.* § 4177(a)(5).

collision on Summit Bridge Road at 7:30 a.m. However, Trooper Armstrong did not testify to the circumstances surrounding the accident. It was never established that the accident actually took place at 7:30 a.m., nor was it established that the accident actually involved a vehicle driven by Hoffman.

The best the State could offer was damage to the front-end of the SUV, which was registered to Hoffman and parked in his driveway. There was no testimony linking the damage to the SUV to the collision that Trooper Armstrong was investigating. In order to link the alleged collision, for which the State provided no details, to Hoffman's SUV, the Court would have to make a quantum leap of logic, which it is not prepared to do. Thus, the fact that the Intoxilyzer was administered at 9:39 a.m.—within four hours of Trooper Armstrong's 7:30 dispatch to the accident—is inapposite. The State failed to present any evidence upon which the Court can rely to prove, beyond a reasonable doubt, that Hoffman drove within four hours of the administration of the Intoxilyzer. Therefore, the State failed to prove the DUI Offense beyond a reasonable doubt.⁷

Additionally, because the State failed to establish that Hoffman was driving, it did not meet its burden of proving the remaining traffic charges against Hoffman beyond a reasonable doubt.

CONCLUSION

The State failed to meet its burden of proving each element of the offences charged beyond a reasonable doubt. The Court finds that the State has not presented sufficient evidence to find Hoffman guilty of driving under the influence of alcohol in violation of 21 *Del. C.* § 4177(a); inattentive driving in violation of 21 *Del. C.* § 4176; leaving the scene of a property

⁷ Based upon the Court's findings, the State would have failed to meet its burden under each of the five subsections of 21 *Del. C.* § 4177(a).

collision accident in violation of 21 *Del. C.* § 4201; or, failure to provide information at collision scene resulting in property damage in violation of 21 *Del. C.* § 4201. Accordingly, the Court finds Defendant Daniel G. Hoffman **NOT GUILTY** on all counts.

IT IS SO ORDERED THIS 6^{th} DAY OF NOVEMBER, 2013.

The Honorable Sheldon K. Rennie, Judge