

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

STATE OF DELAWARE,

v.

OMARR J. SCOTT,

Defendant.

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Cr. A. Nos.: 1408003726, 1605010033,
1606017066, 1607023828, 1611018494

**DECISION AFTER TRIAL &
MEMORANDUM OPINION ON
DEFENDANT'S MOTION TO STRIKE**

Submitted: November 20, 2017

Decided: January 16, 2018

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WELCH, J.

I. PROCEDURAL POSTURE

On August 5, 2014, Defendant Omarr J. Scott (“Defendant”) was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a), and Driving Without a License, in violation of 21 *Del. C.* § 2701(a) (case ending in #3726). On May 14, 2016, Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a), Failure to Have Required Insurance, in violation of 21 *Del. C.* § 2118(a), and Driving with Expired Tags, in violation of 21 *Del. C.* § 2115(1) (case ending in #0033). On June 21, 2016, Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a), Failure to Have Insurance Identification in Possession, in violation of 21 *Del. C.* § 2118(p)(1), and Driving with Expired Tags, in violation of 21 *Del. C.* § 2115(1) (case ending in #7066). On July 31, 2016, Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a) (case ending in #3828). And, on November 28, 2016, Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a) and Failure to Have License in Possession, in violation of 21 *Del. C.* § 2721(b) (case ending in #8494).

Pursuant to *Court of Common Pleas Criminal Rules* 8 and 13, Defendant and the State stipulated that all five matters should be consolidated and jointly tried. On August 8, 2017, a trial was convened in this matter, and the Court reserved decision. In lieu of oral closing arguments, the Court ordered written closing arguments and supplemental briefing on August 10, 2017. On August 24, 2017, the State filed its *Post-Trial Opening Memorandum*.¹ On September 18, 2017, Defendant filed his *Answering Memorandum*.² And, on October 3, 2017, the State filed its *Post-Trial Reply Memorandum* (“State’s Reply Brief”).³

¹ State’s Post-Trial Opening Memorandum (hereinafter “State’s Opening Brief”).

² Defendant’s Answering Memorandum (hereinafter “Defendant’s Answering Brief”).

³ State’s Post-Trial Reply Memorandum (hereinafter “State’s Reply Brief”).

On October 16, 2017, Defendant filed a *Motion to Strike* (“Defendant’s Motion”) based on perceived problematic references in the State’s Reply Brief.⁴ On October 30, 2017, the Court issued an abbreviated briefing schedule. On November 7, 2017, the State filed its *Response to Defendant’s Motion to Strike*.⁵ And, on November 20, 2017, Defendant filed his *Reply to the State’s Response to Defendant’s Motion to Strike*.⁶ This is the Court’s consolidated decision after trial and memorandum opinion on Defendant’s Motion.⁷

II. FACTUAL HISTORY

While this case concerns five consolidated matters, the nature of the trial timeline and evidence require a divergence from chronology. After the State’s first witness testified regarding the arrest date of August 5, 2014, Defendant stipulated that on the arrest dates of May 14, 2016 and June 21, 2016, he was driving on a public roadway in Delaware, he did not possess minimum insurance coverage, and his vehicle’s tags were expired.⁸ Hence, this section will proceed in the following order: (A) the State’s admitted exhibits; (B) Ms. Kami Beers’ testimony as Chief of Driver Services at the Delaware Division of Motor Vehicles; (C) the first arrest on August 5, 2014 (case #3726), (D) the fourth arrest on July 31, 2016 (case #3828); and (E) the fifth arrest on November 28, 2016 (case #8494).

⁴ Defendant’s Motion to Strike (hereinafter “Defendant’s Motion”).

⁵ State’s Response to Defendant’s Motion to Strike (hereinafter “State’s Response to Defendant’s Motion”).

⁶ Defendant’s Reply to the State’s Response to Defendant’s Motion to Strike (hereinafter “Defendant’s Reply to the State’s Response”).

⁷ The Defendant’s Motion to Strike is denied as moot. Defendant sought to strike statements in the State’s Reply Brief that he believed supported an argument the State had abandoned at trial. Defendant’s Motion at 2. However, as Defendant admits in his Reply to the State’s Response, his Motion is based on a misunderstanding of the State’s Reply Brief. Defendant’s Reply to the State’s Response at 1. The State did not pursue a “theory that Mr. Scott had a suspended license due to an outstanding capias or warrant” in its Reply brief. *Cf.* Defendant’s Motion at 2. Rather, the State presented a hypothetical, arguing—by analogy—that Defendant was driving during a period of suspension. State’s Reply at 4 (“Consider an individual whose license and driving privileges were suspended for a capias . . .”). The State admits that any contested reference was an illustration, not a revived claim. State’s Response to Defendant’s Motion at 2-3. Thus, Defendant’s Motion is denied.

⁸ Based on Defendant’s stipulation, this Court finds that the State has proven beyond a reasonable doubt that Defendant violated the corresponding charges in case #0033 and case #7066, see *infra*.

A. *The Exhibits*

The State introduced four alphabetically marked exhibits for identification purposes. These exhibits were subsequently admitted into evidence—over Defendant’s objections⁹—and numerically marked.

1. *State’s Exhibit 1*

State’s exhibit 1 (“Exhibit 1”) contains: (1) a notarized affidavit of a Delaware Division of Motor Vehicles (“DMV”) employee who swears that a notice was mailed to Defendant at 105 Kent Drive, Clayton, DE 19938, (2) an Official Notice and Order of Suspension mailed on August 29, 2011, and (3) Defendant’s Full Driving Record as of July 24, 2013.¹⁰ The third document is also signed by a DMV employee.¹¹

Exhibit 1 indicates that because of Defendant’s failure to display an insurance card on August 23, 2010, Defendant’s driving privileges were suspended for six (6) months effective September 2, 2011.¹² State’s Exhibit 1 also states:

In order to be eligible for reinstatement, the following conditions must be met:

1. Serve the full term of the suspension.
2. Pay a \$25 reinstatement fee at the Division of Motor Vehicles. Your driver license and/or driving privileges remain suspended until this fee is paid.

⁹ Defendant objected to Exhibits 1 and 3, arguing these exhibits violate Delaware Rules of Evidence 404(b) and 403. In accordance with his theory of the case, Defendant argued that the monthly suspension periods began, and ended, prior to the dates Defendant was arrested. The State countered that it is entirely relevant and appropriate to show that Defendant was currently suspended prior to 2014. The Court admitted Exhibits 1 and 3 over Defendant’s objections. Defendant objected to Exhibits 2 and 4 as hearsay within hearsay. Defendant noted that the exhibits include information that he was suspended for failure to answer a summons/defaulting on a fine, which the Delaware Division of Motor Vehicles (“DMV”) would not know “firsthand.” Defendant asserted that the underlying capias warrant would need to be proffered to support Defendant’s driving record in Exhibits 2 and 4. The State noted that it was not arguing Defendant was suspended for failure to pay, but it was using the exhibits to show Defendant had been notified of his suspension in subsequent notices. The State also cited 21 *Del. C.* § 2736(c) to argue that the DMV had firsthand knowledge because it processed and mailed the notifications of suspension. *See* 21 *Del. C.* § 2736(c) (“In any prosecution under this chapter, proof of the giving of notice of suspension or revocation in a manner provided for by subsection (b) of this section may be made by: (1) The certificate of any officer or employee of the Department; (2) An affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof . . .”). The Court admitted Exhibits 2 and 4 over Defendant’s objection.

¹⁰ State’s Exhibit 1.

¹¹ *Id.*

¹² *Id.*

3. A vision screening, knowledge and/or road skills test may be required at the time of reinstatement.¹³

Exhibit 1 evidences that a notice of these conditions was mailed to Defendant at 105 Kent Drive, Clayton, Delaware 19938 on August 29, 2011.¹⁴ Defendant's Driving Record in Exhibit 1 does not indicate that Defendant paid the necessary fine, or that the suspension was lifted.

2. State's Exhibit 2

State's exhibit 2 ("Exhibit 2") contains: (1) a notarized affidavit of a DMV employee who swears that a notice was mailed on May 4, 2013 to Defendant at 105 Kent Drive, Clayton, DE 19938, and (2) Defendant's Full Driving Record as of July 24, 2013.¹⁵ By the State's own admission, Exhibit 2 was admitted into evidence to show that Defendant was again notified on May 4, 2013 of his suspension.¹⁶

3. State's Exhibit 3

State's exhibit 3 ("Exhibit 3") contains: (1) a notarized affidavit of a DMV employee who swears that a notice was mailed to Defendant at 105 Kent Drive, Clayton, DE 19938, (2) Defendant's Full Driving Record as of February 11, 2015, and (3) an Official Notice and Order of Suspension mailed on November 18, 2013.¹⁷ The second document is also signed by a DMV employee.¹⁸

Exhibit 3 is nearly identical to Exhibit 1. Exhibit 3 indicates that because Defendant accumulated twelve (12) points on his driving record within a two (2) year period, Defendant's

¹³ *Id.*

¹⁴ *Id.*

¹⁵ State's Exhibit 2.

¹⁶ *Id.*

¹⁷ State's Exhibit 3.

¹⁸ *Id.*

driving privileges were suspended for two (2) months effective November 22, 2013.¹⁹ Exhibit 3 also states:

REINSTATEMENT

1. Serve the full term of the suspension.
2. Pay a \$25 reinstatement fee at the Division of Motor Vehicles. Your driving privileges remain suspended until this fee is paid.²⁰

Exhibit 3 evidences that notice of these conditions was mailed to Defendant at 105 Kent Drive, Clayton, Delaware 19938 on November 18, 2013.²¹ Defendant's Driving Record in Exhibit 3 does not indicate that Defendant paid the necessary fine, or that the suspension was lifted.

4. State's Exhibit 4

State's exhibit 4 ("Exhibit 4") contains: (1) a notarized affidavit of a DMV employee who swears that a notice was mailed on June 19, 2016 to Defendant at 2000 N. Jefferson Street, Wilmington, Delaware 19802, and (2) Defendant's Full Driving Record as of September 1, 2016.²² Similar to Exhibit 2, Exhibit 4 evidences that Defendant was again notified on June 19, 2016 of his suspension.²³ As of September 1, 2016, Defendant's 9/2/2011 and 11/22/2013 suspensions remained on his "Full Driving Record."²⁴

B. Testimony of Ms. Kami Beers, DMV's Chief of Driver Services

Kami Beers ("Ms. Beers"), Chief of Driver Services at the DMV,²⁵ testified for the State regarding the appropriate procedure to reinstate an offender's driving privileges after the offender

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² State's Exhibit 4.

²³ *Id.*

²⁴ *Id.*

²⁵ Kami Beers' ("Ms. Beers") duties include overseeing Driver License and Driver Improvement Programs for the State of Delaware. Specifically, Ms. Beers' duties include reviewing suspensions and revocations and failure to pay fines in reference to driver licenses.

has been suspended.²⁶ She testified that a notice is usually sent to the offender that his or her driving privileges have been suspended. Referencing the language of the Notice and Order of Suspension (“Notice”) in Exhibits 1 and 3, Ms. Beers testified that the language of the Notice requires a fine to be paid in order for Defendant’s privileges to be reinstated. Ms. Beers confirmed that the offender is required to serve the time of suspension and, after that suspension period has expired, the offender is then required to pay a fine to reinstate his or her driving privileges through the DMV.

After the offender pays the reinstatement fee, Ms. Beers testified that the offender’s driving record is updated at the DMV. Specifically, she testified that it would indicate: (a) the date an offender is cleared, (b) “Suspension lifted” with the date the offender paid the reinstatement fee, and (c) the notation “Cleared” next to the violation. As of September 1, 2016, Ms. Beers testified that there were no such notations on Defendant’s “Full Driving Record.” Based on said driving record, she testified that Defendant’s driving privileges were suspended or revoked on: August 5, 2014, May 14, 2016, June 21, 2016, July 31, 2016, and November 28, 2016. Moreover, she testified that the 9/2/2011 and 11/22/2013 suspensions remain in effect.

C. The August 5, 2014 Incident (#3726)

On August 5, 2014, Detective Matthew Rosaio (“Detective Rosaio”)²⁷ of the Wilmington Police Department was conducting routine patrol near 1099 North Spruce Street,²⁸ Wilmington, Delaware at approximately 5:00 p.m. He testified that his attention was drawn to a Gold Chevrolet

²⁶ Ms. Beers noted that when the offender does not possess a driver’s license—as is the circumstance here—the driving record would indicate a “License Number,” but it would be issued solely for offender identification purposes. Defendant’s driving record indicates the temporary nature of the license by placing zeros for date sections: “Original Issue,” “Current Issue,” and “License Expires.”

²⁷ Detective Matthew Rosaio (“Detective Rosaio”) has been employed by the Wilmington Police Department for seven and a half years. He testified that he underwent a variety of training while at the police academy, including strategy training concerning traffic stops, pedestrian stops, and crime investigation. In August 2014, Detective Rosaio was employed in the Drug Organized Crime and Vice Unit, specifically Operation Safe Streets.

²⁸ North Spruce Street is a two-lane roadway consisting of two lanes running southbound.

Traverse (the “Chevrolet vehicle”), which was traveling directly in front of his patrol vehicle. After conducting a registration check through the Delaware Criminal Justice Information System (“DELJIS”),²⁹ he testified that a “flag” appeared attached to the Chevrolet vehicle’s registration. Detective Rosaio conducted a routine traffic stop of the Chevrolet vehicle in the 700 block of North Spruce Street. Detective Rosaio approached the Chevrolet vehicle and observed Defendant in the driver seat of the Chevrolet vehicle. Detective Rosaio testified that DELJIS also indicated that Defendant was suspended from driving. Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a) and Driving Without a License, in violation of 21 *Del. C.* § 2701(a).

D. *The July 31, 2016 Incident (#3828)*

On July 31, 2016, Trooper Bryan Jefferson (“Trooper Jefferson”) of Delaware State Police Troop Six was on duty in the southern area of Wilmington.³⁰ During his shift, Trooper Jefferson was called to a property damage accident on Northbound I-95, in-between the Route 896 and Route 273 exits. Trooper Jefferson testified that three individuals were present at the accident scene when he arrived, including Defendant. Trooper Jefferson observed a Black Ford Pickup Truck (“Ford vehicle”) on the right-hand shoulder of I-95. When Trooper Jefferson approached the Ford vehicle, he observed Defendant in the driver seat of the Ford vehicle, as well as a “Ms. Sims” in the front passenger seat. Additionally, Trooper Jefferson testified that Defendant informed Trooper Jefferson that he had been driving. Upon further investigation, Trooper Jefferson discovered that the Ford vehicle was registered to Defendant. As part of Trooper Jefferson’s

²⁹ Detective Rosaio described Delaware Criminal Justice Information System (“DELJIS”) as an information sharing database between Delaware law enforcement departments and agencies for case specific information. He further testified that vehicle and driver information within DELJIS is maintained by the DMV.

³⁰ Defendant stipulated that Trooper Bryan Jefferson is a police officer who possesses the appropriate knowledge and experience.

investigation, he conducted a DELJIS search, which indicated that Defendant was suspended from driving. Ultimately, Trooper Jefferson was not able to determine who was at fault and, thus, Defendant was only charged with driving while suspended, in violation of 21 *Del. C.* § 2756(a).

E. *The November 28, 2016 Arrest (#8494)*

On November 28, 2016, Trooper Maria Rodriguez (“Trooper Rodriguez”) of the Wilmington Police Department was on duty in the northeast area of Wilmington.³¹ After being dispatched to the 1400 block of East 12th Street, Trooper Rodriguez was flagged down by the Gander Hill security regarding a vehicular/domestic assault concerning two vehicles: a Black Kia Sorento (“Kia vehicle”) and Gold Cadillac (“Cadillac vehicle”). Upon arriving, Trooper Rodriguez interacted with Defendant and the operator of the second vehicle. Trooper Rodriguez testified that Defendant informed her that he was driving the Kia vehicle and was attempting to lose the Cadillac vehicle when the Cadillac vehicle struck his vehicle. Trooper Rodriguez testified that there was damage to the Kia vehicle’s rear-passenger tire consistent with Defendant’s statements.

When Trooper Rodriguez interacted with Defendant he was near the Kia vehicle, but outside of the vehicle. Trooper Rodriguez could not recall whether the Kia vehicle remained running. During her investigation, Defendant was unable to provide Trooper Rodriguez with a valid Delaware driver’s license; therefore, she conducted a DELJIS search. The search revealed that Defendant did not possess a Delaware driver’s license and was currently suspended from driving. Defendant was charged with Driving While Suspended or Revoked, in violation of 21 *Del. C.* § 2756(a), and Failure to Have License in Possession, in violation of 21 *Del. C.* § 2721(b).

³¹ Defendant stipulated that Trooper Maria Rodriguez is a police officer who possesses the appropriate knowledge and experience.

III. DISCUSSION

Based on the testimonial and documentary evidence produced at trial, the Court finds that the State has proven beyond a reasonable doubt that Defendant violated 21 *Del. C.* § 2701(a) in case #3726 when he was unable to produce a driver's license for Detective Rosaio, and DELJIS indicated on August 5, 2014 that Defendant did not have a valid driver's license.³² Additionally, based on Defendant's stipulation, this Court finds that the State has proven beyond a reasonable doubt that Defendant violated 21 *Del. C.* § 2118 and 21 *Del. C.* § 2115 in case #0033 and case #7066. The remaining issues for this Court to address concern the legal interpretation of 21 *Del. C.* § 2756, whether the State has met its burden in proving violations of § 2756, and whether the police troopers were required to obtain arrest warrants before arresting Defendant for Title 21 violations on July 31, 2016 (case #3828) and November 28, 2016 (case #8494).³³

A. 21 *Del. C.* § 2756: Driving While License is Suspended or Revoked

For the reasons discussed below, the Court finds that Defendant was driving "during the period of suspension." Section 2756(a) states: "[a]ny person whose driver's license or driving privileges have been suspended or revoked and who drives any motor vehicle upon the highways of this State during the period of suspension or revocation shall for the first offense be fined"³⁴ Defense counsel should be commended for his zealous advocacy in this case; however, this

³² 21 *Del. C.* § 2701(a) ("No person shall drive a motor vehicle on a public street or highway of this State without first having been licensed under this chapter, unless expressly exempt from the licensing requirements."). The exemptions enumerated in 21 *Del. C.* § 2705 do not apply here. See 21 *Del. C.* § 2705 ("Persons exempt from licensing requirements").

³³ Pursuant to *Court of Common Pleas Criminal Rule* 29, Defendant moved for a Judgment of Acquittal in case #8494 at the close of the State's case in chief. Defendant argued that he could not be convicted under 21 *Del. C.* § 2721(b) for Failure to Have a License in Possession, as he was not issued a driver's license.³³ Based on the evidence presented at trial, and the State's acquiescence, the Court granted Defendant's Motion for Judgment of Acquittal as to the § 2721 charge in case #8494.

³⁴ 21 *Del. C.* § 2756.

Court is not persuaded by Defendant’s interpretation of § 2756. The Delaware Supreme Court has stated:

The object of statutory construction is to give, if possible, a sensible and practical meaning to a statute as a whole so that it may be applied in future cases as well as the present one without difficulty. The court must necessarily be guided by the presumption that the Legislature did not intend an unreasonable, absurd or unworkable result. If from the statute as a whole the object sought to be attained or the general intent underlying the statutory language can be ascertained, it will be given effect by the courts.³⁵

The Supreme Court further noted:

It is well-settled that unambiguous statutes are not subject to judicial interpretation. “If the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court's role is limited to an application of the literal meaning of those words.” Accordingly, the first step in any statutory construction requires us to examine the text of the statute to determine if it is ambiguous. Under Delaware law, a statute is ambiguous if: first, it is reasonably susceptible to different conclusions or interpretations; or second, a literal interpretation of the words of the statute would lead to an absurd or unreasonable result that could not have been intended by the legislature.³⁶

Defendant claims the statute is unambiguous;³⁷ however, the parties’ contentions before the Court in this matter belie Defendant’s claim. The statutory language is ambiguous. Therefore, the Court must examine the ordinary and usual meaning of “during the period of suspension or revocation,” as it is not expressly defined in Title 21.³⁸ In this vein, “[o]ne of the numerous canons of statutory interpretation other than plain meaning and legislative history is the principle of *noscitur a sociis*, under which the meaning of an unclear word or phrase should be determined by the words immediately surrounding it.”³⁹

³⁵ *E.I. DuPont De Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952) (internal citations omitted).

³⁶ *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007) (footnotes omitted) (quoting *In re Adoption of Swanson*, 623 A.2d 1095, 1096–97 (Del. 1993); *Newtowne Village Serv. Corp. v. Newtowne Road Dev. Co.*, 772 A.2d 172, 175 (Del. 2001); *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 68 (Del. 1993)).

³⁷ Defendant’s Answering Brief at 7 (“Section 2756 is an unambiguous statute . . .”).

³⁸ *State v. Kimbi*, 2015 WL 5007981, at *1 (Del. Com. Pl. Aug. 21, 2015).

³⁹ *In re Smale*, 390 B.R. 111, 118 (Bankr. D. Del. 2008).

The question of how § 2756(a)'s phrase "during the period of suspension or revocation" should be interpreted is plainly a question of law. The Delaware Supreme Court has provided guidance regarding the purpose of § 2756,

The object of this statute is to prohibit the operation of a car on our highways by one who has no driving privileges Whether the appellee's chauffeur's license or merely his driving privileges had been revoked is of little moment; the important consideration is whether he had or did not have the privilege of driving on our roads.⁴⁰

Neither party cites a case directly on point regarding the interpretation of § 2756. Likewise, the Court's own research has not yielded a case that addresses the issue presented. While this Court recently found a defendant guilty for violating § 2756, it did not define the suspension period.⁴¹ That is, the Court's holding did not establish whether the defendant was convicted for driving during the monthly suspension period only.⁴² The State's reliance on *Bowersox v. State* and *State v. Taye* is similarly misplaced.⁴³

The State asserts that Defendant was driving "during the period" because he failed to pay the necessary fine to the DMV to reinstate his driving privileges and, thus, he remained suspended following the term of the suspension.⁴⁴ The State's argument concerns a common sense understanding of § 2756. Contrarily, Defendant argues that "during the period" is limited to the "term of the suspension" and, thus, does not include the subsequent limitation of paying a fine for

⁴⁰ *State v. Dennis*, 306 A.2d 729, 731 (Del. 1973).

⁴¹ See *State v. Payne*, 2017 WL 2364567, at *1, 4 (Del. Com. Pl. May 31, 2017).

⁴² Accord *State v. Wells*, 2004 WL 1551515, at *2 (Del. Super. June 16, 2004) (finding the defendant guilty of driving while license is suspended or revoked because the "State presented uncontroverted evidence that the defendant's driver's license was suspended as of September 13, 2003, the date of the accident").

⁴³ *Bowersox v. State*, 819 A.2d 301 (Del. 2003); *State v. Taye*, 2009 WL 4017638 (Del. Nov. 20, 2009). This Court finds the Delaware Supreme Court's analysis of 21 Del. C. § 2810 in *Bowersox v. State* inapplicable to this case. The Court was analyzing narrower language ("unlawful for any person to operate any motor vehicle in this State while the judgment of the Court prohibiting the operation *remains in effect*"), and the defendant in *Bowersox* was subject to additional restrictions based on his habitual offender status. See *Bowersox*, 819 A.2d at 302-304 (emphasis added). Additionally, *State v. Taye* is similar to *State v. Payne* in that it finds the defendant guilty under § 2756, but does not articulate what driving while suspended or revoked encompasses. See *Taye*, 2009 WL 4017638, at *8, 10.

⁴⁴ State's Opening Brief at 5-11.

reinstatement.⁴⁵ Defendant relies on the common dictionary definition of “during” and “period” in the *Oxford American Dictionary*.⁴⁶ Defendant’s chosen Oxford definitions define *during* as “[t]hroughout the course or duration of (a period of time)” and *period* as a “length or portion of time . . . [a] set period of time during which a particular activity takes place.”⁴⁷ Defendant argues that if the dictionary definitions of “during” and “period” are used in tandem with the State’s burden, the State must prove beyond a reasonable doubt that “throughout the course or duration of a set length or portion of time, [Defendant] operated a motor vehicle on the public highway.”⁴⁸

Defendant’s rephrasing of § 2756 does not answer his own question. Defendant simply presumes his original interpretation of § 2756 and inserts new definitions. In other words, the “course or duration of a set length or portion of time” can still include the period for reinstatement.⁴⁹ The ordinary definitions of *during* and *period* are likely unhelpful because the phrase “during the period” cannot be defined by focusing on these two terms. This is mainly because the combined terms produce a redundant definition. Accordingly, the Court cannot apply Defendant’s “duration of a set length . . . of time” element, as he is simply engaging in a cyclical inquiry of “duration.”⁵⁰ And since the concern is not *whether* Defendant has served a period of time but *what* constitutes that period of time served, Defendant’s Oxford definitions provide little guidance. Thus, even accepting Defendant’s reliance on his specific Oxford definitions, the ambiguity remains.

⁴⁵ Defendant’s Answering Brief at 6–13.

⁴⁶ *Id.* at 7-8 (citing CONCISE OXFORD AMERICAN DICTIONARY (1st ed. 2006)).

⁴⁷ *Id.*

⁴⁸ *Id.* at 8 (citing *McMonigle v. State*, 2009 WL 27311, at *2 (Del. Super. Jan. 6, 2009)).

⁴⁹ The State makes a variant of this argument in its Reply. State’s Reply Brief at 3-4 (“Using the same definitions provided by the Defendant, this Court could properly determine the Defendant’s driver’s license or driving privilege remained suspended throughout the court or duration of a length of time. As this definition does not require a set or fixed length of time, it is possible that the length of time could be continuous for an undetermined length of time.” (footnote omitted)).

⁵⁰ BLACK’S LAW DICTIONARY 542 (8th ed. 2004) (defining “duration” as “[t]he length of time that something lasts” and more generally as a “length of time; a continuance in time”).

In light of this persistent ambiguity, it strikes the Court as more appropriate to focus on the canon of *noscitur a sociis* to interpret “during the period.” This canon has been described as an “erudite . . . way of saying what common sense tells us to be true: ‘[A] word is known by the company it keeps.’ ”⁵¹ Phrased differently, “ ‘which of various possible meanings a word should be given must be determined in a manner that makes it fit with the words with which it is closely associated.’ ”⁵²

The main subject of § 2756 is a “person whose driver’s license or driving privileges have been suspended or revoked.”⁵³ In *State v. Kimbi*, this Court held that an unlicensed driver can be convicted for violating § 2756 because the statute distinguished the suspension of one’s driver’s license from one’s driving privileges.⁵⁴ Focusing on the subject of the statute, the Court found “the key determination” to be whether Defendant possessed driving privileges when he was charged.⁵⁵ Admittedly, *Kimbi* does not address the interpretation question posed in the present case; however, its analysis presents the broader “ ‘fit’ ” of the phrase “during the period.” By using the phrase “during the period,” the legislature is not fixated on an offender driving during a monthly carved out period, but driving without the privilege or right to do so. This legislative focus is subsequently evidenced by § 2756’s elements.⁵⁶ In accordance with this focus, the phrase “during the period” should not be read in Defendant’s proposed vacuum. The phrase not only

⁵¹ *In re Smale*, 390 B.R. at 118 (quoting *James v. United States*, 550 U.S. 192, 127 S. Ct. 1586, 1605 (2007) (Scalia, J., dissenting)) (internal quotation marks omitted).

⁵² *See id.* (quoting *James v. United States*, 127 S. Ct. at 1605) (internal quotation marks omitted).

⁵³ 21 Del. C. § 2756(a).

⁵⁴ *See generally Kimbi*, 2015 WL 5007981; *cf. State v. Glenn*, 1973 WL 157797 (Del. Super. Mar. 28, 1973), *abrogated by State v. Dennis*, 306 A.2d 729 (Del. 1973).

⁵⁵ *Kimbi*, 2015 WL 5007981, at *2.

⁵⁶ *State v. Payne*, 2017 WL 2364567, at *4 (Del. Com. Pl. May 31, 2017) (the State must prove beyond a reasonable doubt that: “(1) Defendant’s driving license or driving privileges were suspended or revoked; (2) that notice of the revocation or suspension was given as provided by the statute; and (3) that Defendant operated a motor vehicle on a public highway”).

includes the monthly “term of the suspension,” but also the period prior to reinstatement of the offender’s driver’s license or driving privileges.⁵⁷

B. 21 Del. C. § 701: Arrest Without Warrant for Motor Vehicle Violations

Defendant has asserted that Trooper Jefferson and Trooper Rodriguez violated Delaware law, 21 Del. C. § 701(a), when Defendant was arrested on July 31, 2016 (case #3828) and November 28, 2016 (case #8494).⁵⁸ Defendant requests that the Court find Defendant not guilty in case #3828 and case #8494 because of these unlawful arrests. The State argues that 21 Del. C. § 701(b) “clearly authorizes police officers the ability to arrest a suspect without an arrest warrant at the scene of a motor vehicle accident, when the officer has reasonable and probable cause to believe that a Title 21 violation has been committed.”⁵⁹ Specifically, the State asserts that the statute allows the investigating officer to rely on “information obtained by eyewitnesses at the scene.”⁶⁰ Defendant’s focus on subsection (a) and disregard of § 701(b) imply that he believes subsection (b) applies only when the police officer witnesses the violation.⁶¹ Defendant relies on *State v. Rizzo* for his temporal officer requirement.⁶² The State counters that *Rizzo* was not focused on the temporal presence of the investigating officer, but the temporal question of whether “at the scene” could include arresting a defendant at her home.⁶³

⁵⁷ Focusing on a comprehensive interpretation of Title 21, Defendant points to 21 Del. C § 2701(b), which also uses the phrase “period of suspension.” Defendant’s Answering Brief at 9 (citing 21 Del. C. § 2701(b)). Although, Defendant has not been charged for a violation of § 2701(b), Defendant argues that reading the section in accordance with the State’s interpretation of § 2756 renders § 2701(b) nonsensical. Disregarding that § 2701(b) concerns a different crime, Defendant’s reliance is misplaced. Section 2701(b) states, “[n]o person shall drive a motor vehicle on a public street or highway of this State *after serving a period of suspension*, revocation or license denial, without first having obtained a valid license through proper reinstatement procedures as prescribed by this title.” 21 Del. C § 2701(b) (emphasis added). Section 2701(b)’s inclusion of a dependent clause is incongruous with § 2756. The Court interprets the conditional statement in subsection (b) (“without first having obtained a valid license . . .”) as a simple clarification.

⁵⁸ Defendant’s Answering Brief at 14-15.

⁵⁹ State’s Reply Brief at 6-7.

⁶⁰ See *id.* at 7 (citing 21 Del. C. § 701(b)).

⁶¹ Defendant’s Answering Brief at 14.

⁶² See *id.* at 14-15 (citing *State v. Rizzo*, 634 A.2d 392, 398-402 (Del. Super. 1993)).

⁶³ State’s Reply Brief at 7. The State is correct on this point. See *State v. Rizzo*, 634 A.2d 392, 400 (Del. Super. 1993).

Section 701(a) states:

The Secretary of Safety and Homeland Security, the Secretary of Safety and Homeland Security's deputies, Division of Motor Vehicles investigators, *State Police, state detectives and other police officers authorized by law* to make arrests for violation of the motor vehicle and traffic laws of this State, provided such officers are in uniform or displaying a badge of office or an official police identification folder, may arrest a person without a warrant:

- (1) *For violations of this title committed in their presence*; or
- (2) For violations of § 4169 of this title, relating to speed violations, . . . provided such arresting officer is in a position to observe the vehicle being detected and provided that the officer is working in conjunction with the reading or observing officer and is immediately advised of the violation and that the vehicle being apprehended is the vehicle detected; or
- (3) For violations of § 4108(a)(3) of this title relating to red traffic lights, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected; or
- (4) For violations of § 4176C(a) of this title relating to electronic communication devices, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected; or
- (5) For violations of § 4802(a)(1) or (2) or § 4803 of this title relating to seat belts, when the violation is determined by personal observation by another law-enforcement officer who communicates the information to the arresting officer by radio or other telecommunications device, provided that the arresting officer is working in conjunction with the observing officer, the arresting officer is immediately advised of the violation and the vehicle being apprehended is the vehicle detected.⁶⁴

Based on a plain reading of subsection (a)(1), a warrant is unnecessary for all Title 21 violations if the arresting officer observes the violation.⁶⁵ If the arresting officer does not personally witness the violation *and* the violation concerns §4169, § 4108(a)(3), § 4176C(a), § 4802(a)(1) - (2), or §

⁶⁴ 21 *Del. C.* § 701(a) (emphasis added).

⁶⁵ 21 *Del. C.* § 701(a); *accord State v. Nyala*, 2014 WL 4715860, at *8 (Del. Super. July 17, 2014), *aff'd on reh'g*, 2014 WL 4467168 (Del. Super. Sept. 11, 2014); *State v. Bobb*, 2007 WL 3378672, at *3 (Del. Super. June 13, 2007).

4803, then the arresting officer can rely on the personal observations of another officer according to the restrictions of § 701(a)(2) – (a)(5).⁶⁶

Correspondingly, Section 701(b) states:

Any police officer authorized to arrest without warrant under subsection (a) of this section is further authorized at the scene of a motor vehicle accident, upon reasonable and probable cause to believe, based upon personal investigation which may include information obtained from eyewitnesses, that a violation has been committed by any person then and there present, to arrest such person without a warrant of arrest.⁶⁷

Based on a plain reading of subsection (b), an arresting officer can arrest an offender for Title 21 violations without a warrant *at the scene of a motor vehicle accident* if probable cause to arrest exists.⁶⁸ In these circumstances, probable cause can be based on the personal observations of an eyewitness.⁶⁹

The Court finds the State’s interpretation more reasonable and supported by Delaware case law. In *Halko v. State*, the Delaware Supreme Court applied § 701(a) to the violations of driving under the influence and driving while license is revoked.⁷⁰ The Court allowed the arresting police officers—who did not witness the defendant driving the vehicle—to rely on another driver’s observations who was present at the scene.⁷¹ Relevant to this case, the Court stated:

In these circumstances, is it reasonable to say that the officers should have left the scene and gone to a magistrate to swear out a warrant? We do not think that the statute should be construed to require such a manifestly unreasonable course.⁷²

⁶⁶ 21 Del. C. § 701(a); *accord Nyala*, 2014 WL 4715860, at *8.

⁶⁷ 21 Del. C. § 701(b).

⁶⁸ *See id.*; *accord State v. Earle*, 2001 WL 1558311, at *3 (Del. Com. Pl. Feb. 21, 2001).

⁶⁹ 21 Del. C. § 701(b); *accord Earle*, 2001 WL 1558311, at *3.

⁷⁰ *See Halko v. State*, 175 A.2d 42, 43, 46-47 (Del. 1961). The case was reversed and remanded regarding these two charges for a reason unrelated to this case. *See id.* at 50. The Court provided the following analysis in anticipation of the parties raising the same issues on retrial. *See id.* at 44-45.

⁷¹ *See id.* at 46.

⁷² *See id.*

Further, in *Spinks v. State*, the Delaware Supreme Court reiterated the appropriate application of § 701, “[u]nder Delaware law, a police officer is authorized to make a warrantless arrest and search when he has probable cause to believe that a crime or a violation of the Motor Vehicle Code has been committed.”⁷³ The Court applied a §701 analysis to the charge of driving while under the influence of alcohol.⁷⁴ Similar to the case *sub judice*, the charge in *Spinks* was in accordance with § 701(a)(1), yet the Court allowed the arresting police officer to rely on information provided to her by the first responding police officer.⁷⁵ In other words, despite an arresting officer failing to observe the general Title 21 violation as required by subsection (a)(1), 701(b) can still be applied to a subsection (a)(1) violation.

The Court has found only one case, *State v. Nyala*, that agrees with Defendant’s exclusive focus on subsection (a)(1).⁷⁶ In *Nyala*, the observing officer contacted a surveillance unit at a separate location to initiate the traffic stop.⁷⁷ The observing officer testified at trial that he did not witness the vehicle stop occur.⁷⁸ The Delaware Superior Court refused to apply § 701 to the arrest of a defendant for traffic violations because there was insufficient evidence that the arresting officer observed the defendant commit the violation.⁷⁹ The Court noted that § 701(a)(1), which requires an officer’s observance of the violation, and the subsequent (a) subsections, which allow an observing officer to relay information to the arresting officer, were inapplicable.⁸⁰ The Court did not address § 701(b) in its opinion because no motor vehicle accident occurred. The Court

⁷³ *Spinks v. State*, 571 A.2d 788, 1990 WL 17789, at *2 (Del. Jan. 17, 1990) (TABLE) (citing 21 *Del. C.* § 701; *Garner v. State*, 314 A.2d 908, 910 (Del. 1973)).

⁷⁴ *See id.* at *1.

⁷⁵ *See id.* at *2.

⁷⁶ *See Nyala*, 2014 WL 4715860.

⁷⁷ *See id.* at *3.

⁷⁸ *See id.*

⁷⁹ *Nyala*, 2014 WL 4715860, at *8.

⁸⁰ *See id.* (citing 21 *Del. C.* § 701(a)).

affirmed its analysis on re-argument.⁸¹ Because *Nyala* is inapplicable to a case involving a motor vehicle accident, this Court will rely on § 701(b).

In accordance with § 701(b)'s applicability, this Court will proceed to a probable cause analysis. This Court finds that the police officers possessed probable cause to arrest Defendant on July 31, 2016 (case #3828) and November 28, 2016 (case #8494). A finding of probable cause is based on a totality of the circumstances and “exists when a police officer possesses information which would warrant a reasonable man into believing that a crime has been committed.”⁸² The Superior Court has opined,

“Probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not.” Rather, probable cause merely requires the State to present facts which are sufficient to show that “there is a fair probability that the defendant has committed a crime.” “That hypothetically innocent explanations may exist for facts learned during an investigation does not preclude a finding of probable cause.” When determining whether a particular arrest was supported by probable cause, the facts must be viewed under the totality of the circumstances then facing the investigating officer. Under the totality of the circumstances standard, facts are not viewed in isolation to assess the establishment of probable cause. And the totality of the circumstances standard takes into account a police officer's training, experience, observations, investigation, and any rational inferences drawn therefrom. At bottom, “[w]hat is required is that the arresting police officer possess a ‘quantum of trustworthy factual information’ sufficient to warrant a man of reasonable caution in believing a DUI offense has been committed.”⁸³

The facts here are sufficient to support a probable cause analysis. On July 31, 2016, Trooper Jefferson arrested Defendant based on: (1) Defendant's admission to driving, (2) Defendant's position behind the vehicle's wheel, and (3) DELJIS information. On November 28, 2016,

⁸¹ See *Nyala*, 2014 WL 4467168, at *2 (“Although the State urges the Court to adopt a “liberal view” of 21 *Del. C.* § 701(a) based on the 1967 decision in *State v. Coustenis*, the General Assembly amended the statute in 1968. . . . Furthermore, the General Assembly has specified only four circumstances under which an “arresting officer [may] work[] in conjunction with an observing officer”—speed violations, red traffic lights, electronic communication devices, and seat belts. The State does not assert, and the record does not reflect, that there is any evidence of a speed, red traffic light, electronic communication device, or seat belt violation in this case.” (footnote omitted)).

⁸² *Altizer v. State*, 2017 WL 111729, at *4 (Del. Super. Jan. 11, 2017).

⁸³ See *id.*

Trooper Rodriguez arrested Defendant based on: (1) Defendant's admission to driving and ownership of the vehicle, (2) Defendant's posture near his vehicle, and (3) DELJIS information. Based on a totality of circumstances, Trooper Jefferson and Trooper Rodriguez possessed probable cause to arrest Defendant for violations of 21 *Del. C.* § 2756.

C. Proof Beyond a Reasonable Doubt

After adjudicating the issues above, the Court now addresses whether the State has met its burden to prove beyond a reasonable doubt that Defendant committed violations of § 2756. To prove violations of § 2756, the State must prove beyond a reasonable doubt that “(1) Defendant's driving license or driving privileges were suspended or revoked; (2) that notice of the revocation or suspension was given as provided by the statute; and (3) that Defendant operated a motor vehicle on a public highway.”⁸⁴

The Court finds the testimony and evidence submitted at trial to be credible and satisfy the above elements. The State satisfied its burden to prove that Defendant was driving on a Delaware public highway “during a period of suspension” in all five cases. In addition, the State's four exhibits and witness testimony satisfy its burden that it provided legally sufficient and proper notice to Defendant.⁸⁵ Therefore, the Court finds that the State has met its burden to prove beyond a reasonable that Defendant violated § 2756 in all five cases.

⁸⁴ *Payne*, 2017 WL 2364567, at *4.

⁸⁵ *See* 21 *Del. C.* § 2736; *see id.* (“Furthermore, in order for there to be a legal revocation or suspension, the State must properly notify the Defendant of his revocation or suspension.”). Defendant has not raised issue with the State's satisfaction of the second element.

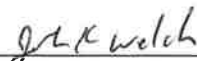
IV. CONCLUSION

For the reasons discussed above, the Court finds that:

- 1) Defendant is GUILTY of violating 21 *Del. C.* § 2701(a) when he was unable to produce a driver's license in case #3726;
- 2) Defendant is GUILTY of violating 21 *Del. C.* § 2115 for Expired Tags in case #0033 and case #7066;
- 3) Defendant is GUILTY of violating 21 *Del. C.* § 2118 when he failed to have the required insurance in case #0033 and failed to have insurance identification in his possession in case #7066;
- 4) Defendant is GUILTY of violating 21 *Del. C.* § 2756 when he drove "during the period of suspension" in all five cases; and
- 5) Defendant is NOT GUILTY of violating 21 *Del. C.* § 2721(b) in case #8494 for Failure to Have a License in Possession, as a valid license was never issued to him.

Moreover, as previously noted, Defendant's *Motion to Strike* is DENIED as moot.⁸⁶ This Judicial Officer shall retain jurisdiction of this case and will schedule it forthwith for sentencing.

IT IS SO ORDERED this 16th day of January, 2018.



John K. Welch, Judge

cc: Ms. Michelle Jackson, Judicial Operations Manager

⁸⁶ See *supra* note 7.