

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

STATE OF DELAWARE

v.

RUSSELL W. STEWART,

Defendant.

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Case No.: 0904016108

Submitted: January 18, 2012

Decided: February 1, 2012

**ORDER DENYING DEFENDANT'S
MOTION IN LIMINE**

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Attorney for the State of Delaware

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

WELCH, J.

1. On June 11, 2009, Russell W. Stewart (“Defendant”) was charged by Information with Driving Under the Influence of Alcohol in violation of 21 *Del. C.* § 4177(a). On June 17, 2009, Defendant entered a plea of Not Guilty in this case. Trial was scheduled for November 9, 2011. However, this trial was later continued to March 1, 2010 at the Court’s request.

2. On July 23, 2009, Defendant filed a Motion to Suppress arguing that there was no reasonable articulable suspicion for the initial detention of Defendant. On March 1, 2010, hearing was held on this Motion before trial. On March 12, 2010, the Court issued a memorandum opinion granting Defendant’s Motion to Suppress. On February 1, 2011, the Superior Court, in a written opinion, reversed the decision of the Court of Common Pleas, finding that there was reasonable articulable suspicion for the initial detention. Further, the Superior Court remanded the case to the Court of Common Pleas for further proceedings consistent with the Superior Court’s written opinion.

3. The Court then re-scheduled this matter for trial to be held on August 4, 2011. On August 4, 2011, the Court rescheduled the trial to September 26, 2011.

4. On August 24, 2011, Louis B. Ferrara, Esquire filed an Entry of Appearance on behalf of Defendant. Also, Mr. Ferrara requested that the September trial date be continued because Mr. Ferrara had a personal conflict. On August 25, 2011, the Court granted Mr. Ferrara’s request for a continuance. The Court rescheduled the matter for trial to be held on December 5, 2011.

5. On December 5, 2011, on the morning before trial, Mr. Ferrara provided the Court and the State with a letter from Grant T. Lui, M.D., dated March 12, 2010, concluding that Defendant, as of that time, was legally blind. Defendant argued that all video evidence must be excluded from evidence because the Court is a public entity bound by the Federal Americans

with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (the “ADA”) to provide reasonable accommodations for persons with disabilities.

6. On December 6, 2011, the Court ordered the parties to file cross memoranda within thirty days concerning Defendant’s competency to stand trial as a result of his legal blindness. On January 5, 2011, the parties filed cross memoranda on this issue. On January 6, 2011, the Court ordered the parties to file answering briefs responding to the cross memoranda within ten days. On January 17, 2011, the parties filed their answering briefs.

7. Defendant argues that blindness is a “disability” under the ADA, the Court is a “public entity” as defined by the ADA, and that criminal trials are “services” as provided by the ADA. Further, Defendant argues that because the ADA requires that public entities make “reasonable accommodations” for persons with qualifying disabilities, the only reasonable accommodation in this case is to exclude video evidence in this case. In short, because the Defendant will not be able to view the video meaningfully at trial, he will be unable to assist in his defense.

8. The State argues that the only requirement at issue in this case is whether Defendant is competent to stand trial. The state argues that Defendant is competent because his legal blindness does not render him unable to consult with defense counsel, assist defense counsel, and have a rational and factual understanding of the proceedings.¹ In support of this argument, the State contends that Mr. Ferrara can watch any video evidence; Defendant may orally consult with Mr. Ferrara; can listen to the audio accompanying the video; and may chose to testify as to his recollection of the events. Moreover, the State questions Defendant’s blindness and alleged incompetency because on March 8, 2011, Defendant was arrested for various moving violations.

¹ *State v. Shields*, 593 A.2d 986, 1010 (Del. Super. 1990).

Indeed, on June 7, 2011, Defendant pled guilty to various moving violations arising out of the March 8, 2011 incident.

9. The State has the burden to prove that a criminal defendant is competent to stand trial by a preponderance of the evidence.² In order for a criminal defendant to be competent to stand trial, the “defendant must be able (1) to consult with defense counsel, (2) to otherwise assist in his defense, and (3) to have both a rational and factual understanding of the proceedings.”³

10. In this case, the Court finds that the State has met its burden to prove that Defendant is competent to stand trial by a preponderance of the evidence. Defendant is able to consult with defense counsel because Defendant can inform Mr. Ferrara about the facts surrounding the arrest based on his independent recollection, and there is no evidence that Mr. Ferrara and Defendant cannot discuss whether Mr. Ferrara’s observations of the video are consistent with Defendant’s recollection. Similarly, Defendant is able to otherwise assist in his defense because he can inform Mr. Ferrara of his recollection of the events, and discuss the other evidence and testimony in the case. Last, there is no evidence in the record as it currently stands before the Court indicating that Defendant does not have both a rational and factual understanding of the proceedings.

11. Moreover, Defendant has failed to cite any binding decisional law or authority under the ADA requiring that video evidence be excluded in criminal cases where the defendant has suffered from blindness after the incident in question.⁴ Defendant makes only vague references to blindness qualifying as a disability and that the Court must, therefore, provide Defendant with “reasonable accommodation” as defined by the ADA. Defendant does not provide by way of

² *Diaz v. State*, 508 A.2d 861, 863 (Del. 1986).

³ *Shields*, 593 A.2d at 1010.

⁴ *Gonzalez v. Caraballo*, 2008 WL 4902686, *3 (Del. Super. Nov. 12, 2008).

decisional law or statute any authority for the proposition that excluding video evidence in a criminal trial is the appropriate accommodation in this case.

12. Even assuming, *arguendo* that Defendant could point to statute or decisional law requiring the Court to exclude video evidence in cases where the defendant was blind, the Court is deeply concerned by Defendant's continued record of driving since this incident. It is incongruous for Defendant to argue on one hand that his vision is so poor that he is not competent to stand trial because he cannot reasonably assist in his defense, and then to drive, incurring further moving violations. Defendant's June 7, 2011 guilty pleas are even more jarring considering that the criminal charge in this case, Driving Under the Influence of Alcohol, is an offense requiring that Defendant drove a motor vehicle.

13. Therefore, Defendant's Motion in Limine is hereby **DENIED**.

14. The Court shall reschedule this matter for trial with notice to counsel of record at the earliest convenience of the Court.

IT IS SO ORDERED this 1st day of February, 2012.

/S/ John K. Welch

John K. Welch, Judge.