September 4, 2008

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Re: *State of Delaware v. Brian S. Singleton*
Case No.: 0703008586

Date Submitted: August 20, 2008
Date Decided: September 4, 2008

MEMORANDUM OPINION

Dear Counsel:

Trial in the above captioned matter took place on Wednesday, August 20, 2008 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence and sworn testimony the Court reserved decision. This is the Court's Final Decision and Order.

The defendant Brian S. Singleton ("Singleton") was charged by Information with five (5) traffic counts; 1 Count Driving Under the Influence of Alcohol and or Drugs in violation of 21 *Del. C.* §4177(a) on February 18, 2007; 1 Count Improper Lane Change in violation of 21 *Del. C.* §4122(1) on the same date, county and location; 1 Count of 21 *Del. C.* §4155(c) of Stopping too Suddenly or Decrease Speed

of Vehicle without Signal; 1 Count of Failure to Yield to Vehicle or Pedestrian in Intersection when there is a Green Light to Proceed in violation of 21 *Del. C.* §4108(a)(1)(a); and finally 1 Count Inattentive Driving on the same date, county and location allegedly in violation of 21 *Del. C.* §4176(b). All Informations were filed with the Criminal Clerk by the Office of the Attorney General.

The Facts.

At the outset of trial, counsel for the defendant moved orally for a *DeBerry-Lolly* Instruction on the limited issue of the absence of the phlebotomist blood report from the state chemist which was not available at trial. That decision will be outlined below and the Court notes that *DeBerry-Lolly* Instruction was not opposed by the Attorney General and entered by stipulation.[1]

At trial Joshua Fanelli ("Fanelli") presented testimony. Fanelli is thirty-three (33) years old and works in construction with White & Kern. He has been a Project Construction Manager for ten (10) years. On February 18, 2007 between six and seven p.m. he was on Route 896 South in the area of I-95 in New Castle County. Fanelli was in the left-hand lane of traffic on Route 896 and observed a white pick-up truck that drifted three to four feet across the right lane. Fanelli observed another motor vehicle have to slam on the breaks. He was located behind the defendant's white truck traveling south. The defendant's motor vehicle then crossed Old

[1] As the transcript will indicate, since this is a bench trial, this instruction is actually given to the trial judge.

Baltimore Pike where Fanelli then observed again the white truck cross the left lane for a second time on Route 896 South. Fanelli noted that the weather conditions were "extremely cold" and it was "fairly dark". Fanelli never lost sight of the white pick-up truck. He stayed behind the truck and noticed it then swerve again into the right-hand lane and nearly struck another motor vehicle. According to Fanelli, this was the third observation of a non-signaling lane change Fanelli observed by the defendant's white truck.

Fanelli then called 9-1-1 on his cell phone. He spoke with an operator but his cell phone then "went dead". Next, Fanelli observed the defendant stopped at the light at the intersection of Route 896 and 40. Fanelli spoke with another operator of a motor vehicle and requested that they call 9-1-1. He then observed the defendant's white truck move into the Route 40 traffic lane and impede the Route 40 westbound traffic.

When he exited his motor vehicle, Fanelli observed the defendant in a "slumped down position" over his steering wheel in his motor vehicle. The defendant appeared to be asleep. Defendant's eyes were closed.

Fanelli identified the defendant in the courtroom

Fanelli presented testimony that there was traffic moving across Route 40 at high speed and he was afraid of a "T-Bone" collision with the defendant's white pick-up truck.

Fanelli spoke to another woman; "Caroline," as well as another female at the same time who was the mother of Caroline and then asked them both to call 9-1-1.

Fanelli indicated that defendant's car was locked and an ambulance arrived soon across Route 40 and parked next to the defendant's pick-up truck. Fanelli requested the ambulance to park in a perpendicular position so the defendant's pick-up truck would not be involved in a T-bone accident with traffic on Route 40. All three (3) employees of the ambulance service knocked on the defendant's windows in an attempt to wake him up and were unsuccessful. All three (3) employees were screaming and knocking hard on the windows. The defendant finally awoke and appeared, according to one fact witness, "groggy" and "unsure of his surroundings".

Margaret A. Brennan ("Brennan") presented testimony at trial. Brennan is a Christiana Fire Company employee for the past eight (8) years and is a Fire Fighter and Emergency Medical Technician. Brennan was so employed on February 18, 2007. At approximate 6:00 – 7:00 p.m. she responded to a call for a "potential medical problem." Brennan was then dispatched to the intersection of Route 40 and 896 with her were two other EMT employees who arrived at the scene. Brennan has experience with driving under the influence charge and has been so employed for twenty-four (24) years.

Brennan came to the scene and observed a white male, identified as the defendant, in a pick-up truck who appeared to be "unconscious" and behind the wheel. Brennan spoke with Fanelli who indicated he was unable to arouse the driver.

Brennan then exited her Emergency Vehicle and began to knock on the defendant's windows in an attempt to wake him up. Brennan looked inside the pick-up truck and saw a can of beer in the console. Brennan "continuously" beat on the window and finally the defendant awoke. Brennan observed the automatic transmission was still in gear. Brennan instructed her co-worker John to back up the ambulance and put it in a perpendicular position so that defendant's truck would not cross Route 40 and be involved in T-bone accident. After several minutes the defendant finally responded. Brennan's observations were that defendant appeared "out of it" and "did not know where he was". Brennan has experienced twenty years of attempting to arouse people from a sound sleep and defendant appeared to be "intoxicated". The defendant awoke and inquired "What?" She attempt to pull the keys out of the ignition and the defendant replied "No, No, No" and sat back in his seat. Defendant then picked up a can of beer, sipped it, and threw the beer can in the back seat.

Brennan observed the defendant could not stand on his own. She also had to physically assist him when he exited his motor vehicle.

Next, Brennan asked the defendant had any medical problems and he responded "I don't have an f---ing medical problems". Brennan indicated the defendant did not appear to have sustained any physical injuries and was not in danger of hurting himself or any third party. He did, in fact, have a "flushed face" and "slurred speech" and had to be assisted physically while exiting from his motor vehicle.

Brennan observed that one-third of defendant's motor vehicle, or the front wheels crossed the stop line in the intersection of Route 40 and 896. The defendant started up his white pick-up truck while Brennan was speaking with him and his motor vehicle hit the ambulance in front of him. The accident caused an 8 inch dent, 2-3 inches deep in the ambulance bumper.

Brennan testified on cross-examination that there was an odor of alcohol coming from defendant's motor vehicle.

Corporal Patrick C. Wenck ("Corporal Wenck") was sworn and testified. He has been so employed as Delaware State Police Officer at Troop 2 since July 2000. He is a Uniformed Patrol Officer. He was so employed on February 8, 2007 between 6:00 and 7:00 p.m. and was dispatched to the location of the defendant's motor vehicle at the intersection of Route 896 and 40. Corporal Wenck is NHTSA trained and in the year 2006 became an Instructor. He is now in the process of teaching instructors for the Delaware State Police. Corporal Wenck has received five different awards, including awards from Mother's Against Drunk Driving and has been recognized by the Delaware State Police with the most arrests for DUI in years 2006 and 2007.

At 18:54 hours on the date charged in the Information Corporal Wenck responded to Route 896 and Route 40 in New Castle County for a suspected impaired driver. Corporal Wenck saw the defendant's truck in the southbound lane of Route

896. Wenck testified that there were three southbound lanes. He made physical contact with the defendant as well as with EMT Brennan.

Corporal Wenck approached defendant's motor vehicle; the lights were still on; and the defendant was seated in the driver's seat with the door open and his feet outside the motor vehicle. Corporal Wenck spoke with the defendant who appeared to be "obviously dazed" and in "an intoxicated stupor". The defendant had "blood-shot glassy eyes" and his face was "flushed". Corporal Wenck testified the defendant appeared to be "sloppily" dressed. A strong odor of alcoholic beverage was emanating from the defendant's breath.

Corporal Wenck asked the defendant questions including "What happened". Corporal Wenck observed the defendant's eyes were "half closed" and his speech was "severely slurred". The defendant responded "What". The defendant then responded "I know nothing."

Corporal Wenck then testified that he asked the defendant where he was coming from and the defendant responded "Middletown". Defendant was then asked by Corporal Wenck "where are you going" and the defendant responded "home". Corporal Wenck testified both answers were puzzling because defendant was not headed toward the address of his home and was also not coming from Middletown.

Corporal Wenck then asked the defendant "How much have you had to drink" and the defendant responded "What, I don't know, it's a non-issue".

Corporal Wenck then testified he noticed can of light beer in the console.

Corporal Wenck then asked the defendant to exit the motor vehicle. Corporal Wenck testified that the defendant was "unsteady on his feet" and "almost fell several times".

Corporal Wenck testified that he had a suspicion that the defendant was driving under the influence and therefore administered field sobriety tests. The first test was the mental acuity alphabet test. The defendant refused the test. Next, the defendant was asked to perform the counting test and the defendant responded "I do not know how to count". Corporal Wenck testified this was puzzling because defendant indicated he had a high school education.

Third, defendant was properly administered and a foundation was laid for the Horizontal Gaze Nystagnus Test. The results of that test indicated that defendant was observed six out six clues under the NHTSA standards. This result according to Corporal Wenck indicated a correlation of 77% of being a greater BAC than .08 because more than four clues were exhibited by the defendant.

There were several other field test attempted by Corporal Wenck including the Walk and Turn test. The defendant refused the One Legged Stand test and while the defendant appeared to follow the instructions on the Walk and Turn test, he refused to take the field test.

The defendant also refused a portable breath test. The defendant than attempted to locate his phone but could not find the phone until he realized that he was actually sitting on the phone.

The Law.

Sec. 4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties

(a) No person shall drive a vehicle:

(1) When the person is under the influence of alcohol;

(2) When the person is under the influence of any drug;

(3) When the person is under the influence of a combination of alcohol and any drug;

(4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2) a. <u>No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after</u>

driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3) The charging document may allege a violation of subsection (a) without specifying any particular subparagraph of subsection (a) and the prosecution may seek conviction under any of the subparagraphs of subsection (a).

(c) For purposes of subchapter III of Chapter 27 of this title, this section and §4177B of this title, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per two hundred ten liters of breath.

(2) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of

breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(3) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(4) "Vehicle" shall include any vehicle as defined in §101(80) of this title, any off-highway vehicle as defined in §101(39) of this title and any moped as defined in §101(31) of this title.

(5) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(6) "Alcohol concentration of .16 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .16 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to 20 or more grams per two hundred ten liters of breath.

(7) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than $230 nor more than $1,150 or imprisoned not more than 6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense, be fined not less than $575 nor more than $2,300 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense, be guilty of a class G felony, be fined not less than $1,000 nor more than $3,000 and imprisoned not less than 1 year nor more than 2 years. The provisions of §4205(b)(7) or §4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to §4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to §636(a)(2) of Title 11.

(4) For a fourth or subsequent offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than $2,000 nor more than $6,000 and imprisoned not less than 2 years nor more than 5 years. The provisions of §4205(b)(5) or §4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6

months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to §4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree charge pursuant to §636(a)(2) of Title 11.

(5) The provisions of paragraphs (3) and (4) of this subsection and the provisions of subdivision (e)(2) of §4177B of this title notwithstanding, the Attorney General may move the sentencing court to apply the provisions of paragraph (3) of this subsection to any person who would otherwise be subject to a conviction and sentencing pursuant to paragraph (4) of this subsection.

(6) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's 17th birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of $230 and not more than an additional $1,150 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of $575 and not more than an additional $2,300 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a

> person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in subsection (c)(2) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.
>
> (1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

Case law provides that the element of driving may be proven beyond a reasonable doubt by circumstantial evidence. *Coxe v. State,* Del. Supr., 281 A.2d 606 (1971); *Lewis v. State,* Del. Supr., 626 A.2d 1350 (1993) Subsections (a) and (b) [of Sec. 4177] must be read together and defendant must "be found, beyond a reasonable doubt, to have operated a vehicle while under the influence of alcohol." 21 *Del. C.* §4177(a); 11 *Del. C.* §301.

By established case law and by statute, the State is required to prove each element of the instant charges beyond a reasonable doubt. 11 Del. C. § 301. *United States ex rel. Crosby v. Delaware,* 346 F. Supp. 213 (D. Del. 1972). A reasonable doubt is "not meant to be a vague, whimsical or merely possible doubt, but such a doubt as intelligent, reasonable, and impartial persons honestly entertain after a careful examination and conscientious consideration of the evidence." *State v. Matuschefske,* Del. Super., 215 A.2d 443 (1965). 11 *Del. C.* §301.

The State also has the burden of proof beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 Del. C. § 232. *James v. State,* Del. Supr., 377 A.2d 15 (1977). *Thornton v. State,* Del. Supr., 405 A.2d 126 (1979).

The Court as trier of fact is the sole judge of the credibility of each fact witness.

If the Court finds the evidence presented to be in conflict, it is the Court's duty to reconcile these conflicts, if reasonably possible, so as to make one harmonious story of it all.

If the Court cannot do this, the Court must give credit to that portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony which in the Court's judgment is unworthy of credit.

In doing so, the Court takes into consideration the demeanor of the witness, their apparent fairness in giving their testimony, their opportunities in hearing and

knowing the facts about which they testified, and any bias or interest that they may have concerning the nature of the case.

Opinion and Order

The Court must note that defendant has requested a *DeBerry-Lolly* Instruction on the issue of the appearance of the State Chemist and the production at trial of the Phlebotomist blood test results. The Attorney General did not oppose such an Instruction under *DeBerry v. State*, 457 A.2d 744 (Del. Supr. 1983). The form instruction under *DeBerry* is as follows:

> In this case the court has determined that the State failed to collect/preserve certain evidence which is material to the defense. The failure of the State to collect/preserve such evidence entitles the defendant to an inference that if such evidence were available at trial it would be exculpatory. This means that, for purposes of deciding this case, you are to assume that the missing evidence, had it been collected/preserved, would not have incriminated the defendant and would have tended to prove the defendant not guilty. The inference does not necessarily establish the defendant's innocence, however. If there is other evidence presented which establishes the fact or resolves the issue to which the missing evidence was material, you must weigh that evidence along with the inference. Nevertheless, despite the inference concerning missing evidence, if you conclude after examining all the evidence that the State has proven beyond a reasonable doubt all elements of the offenses(s) charged, you would be justified in returning a verdict of guilty. (Emphasis added).

The Attorney General has argued that this case and the prosecution is an impaired driving case. Hence, the State argues that the BAC or Blood results need not be considered by the Court. The Court must note that as the *DeBerry* Instruction

indicates, if there is any other evidence (other than the blood drawn phlebotomist report of the State Chemist) presented which establishes the fact or resolve the issue to which the missing evidence was material, the Court will weigh that evidence in the determination of the State's burden; beyond a reasonable doubt, 11 *Del. C.* §301, along with the inference in the *DeBerry* instruction. *See also, Lolly v. State*, 611 A.2d 956 (Del. Supr. 1992).

In the instant case this Court concludes that there is overwhelming evidence satisfying 11 *Del. C.* §301 that the defendant was driving under the influence of alcoholic beverage in violation of 21 *Del. C.* §4177(a). As the case law indicates a chemical or phlebotomist blood test results is not necessary in order to find the defendant guilty of driving under the influence. *See e.g. Marvin J. Bennefield v. State*, 2006 WL 258306 (Del. Super.) Jan. 4, 2006.

In order to find the defendant guilty of driving under the influence in this case as a Superior Court ruled…;"the State must prove both of the following two elements beyond a reasonable doubt; First, that the defendant drove a motor vehicle at or about the time and place charged; [and] Second, that the defendant was under the influence of alcohol while he drove the motor vehicle." *See, Lewis v. State,* 626 A.2d 1350, 1355 (Del.1993); *State v. Baker,* 720 A.2d 1139, 1142 (Del.1998).

According to case law … "the evidence proffered "must show that the person has consumed a sufficient amount of alcohol to cause the driver to be less able to exercise the judgment and control that a reasonably careful person in full possession

of his or her faculties would exercise under like circumstances." *See e.g., Lewis v. State,* 626 A.2d 1350 at 1355.

Set forth in the trial record is the following facts. The defendant crossed the road lane markers on a public highway; three (3) times he was involved in an accident causing damage to an EMT emergency vehicle; he was "asleep" in a public highway stopped at an intersection which the Court finds he was actually intoxicated; he did not know "where he was" or "where he was traveling"; he needed physical assistance to exit and walk form his motor vehicle; he had "blood shot", "glassy eyes"; an "odor of alcohol from his breath" as well as emanating from his motor vehicle; his face was "flushed"; he was "sloppily dressed"; his speech was "severely slurred"; he had an open can of beer was in the console; he had six clues on the HGN NHTSA field coordination test; and his eyes were half closed while passed out in his motor vehicle when he was finally awakened. Following the *DeBerry/Lolly* Instruction, this Court shall as a matter of this record, enter a finding of guilt in the violation of 21 *Del. C.* §4177(a) and 11 *Del. C.* §301 and conclude that there is "other evidence presented which … resolve the issue to which the missing evidence was material…" The Court notes the efforts of the EMT personnel who placed the ambulance in front of the defendant's motor vehicle. But for these actions, the defendant or some third party could have been severely injured in a T-bone accident.

The defendant has also raised the issue that he drank or consume alcoholic beverage after he was driving. *See e.g.* 21 *Del. C.* §4177 (b)(2)(a) or (b) and therefore

should not be adjudicated guilty of the central charge 21 *Del. C.* §4177(b). The facts of the instant case indicate the defendant had "one sip" out of his beer can after he was awoken by the EMT employee and/or Corporal Wenck. The defendant, after one sip, through the beer can into the back seat. This is not a case where there is clear evidence in the trail record that the defense presented that the consumption of alcohol, one sip, "occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within four (4) hours after the time of driving." *See*, e.g. 21 *Del. C.* §4177(b)(2)(a) and (b). To the contrary, the BAC Chemical Test report or phlebotomist blood report was not introduced into the record.

Clearly, the only evidence is the defendant had one sip out of a can of beer. Nor does the evidence in the record for this Court to find that 21 *Del. C.* §4177(b)(2)(a) or (b) applies. Simply put, one sip of beer does not invoke, in a diminimus way, either provision or sub-paragraph of Title 21, §4177. The quantity of alcohol consumed does not rise to a level to make these statutes applicable. As the Court noted in *Lewis v. State*, 626 A.2d 1350, July 28, 1993 (Del. Supr.) "It is the well settled law of this state that statutes should be construed in a manner which avoid an absurd or mischievous result." *Friant v. Friant*, Del. Supr. 553 A.2d 1186 (1989); *Burplus v. Director of Revenue*, Del. Supr., 498 A.2d 1082, 1087 (1985). With regard to the other traffic charges pending before the Court there is also proof beyond a reasonable doubt that the defendant made an improper lane change in violation of 21

Del. C. §4122(1); violated 21 *Del.C.* §4155(c) on the date charged in the Information; one Count of Stopping too Suddenly or Decreasing Speed, 11 *Del. C.* §301 as well as inattentive driving, 21 *Del.C.* §4176(b) on the date charged in the Information. The Court acquits defendant or adjudicates him not guilty of Count IV of the Informations for failing to yield to vehicle or pedestrians in the intersection.

The matter shall be set for sentencing with notice to counsel of record.

IT IS SO ORDERED this 4th day of September, 2008

John K. Welch
Judge

/jb

cc: Juanette West, Case Manager
CCP, Criminal Division