

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

ANGELA MURREY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07C-08-137 CLS
	)	
TIM J. SHANK and S & W, INC.,	)	
	)	
Defendants.	)	

Date Submitted: April 8, 2011  
Date Decided: April 13, 2011

On Plaintiff's Motion *in Limine* to Exclude Evidence of a Non-Party's Guilty Plea  
for Speeding. **DENIED.**

**ORDER**

Stephen B. Potter, Esq., 840 N. Union Street, P.O. Box 30409, Wilmington, DE 19805. Attorney for Plaintiff.

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for Defendants.

**Scott, J.**

## Introduction

Before the Court is Plaintiff's motion *in limine* to exclude evidence of a non-party's guilty plea for speeding. The Court has reviewed the parties' submissions. For the reasons that follow, Plaintiff's motion *in limine* is **DENIED**.

## Facts

On March 7, 2006, Plaintiff, William O. Murrey, Jr. ("Mr. Murrey"), was traveling eastbound on East 12th Street ("E. 12th St.") in the City of Wilmington, which is a four lane divided highway approaching the southbound I-495 entrance ramp. Tim J. Shank ("Defendant Shank") was driving a garbage truck westbound on E. 12th St. and allegedly made a left turn into the path of Mr. Murrey's oncoming vehicle. Using skid marks, Officer Gerald J. Connor ("Officer Connor") of the Wilmington Police Department calculated Mr. Murrey was driving between 42 mph and 45 mph<sup>1</sup> in a posted 25 mph zone.<sup>2</sup> Officer Connor cited Mr. Murrey for driving at an unsafe speed in violation of 21 *Del. C.* § 4168(a).<sup>3</sup> Mr. Murrey pled guilty to the violation. Defendant Shank was cited and pled guilty to failing to yield the right of way in violation of 21 *Del. C.* § 4132.

Mr. Murrey accepted an offer of judgment on October 15, 2010. Only Angela Murrey's ("Plaintiff") loss of consortium claim remains. Plaintiff alleges

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<sup>1</sup> Pl. Motion *in Limine* Ex. A, Connor Dep. 22:20-23:1.

<sup>2</sup> *Id.*

<sup>3</sup> Def. Response Ex. 3. Both parties mistakenly cite 21 *Del. C.* § 4169. However, the Court of Common Pleas criminal court docket clearly indicates Mr. Murrey pled guilty to driving at an unsafe speed: "DE214168000A UNSAFE SPEED".

Defendant Shank was negligent in failing to yield the right of way. The Defendants allege Mr. Murrey was negligent for driving at an unsafe speed. This motion *in limine* concerns the admissibility of Mr. Murrey's guilty plea to driving at an unsafe speed.

### **Discussion**

*I. Mr. Murrey's Guilty Plea is More Probative than Prejudicial Under D.R.E. 403 Because the Doctrine of Collateral Estoppel Prevents Plaintiff From Raising Her Only Argument that Prejudice Exists, the Correct Speed Limit on E. 12th St.*

Mr. Murrey's guilty to plea to driving at an unsafe speed at the time of the accident is more probative than prejudicial under D.R.E. 403. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence."<sup>4</sup> In support of her argument that Mr. Murrey's guilty plea be excluded, the Plaintiff contends Mr. Murrey was unaware of the lawful speed on E. 12th Street. However, the doctrine of collateral estoppel prevents her from advancing that argument.

The Plaintiff may not challenge Mr. Murrey's guilty plea to driving at an unsafe speed because it is barred by the doctrine of collateral estoppel, also known

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<sup>4</sup> D.R.E. 403.

as issue preclusion.<sup>5</sup> “Collateral estoppel prohibits a party from relitigating a factual issue that was adjudicated previously.”<sup>6</sup> “In Delaware, the rule of collateral estoppel applies only when the fact sought to be established in the second proceeding has been actually litigated and determined in the first proceeding.”<sup>7</sup> The purpose behind the doctrine is to prevent “contradictory fact-finding by different tribunals.”<sup>8</sup> Collateral estoppel applies when “(1) a question of fact essential to the judgment (2) [was] litigated and (3) determined (4) by a valid and final judgment.”<sup>9</sup> A guilty plea is considered a full litigation of guilt of the criminal charge.<sup>10</sup> Collateral estoppel prevents a litigant who pled guilty and was convicted by a court to challenge the conviction in a subsequent civil trial.<sup>11</sup>

The Plaintiff may not challenge her husband’s guilty plea to driving at an unsafe speed in this subsequent civil case because his plea of guilty is considered an actual and full litigation on the issue of speed on E. 12th St. Since Mr. Murrey was charged with driving at an unsafe speed in violation of 21 *Del. C.* § 4168(a), a determination of the speed limit on E. 12th St. was a question of fact essential to whether or not he was driving at an unsafe speed. Accordingly, Mr. Murrey’s

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<sup>5</sup> *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 520 (Del. 1999).

<sup>6</sup> *Id.*

<sup>7</sup> *Patterson v. Shahan*, 1995 WL 108925, at \*2 (Del. Super. Ct.) (citing *Auerbach v. Cities Service Co.*, 134 A.2d 846, 851 (Del. 1957)).

<sup>8</sup> *Diamond State Youth, Inc. v. Webster*, 2008 WL 4335875 (Del. Super. Ct.).

<sup>9</sup> *M.G. Bancorporation, Inc.* 737 A.2d at 520.

<sup>10</sup> *Petrella v. Alexander*, 1991 WL 236921, at \*1 (Del. Super. Ct.) (citing *Warmouth v State Bd. Of Examiners in Optometry*, 514 A.2d 1119 (Del. Super. Ct. 1985)).

<sup>11</sup> *Diamond State Youth, Inc.*, 2008 WL 4335875, at \*1.

guilty plea is considered a full litigation on the issue of the speed limit on E. 12th St.

The Plaintiff also relies upon *Hawkins v. Schreiber*<sup>12</sup> to demonstrate the prejudicial effect of allowing the guilty plea to be admissible at trial. In that case, the officer investigating the accident issued a citation before he finished his investigation.<sup>13</sup> After issuing the citation, the officer obtained information that called into doubt his decision to issue the citation.<sup>14</sup> The *Hawkins* Court ruled it would permit the officer to testify he probably would not have issued the citation if he had all the information available to him at the time it was issued, but only after the guilty plea was mentioned.<sup>15</sup> Plaintiff contends that situation is similar to this case. The Court disagrees. In contrast to *Hawkins*, Officer Connor has never stated he received information that made him second guess issuing Mr. Murrey a citation for driving at an unsafe speed. Officer Connor testified at his deposition that Mr. Murrey was driving between 42 mph and 45 mph, above the posted 25 mph speed limit. As a result, there is little, if any, prejudicial effect in finding Mr. Murrey's guilty plea admissible. Since the guilty plea goes directly toward comparative negligence, it is more probative than prejudicial under D.R.E. 403.

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<sup>12</sup> 2000 WL 33113798 (Del. Super. Ct.).

<sup>13</sup> *Id.* at \*1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at n.13.

*II. Mr. Murrey's Guilty Plea is Not Admissible as a Statement Against Interest Under D.R.E. 804(b)(3) Because He Is Probably Available to Testify at Trial.*

The Defendants seek admission of Mr. Murrey's guilty plea as a statement against interest, an exception to hearsay. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."<sup>16</sup> Generally, hearsay is inadmissible unless it meets an exception.<sup>17</sup> A statement against interest is an exception to hearsay requiring the declarant to be unavailable to testify at trial, and the statement be

so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true.<sup>18</sup>

A declarant is unavailable to testify when the person:

- (1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) Testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

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<sup>16</sup> D.R.E. 801.

<sup>17</sup> D.R.E. 802.

<sup>18</sup> D.R.E. 804(b)(3).

(5) Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.<sup>19</sup>

Here, the Defendants have not stated how Mr. Murrey will be unavailable to testify at trial. Since he is probably available to testify at trial the defense will have the opportunity to ask him on the stand whether he pled guilty to driving at an unsafe speed. Therefore, it is unnecessary to consider whether the guilty plea satisfies the other requirements of D.R.E. 804(b)(3).

*III. Mr. Murrey's Guilty Plea is Admissible as a Self-Authenticating Business Record From the Department of Motor Vehicles.*

A motor vehicle record, such as a guilty plea to driving at an unsafe speed, is admissible as a business record of the Department of Motor Vehicles.<sup>20</sup> The business records exception to hearsay permits the admission of

A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with D.R.E. 902(11), D.R.E. 902(12) or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.<sup>21</sup>

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<sup>19</sup> D.R.E. 804(a).

<sup>20</sup> *Owens v. State*, 894 A.2d 407 (Del. 2006) (TABLE).

<sup>21</sup> D.R.E. 803(6).

In order for the motor vehicle record to be self-authenticating it would have to be accompanied by a written declaration of its custodian or other qualified person that it meets the requirements of D.R.E. 803(6).<sup>22</sup> Here, the Defendants could attempt to obtain a certified copy of Mr. Murrey's driving record from the Department of Motor Vehicles along with the required written declaration. The driving record of Mr. Murrey would be admissible under D.R.E. 803(6)<sup>23</sup> if a proper foundation was laid and the authentication requirements of D.R.E. 902(11) were satisfied.

*IV. Mr. Murrey's Guilty Plea is Also Admissible as a Self-Authenticating Public Record if the Defendants Introduce the Court of Common Pleas Criminal Docket.*

The Court of Common Pleas' Criminal Docket, depicting Mr. Murrey's guilty plea to driving at an unsafe speed, is admissible under the public record exception to hearsay. As a public record it is self-authenticating. The public records exception permits the introduction of records or reports "of a public office or agency setting forth its regularly conducted and regularly recorded activities."<sup>24</sup> The public record is properly authenticated when "a copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, . . . certified as correct by the

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<sup>22</sup> D.R.E. 902(11).

<sup>23</sup> See *Rodgers v. M.K. Coale Enterprises*, 1993 WL 390369 (Del. Super. Ct.).

<sup>24</sup> D.R.E. 803(8).

custodian or other person authorized to make the certification.”<sup>25</sup> Here, the criminal docket of the Court of Common Pleas would be admissible as a public record so long as it was properly authenticated.<sup>26</sup>

### **Conclusion**

Based on the forgoing, Plaintiff’s Motion *in Limine* to Exclude Evidence of a Non-Party’s Guilty Plea for Speeding is **DENIED**.

**IT IS SO ORDERED.**

/S/CALVIN L. SCOTT  
Judge Calvin L. Scott, Jr.

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<sup>25</sup> D.R.E. 902(4).

<sup>26</sup> See *United States v. Crute*, 238 F. App’x. 903, 905 (3d Cir. 2007); *Crossley v. Lieberman*, 868 F.2d 566, 568 (3d Cir. 1989).