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Re: *State v. Karen A. Ferrara-Daniels*
Case No.: 0302014482

Date Submitted: November 15, 2004
Date Decided: December 1, 2004

LETTER OPINION

Dear Counsel.:

Trial in the above captioned matter took place on three separate days, July 28, 2004, August 12, 2004 and on November 15, 2004. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's Final Decision and Order.

THE FACTS

The Defendant was charged by Information filed with the Clerk by the Attorney General with four counts; an alleged violation of 11 *Del. C.* §1301(1)(a) (Disorderly Conduct); 11 *Del. C.* §1257 (Resisting Arrest); 21 *Del. C.* §4117(a) (Improper Passing on the Right); and finally 21 *Del. C.* §4103(b) (Disregarding a Police Officer's Signal). The informations filed by the Attorney General allege these motor vehicle violations occurred on the 24th day of February, 2003 in New Castle County, Delaware on the date and place set forth in the charging documents.

Trooper Thomas F. Rhoades (“TFC Rhoades”) presented testimony at trial. He is a Delaware State Police Officer having been employed since July 16, 2000. TFC Rhoades is employed at Troop 6 and was on routine patrol on I-95 South in New Castle County on February 24, 2003. TFC Rhoades was working the dayshift on that day 7:00 a.m. – 7:00 p.m. At 5:15 p.m. he observed Defendant’s motor vehicle “move out onto the shoulder.” TFC Rhoades was in a fully marked state police vehicle with overhead lights in the right lane of I-95. He was at the point of I-95 where the four lanes merge from the left past Newport and towards New Castle near Churchman’s Road and noticed Defendant’s motor vehicle. Defendant’s motor vehicle was traveling approximately 5 miles per hour and he observed it “jerk to the right” and access the shoulder of Interstate 95. The shoulder has markings on the lane change from the road to the shoulder.

TFC Rhoades presented testimony that the Defendant’s vehicle passed approximately 20 vehicles on the shoulder. He immediately got behind Defendant’s vehicle. Defendant’s vehicle was a 1998 minivan. TFC Rhoades turned on his “grill lights,” and “overhead lights,” as well as “red and blue lights” and activated his siren and followed the Defendant’s vehicle. According to TFC Rhoades, Defendant’s motor vehicle kept “going straight.” He called in the motor vehicle stop to RECOM. TFC Rhoades stationed himself 15 feet behind the Defendant’s motor vehicle and followed her for approximately one mile.

After the call was made to RECOM Corporal Natalie George (“Officer George”), a Delaware State Trooper blocked the Defendant’s vehicle in the right lane. According to TFC Rhoades, Officer George ran up to the Defendant’s motor vehicle and yelled “stop.”

TFC Rhoades at this point removed his shotgun from the resting spot in the holder in the right seat of his patrol vehicle and approached the Defendant. He stood between the front of his

motor vehicle and the Defendant's motor vehicle and yelled "Stop your motor vehicle" while pointing his shotgun directly at the Defendant. The Defendant then jammed on the brakes of her minivan. After the motor vehicle subsequently stopped, TFC Rhoades put his shotgun back into the holder in his marked police vehicle.

Officer George requested the Defendant exit her motor vehicle and Officer George patted the Defendant down and checked her license and insurance.

TFC Rhoades asked the Defendant, "Why didn't you stop?" According to TFC Rhoades, Defendant stated "I'm not going to stop, I am on my way to pick up my children at daycare." According to TFC Rhoades, he informed the Defendant, "When a Delaware State Police Officer is behind you with the lights on, you should stop." According to TFC Rhoades, the Defendant informed him, "I had no plans to pull over." According to TFC Rhoades, the Defendant then became "hostile" and "very agitated."

As detailed below, at some point after the initial traffic stop, Defendant got out of her motor vehicle and was instructed to return and sit in her motor vehicle. Defendant complied initially with this request.

On cross-examination, TFC Rhoades testified that once he turned on his overhead lights the Defendant got back into the traffic lane. Her speed in the minivan did not exceed ten miles per hour. Most of the motor vehicle traffic on South I-95 was in lock-jam traveling approximately ten miles per hour. The traffic stop apparently occurred one mile north of the Churchman's Road exit, Delaware Route 58, approximately 1/10th of a mile from the intersection. According to TFC Rhoades, the Defendant traveled approximately .9 miles after he activated his overhead lights. TFC Rhoades further testified that Officer George blocked the

right lane with her patrol motor vehicle in order to stop the Defendant from moving forward on the shoulder and or right lane of I-95.

According to TFC Rhoades, he is not required to file a formal Force Report, but at trial he believed Officer George had filed a force report. Testimony later clarified no such Force Report was filed by Officer George.

TFC Rhoades reiterated his testimony that he positioned himself in front of the police vehicle pointing the gun at the Defendant in the fire position approximately ten feet away from her minivan. The barrel of the shotgun was pointed at the driver's compartment and he yelled, "Delaware State Police, stop the motor vehicle!" TFC Rhoades at the time believed the Defendant's motor vehicle window was up and he was unsure who was actually in the motor vehicle or why the operator refused his command to stop after his lights and siren were activated. He lowered the shotgun to the ground once he observed the female defendant inside the motor vehicle.

The justification for use of such force at trial offered by TFC Rhoades was that when a Trooper is behind you with the lights and siren on, "You are supposed to pull over."

TFC Rhoades also reiterated his testimony on further cross-examination that the Defendant told him "I had no plans to stop, I have to pick up my children at daycare." TFC Rhoades described the Defendant's demeanor as "cocky".

TFC Rhoades did not recall if the Defendant asked him, "What are you doing, why are you pulling a gun on me?"

On Redirect Examination by the State, according to TFC Rhoades, at one point after the initial traffic stop, "all of the sudden" Defendant exited her motor vehicle and allegedly came forward to the Troopers and told them "I am leaving." The Defendant had been present

approximately ten minutes in her motor vehicle and Officer Fox had previously instructed her that she had to wait in her motor vehicle in order to determine what, if any, traffic charges would be filed by TFC Rhoades. The Defendant then got back into her motor vehicle, and turned it off. According to TFC Rhoades, he did not know where the keys to the Defendant's motor vehicle were at that time.

At this point, according to TFC Rhoades, two lanes of South I-95 were shut down as it was "rush hour". There was also a disabled car on the shoulder. At this point Officer George and Officer Fox "put the Defendant on the ground" because she allegedly wrestled and was "flailing her hands" preventing her arrest. They were eventually successful in getting Defendant's hands "hooked behind her in handcuffs." According to TFC Rhoades, Officer Fox asked the Defendant if she needed medical attention and she indicated "no". Subsequent traffic charges were filed by TFC Rhoades which are part of the trial record.

During the struggle Officer Fox testified she "put her weight on the Defendant" and forced her to the ground after resisting.

Corporal Natalie George ("Officer George") presented testimony at trial. Officer George received a telecommunication over the radio that TFC Rhoades was "in the area of 141 on 95 southbound " and needed State Police assistance. The call was from RECOM and indicated that TFC Rhoades was following a motor vehicle that would not stop and TFC Rhoades believed it was single operator. A description of the motor vehicle was contained in the RECOM Report. Officer George observed traffic was "crawling" at the time of her arrival at the scene. Officer George communicated to TFC Rhoades, "I'll block her; I'll pull out in the right lane and block her motor vehicle." Officer George placed her patrol motor vehicle completely in the right lane, on I-95 not completely on the shoulder, and blocked the Defendant's minivan. When Officer

George pulled her motor vehicle out into the right lane, Defendant's car was approximately ten car lengths away. Defendant's minivan then made "a complete stop" and TFC Rhoades stationed himself directly behind the Defendant. At this juncture, Officer George was stationed in front of Defendant's motor vehicle, approximately two feet away.

Defendant's motor vehicle was placed in the middle of Corporal George and TFC Rhoades' motor vehicles. Defendant was in the right lane next to the shoulder, but not crossing into it. Officer George observed TFC Rhoades with a shotgun and observed Rhoades approximately five to ten feet away from the Defendant who then yelled, "Let me see your hands." Defendant then put her hands on the steering wheel and Rhoades asked her, "Why didn't you stop?" According to Officer George, the Defendant's demeanor was "frantic, panicked and rushed." Defendant told the police, "I'm late to pick up my child, I don't have the time for this." Defendant also told the officers, "Why do you have a shotgun pointed at me?"

Officer Fox then arrived at the scene according to Officer George and went back to Defendant's motor vehicle. The Defendant's door was open and the officers could hear Defendant yelling. The Defendant exited her motor vehicle and informed them, "I have a kid a daycare, I have got to get out of here." TFC Rhoades then allegedly told the Defendant to go back in her motor vehicle.

Master Corporal Melanie Fox ("Officer Fox") presented testimony at trial. She is a Delaware State Police Trooper at Troop 6. Officer Fox was working the uniformed division for the Delaware State Police and was on active duty on February 24, 2003. She received a call from TFC Rhoades regarding a motor vehicle failing to stop on I-95 southbound. She arrived at the scene; saw Defendant in her motor vehicle and approached TFC Rhoades who was on the radio conferring with his supervisor. Officer Fox made contact with the Defendant and the

Defendant exited her motor vehicle and approached her. Officer Fox instructed the Defendant to go back to her motor vehicle and “sit.” The Defendant apparently asked, “How long do I have to be here?”

At some point, Officer Fox returned to speak with the Defendant and opened the Defendant’s car door. Defendant then grabbed her door and slammed it and almost struck Fox’s fingers. At this point Fox told the Defendant, “You are under arrest; step out of your motor vehicle.” According to Fox, the Defendant refused. At this point Fox told her, “If you don’t exit the motor vehicle, I’ll forcibly remove you.” Officer Fox then testified she told Defendant “Put your hands behind your back” and the Defendant yelled, “No, No” and refused to be handcuffed. Defendant was then forced to the ground with the assistance of Corporal George. Fox allegedly told the Defendant, “Put your hands behind your back.” According to Officer Fox, the Defendant refused to comply “while flailing her arms”.

At this point the State rested its case in chief.

The Defendant Karen A. Ferrara-Daniels (“Ferrara-Daniels”) was sworn and testified. Ferrara-Daniels is 45 years old and lives in Newark, Delaware. She has three boys and was “taking the 273 exit” on I-95 to pick up one of her children at daycare. She is employed at Access Group as a Web Designer.

On February 24, 2003 she was traveling “up I-95” at approximately 4:45 – 5:00 p.m. She believes it was a Monday and she was going to pick-up her son Shawn at daycare. Ferrara-Daniels got on I-95 Foulk Road, 202 and traveled on the turnpike, I-95. The traffic conditions were “heavy.” Ferrara-Daniels was in the far right lane of two lanes of I-95 and she knew she had to “work over two lanes” in order to get to the correct lane in order to proceed to her daycare site. Ferrara-Daniels drove in the right lane and tried to move to another lane and was forced

over to the Route 141 exit and onto the shoulder by another motor vehicle. She “ended up” in the second lane and was trying to get back to the travel lane on I-95 but “no car would let her get back onto I-95.” Ferrara-Daniels was then “squeezed” between two cars on the shoulder; traveling approximately ten miles per hour while attempting to work her way back to the I-95 lane. She believes she only traveled on the shoulder for 4 or 5 car lengths or 80 – 100 feet while driving her minivan. According to Ferrara-Daniels the minivan has side and rear windows and her car was “moved over” because of a car allegedly forcing her onto the shoulder. Only at this point, according to Ferrara-Daniels, did she see any police cars and sirens. She then observed a police car pulled horizontally in front of her on I-95 while blocking her. At this point the I-95 southbound traffic was “creeping and crawling.” Ferrara-Daniels believes she stopped at the command of the Police Officer when George actually pulled in front of her with her police cruiser. She was approximately three feet way from Officer George’s police vehicle and saw her in the motor vehicle and then heard TFC Rhoades yelling, “Why didn’t you stop?” Ferrara-Daniels observed TFC Rhoades with a shotgun at her window with a gun pointed directly at her head.

Ferrara Daniels testified she never had a chance to respond to TFC Rhoades’ question as to “Why she didn’t stop.” At this point she testified she was “terrified and shaking.” She had never seen a shotgun before, nor one aimed at her head. Her window was down and Officer George asked her to get out of her motor vehicle. Officer George then frisked her and Ferrara-Daniels repeated her question to TFC Rhoades, “Why do you have a gun pointed at my head?”

At one point Ferrara-Daniels testified she exited her minivan and Officer Fox showed up and instructed her “Get into your car.” She complied. According to Ferrara-Daniels, there were now three State police officers now present on the scene: Fox, George and TFC Rhoades.

Officer Fox then returned and instructed her to get out of the car. At that point and she informed Officer Fox that she had a son to pick up at daycare. Ferrara-Daniels testified that she was “frantic, very upset, her hands were shaking” and that she had previously made a phone call to a friend by voice mail to have someone pick up her son. According to Defendant, Fox never informed her “I am going to arrest you for disorderly conduct” but simply instructed her to “Get out of your motor vehicle”. Ferrara-Daniels testified she was then pulled her out of the motor vehicle and forced her to the ground by Officers Fox and George. According to Ferrara-Daniels the entire incident removing her from her minivan only lasted about three seconds.

Ferrara-Daniels does not believe her arms were flailing or that she resisted arrest.

THE LAW

As a criminal matter, the State has a burden of proving each and every element of the offenses beyond a reasonable doubt. 11 *Del. C.* §301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965). The State also has a burden of proving beyond a reasonable doubt jurisdiction and venue. 11 *Del. C.* §232. *James v. State*, Del. Supr., 377 A.2d (1977). In considering whether the State has met this burden, the Court may consider all direct and circumstantial evidence.

Since this is a bench trial, not a jury trial, the Judge’s has the sole task of determining credibility of each and every fact witness who has testified at the trial. If the Court finds evidence to be presented in conflict, it is the Court’s duty to reconcile these conflicts, if reasonably possible, as to make one harmonious story of it all. If the Court cannot reconcile these differences, the Court must give credit to the portion of the testimony which, in the Court’s judgment is the most worthy of credit and disregard any portion of the testimony which the Court’s judgment finds is unworthy of credit. The Court takes into consideration the demeanor

of the fact witness, their apparent fairness in giving the testimony, their opportunities in hearing and knowing the facts about which they testified, any bias or interest they may have concerning the nature of the case.

OPINION AND ORDER

With regard to the central charge in this trial, Disregarding the Command of a Police Officer purportedly in violation of 21 *Del. C.* §4103(b), the State argued in closing statements from the trial record that it would be hard to fathom that a civilian driving a motor vehicle on a public roadway for almost approximately one mile who would not hear a visual or audible signal from a Police Officer in a marked patrol vehicle, including overhead lights, siren, red and blue lights stationed directly behind the Defendant. Scrutinizing the testimony and evidence presented at trial including the Defendant's testimony that she was traveling, albeit at a slow speed on the shoulder, and simply failed to hear TFC Rhoades' signal to stop, the Court finds that the Defendant violated 21 *Del. C.* §4103(b) beyond a reasonable doubt 11 *Del. C.* §301.

In reaching this conclusion the Court notes it has carefully scrutinized the credibility of each State fact witness and the Defendant's testimony, as well as balanced the conflicting stories from the respective State and Defense witnesses' testimony.

While the charging documents plead different sections of the statute in the alternative, it is clear the State has proven the charge as plead, 21 *Del. C.* §4103(b), beyond a reasonable doubt. 11 *Del. C.* §301. The Court finds that a "clearly discernable police signal to bring the drivers' (Defendant's) vehicle to a stop" as referenced in 21, *Del. C.* §4103(b) was made by TFC Rhoades and that Defendant failed to timely stop or comply with TFC Rhoades lawful direction. The overwhelming evidence presented at trial by all state police officers indicated that for at least .9 mile the Defendant disregarded a siren; flashing lights; and "red and blues" from TFC

Rhoades' patrol vehicle. While there was some testimony elicited from the defendant during cross-examination that she was taking prescription medicines, the Court finds based upon the trial record that the elements of the underlying statute, 21 *Del. C.* §4103(b) were proven. 11 *Del. C.* §301. Such is not an affirmative defense nor was it proffered as such at trial or as a mitigating factor.

As to the Disorderly Conduct Charge, the Court finds this unclassified misdemeanor was not proven in the trial record. 11 *Del. C.* §301. Arguably, while the Defendant may, or may not, have been flailing her arms, her testimony is that the incident lasted only "seconds" The Court finds lacking in the State's "case, annoyance or alarm to the public" as a predicate element that was not proven beyond a reasonable doubt. 11 *Del. C.* §301. While there was traveling motor vehicle occupants on I-95 who may, or may not, have witnessed the event, no such testimony that any fact witness was "annoyed or alarmed" was presented at trial by the State. 11 *Del. C.* §301.

With regards to the Improper Passing on the Right, by the Defendant's own admission, Ferrara-Daniels drove her motor vehicle on a public roadway known as South JFK Memorial Highway off the roadway, or main traveled portion of the highway in violation of 11 *Del. C.* §4117(a). Clearly she admitted she was driving on the shoulder at trial. Therefore, the State met its burden of proof beyond a reasonable doubt for this charge. 11 *Del. C.* §301.

Finally, with regards to the Resisting Arrest Charge, the Court finds that the Officers were without the legal authority to make a seizure in pulling the Defendant out of her motor vehicle. Clearly the Defendant had lawfully complied with the Police Officer's previous instructions to remain and sit in her motor vehicle when she first exited and attempted to leave. At the point in time the Defendant was allegedly placed under arrest, the State did not articulate

at trial the legal authority to remove Ferrara-Daniels from her minivan. See, e.g. *State v. Jackie Boyd, Jr.*, C.C.P., NCC, Case No. 040507093, Welch, J. October 20, 2004. Ferrara had lawfully complied with the police's instruction to return and sit in her motor vehicle. She was not presently under arrest for any misdemeanor or traffic charge. TFC Rhoades at the time, the Court believes, was conversing with his troop supervisor to determine what, if any, traffic summons he should issue to the defendant. When Officer Fox pulled her and forcibly removed her from her minivan, Officer Fox was without legal authority. The defense in closing statements referred to the police actions at this juncture as a "pouring gas on a fire". What appeared to the Court at this juncture was a highly distressed civilian who had just been stopped at gunpoint for a traffic violation. A simple request to be escorted to TFC Rhoades patrol vehicle to sign a Uniform Made Vehicle Summons would have appeared to the Court to be a reasonable lawful request by the police. The factual basis offered at trial by the State for the Resisting Arrest charge, according to Officer Fox is that the Defendant shut her own car door to the minivan. Query, what was the Defendant being arrested for? At the moment the defendant had not committed, as the Court understands, any elements of a Disorderly Conduct charge. 11 *Del. C. §1301(a)*. In analyzing these facts the Court notes that established case law provides that illegality of an underlying arrest is no defense to such a Resisting Arrest charge. *Ellison v. State*, Del. Super. Ct, 410 A.2d 519 (1979); *aff'd.*, Del. Supr., 437 A.2d 1127, 72 L.Ed. 147 (1981); Cert. denied., 455 U.S. 1026, 102 S.Ct. 1730 (1982).

However, even having considered this case law and deciding the Resisting Arrest charge on its merits while carefully scrutinizing the trial testimony, this Court cannot conclude beyond a reasonable doubt that the "Defendant did attempt to prevent CPL Fox of the Troop 6 State Police from effecting an arrest of herself". 11 *Del. C. §1271(3)*; 11 *Del. C. §301*. The Defendant's

version was that the incident lasted only seconds and directly contradicts the version offered by the State. The Court finds as a matter of law the evidence to be equally balanced and adjudicates the defendant not guilty of the charge.

The Court shall schedule this matter for sentencing for the violations of 21 *Del. C.* §4103(b) and §4117 at the earliest convenience of the Court with notice to the State and defense.

IT IS SO ORDERED this _____ day of December, 2004.

John K. Welch
Associate Judge

xc: Theresa Sama
Criminal Clerk, Scheduling Division