

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

STATE OF DELAWARE, )  
 )  
 v. ) Case No. 0310007773  
 )  
 DANIEL B. PARSONS, )  
 )  
 Defendant. )

Submitted: August 6, 2004  
Decided: September 10, 2004

Danielle Joffe, Esquire  
Deputy Attorney General  
Attorney General's Office  
820 North French Street  
Wilmington, DE 19801  
Attorney for the State

Louis B. Ferrara, Esquire  
Ferrara, Haley, Bevis & Solomon  
1716 Wawaset Street  
P.O. Box 188  
Wilmington, DE 19899  
Attorney for Defendant

**ORDER AFTER TRIAL**

COMES NOW, the Court in these proceedings finds as follows:

1) Daniel P. Parsons, defendant was stopped while driving a motor vehicle on North Market Street, Wilmington, Delaware and arrested for Operating a Vehicle While Under the Influence of Alcohol in violation of 21 Del. C. § 4177; Failure to Obey A Traffic Control Device, in violation of 21 Del. C. § 4122(3); Failure to Stop at a Red Light, in violation of 21 Del. C. § 4108(a); and Failure to Have License in Possession, in violation of 21 Del. C. § 2721 (b).

Informations were timely filed by the State and the defendant was arraigned on December 3, 2002.

3) On October 7, 2003, defendant filed a motion under Court of Common Pleas Civil Rule 12(b) to suppress alleging the stop was not based upon reasonable articulable suspicion; his arrest was not founded upon probable cause and the intoxilyzer testing failed to comply with the procedural standards under the United States and Delaware State Constitutions;

4) On July 12, 2004, the charges were scheduled for trial. Pursuant to our procedures this Court heard testimony on defendant's motion to suppress, in the same proceeding as the trial. At the conclusion, the testimony on the motion to suppress this Court held that the Trooper had reasonable articulable suspicion to stop the defendant and probable cause to take the defendant into custody to administer the intoxilyzer test. The Court then heard testimony on the merits of the State's charges;

5) Trooper Parker of the Delaware State Police testified he was certified to administer the intoxilyzer test having been qualified by training and education at the Delaware State Police Academy. Trooper Parker further testified he calibrated the machine before the test was administered. He also waited the required twenty (20) minutes where he personally observed the defendant before administering the test. During this observation period, he did not observe the defendant eat, drink, belch, regurgitate or smoke. Trooper Parker then

administered the intoxilyzer test, which indicated defendant's breath alcohol reading as .20.

6) Under the provisions of 21 Del.C. § 4177, a breath alcohol reading of greater than .10 is deemed under the influence of alcohol and legally impaired. At the conclusion of Trooper Parker's testimony, the State moved and the Court admitted into evidence the intoxilizer card which contained the defendant's alcohol content reading. Thereafter, the State rested its case.

7) The defendant presented no evidence and rested. The State did not offer any rebuttal evidence, and moved for judgment of guilt on the Driving While Under the Influence of Alcohol, Failure to Stop at Red Light, and Failure to Obey a Traffic Control Device.

8) The defense moved for judgment of acquittal on the basis that the State failed to formally move the non-hearsay evidence from the suppression hearing into the record for consideration by the Court during the guilty or innocence phase of the proceeding. The Defense alleged this Court had previously held that failure of the State to formally move the evidence into the record prevents the Court from considering such evidence. Therefore, without such evidence, there is insufficient basis for the Court to conclude beyond a reasonable doubt the guilt of the defendant on the offenses alleged.

9) A review of this court decision finds that defendant's argument is misplaced. While this Court has stated it is preferable for the State to formally move the non-hearsay into the record, we have never held such is a

condition precedent to the Court's consideration of such evidence during the guilty and innocence phase of the trial. See State v. Dinan, Del. CCP, 1999 WL 1847342, Welch J. (1999).

10) Furthermore, the defendant's argument that failure of the State to move the Court, prevents consideration of such evidence lacks merit. In these proceeding, the Police Officer testified in a single session of the Court. The Officer was subject to cross-examination on all of the issues which concerned the stop, arrest and administration of the test. I fail to see any legal basis for the Court not to consider competent evidence before it in the record, which it has previously ruled admissible. Further, justification for this conclusion is that if the Court had concluded the evidence inadmissible or legally insufficient, it would by necessity grant the motion to suppress.

Accordingly, defendant's motion is for judgment of acquittal is hereby Denied. Based upon the evidence, I am convinced that the State has proved the charges beyond a reasonable doubt and he is adjudged guilty of Driving While Under the Influence of Alcohol, in violation of 21 Del. C. § 4177, Failure to Obey a Traffic Control Device, in violation of 21 Del. C. § 4122(3), and Failure to Stop at a Red Light, in violation of 21 Del. C. § 4108(3). Failure to Have License in Possession in violation of 21 Del. C. § 2721(b) charge was dismissed at the conclusion of State's case.

The Clerk will schedule the defendant for sentencing as soon as possible.

So Ordered this 10<sup>th</sup> day of September 2004

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Alex J. Smalls  
Chief Judge

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