SUPERIOR COURT
OF THE STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

STATE OF DELAWARE)
)
v.) ID#: 0302014400
)
JAMES STEWART,)
)
Defendant.)

Submitted: May 3, 2004
Decided: August 31, 2004

ORDER

Upon Appeal from Court of Common Pleas - - *REVERSED and REMANDED*

This is an appeal by the State.[1] Shortly before Defendant was arrested and prosecuted for driving under the influence in Delaware, he was convicted of the same offense in Florida. At the time, the charge could be proved in Florida by a .08 blood alcohol reading. In Delaware, the presumption's threshold was higher, .10. The Court of Common Pleas, the trial court, correctly found Florida's law similar to Delaware's. But the trial court required the State to show that Defendant's actual misconduct in Florida would have supported his conviction under Delaware's law.

---

[1] 10 *Del. C.* § 9902(a) (1999).

When the State failed to meet the requirement, the trial court ignored the prior conviction and sentenced Defendant as a first-offender. Hence this appeal.

In the first instance, therefore, the question presented is whether as Delaware's and Florida's statutes then existed, was Florida's statute substantially similar to Delaware's? Because this court has already compared a statute almost identical to Florida's in *State v. Rogers*,[2] and concluded that those statutes are substantially similar, it follows that Florida's statute must be treated the same way. The decision here turns on the harder, second question: Must the State prove that Defendant's conduct in the first offense amounted to an offense in Delaware before it counts as a prior conviction?

I.

Like most states, Delaware provides increased penalties for second and subsequent driving under the influence convictions. For sentencing purposes under Delaware law, a prior offense is "a conviction pursuant to Section 4177 of [Title 21], or a similar statute of any state . . . within the five years immediately preceding the date of the present offense."[3] As noted below, Delaware's and Florida's statutory prohibitions on driving under the influence are virtually identical.[4] The potentially meaningful difference between the two statutes is the threshold at which

---

[2] Del. Super., Cr. ID. No. 0007008894, Del. Pesco, J. (Oct. 9, 2001).

[3] 21 *Del. C.* § 4177B(e)(2) (1995).

[4] Compare 21 *Del. C.* § 4177 with FLA. STAT. ANN § 316.193 (2004).

a blood alcohol reading leads to a conclusive presumption of guilt. As mentioned, under Florida law, the State is entitled to a presumption by showing an alcohol concentration of .08 or more and in Delaware, at the relevant time, the State was not entitled to the presumption until it proved an alcohol concentration of .10 or more.[5] This difference leads to the question whether Florida's statute is similar to Delaware's statute.

That question was addressed directly in *State v. Rogers,* which involved a prior conviction for driving while impaired in North Carolina. There is no basis for distinguishing *Rogers*. Florida's and North Carolina's statutes, including their presumptions at .08, are virtually identical. If North Carolina's statute is similar to Delaware's, then so is Florida's. As mentioned above and discussed below, the trial court correctly acknowledged that *Rogers* controls the outcome here. The problem, as also discussed below, is that the trial court placed an unnecessary evidentiary burden on the State before it would follow *Rogers* and recognize the Florida conviction.

II.

On appeal, this court is bound by the trial court's fact-finding, if it is rational and based on evidence with substance. The court's appellate review of legal questions, however, is plenary. As to a point of law that has been settled by this

---

[5] See generally H.B. 111, 142nd G.A. (2004)(replacing ".10" in 21 *Del. C.* § 4177(a)(4) with ".08").

court's decision, it "forms a precedent which is not afterwards to be departed or lightly overruled or set aside . . . and [it] should be followed except for urgent reasons and upon clear manifestation of error."[6] This process of a court's following its own precedents unless they are clearly wrong is the doctrine of *stare decisis*.

III.

In this case, the trial court's fact-finding is unchallenged. The material facts are undisputed. Defendant admits that he was convicted in Florida on February 13, 2003 for driving under the influence. Although Defendant's Delaware Division of Motor Vehicles driving record is not dispositive, it also reflects the Florida conviction.

The underlying law also is undisputed. *State v. Rogers* controls. The court need not recapitulate *Rogers* entirely. In summary, *Rogers* recognized that North Carolina's driving while impaired statute and Delaware's driving under the influence statute are not identical. But the operative difference was not important enough to make the statutes dissimilar. Both states prohibit the same thing, driving under the influence. Neither state requires that the prosecutor must introduce a blood alcohol reading nor condones operating a motor vehicle by a driver with a blood alcohol concentration above .00. The states merely provided a conclusive presumption of intoxication based on slightly different blood alcohol readings. In

[6] *Account v. Hilton Hotels Corporation*, 780 A.2d 245, 248 (Del. 2001) (citing *Oscar George, Inc. v. Potts*, 115 A.2d 479, 481 (Del. 1955)).

other words, it was never any more legal or any less illegal to drive with a .08 in Delaware then it was in Florida. The only difference is that it took a little lower blood alcohol reading to prove the offense in Florida. *Rogers* focused more on the prohibited conduct and less on the quantum of proof.

The court adds that *Rogers* is fair. When Rogers began drinking and driving in Delaware in 2000, he knew he had been convicted of driving while impaired in North Carolina. The possibility that Rogers was slightly less intoxicated when he got into trouble in North Carolina compared to when he was arrested in Delaware is inconsequential in all respects. Ultimately, the same thinking applies here to Stewart. When he started drinking and driving in Delaware, Stewart knew he recently had been convicted for the same behavior in Florida. Thus, it was no defense, in law and fairness, for Stewart to protest that he might have been a little less intoxicated when he was stopped in Florida than he was when he was stopped in Delaware.

IV.

The specific reason why the trial court's decision cannot stand is its conclusion "that while the Florida statute is similar to the Delaware statute no facts from the Florida jurisdiction [have] been placed before this Court." The trial court's concern about the details of the specific conduct for which Defendant was convicted in Florida was not out of the blue. It came from the trial court's reading of *Fletcher*

v. State.[7]

Fletcher concerned sentencing as a habitual criminal under 11 *Del. C.* § 4214(b). In *Fletcher*, the trial court had to determine whether defendant had been convicted in Kansas of predicate felonies before it declared him a habitual offender. To determine whether Fletcher's convictions in Kansas were predicates for sentencing in Delaware, the State was required to prove to the trial court that Fletcher's conduct amounted to prohibited felonious behavior under Delaware law. The issue in *Fletcher* was murky because it concerned whether Fletcher's behavior as a juvenile in Kansas was bad enough to count as a prior for Delaware's habitual offender statute's purposes. In *Fletcher,* the court had to put Kansas's law into the context of Delaware law.

For *Fletcher*'s purposes,

> [[t]he best and most just method of determining those deserving of such punishment [i.e. life without parole] is to look at prior conduct of the defendant as it relates to felonies in the Delaware Criminal Code, rather than to rely on technical classifications of other jurisdictions . . . .][8]

What happened in *Fletcher* was that defendant's criminal history revealed two, unspecified, prior felony convictions while he was a juvenile. Without considering

---

7 *Fletcher v. State*, 409 A.2d 1254 (Del. 1979).

8 *Id*. at 1255.

their nature, the trial court treated those convictions as predicates. *Fletcher* held that the trial court must know more than it did about the putative predicates. It had to determine whether Fletcher's conduct in Kansas amounted to felonies in Delaware. But *Fletcher* did not require the trial court to decide whether the evidence in Kansas would have justified Defendant's conviction in Delaware. By the same token, all that the trial court had to determine here was that Stewart had been convicted in Florida under a statute that was similar to Delaware's.

In this case, there is little mystery about what Defendant did in Florida. Defendant indisputably violated Florida's prohibition on driving under the influence and, as discussed above, the Florida statute that Defendant violated is similar to Delaware's. In short, the trial court's implicit concern that Defendant's blood alcohol concentration in Florida might have been less than .10 is beside the point. To rule as the trial court did invites relitigating the Florida case here. What was the State to do if no blood alcohol test had been introduced in the Florida case?

V.

In summary, before the trial court was required to sentence Defendant as a second offender, the State had to prove that Defendant was previously convicted of driving under the influence in Florida and the Florida statute was

similar to Delaware's. The State met its burden and, therefore, the trial court was required to impose the statutorily mandated sentence. The State was not required to show that Defendant would have been convicted had he been prosecuted in Delaware instead of Florida.

For the foregoing reasons, the October 28, 2003 final order of the Court of Common Pleas is **REVERSED** and the case is **REMANDED** for re-sentencing, consistent with this decision.

IT IS SO ORDERED.

______________________ ____
Judge

oc: Prothonotary (Criminal Division)
Shawn Martyniak, Deputy Attorney General
Anthony Figliola, Esquire

bxc: The Honorable John Welch

NOTE: NOTIFY JUDGE WELCH IN CCP FIRST BEFORE ISSUING THE ORDER