IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHELLY DEHORTY,	)	No. 494, 2000
	)	
Defendant Below,	)	Court Below: Superior Court
Appellant,	)	of the State of Delaware in
	)	and for Kent County
v.	)	
	)	Cr. ID. No. 0001003668
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: February 21, 2002
Decided: June 10, 2002

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND, BERGER** and **STEELE**, Justices.

O R D E R

This 10th day of June, 2002, upon consideration of the parties' briefs and record below, it appears to the Court that:

1. The Defendant Appellant, Shelly A. Dehorty, filed this appeal from the Superior Court's order dated July 20, 2000, which convicted Dehorty of three counts of Assault in the Second Degree and certain motor vehicle offenses, largely irrelevant to this appeal, after a bench trial. On October 31, 2001, we remanded the case to Superior Court and requested that the trial judge address the

applicability, if any, of *Bullock v. State,*[1] to the facts of this case and requested appropriate findings and conclusions in that regard. On January 3, 2002, we received the report of those findings and conclusions on remand. After a careful review of the report, we conclude that the trial judge ruled correctly on each issue raised by Dehorty relevant to her convictions except for Driving While Revoked.[2] That conviction and sentence is vacated. We affirm the Superior Court's judgment on all other counts.

2. The record reflects that after a bench trial, the trial judge found Dehorty guilty of three counts of Assault Second, lesser included offenses of Assault First, arising from reckless conduct while driving her automobile at night into a horse-drawn buggy within 100 feet of an intersection on an unlighted, unmarked, shoulderless, narrow, county road. Dehorty drove her vehicle in excess of the posted speed limit, did not slow down as she approached the buggy from behind and moved into the left lane in an attempt to pass the buggy after the buggy had already begun a left turn. At the time she collided with the buggy, the horse had already completely cleared the road upon which both vehicles were traveling. Dehorty left only 17 feet of skid marks before the point of impact.

3. The trial judge correctly concluded after detailed findings of fact that these actions constituted reckless conduct that a trier of fact could not excuse. The

[1] 775 A.2d 1043 (Del. 2001).
[2] Del. Code Ann. tit. 21 § 2756 (1995).

collision resulting from speeding and attempting to pass an appropriately marked horse-drawn vehicle within 100 feet of an intersection was not outside the risk of which Dehorty was aware and the actual result involved the same kind of injury as the probable result. The result was not too remote to have a bearing on Dehorty's penal liability.

4. The trial judge's opinion on remand carefully examines Del. Code Ann. tit. 11 § 263 and correctly distinguishes *Bullock* from the facts of this case. Dehorty caused the collision by being where she had no right to be at a time and place where a reasonable person could anticipate or foresee that the buggy ahead of her might make a slow left turn into her path. The folly of approaching a horse-drawn vehicle at night on a dark, narrow county road and attempting to pass within 100 feet of an intersection at a speed in excess of the posted 50 m.p.h. speed limit constituted reckless conduct which caused the collision resulting in serious injury to the buggy's three occupants.

5. The trial judge did not abuse his discretion when he found that all three occupants of the buggy suffered serious physical injury. Dehorty argues that one occupant merely suffered from injuries that her emergency room physician characterized as "significant" rather than "serious."[3] Our standard of review of the

[3] Dr. Craig Hochstein opined at trial that a "broken clavicle or collar bone, and . . . a broken bone in her leg" along with "numerous abrasions and contusions" were significant but not "serious or life threatening."

trial judge's ruling on this issue is whether any rational trier of fact could, viewing the evidence in the light most favorable to the State, find that the occupant suffered "serious physical injuries" from the collision caused by Dehorty. When measured by a legal standard, a rational person could find these injuries to be "serious."[4]

6. Dehorty urges this Court to vacate her sentence on the basis that the trial judge abused his discretion by imposing an excessive term of imprisonment that exceeds TIS guidelines and is out of proportion to sentences imposed in other similar cases. The trial judge's sentence did not exceed the statutory maximum for Assault Second. The fact that the sentence for each Assault Second conviction exceeded TIS guidelines is not subject to Appellate review.[5] On October 30, 2000, the Superior Court deferred action on a Motion for Reconsideration of Sentence until this Court returned the record and mandate to the Superior Court.[6] Dehorty may wish to address sentencing issues at that time. To the extent a proportionality

[4] *See Bass v. State,* 670 A.2d 1336, 1995 WL 788594 at 1 (Del. 1995) Berger, J., order) (second degree assault victim hospitalized four days and treated for multiple face bruises, a black eye, a broken nose and a brain contusion); *Young v. State,* 610 A.2d 728, 1992 WL 115175 at 2 (Del. 1992) (Horsey, J, order) (second degree assault victim suffered at least one fractured toe, two black eyes, extensive bruises, and a laceration above her left eyebrow which the treating physician predicted would result in an "unacceptable outcome"); *Slaton v. State,* 670 A.2d 907 1996 WL 147619 at 2 (Del. 1995) (Holland, J., order) (sexual assault victim sustained no bone fractures, but "suffered pulled ligaments and tendons in her arm" and was unable to work for approximately three weeks because of the loss of use of her arm).

[5] *Mayes v. State,* 604 A.2d 839, 846 (Del. 1992); *Gaines v. State,* 571 A.2d 765, 766-67 (Del. 1990).

[6] *State v.Dehorty,* Del. Super., Cr. A. No. 00-01-0003668 (Oct. 30, 2000).

analysis is appropriate, the sentencing judge should have an opportunity to consider the issue initially.

6. Dehorty's claim that there was insufficient evidence to support the conviction of Reckless Driving is without merit for the reasons stated in this Order's discussion of the Assault Second convictions.

7. We must, as the State has conceded, vacate the judgment and sentence for the conviction of Driving While Revoked. While Dehorty did drive at the time of the offense without having taken steps to reinstate her license, her actual revocation period expired on May 5, 1998 after a one year revocation period. This offense occurred on December 24, 1999. At most, the record reflects that she could have been charged with and convicted of Del. Code Ann. tit. 21 § 2701(b).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is VACATED as to IK00-02-0196 and AFFIRMED as to all other counts of the Indictment.

BY THE COURT:

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Justice