

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT CHURCH,	§
	§ No. 360, 2010
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. 0902018033
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 15, 2010
Decided: December 22, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 22nd day of December, 2010, it appears to the Court that:

1) The defendant-appellant, Robert Church (“Church”) appeals from his Superior Court conviction for driving under the influence (“DUI”).¹ Church moved for a judgment of acquittal. The Superior Court denied that motion and a jury convicted Church. The Superior Court sentenced Church to three years of incarceration at Level V, suspended after six months for two years at Level IV, followed by probation.²

¹ See Del. Code Ann. tit. 21, §§ 4177(a) and (c)(5).

² This was Church’s fourth DUI conviction. See Del. Code Ann. tit. 21, § 4177(d)(4).

2) Church contends that the Superior Court erred in denying his motion for a judgment of acquittal because the State did not present sufficient evidence. The record does not support Church's argument. Therefore, the judgment of the Superior Court must be affirmed.

3) Clayton Fire Company Captain David Ross was dispatched to an accident scene. Upon arrival, Ross observed a vehicle in a ditch and Church standing nearby. Ross asked Church to follow him to his command vehicle. Initially, Church replied, "I'm good," but he soon complied. Ross observed Church to be "a little unstable" and detected "a little odor of alcohol."

4) Shortly thereafter, Trooper Eric Lochstoer arrived at the scene. Trooper Lochstoer is an eighteen-year veteran of the State Police with extensive experience in accident and DUI investigations. He determined that Church's vehicle veered off the road, struck a mailbox, traveled across the oncoming lane, and crashed in the ditch. Trooper Lochstoer testified that the road leading up to the crash site is "kind of straight." Although it had rained earlier, it was not raining when Trooper Lochstoer arrived at the scene.

5) Because paramedics were treating Church at the scene, Trooper Lochstoer only spoke with him briefly, but detected a "very strong" odor of

alcohol coming from Church's breath and observed Church's eyes to be watery, bloodshot, and glassy. Trooper Lochstoer spoke with Church in more detail at the hospital and observed that Church had urinated in his pants. Trooper Lochstoer asked Church if he would submit to field sobriety tests or consent to a blood test, but Church refused. At trial, Trooper Lochstoer testified that, from what he observed, he "had reason to believe [Church] was under the influence."

6) When a defendant argues that the evidence is insufficient to support the verdict, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, including all reasonable inferences to be drawn therefrom, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.³ In so doing, this Court does not distinguish between direct and circumstantial evidence.⁴ Following a jury trial, the standard of appellate review is deferential to the extent that "the jury is the sole trier of fact responsible for determining witness credibility, resolving conflicts in testimony and for drawing any inferences from the proven facts."⁵

³ *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

⁴ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

⁵ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

7) Church was convicted of violating title 21, section 4177(a)(1) of the Delaware Code which provides that “[n]o person shall drive a vehicle [w]hen the person is under the influence of alcohol.” The statute defines “under the influence” as follows:

“While under the influence” shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.⁶

In order to prove guilt of driving while under the influence of alcohol, the State must prove that the defendant was driving and that he was under the influence of alcohol while driving.⁷ Church does not contest that he was driving at the time his vehicle ran off the road. He argues, however, that the State failed to prove that he was under the influence of alcohol.

8) A chemical test is not necessary to prove the impairment required by the statute.⁸ Driving under the influence may be established by circumstantial evidence.⁹ This Court has held that intoxication is within the realm of common knowledge. Accordingly, a police officer may offer opinion testimony regarding intoxication so long as the officer also testifies

⁶ Del. Code Ann. tit. 21, § 4177(c)(5).

⁷ See *Lewis v. State*, 626 A.2d 1350, 1355 (Del. 1993).

⁸ Del. Code Ann. tit. 21, § 4177(g)(2); *Shaw v. State*, 2007 WL 866196, *1 (Del. March 23, 2007).

⁹ *State v. Pritchett*, 173 A.2d 886, 889 (Del. Super. Ct., 1961) (collecting cases).

about the observations that gave rise to that opinion.¹⁰ A defendant's refusal to submit to testing may be used for any relevant purpose, including to show consciousness of guilt.

The mere fact that evidence offered against an accused might be said to be prejudicial in the sense that it tends to incriminate him is no reason for its rejection in a criminal prosecution. Thus, subject to well-defined rules of evidence, it is proper in a criminal case to show defendant's conduct, demeanor, and statements, whether oral or written, his attitude and relations toward the crime, if there was one. These are circumstances that may be shown. Their weight is for the jury to determine. The fact that defendant declined to submit to a sobriety test is such a circumstance which a jury may consider.¹¹

9) The record reflects that the jury relied on the following circumstantial evidence to convict Church of DUI: the accident itself -- a one car crash on a straight road; Ross' observation that Church appeared "unstable"; Trooper Lochstoer's detection of a strong odor of alcohol emanating from Church's breath; Trooper Lochstoer's observation of Church's watery, glassy, and bloodshot eyes; Trooper Lochstoer's observation that Church had urinated in his pants; Church's refusal to submit to field sobriety or blood tests; and Trooper Lochstoer's belief that Church was under the influence. "[A] rational trier of fact, viewing the evidence in

¹⁰ *State v. Durrant*, 188 A.2d 526, 529 (Del. 1963).

¹¹ *Id.* at 528. See also *South Dakota v. Neville*, 459 U.S. 553, 564 (1983) (Fifth Amendment does not bar admission in evidence of defendant's refusal to submit to alcohol test, nor does due process prohibit its use as evidence of guilty.).

the light most favorable to the State, could find . . . beyond a reasonable doubt”¹² that Church was “because of alcohol or drugs or a combination of both, less able than [he] would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of [his] vehicle.”¹³

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is affirmed.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹² See *Neal v. State*, 3 A.3d 222, 223 (Del. 2010).

¹³ See Del. Code Ann. tit. 21, §§ 4177(a)(1), (c)(5).