

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL SHAW,	§	
	§	No. 538, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0509015887
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: January 25, 2007

Decided: March 23, 2007

Before **HOLLAND, BERGER, and RIDGELY**, Justices.

ORDER

This 23rd day of March 2007, upon consideration of the briefs of the parties and the record on appeal, it appears to the Court that:

(1) Appellant Daniel Shaw appeals his Superior Court conviction of driving under the influence of alcohol or drugs. Shaw argues that the State produced insufficient evidence from which a rational juror could conclude beyond a reasonable doubt that he was under the influence of alcohol or drugs. We find no merit to his argument and affirm.

(2) At approximately 1:30 a.m. on September 20, 2005, Sergeant James Ryan of the Newport Police Department witnessed a vehicle speeding southbound on Route 141. He then observed the vehicle crash into the barriers, “[go] up an

incline [and] around a curve.” Ryan then heard a loud “thump.” Ryan drove south on Rt. 141 and found a Plymouth Breeze upside down and saw Shaw crawl out from underneath the vehicle.¹ Ryan did not see anyone else near the overturned vehicle.

(3) Shaw was visibly injured. Ryan testified that Shaw “had a head injury [and] was complaining of his side hurting, and he had lacerations on his legs.” When Ryan got close to Shaw, he detected the smell of alcohol on Shaw’s breath. When asked if he had been drinking, Shaw admitted that he had been, but did not say exactly how much he had to drink. Ryan then asked Shaw to say the alphabet. According to Ryan, Shaw “made it to B and, then, he started transposing letters.”

(4) Ryan called a tow truck to turn Shaw’s vehicle back over. As the car was being turned over, a bag containing a white substance fell in front of the driver’s seat. The bag contained crack cocaine. Several bags were then found in Shaw’s vehicle. A total of 34.05 grams of cocaine were seized.²

(5) At the police station, Shaw admitted that he had a drink that night, but did not believe that he was intoxicated. Shaw also admitted to smoking marijuana two days earlier, and taking several prescription drugs due to recent injuries. Shaw denied being the driver of the vehicle.

¹ According to Ryan, it took approximately two minutes to get to the scene.

² Shaw does not appeal any of the drug related charges.

(6) Shaw argues that the State produced insufficient evidence from which a rational trier of fact could conclude that Shaw was under the influence of alcohol or drugs on the morning of the accident. We review such claims to determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”³

(7) To successfully prosecute an individual under 21 *Del. C.* § 4177, the “State must prove both of the following two elements beyond a reasonable doubt: First, that the defendant drove a motor vehicle at or about the time and place charged; Second, that the defendant was under the influence of alcohol while he drove the motor vehicle.”⁴ A person is “under the influence” of alcohol when he or she 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.”⁵ Chemical testing is not required to prove impairment.⁶

³ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

⁴ *Lewis v. State*, 626 A.2d 1350, 1355 (Del. 1993).

⁵ 21 *Del. C.* § 4177(c)(5).

⁶ 21 *Del. C.* § 4177(g)(2) (“Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.”); *State v. Cagle*, 332 A.2d 140, 142 n.2 (Del. 1974) (“Defendant's blood alcohol concentration test results were not admitted into evidence by the Trial Judge. The absence of such test results does not preclude a conviction based on other admissible evidence.”).

(8) There was sufficient evidence in this case to show that Shaw was the driver of the Plymouth Breeze. The vehicle was registered to Shaw. In addition, Ryan witnessed Shaw, and no one else, crawl out from the vehicle within minutes of the accident. There was also sufficient evidence to show that Shaw was under the influence at the time of the accident. Ryan detected a smell of alcohol on Shaw's breath after he crawled out from beneath the wreckage. Shaw admitted that he had consumed alcohol before driving and he also failed a field sobriety test. When asked to recite the alphabet, Shaw began transposing the letters after the letter B. When all the evidence is viewed together, a rational trier of fact could conclude that Shaw was guilty of driving a vehicle while under the influence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice