

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 68, 1959

WILLIAM J. DE SALVATORE, DEFENDANT BELOW, APPELLANT

v.

STATE OF DELAWARE, APPELLEE

OPINION

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v.

STATE OF DELAWARE, APPELLEE

(June 3, 1960)

Southerland, C. J., Wolcott and Bramhall, JJ., sitting.

Appeal from the Superior Court in and for New Castle County.

Robert C. O'Hora and John P. Daley, of Wilmington, attorneys for appellant.

Clement C. Wood, Chief Deputy Attorney General, and Murray M. Schwartz, Deputy Attorney General, attorneys for appellee.

Wolcott, J.: This is an appeal from a conviction before a Superior Court Judge, in the absence of a jury, of driving a motor vehicle under the influence of intoxicating liquor. The bases of the appeal are the denial by the trial judge of the following defense motions: (1) to suppress intoximeter test results by reason of the State's failure to produce for inspection one component part of the intoximeter; (2) to suppress the testimony of the officers taking the defendant into custody by reason of an asserted lack of authority to make an arrest; (3) to suppress evidence on the basis of an asserted invalidity of the "Uniform Arrest Act" (11 *Del. C.*, § 1902); and (4) an objection to questions addressed by the prosecution to the State Chemist designed to elicit an opinion concerning the physical condition of a man with 0.243 percent of blood alcohol by weight.

The facts involved in this prosecution are briefly summarized.

At approximately 1:00 A.M. on February 2, 1959, two uniformed Delaware Memorial Bridge guards, known generally to the community as "Bridge Police", were proceeding south on Route 13 approaching the overpass of Basin Road, a point three or four miles south of the Delaware Memorial Bridge. The two officers noticed a car across the grass plot dividing the north and south lanes of Route 13 at a point where there was no legal crossover. The car, thus observed, drove into the parking lot of a diner immediately to the south of the Basin Road overpass and stopped. The two officers followed in the patrol car and pulled up alongside the observed vehicle.

The driver of the car, who turned out to be this appellant, was requested to get out of his car. He did so slowly and leaned against the open door of his car. He emitted the odor of alcohol. He appeared unsteady on his feet. When asked for his registration and license, he fumbled in finding them. He admitted to having had some beer to drink. The officers concluded the appellant should be given a sobriety test, which he agreed to submit to.

Before leaving the parking lot, and after the appellant had given in response to questions his name and address, the officers told him he was being placed under a 2-hour detention for the purposes of the sobriety test and that at the end of that period he would either be released or a charge would be placed against him. Appellant voluntarily went with the officers to the police station, although in no event, the officers testified, would they have permitted him not to have accompanied them.

At the police station the appellant was administered physical coordination tests. His attitude changed from cooperative to indifferent to insulting. His speech was confused. His eyes watery, his balance and walk were "swaying," and he was "uncertain" on the finger-to-nose and picking up coins tests. His language became abusive and obscene when he was told a charge would be