

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2790-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WESLEY CLAY,

Defendant-Appellant.

Submitted May 16, 2017 – Decided August 14, 2017

Before Judges Sumners and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Municipal
Appeal No. 26-15-C.

Mitchell E. Ignatoff, attorney for appellant.

Michael H. Robertson, Somerset County
Prosecutor, attorney for respondent
(Alexander Mech, Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant Wesley Clay entered a conditional guilty plea in Bound Brook Borough Municipal Court to driving while intoxicated (DWI), N.J.S.A. 39:4-50, specifically preserving his right to

appeal the denial of his motion seeking discovery of the New Jersey State Police Manual (NJSP Manual) governing the administration of standardized field sobriety tests. In his trial de novo appeal to the Law Division, defendant also contended that his plea should be vacated because he failed to give a factual basis for DWI. For the reasons that follow, we affirm.

Defendant was arrested and charged with DWI by a New Jersey State Trooper. Prior to trial, defendant requested that the State provide him with a copy of the NJSP Manual. When the State did not comply with the request, defendant filed a motion with the municipal court. The municipal court initially denied the request on the belief that the NJSP Manual was available to the public on the internet; however, once defendant discovered that the manual was not available, he filed a reconsideration motion. The municipal court acknowledged that it was mistaken about the availability of the NJSP Manual, yet denied reconsideration. After expressing concern about whether the state trooper who administered the field sobriety tests to defendant received training based upon the NJSP Manual,¹ the municipal court determined that the NJSP Manual was not relevant because defendant

¹ It was later stipulated that the state trooper had received New Jersey State Police field sobriety test training prior to administering the test to defendant.

was not solely charged due to a failed field sobriety test. The state trooper also charged defendant based upon observation of defendant's driving, defendant's watery eyes, the smell of alcohol on defendant's breath, and the breathalyzer results above the legal limit.²

A week after the reconsideration motion was denied, defendant entered his conditional plea to DWI, his third such offense. To establish a factual basis for DWI, the following colloquy took place:

THE COURT: Okay. On October 15, 2014[,] were you driving here in Bound Brook?

DEFENDANT: Yes, I was.

THE COURT: . . . before you were driving in Bound Brook had you imbibed any alcoholic beverages?

DEFENDANT: Yes.

. . . .

THE COURT: All right. Can you give me any estimate as to how many beers there were? And I'm -- don't think I'm holding you to it as far as --

DEFENDANT: Yeah, I'm not really sure on that because I -- probably -- maybe three beers, four beers at the most.

² According to the record, defendant had a blood alcohol content of .19, which is well above the .08 limit set forth in N.J.S.A. 39:4-50(a).

THE COURT: Okay. And did the beer that you imbibed, did that affect your capability of driving an automobile?

DEFENDANT: No.

THE COURT: No?

DEFENDANT: Not normally. Yeah (Indiscernible) -- I guess I probably -- obviously does everybody, yeah.

. . . .

THE COURT: Okay. And after you drank these beers you got into your automobile and then . . . you were pulled over by the Bound Brook Police.

DEFENDANT: Well[,] I went down and picked up some pizza and food [] for the friend. And I was bringing it back there, just across town, and came back. And before I got back to the house[,] I got pulled over.

The municipal court then explained to defendant the jail term, loss of driving privileges, fines and penalties that would be imposed for his third DWI offense. Based upon the court's inquiry, defendant indicated that he was entering his plea freely, voluntarily, without coercion and not under the influence of any alcohol or drugs affecting his decision to enter his plea.

Defendant appealed his DWI conviction to the Law Division. He argued that the municipal court erred in denying his discovery motion and accepting his guilty plea without a factual basis as

to the time he drank beer and that it affected his ability to drive.

Following a trial de novo on the record, Judge Bruce A. Jones, issued an order and written decision on January 4, 2016, denying defendant's appeal. The judge reasoned that pursuant to State v. Robertson, 438 N.J. Super. 47, 66 (App. Div. 2004), and State v. Ford, 240 N.J. Super. 44, 48 (App. Div. 1990), defendant was not entitled to discovery of the NJSP Manual because the field sobriety test was not relevant and it did not affect his guilty plea. The judge recognized, as did the municipal court, that the DWI charge was not solely based on the field sobriety test, but also upon the state trooper's observation and the breathalyzer result. Thus, the judge concluded, "[t]here is no reasonable basis to assert that if the [NJSP] Manual was produced it would have provided [] [d]efendant with a defense." In reviewing defendant's plea colloquy, the judge was "satisfied that an adequate factual basis was provided on the record to justify a plea of guilty." This appeal followed.

Before us, defendant reiterates the arguments that he was entitled to a copy of the NJSP Manual and that he failed to provide a factual basis for his guilty plea. We find no merit to either contention.

We review a court's denial of discovery requests under an abuse of discretion standard. State v. Enright, 416 N.J. Super. 391, 404 (App. Div. 2010), certif. denied, 205 N.J. 183 (2011). "[T]he liberal approach to discovery in criminal cases is applicable in municipal court cases." State v. Stein, 225 N.J. 582, 594 (2016). A defendant, "on written notice to the municipal prosecutor . . . shall be provided with copies of all relevant material . . ." R. 7:7-7(b). "'Relevant evidence' is defined as 'evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.'" State v. Gilchrist, 381 N.J. Super. 138, 146 (App. Div. 2005) (quoting N.J.R.E. 401). "In determining whether evidence is relevant, the inquiry should focus upon 'the logical connection between the . . . evidence and a fact in issue.'" State v. Darby, 174 N.J. 509, 519, (2002) (quoting State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990)). Moreover, "[a] DWI defendant's 'right to discovery . . . is limited to items as to which 'there is a reasonable basis to believe will assist a defendant's defense.'" State v. Robertson, supra, 438 N.J. Super. at 66 (citing State v. Carrero, 428 N.J. Super. 495, 507 (App. Div. 2012) (quoting State v. Ford, 240 N.J. Super. 44, 48 (App. Div. 1990))).

Guided by these principles, we conclude there was no abuse of discretion in denying defendant's discovery motion. Under

certain circumstances, it may be relevant whether a state trooper acted in conformance with the NJSP Manual when administering a field sobriety test. Here, however, the NJSP Manual was not relevant to proving that defendant was guilty of DWI because the State's proofs were based upon the state trooper's observation of defendant's driving and physical appearance, and the breathalyzer results. Thus, we discern no reason to disturb Judge Jones' discovery ruling.

Lastly, defendant contends that his conviction should be vacated because he did not provide a factual basis for his DWI guilty plea. In particular, he contends no facts were presented during his plea colloquy indicating the time of day that he consumed alcohol before he was pulled over and charged with DWI.

In order to properly accept a plea of guilty, a municipal court judge must address the defendant personally and must determine "that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea." R. 7:6-2(a)(1). Indeed, constitutional law requires that a guilty plea be entered knowingly and voluntarily. Brady v. United States, 397 U.S. 742, 748, 90 S. Ct. 1463, 1468-69, 25 L. Ed. 2d 747, 756 (1970).

After a careful review of the record, we find no basis to set aside the DWI plea. Defendant was represented by counsel, and a

sufficient factual basis for the plea was developed. Defendant admitted in his own words that his driving was affected because he drank three to four beers before driving. Despite the fact there was no indication of the time defendant consumed the beer, the record supports a finding that defendant drove his vehicle while under the influence of alcohol. We are mindful that defendant's breathalyzer results were not stipulated at the plea hearing. Nevertheless, we are satisfied that defendant's admission of erratic driving adequately supported a guilty plea.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION