

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYAN M. BROCHU,	§	
	§	No. 341 , 2011
Defendant Below,	§	
Appellant,	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. ID No. 1006001378
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 11, 2012

Decided: February 21, 2012

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

ORDER

This 21st day of February, 2012, on consideration of the briefs of the parties,
it appears to the Court that:

1) Bryan M. Brochu appeals the Superior Court's modified sentencing order,
on the ground that the court improperly identified excessive cruelty as an aggravating
circumstance. We find no merit to this appeal and affirm.

2) On June 2, 2010, Brochu and Gregory Walters, a co-worker, were drinking
at McGlynn's Pub in Newark, Delaware. Both men were intoxicated when they
became involved in a fight in the parking lot. Walters was larger than Brochu and

apparently got the better of him. After others separated the two men, Brochu got into his truck and drove to the far end of the parking lot. He was “doing donuts,” and then turned, accelerated, and headed straight for Walters, who was standing by his truck. Brochu was going about 44 miles per hour when he hit Walters, and sent him flying 50 feet into the air. After hitting Walters, Brochu continued driving until he struck a pillar not far from the Pub.

3) Brochu got out of his car and went to see Walters’ condition. When Brochu saw Walters, he said, “Don’t die” several times. Brochu also said that he was sorry and that he did not mean to hit Walters.

4) Walters suffered brain damage. He is permanently disabled and has no ability to work. Walters’ wife told the court at sentencing that Brochu “technically . . . did kill [Walters] because [he] will never be the man he was prior to June 2nd.”¹

5) The trial court originally sentenced Brochu to 20 years at Level V, suspended after 15 years for 5 years at Level IV, suspended after 6 months for 2 years at Level III. The court later reduced Brochu’s Level V time from 15 years to 12 years. The court also removed its prior order of restitution.

¹Appellee’s Appendix, B-4.

6) A sentence that is within statutory limits, as is this one, generally is not reviewed on appeal.² If, however, the sentencing judge relies on information that lacks “minimum indicia of reliability,”³ the sentence may be vacated. Brochu argues that the trial court’s finding of “excessive cruelty” is not supported by minimum indicia of reliability. He argues that he was not excessively cruel because he did not intend to hit Walters. Brochu says that Walters “jumped out” into his path – a description consistent with several witnesses’ statements. In addition, Brochu was extremely upset and remorseful immediately after the collision.

7) The problem with this argument is that other facts support the conclusion that Brochu acted intentionally. First, when Brochu got into his truck, one witness heard him tell Walters, “I’m going to get you for this.”⁴ Others at the scene said it looked like Brochu intentionally drove toward Walters, and that Walters was trying to get away when he was hit. Finally, there is no dispute that Brochu was driving at about 40 miles per hour when he struck Walters, and there was no evidence that Brochu ever hit the brakes before impact.

8) The trial court was not required to accept Brochu’s self-serving claim that the collision was an accident. There was reliable evidence from which the trial court

²*LaBoy v. State*, 1995 WL 389720 at * 1 (Del. Supr.).

³*Mayes v. State*, 604 A.2d 839, 843 (Del. 1992).

⁴Appellant’s Appendix, A-37.

could have concluded that Brochu, in a drunken rage, drove straight at Walters. Brochu's willingness to endanger Walters in that fashion justifies a finding of excessive cruelty. The trial court acted within its discretion in imposing sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice