# IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
V.	)	Case No. 1203013161
	)	
OTHELO K. PREDEOUX	)	
	)	
Defendant.	)	

Submitted: November 1, 2013 Decided: November 4, 2013

Upon Consideration of Defendant's Motion to Suppress, GRANTED.

# **OPINION**

David Holloway, Esquire, Deputy Attorney General, Delaware Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, Delaware 19801, Attorney for the State.

Darryl J. Rago, Esquire, Assistant Public Defender, Office of the Public Defender, Carvel State Office Building, 820 North French Street, Second Floor, Wilmington, Delaware 19801, Attorney for the Defendant.

RAPPOSELLI, J.

## **INTRODUCTION**

On March 27, 2012, Defendant Othelo Predeoux ("Defendant") was required to submit to a warrantless search in the form of a non-consensual blood draw. The State intends to introduce the evidence obtained as a result of the search against Defendant at trial. Defendant moved to suppress this evidence and filed his motion on October 14, 2013. The State submitted a response on October 30, 2013. Oral arguments were heard on November 1, 2013. This Court finds that the State failed to meet its burden of proving that the warrantless search fell within an established exception to the warrant requirement. Therefore, Defendant's Motion to Suppress is **GRANTED.** 

### FACTUAL HISTORY

On March 27, 2012, at approximately 8:00 am, Delaware State Police officer, Corporal Shannon King ("Cpl. King"), and at least three other officers were called to the scene of a two motor vehicle accident in which Defendant was one of the drivers. Upon arrival, Cpl. King observed emergency response personnel moving Defendant from the driver's seat to a stretcher and into an ambulance. While in the ambulance, Defendant told Cpl. King that he had been "T-boned" by the other driver. Cpl. King detected an odor of alcohol and asked Defendant if he had consumed any alcohol. Defendant said no. Nonetheless, Cpl.

King asked another officer to administer a Portable Breath Test ("PBT") which resulted in a "passing" breath alcohol level of .051. Defendant was then transported to Christiana Care Hospital via ambulance while Cpl. King continued his investigation at the scene of the accident. Cpl. King then interviewed the second driver who stated that the accident was caused by Defendant. The interview lasted approximately five minutes and then Cpl. King traveled to the hospital to continue to speak with Defendant. At the hospital, after a CJIS inquiry, Cpl. King learned that the date in question was also Defendant's birthday and asked Defendant again if he had consumed any alcohol. This time, Defendant contradicted his earlier statement and admitted to drinking "one shot" of alcohol the previous night. Cpl. King then contacted Omega Services, with whom DSP has a service contract, to conduct a blood draw on Defendant. No warrant was obtained. Defendant was charged with Driving Under the Influence, Driving with a Suspended License and Failure to Yield at an Intersection.

### **DISCUSSION**

Defendant contends that the warrantless blood draw in this case was an impermissible search in violation of the Fourth Amendment of the U.S.

Constitution, and Article 1, Sections 6 and 7 of the Delaware Constitution.<sup>1</sup> The Fourth Amendment to the United States Constitution provides, in pertinent part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against all unreasonable searches and seizures, shall not be violated." "On a motion to suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed…by the U.S. Constitution, the Delaware Constitution, or Delaware statutory law. The burden of proof on a motion to suppress is proof by a preponderance of evidence."<sup>2</sup>

If a search proceeds without a warrant, the State must prove by a preponderance of evidence that the search fell within an established exception to the warrant requirement.<sup>3</sup> "This principle applies to the type of search at issue in this case, which involved a compelled physical intrusion beneath [the] skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation."<sup>4</sup>

It is well established that one exception to the warrant requirement exists "when exigencies of the situation make the needs of law enforcement so

<sup>&</sup>lt;sup>1</sup> The issue of probable cause was not raised by Defendant, and thus not discussed by this Court. The sole issue before this Court is whether the warrantless search fell within an established exception to the warrant requirement.

<sup>&</sup>lt;sup>2</sup> State v. Anderson, 2001 WL 1729141, at \*2 (Del. Super. Nov. 29, 2001) (citations omitted).

<sup>&</sup>lt;sup>3</sup> Missouri v. McNeelv, 133 S. Ct. 1552, 1558, 185 L. Ed. 2d 696 (2013).

<sup>&</sup>lt;sup>4</sup> *Id*.

compelling that a warrantless search is objectively reasonable."<sup>5</sup> The exigent circumstances exception to the warrantless drawing of blood was recently addressed by the United States Supreme Court in *Missouri v. McNeely*. In *McNeely*, the U.S. Supreme Court held that the natural metabolization of alcohol in the bloodstream does not present a *per se* exigency that justifies an exception to the general rule that nonconsensual blood testing generally requires a warrant. Rather, the Court concluded that the exigency in a drunk-driving "context must be determined case by case based on the totality of the circumstances." As required by *McNeely*, this Court looks at the totality of the circumstances to determine if there existed exigent factors beyond "the natural metabolization of alcohol in the bloodstream" sufficient to justify the warrantless blood draw.

The State asks this Court to distinguish this case from *McNeely* by arguing that the facts are more analogous to the 1966 U.S. Supreme Court decision of *Schmerber v. State of California.* Schmerber is similar to this case because it involved the warrantless blood draw of a suspect injured in an automobile accident. In *Schmerber*, the Court upheld the warrantless blood draw because the officer "might reasonably have believed that he was confronted with an emergency, in

\_

<sup>&</sup>lt;sup>5</sup> *Id.* at 1558.

<sup>&</sup>lt;sup>6</sup> *Id*.

<sup>&</sup>lt;sup>7</sup> *Id.* at 1556.

<sup>8</sup> *Id* 

<sup>&</sup>lt;sup>9</sup> Schmerber v. State of California, 384 U.S. 757 (1966).

which the delay necessary to obtain a warrant under the circumstances, threatened the destruction of evidence." <sup>10</sup>

While this Court agrees that the Schmerber facts are somewhat similar to the facts in this case - both involved a motor vehicle accident and an injured suspect the State has failed to provide evidence showing that the officer in this case was confronted with an emergency. Unlike the evidence presented in *Schmerber*, Cpl. King's testimony clearly established that there were no exigent circumstances which prevented him from obtaining a warrant. Cpl. King arrived at the scene of the accident shortly before 8 am. He testified that he spent approximately a few minutes at the scene speaking with both Defendant and the other driver. He managed to investigate the scene of the accident, speak to the persons involved in the accident, run a CJIS inquiry, travel to the hospital, re-interview Defendant, call upon the DSP provider, Omega Services, and complete the blood draw by 9:07 am. Delay was not an issue in this case. At no time did Cpl. King testify that he was faced with an emergency that objectively justified a warrantless search. In fact, Cpl. King testified that he simply did not think to obtain a warrant, not that he feared that waiting for one would somehow threaten the destruction of evidence.

<sup>&</sup>lt;sup>10</sup> *Id.* at 770.

**CONCLUSION** 

This Court finds that the State has failed to meet its burden of proof. No

exigent circumstances existed in this case to justify the non-consensual blood draw

without a proper warrant. Therefore the Motion to Suppress is hereby **GRANTED** 

and any and all evidence from said search is excluded under McNeely.

IT IS SO ORDERED.

/s/Vivian L. Rapposelli

Judge Vivian L. Rapposelli

cc:

Prothonotary

6