IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE	)	
	)	
	)	
	)	
v.	)	Case No.: 1501010090
	)	
RON REID,	)	
	)	
Defendant.	)	
	)	

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Submitted: May 8, 2015
Decided: May 26, 2015

DECISION ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Rob Reid, has been charged with Driving Under the Influence of Drugs or Alcohol in violation of title 21, section 4177(a)(1) of the Delaware Code. The defendant filed a motion to suppress the evidence obtained from a blood draw on the grounds that the arresting officer did not obtain a search warrant for the draw and that the blood draw was taken without the defendant's consent. This Court held a hearing on the motion and reserved decision. After careful consideration of the evidence, the parties' written submissions and applicable law, the Court denies the defendant's motion to suppress.

FACTS

On or about January 17, 2015, a Wyoming Police Department officer was dispatched to the scene of an accident. When he arrived, he found the defendant leaning against his car. The airbag of the car had deployed and the defendant had a swollen abrasion under one eye. The officer also noted an odor of alcohol. The officer called an ambulance and the defendant was transported to the hospital. The officer arrived at the hospital shortly after the defendant and informed the defendant that he was under investigation for driving under the influence. The officer told the defendant that he would either need to have his blood drawn at the hospital or he would be transported to Delaware State Police Troop 3 to have an intoxilyzer test administered. The officer did not inform the defendant that he had the option of refusing consent to do either.

The officer completed a Bayhealth Medical Center Consent Form and the defendant signed it. The officer brought in a blood kit from his patrol car and opened it in view of the defendant. When a nurse appeared to perform the blood draw, the defendant initially rolled up his own sleeve, then changed his mind, and declined the blood draw because of his fear of needles. The officer again explained that he could either have his blood drawn at the hospital or would be transported to Troop 3 for the intoxilyzer. Again, the officer did not inform the defendant that he had the third option of withholding his consent for any search. The officer testified that the defendant seemed to be in a hurry, so rather than wait for the trip to Troop 3, the defendant put out his arm and said "Let's get it over with."

DISCUSSION

If a defendant challenges the propriety of a search without a warrant, the State bears the burden of proving that the search was valid. *State v. Adams*, 13 A. 3d 1162, 1166 (Del. Super.

Ct. 2008). In order for a warrantless search to be upheld by a court, there must be valid consent from the defendant, or another exception to the warrant requirement must apply. *E.g., Flonnory v. State*, 109 A.3d 1060 (Del. 2015) (citing *Scott v. State*, 672 A.2d 550, 552 (Del. 1996)). Consent is valid when it is not the result of coercion. *Flonnory v. State*, 109 A. 3d at 1063 (citing *Scott v. State*, 672 A. 2d 550, 552 (Del. 1996)). Courts determine the validity of consent by examining the totality of the circumstances. *Id.* (citing *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013)). Although the defendant's waiver of his right to refuse consent "need not be knowing and intelligent," (*E.g., Cooke v. State*, 977 A.2d 803, 855 (Del. 2009)) one of the factors that must be weighed when determining whether the consent was voluntary is "the defendant's knowledge of the constitutional right to refuse consent." *Flonnory v. State*, 109 A. 3d at 1064. Courts will also examine a "defendant's age, intelligence, education, and language ability," as well as the degree of the defendant's cooperation with police, and "the length of detention and the nature of questioning, including the use of physical punishment or other coercive police behavior." *Id.* Finally, a police officer is not prohibited "from attempting to persuade an individual to consent to a search." *Higgins v. State*, 89 A. 3d at *3 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 233 (1973)). Mere persuasion by an officer, in the absence of force or threat of force, does not invalidate an otherwise valid consent. *Id.* at n. 23.

In *Higgins*, Brian Higgins was investigated for a DUI. *Higgins,* 89 A. 3d at *1. Higgins initially refused to sign a form consenting to the blood draw. *Id.* As he and the officer waited for the phlebotomist, the officer told him that he would lose his driver's license for a year if he withheld consent. *Id.* The officer also told him that "he was lucky that he hadn't hit a kid that day." *Id.* Upon hearing that, Higgins responded "fine, I'll give blood." *Id.* at *1. The

Delaware Supreme Court analyzed the circumstances of Higgins's consent and found it to have been validly given. *Id.* at *2.

The facts of the present case before this Court are remarkably similar to those of *Higgins*. Just as in *Higgins*, there was no argument made here that the defendant was precluded from understanding the nature of the consent form or of the impact of his consent because of his age, intelligence, or education. The defendant here was also generally cooperative with police. Additionally, the fact that the defendant initially refused to consent to the blood draw evidences his understanding of his ability to withhold consent, despite the officer not having informed him of it. Finally, the Court finds that the defendant's consent to the blood draw was not the product of coercion by the officer. Therefore, the defendant's consent to the blood draw was valid and the defendant's motion to suppress the results of the blood draw must be denied.

CONCLUSION

Based on the foregoing analysis, the totality of the circumstances surrounding the defendant's blood draw shows that the defendant's consent was voluntary. Therefore, the defendant's motion to suppress is DENIED.

IT IS SO ORDERED this 26th day of May, 2015.

CHARLES W. WELCH
JUDGE