

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	Cr. ID No. 1212014544
)	
MATTHEW FORD,)	
)	
Defendant.)	

Submitted: May 2, 2013
Decided: May 22, 2013

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**MEMORANDUM OPINION AND ORDER
ON DEFENDANT’S MOTION TO SUPPRESS**

On December 22, 2012 Matthew Ford (“Ford”) was arrested and subsequently charged with one count each of Driving Under the Influence (“DUI”) in violation of 21 *Del. C.* § 4177, Disregarding a Red Light in violation of 21 *Del. C.* § 4208(a)(3), Failure to Provide Information at the Scene of Accident in violation of 21 *Del. C.* § 4201 (B), Leaving the Scene of an Accident Resulting in Injury in violation of 21 *Del. C.* § 4202(a), and Driving on the Wrong Side of the Roadway in violation of 21 *Del. C.* § 4114. Ford was required to submit to a warrantless search of his person in the form of a non-consensual blood test, which provided evidence that the State intends to introduce against Ford at trial.

Ford timely noticed the present Motion to Suppress, which was docketed and filed with the Clerk of the Court. In the Motion, Ford contends, *inter alia*, that the blood draw was in violation of his constitutional rights under the Fourth and Fourteenth Amendment because no

specific exigent circumstance existed to justify the warrantless search of his person. Ford also contends there was no probable cause for seizing the blood.

A hearing on the Motion was held on May 2, 2013. At the conclusion of the hearing, the Court reserved decision. This is the Decision of the Court on the Defendant's Motion to Suppress.

FACTS

At the May 2, 2013 hearing on the Motion, Corporal Howard ("Corp. Howard") testified for the State as follows:

Corp. Howard has been employed as a police officer with the Middletown Police Department for the last six years, after serving 27 years with the Baltimore City Police Department. He is assigned to patrol, and he specializes in traffic and accident reconstruction.

In the early hours of December 22, 2012, Corp. Howard was called to the scene of an accident on U.S. Route 301 involving a tractor trailer and a pickup truck. The call came in around shift change at the police station, and the number of officers available was limited. It took Corp. Howard approximately 20 minutes to get to the scene of the accident. Upon arrival, he observed a tractor trailer and a white pickup truck, both disabled and blocking the roadway, necessitating the complete closure of the roadway until both vehicles could be removed from the scene. The only driver present was John Holloway ("Holloway"), the driver of the tractor trailer. The driver of the pickup had left the scene. Holloway informed Corp. Howard that he had been traveling northbound on U.S. Route 301, and was proceeding through the intersection of Broad Street. A white pickup truck, being driven on the left side of the road, ran a red light and pulled out in front of him. The vehicles collided. Once he brought his vehicle to a stop, Holloway approached the pickup and observed a white male in the driver's seat attempting to restart the

car. A female was the only other occupant of the car. Both occupants had blood on their faces. When Holloway said that he would call for help, the occupants of the pickup fled into the nearby woods.

Corp. Howard examined the pickup truck. In his experience, the damage to the vehicle was consistent with the vehicle spinning and crashing. Further, he observed damage to the car consistent with an occupant impact. Specifically, Corp. Howard testified that he observed damage to the “A” frame consistent with occupant impact. Further, the driver side of the windshield was cracked in an “occupant star,” which is indicative of occupant impact.

In an attempt to locate the occupants of the pickup, a K-9 team was deployed. The K-9 tracked someone into the nearby woods, but ultimately lost the scent. A helicopter with heat-seeking technology was deployed to look for individuals who may be in the area and injured. This effort was also unsuccessful.

The pickup proved to be owned by a business. The business owner was contacted, and he stated that the pickup was a business vehicle being used by Matthew Ford. Police, including Corp. Howard, responded to the last known address of Ford. The residence was about 5 miles from the accident scene in Blackbird, Delaware. Officers discovered Ford present at the residence.

Corp. Howard reported that Ford’s eyes were “glassy and red” and his “face was flushed”. Corp. Howard observed a “strong odor of alcohol” and a cut on Ford’s forehead. Corp. Howard testified that the cut on Ford’s forehead was consistent with the damage to the driver’s side windshield of the pickup, leading Corp. Howard to believe that Ford was the driver of the vehicle. Based on his observations as a trained and experienced police officer, Corp. Howard formed the opinion that Ford was under the influence of alcohol. Ford conceded that he

was intoxicated. When questioned regarding the accident, Ford denied being the driver and indicated that he was too drunk to drive. Nevertheless, based upon his observations and his conversation with Mr. Holloway, Corp. Howard concluded that he had sufficient probable cause to arrest Ford for the charges now pending before the court, including the DUI. The encounter with Ford lasted only a few minutes.

Ford was placed under arrest¹ and transported to the Middletown Police Station, a trip of 20 to 25 minutes. He was asked to submit to an intoxilizer test, which he declined. Ford was informed that the police would require him to submit to a blood test, and a phlebotomist was brought in. Ford indicated that he did not want to submit to the test. The blood was drawn over Ford's objections.

Corp. Howard testified that from his arrival at the scene of the accident until the phlebotomist was called for the blood draw approximately three hours had passed; if the blood is not drawn within four hours, the probative value of the evidence is significantly diminished.

Corp. Howard further testified that he never considered obtaining a warrant; he did not believe a warrant was necessary, and his training did not lead him to conclude that a warrant was necessary in that situation. Corp. Howard testified that he was familiar with the recent United States Supreme Court decision on this issue and, in retrospect, he "would have got [a warrant]."² Corp. Howard stated that creating an affidavit is not time-consuming. In fact, he could create the affidavit from his desk at the police station; however, obtaining a warrant is not as easy. Corp. Howard explained that there is often delay in the Justice of the Peace's issuance of warrants. Corp. Howard is unaware of any ability to create the affidavit and process the warrant from his

¹ See 11 *Del. C.* § 1901 *et seq.*

² Referring to *Missouri v. McNeely*, 569 U.S. ____ (2013) (slip op.).

car. He reiterated that the time lapse from being called to the scene until the blood was drawn was approximately three hours, and obtaining a warrant would have consumed even more time.

PARTIES' CONTENTIONS

Ford contends, *inter alia*, that there was no probable cause for seizing the defendant's blood. Ford also argues that the warrantless blood draw was a constitutionally impermissible search in violation of his Fourth and Fourteenth Amendment rights. Ford emphasizes that the dissipation of alcohol in the bloodstream does not constitute a *per se* exigent circumstance, and specific exigent circumstances must be shown to uphold a warrantless blood draw from a defendant. Ford maintains that, considering the facts of his case, no specific exigent circumstances existed; thus, the warrantless blood draw was an impermissible search, and the evidence obtained thereby should be suppressed.

The State argues that, based on the totality of circumstances, the search was justified by an objectively reasonable belief that an emergency existed and that further delay to obtain a warrant would result in the destruction of evidence. The State places emphasis on the fact that there was significant time delay, which is directly attributable to Ford fleeing the scene of the accident and avoiding arrest for approximately three hours. The State maintains that, considering the specific facts of this case, the drawing of Ford's blood fell within the emergency exception of the warrant requirement.

Both issues will be addressed *in seriatim*.

THE LAW

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 United States Constitution, the Delaware Constitution, or Delaware statutory law. The burden of proof on a motion to suppress is proof by a preponderance of the evidence.”³

Probable cause “is incapable of precise definition...because it deals with probabilities and depends on the totality of the circumstances.”⁴ Moreover, “[t]he rule of probable cause is a practical, nontechnical conception.”⁵ “The substance of all probable cause definitions, however, is a ‘reasonable ground for belief of guilt,’ which must be particular to the person seized.”⁶ “Probable cause exists where the facts and circumstances within the arresting officer’s knowledge, of which he has trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed.”⁷ The probable cause standard “requires less evidence than would justify a conviction . . . [o]nly a fair probability . . . of criminal activity is the standard for probable cause.”⁸

When a search of the person proceeds without a warrant, the State must prove by a preponderance of the evidence that the search fell within an established exception to the warrant requirement.⁹ “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

³ *State v. Anderson*, 2001 WL 1729141, at *2 (Del. Super. Nov. 29, 2001) (citation omitted).

⁴ *Stafford v. State*, 59 A.3d 1223, at 1229 (Del. 2012) (citing *Lopez v. State*, 861 A.2d 1245, 1248 (Del. 2004)) (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)).

⁵ *Brinegar v. United States*, 338 U.S. 160, at 176 (1949).

⁶ *Stafford*, 59 A.3d at 1229 (quoting *Pringle*, 540 U.S. at 371).

⁷ *Id.* (citing *Tolson v. 900 A.2d 639*, at 643 (Del. 2006)) (quoting *Draper v. United States*, 358 U.S. 307, 313 (1959)).

⁸ *Id.* (citations omitted).

⁹ *Missouri v. McNeely*, 569 U.S. ____ (2013) (slip op., 5).

for use as evidence in a criminal investigation.”¹⁰ Accordingly, it is the State’s burden to prove that the warrantless blood draw from Ford fell within an established exception to the warrant requirement.

DISCUSSION

A. Corp. Howard possessed sufficient probable cause to arrest.

Even though the issue was not raised by the parties, as a predicate matter, the court must determine if probable cause to arrest existed. If no probable cause to arrest existed, the issue of the blood draw is moot. Based on the facts addressed above, the Court concludes that Corp. Howard had sufficient probable cause to arrest Ford on all of the pending charges, including the DUI charge. Corp. Howard has over 30 years of police experience, and is qualified to evaluate the accident scene, interview Holloway, and observe and interview Ford. Based upon the evidence introduced in the hearing on the Motion, the Court finds ample evidence to support probable cause to arrest Ford.

B. Corp. Howard had probable cause to seize Ford’s blood.

Corp. Howard also possessed sufficient probable cause to seize Ford’s blood. As a result of his review of the accident scene, inspection of the pickup, and his interview of Mr. Holloway, Corp. Howard had gleaned that the driver of the pickup was operating on the wrong side of the road and ran a red light immediately prior to the impact. Corp. Howard observed the damage to the pickup indicative of occupant impact. After the impact, the driver fled the scene when the authorities were called. The vehicle’s registration led Corp Howard to Ford’s employer, and ultimately to Ford as the person in possession of the vehicle immediately prior to the accident. Corp. Howard personally observed Ford’s injuries, and testified that they were consistent with

¹⁰ *Id.* at 4.

the damage to the vehicle. Upon interviewing Ford, he observed a strong smell of alcohol, glassy red eyes, and a flushed face. Corp. Howard's suspicion that Ford was intoxicated was supported by Ford's admission that he was too drunk to operate the vehicle. Considering the facts based on the totality of the circumstances, it is clear that Corp. Howard possessed the requisite evidence to substantiate probable cause.

C. A warrant was not required as there were exigent circumstances.

It is well established that an exception to the warrant requirement exists “[w]hen the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.”¹¹ The determination of whether an officer was faced with an emergency that objectively justifies a warrantless search or seizure requires a fact-specific analysis based on the totality of circumstances.¹² The analysis calls for an objective approach.¹³ “‘Our cases have repeatedly rejected’ a subjective approach, asking only whether ‘the circumstances, viewed *objectively*, justify the action.’”¹⁴

The emergency exception as it relates to the warrantless drawing of blood from a suspect was recently addressed by the United States Supreme Court in *Missouri v. McNeely*.¹⁵ In that case, McNeely was taken to the hospital to secure a blood sample after he refused a police officer's request to submit to a breath test.¹⁶ The request came after McNeely was pulled over for moving violations and the police officer observed several signs consistent with intoxication.¹⁷

¹¹ *Id.* at 2 (quoting *Kentucky v. King*, 131 S. Ct. 1849, at 1856 (2011)) (internal quotation marks and alterations omitted).

¹² *Id.* at 6; *see, e.g., Brigham City v. Stuart*, 547 U.S. 398, 406 (2006); *Illinois v. McArthur*, 531 U.S. 326, 331 (2001).

¹³ *King*, 131 S. Ct. 1849, at 1859.

¹⁴ *Id.* at 1859 (quoting *Brigham City v. Stuart*, 547 U.S. 398, at 404) (alteration omitted).

¹⁵ *McNeely*, 569 U.S. ____ (2013) (slip op.).

¹⁶ *McNeely*, 569 U.S. ____ (2013) (slip op., 2).

¹⁷ *Id.*

A blood sample was obtained without a search warrant, despite McNeely's refusal to consent.¹⁸ The limited issue before the Court was whether the natural metabolization of alcohol in the bloodstream is a *per se* exigency that justifies an exception to the warrant requirement.¹⁹ The Court found that no such *per se* exigency exists, and held "that exigency in this context must be determined case by case based on the totality of circumstances."²⁰

The Court distinguished the facts in *McNeely* from those in *Schmerber v. California*.²¹ In *Schmerber*, the petitioner, Schmerber, was taken to the hospital when he sustained injuries in an automobile accident.²² While at the hospital, a police officer ordered a blood test, which was conducted despite Schmerber's objection.²³ The Court upheld the warrantless search, because the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant under the circumstances, threatened 'the destruction of evidence.'"²⁴ The Court reasoned that "particularly in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, there was no time to seek out a magistrate and secure a warrant. Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest."²⁵

The case before this Court is factually similar to *Schmerber*. A great deal of time had to be taken—all of which is directly attributable to Ford fleeing the scene – and further delay would

¹⁸ *Id.*

¹⁹ *Id.* at 1

²⁰ *Id.* at 1.

²¹ *Schmerber v. California*, 384 U.S. 757 (1966).

²² *Id.* at 758.

²³ *Id.*

²⁴ *Id.*, at 770 (1966) (quoting *Preston v. United States*, 376 U.S. 364, at 367) (1964)).

²⁵ *Id.* at 770-771.

threaten the “destruction of evidence.”²⁶ Time had to be taken to investigate the scene of the accident. Time had to be taken to contact the owner of the vehicle. Time had to be taken to ascertain the identity and location of the accused. Time had to be taken to bring the accused to the hospital. Three hours were absorbed by this process. Under Delaware law, a blood draw must occur within four hours or its probative value may be severely diminished.²⁷ The exigency created by the prolonged search for the accused rendered the warrantless search objectively reasonable under the Fourth Amendment.

Ford argues that Corp. Howard’s testimony—that if he were faced with the same situation, he would obtain a warrant—was an admission that time existed to do so. The Court concludes that this comment was purely gratuitous. Furthermore, as previously stated, the approach is an objective one.²⁸ An officer’s subjective intention does not invalidate objectively reasonable behavior under the Fourth Amendment.²⁹ The Court finds that it is objectively reasonable under these circumstances for a police officer to conclude that there was not time to secure a warrant as further delay would jeopardize the viability of the evidence. Moreover, even if Corp. Howard could have theoretically obtained a warrant with sufficient time to still draw useable blood evidence is inapposite. A police officer, faced with fleeting evidence, is not required to gamble

²⁶ *Id.* at 770 (quoting *Preston*, 376 U.S. at 367).

²⁷ *State v. Baker*, 2009 WL 1639514, *1 (Del. Super. April 8, 2009).

²⁸ See *King*, 131 S. Ct. at 1859; see also *Horton v. California*, 496 U.S. 128, at 138 (1990) (“evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer”).

²⁹ See *Whren v. U.S.*, 517 U.S. 806, 812-814 (1996) (“Not only have we never held . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary”); see also *Scott v. U.S.*, 436 U.S. 128, at 138 (1978) (“the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action”).

the preservation of that evidence on the slight possibility that a warrant may be obtained in time to save the evidence from pending destruction.

Considering all of the facts and circumstances in this particular case, the Court finds that specific exigent circumstances existed to justify a departure from the warrant requirement. The warrantless search of Ford fits squarely within the confines of the exigent circumstances exception to the warrant requirement as articulated by the United States Supreme Court in *Schmerber* and *McNeely*.

As indicated above, the Court finds sufficient probable cause existed to arrest Ford for all of the pending charges, including 21 *Del. C.* § 4177, Driving Under the Influence. Probable cause also existed to draw Ford's blood, and exigent circumstances justified a departure from the warrant requirement. The State has indeed met its burden and, consequently, Defendant's Motion to Suppress is hereby **DENIED**. This judicial officer retains jurisdiction of this case for trial on the merits. This matter shall be scheduled for trial at the earliest convenience of the counsel and the Court.

IT IS SO ORDERED this 22nd day of May, 2013.

**The Honorable Carl C. Danberg
Judge**