

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

WILLIAM L. WITHAM, JR.
RESIDENT JUDGE

**KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901**

Submitted: March 18, 2015
Decided: April 1, 2015

Zachary A. George, Esquire
Department of Justice
102 West Water Street
Dover, Delaware 19901

Anthony J. Capone, Esquire
Office of the Public Defender
45 The Green
Dover, Delaware 19901

Re: *State of Delaware v. Dale Guifoil*
I.D. No. 1407004778
Letter Order on Defendant's Motion to Suppress

Dear Counsel:

Before the Court is Dale Guifoil's ("Defendant") Motion to Suppress, brought by counsel. Defendant seeks to suppress drug evidence and the results of a blood test administered in connection with his arrest for Driving Under the Influence ("DUI") for lack of probable cause. In light of the law, the facts of this case, and the parties' submissions; for the following reasons, the Defendant's motion is **DENIED**.

FINDINGS OF FACT

On July 6, 2014 around 3:45p.m., a 911 caller reported an unknown white pickup truck parked in her driveway. Officer Michael Weinstein¹ was on patrol at the

¹ Officer Weinstein was the only witness who testified at the suppression hearing. He has been employed by the State Police Department since July 2010 and in addition to six months of

time and was dispatched to the scene. Upon arrival, the officer observed a pickup truck matching the description in the driveway of the residence. Officer Weinstein saw that the vehicle was idling and that there were two occupants in the vehicle.

Officer Weinstein parked his patrol car behind the truck and approached the driver side door. Present in the vehicle was the Defendant and a female passenger. The Officer observed the keys in the ignition and empty beer cans inside the vehicle. From two feet away, Officer Weinstein detected a strong odor of alcohol and the Defendant's speech was slurred. Officer Weinstein asked the Defendant to exit the vehicle. The Defendant had difficulty exiting the vehicle and had to hold onto the side of the truck to maintain his balance. The Defendant appeared to have urinated in his pants. When Officer Weinstein asked for the Defendant's drivers licence and registration, the Defendant fumbled with his wallet and demonstrated poor finger dexterity before ultimately turning over business cards. At one point, the Defendant stated that he had consumed alcohol prior to driving the vehicle.

In addition to his observations, Officer Weinstein properly administered the Horizontal Gaze Nystagmus test ("HGN"), a standardized field sobriety test approved by the NHTSA.² According to Officer Weinstein, the Defendant's performance indicated that there was a 77% chance that his blood alcohol concentration was greater than .10% which is .02% above the legal limit. Finally, Officer Weinstein administered a portable breath test ("PBT") which came back with a blood alcohol concentration of .205%. At that time, Officer Weinstein placed the Defendant under arrest for driving under the influence of alcohol. A search subject to the arrest uncovered drug evidence.

DISCUSSION

The defendant seeks to suppress drug evidence and the results of a blood test administered in connection with his arrest for DUI for lack of probable cause. An

academy training, has attended a forty-hour National Highway Traffic Safety Administration DUI investigation training course ("NHTSA").

² The Defendant declined to participate in a Walk and Turn or One Leg Stand— which are two other NHTSA approved field tests— due to alleged walking problems.

arresting officer has probable cause “when the officer possesses information which would warrant a reasonable man in believing that a crime has been committed.”³ The finding of probable cause does not require police to uncover information sufficient to prove the suspect's guilt beyond a reasonable doubt, or even to prove that his guilt is more likely than not. Rather, to establish probable cause, arresting officers “are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.”⁴ Moreover, “the possibility that there may be plausible innocent explanations for each of the several facts revealed during the course of the investigation does not preclude the determination that probable cause existed.”⁵

In the present case, the defendant was arrested based on an officer’s probable cause determination that he had been driving under the influence of alcohol. 21 *Del. C.* § 4177(a)(1) provides that “[n]o person shall drive a vehicle: When the person is under the influence of alcohol.” 21 *Del. C.* § 4177(c)(3) defines the term “drive” as including “... driving, operating, or having actual physical control of a vehicle.”⁶

The record reflects that there was sufficient evidence to establish that the officer had probable cause to believe the defendant had actual physical control of a vehicle while under the influence. Officers were dispatched to the scene in response to a homeowner’s 911 call which reported an unknown vehicle in her driveway. Upon arrival, an officer observed a vehicle sitting in the driveway as described. The officer observed that the vehicle was on and heard the engine revving. The officer

³ *State v. Betts*, 2009 WL 388952, at *5 (Del. Super.) (quoting *State v. Maxwell*, 624 A.2d 926, 929-30 (Del. 1993)).

⁴ *Id.* (quoting *Maxwell*, 624 A.2d at 930).

⁵ *Id.*

⁶ The Defendant cites *Bodner v. State*, 752 A.2d 1169 (Del. 2000) which held, “a person cannot be properly convicted of driving while under the influence of alcohol by having actual physical control of an inoperable motor vehicle.” However, under the circumstances of this case, whether or not the vehicle was operable has no bearing on a probable cause determination. A finding of probable cause does not require a police officer to be a mechanic and pop the hood of a vehicle to ensure it is in working condition.

exited his patrol vehicle and made contact with the Defendant who was sitting in the driver's seat with the keys in the ignition.

The officer observed empty beer cans on the floorboard of the vehicle. The Defendant emitted a strong odor of alcohol and his speech was slurred. The Defendant told the officer he had consumed alcohol prior to having driven the vehicle. The Defendant urinated in his pants, needed assistance to maintain his balance and had poor finger dexterity.⁷ Additionally, the Defendant's performance in the HGN test indicated that there was a 77% chance that his blood alcohol concentration was over the limit and the results of the PBT came back with a blood alcohol concentration of .205%.

Applying the standard of probable cause set forth above, even without the NHTSA standardized field sobriety tests and the results of the PBT,⁸ the evidence was sufficient to establish that the officer had probable cause to believe the defendant was driving under the influence. Accordingly, the defendant's motion to suppress is **DENIED**.

IT IS SO ORDERED.

Hon. William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Counsel

⁷ The defendant offered a variety of plausible innocent explanations for his lack of balance. However, even if the Defendant's explanations were true, they do not preclude the determination that probable cause existed.

⁸ See *Miller v. State*, 4 A.3d 371, 374-75 (Del. 2010) ("Excluding the results from the PBT and HGN tests, the alcoholic odor from two or three feet away, glassy watery eyes, failed walk-and-turn and one-legged standing tests, and Miller's admission of having consumed two beers about two hours before sufficiently supported probable cause that Miller drove under the influence of alcohol.").