

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.

JASON WALKER,

Defendant.

:
:
:
:
:
:
:
:
:
:

I.D. No.: 0405000068

*Upon consideration of Defendant's Motion to Suppress Statement - **DENIED***

Submitted: February 28, 2005

Decided: May 31, 2005

Josette D. Manning, Esquire and Stephen M. Walther, Esquire, Deputy Attorneys General, Department of Justice, Wilmington, Delaware, Attorneys for State.

John S. Edinger, Jr., Esquire and Dawn A. Miello, Esquire, Office of the Public Defender, Wilmington, Delaware, Attorneys for Defendant.

Del Pesco, J.

Before the Court is defendant's motion to suppress his statement made to police in the early hours of May 1, 2004. Defendant argues that the statement should be suppressed because it was obtained after a detention of more than two hours, in violation of 11 *Del. C.* § 1902; because the interrogation was unduly coercive, based on the time of day and length of the interview and his statement was, therefore, not given voluntarily; and because the interview was obtained in violation of defendant's right to counsel.

The Court ruled at the hearing on February 14, 2005, that defendant had not made an invocation of counsel, and the motion to suppress was denied as to that ground. The Court reserved decision on the other grounds, pending supplements to the record of the ReComm record and review of a videotape that had not previously been provided to the Court of approximately two hours of the interview.

Facts

On April 19, 2004, a robbery and shooting occurred at Tull's Aquarium, 3313 Old Capital Trail, Cranston Heights, New Castle County, Delaware. The owner of the store, Lee Tull ("Tull"), was shot and later died. Witnesses gave descriptions of two suspects, and information about their vehicle - dark, older model Cadillac with a Delaware tag, the first three digits containing the numbers "7" and "4" – either "774" or "744" and last digits of the tag were "68."

On April 30, 2004, Corporal Wohner of the Newport Police Department ("Wohner"), responding to an unrelated call at First State Plaza, observed a black Cadillac with Delaware plate number "774168." The vehicle was unoccupied at the time of initial observation. When defendant approached the vehicle and attempted to enter it,

Wohner detained him. New Castle County officers arrived shortly thereafter and defendant agreed to accompany them to County Police Headquarters.

Tull's nephew, a witness to the robbery/shooting, was brought in and shown two photo line-ups, one of which contained defendant's photo. After the nephew identified defendant as the person who shot his uncle, a videotaped interview with defendant began at 12:15 a.m., May 1, 2004. At the beginning of the interview, defendant was read his Miranda rights and signed a waiver. The interview continued until approximately 4:48 a.m., when defendant was taken to a holding cell while warrants were prepared.

A. Whether there was a violation of 11 *Del. C.* § 1902.¹

At the hearing, Detective Armstrong of the New Castle County Police ("Armstrong") testified regarding the time Wohner initially detained defendant. Reading from Wohner's report, a time of 9:48 p.m. on April 30, 2005, was identified. Armstrong also testified that defendant was considered under arrest at the time the nephew picked defendant out of a photo line-up at 11:54 p.m. Defendant notes this is more than two hours later. Defendant argues, therefore, that the statement he gave was obtained illegally and should be suppressed.

The State countered that the time of the initial detention of defendant was 10:10 p.m., April 30, 2004. To resolve the discrepancy, the Court ordered production of the ReComm dispatch log. The log indicates the initial call from Wohner came at 10:11 p.m.

¹ "A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination." 11 *Del. C.* § 1902(a). The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime." 11 *Del. C.* § 1902(c).

Section 1902 does not require that an arrest be completed within the two-hour period.² “[I]f the § 1902 detention continues beyond two hours and probable cause is present, the arrest has constructively taken place under a § 1904 analysis.”³ Section 1904 permits a warrantless arrest for a felony, if there are reasonable grounds for the arrest. In the context of § 1904, the Supreme Court has interpreted “reasonable grounds” to be the equivalent of probable cause.⁴ Probable cause exists when the facts and circumstances known to the police are sufficient to warrant a prudent person to believe the suspect had committed an offense.⁵ Based on the vehicle description and tag number, as well as the positive eyewitness identification, there was probable cause to believe defendant had committed murder.

I conclude that there is no violation of 11 *Del. C.* § 1902, as the police had probable cause to arrest within two hours of the time defendant was detained by Wohner.

B Whether defendant’s statement was voluntary.

Defendant argues that because the interview took place between approximately midnight and 4 a.m., the time of day and the length of the interview made it unduly coercive. Defendant argues that this made his statement involuntary. The State points to the fact that defendant was provided cigarettes, something to eat and drink, and bathroom breaks during the interview. The State also notes Armstrong’s demeanor at all times was professional and did not employ any coercive tactics. The State notes that after the initial

² *Barrow v. State*, 749 A.2d 1230, 1241 n.9 (Del. 2000).

³ *Id.* (citation omitted).

⁴ *Thomas v. State*, 467 A.2d 954, 957 n.3 (Del. 1983); *see also Barrow v. State*, 749 A.2d 1230, 1241 (Del. 2000).

⁵ *See Darling v. State*, 768 A.2d 463, 466 (Del. 2001).

interview concluded, defendant was placed in a holding cell for approximately four hours, during which time he could rest.

In determining whether a suspect's statement is voluntary, the inquiry considers whether, under the totality of the circumstances, the suspect's will was overborne by the interrogation techniques, as applied to the unique characteristics of that particular suspect.⁶ The burden is on the State to show that the statement was voluntary by a preponderance of the evidence when that evidence is viewed in a light most favorable to the State.⁷

I have reviewed the videotapes and transcripts of the interview with defendant. I find no evidence that defendant's statement was anything other than voluntary. As noted, defendant was given several breaks during the interview, and provided with cigarettes, food, drink, and bathroom breaks. There was no evidence that defendant was tired. The interrogation techniques were not abusive.

I conclude there are no grounds to suppress defendant's statement. Defendant's motion to suppress his statement is DENIED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

⁶ *DeJesus v. State*, 655 A.2d 1180, 1196 (Del. 1995).

⁷ *Id.*