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

STATE OF DELAWARE,)	
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V.) ID. No. 1208022	542
)	
MACTAVISH ALEXANDER,)	
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ORDER

AND NOW, TO WIT, this 30th day of July, 2013, **IT IS HEREBY ORDERED** as follows:

Introduction

Before the Court is Defendant Mactavish Alexander's ("Alexander") Motion to Suppress. Alexander argues that statements or evidence were obtained by police as a result of an illegal detention, based on 11 *Del. C.* § 1902, and an unreasonable delay in presentment, based on 11 *Del. C.* § 1909. The State argues that § 1902 does not apply because Alexander was not stopped abroad, as required by § 1902, and that the delay was reasonable. The State also contends that, even if the statutes were violated, the evidence obtained would have been inevitably discovered.

Findings of Fact

On August 25, 2012 at 9:44 a.m., 911 received a call from an unidentified person reporting a domestic disturbance at a location described by the caller as "a green house near Center Street on New Castle Avenue." Police officers were dispatched to the area to investigate, but found nothing suspicious. Later that day, the bodies of Joseph Taylor and Mary Dale were discovered by family at 4060 New Castle Avenue in New Castle. The victims were killed by a blunt object which inflicted multiple severe head wounds. A knife blade was recovered from under one of the victims. 4060 New Castle Avenue matched the description of the house described to 911 earlier in the morning.

Several hours later, around 11:30 p.m., a person of interest, Alexander, was located by police at 32 Wardor Avenue in New Castle, the home of Alexander's estranged wife. While at 32 Wardor Avenue, detectives asked Alexander, and Alexander agreed, to drive himself to Troop 2 to answer questions regarding the murders. Detectives followed Alexander in a separate car as he made his way to Troop 2. Once Alexander arrived at Troop 2, he was escorted through a secure entrance, multiple locked doors and left alone in an interview room where he waited until Detective Chambers reentered and read Alexander his *Miranda* rights at 2:12 a.m. on August 26th.

Alexander immediately invoked his *Miranda* rights and the interview ended at 2:15 a.m. Detective Chambers then left the interview room while Alexander remained. No questioning was attempted for the next several hours as Alexander continued to wait in the interview room.

The investigation continued with multiple warrants being prepared. A Pen Register warrant was obtained at 3:30 a.m. by Detective Chambers for Mary Dale's missing cell phone. Video surveillance tapes from various locations believed to be on the travel route between 4060 New Castle Avenue and 32 Wardor Avenue were also being reviewed. One of the tapes showed a person matching Alexander's description place an item in a dumpster. At 8:58 a.m., a warrant for Alexander's DNA was executed. Detective Greer provided Alexander with pizza at 9:10 a.m. Detectives received a phone call at 9:11 a.m. from Alexander's wife informing detectives that she found a knife handle in the bathroom Alexander had recently showered in. Detectives drove back to 32 Wardor Avenue to conduct a consent search of the property. The knife handle was retrieved and later positively matched to the blade recovered from the murder scene at 4060 New Castle Avenue. At 9:12 a.m., Detective Chambers sent an email requesting assistance from the current police academy class in conducting a canvas of the general area between 4060 New Castle Avenue and 32 Wardor Avenue.

At 10:42 a.m., Alexander began complaining of chest pains and was transported by ambulance to the hospital for observation. Police followed the ambulance to the hospital and remained near Alexander throughout his treatment.

At 12:30 p.m., while Alexander was at the hospital, Detective Greer played the 911 call to Alexander's wife. Alexander's wife identified Alexander as the unidentified 911 caller.

While still at the hospital and resting on a gurney, Alexander waived

Detective Mark Ryde over. Alexander began asking questions until Detective Ryde

informed Alexander that, if he wished to speak to police, Alexander would be

transported back to the station where he would be re-*Mirandized*.

After being discharged from the hospital at 2:52 p.m., Alexander was returned to Troop 2 by police. Alexander was reread his *Miranda* rights, which he waived. Alexander then began confessing to the murders. The confession started at 3:54 p.m. and ended at 6:30 p.m. Alexander then left Troop 2, in handcuffs for the first time, with Detective Greer in order to assist with locating the murder weapon. The murder weapon, a bloody hammer, was recovered from a dumpster while the victims' cell phones were recovered at a second location from two trash cans located in front of a vacant house. At 8:25 p.m., Alexander wrote his confession. A warrant for Alexander's formal arrest was issued at approximately 9:20 p.m. and he was presented to the magistrate around 11:04 p.m. on August 26.

Discussion

I. Illegal Detention based on § 1902

Alexander was not detained in violation of § 1902 because he was not stopped abroad and he voluntarily agreed to accompany the police to the police station. 11 *Del. C.* § 1902 is a statutory articulation of a *Terry* Stop. 1 § 1902 (a) states;

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.

The police officer may demand the person's name, address, purpose, and destination as well as detain the person for up to two hours.² Section 1902 applies only when a defendant is stopped while traveling abroad, ³ not when the defendant voluntarily presents himself for questioning.

Although the police initially approached Alexander at 11:30 P.M. on August 25, 2012, the exchange was brief and ended once he agreed to voluntarily present himself to the police station for additional questioning. As stated in *State v*. *Sumner*, 2003 WL 21963008 at *65 (Del. Super. Aug. 8, 2003), "1902 of the

¹ Lopez-Vazquez v. State, 956 A.2d 1280 at *7 (Del. 2008), the Court in Lopez stated "this court has consistently found that 11 Del. C. § 1902 represents a codification of the Terry principles." ² § 1902 (c).

³ Foraker v. State, 394 A.2d 208 (Del. 1978); Jarvis v. State, 224 A.2d 596, 597-598 (Del. 1966).

Delaware Code does not apply where the suspect goes voluntarily to the police station."⁴

II. Unreasonable Delay in Presentment based on § 1909

Alexander argues that police arrested and unreasonably delayed in presenting him to a magistrate following his arrival at the police station. Superior Court Criminal Rule 5 and 11 *Del. C.* § 1909 require any arrested person to be brought before a magistrate for arraignment without unreasonable delay. Determining the reasonableness or unreasonableness of delay between arrest and presentment is determined by the trial judge alone and is never considered by the jury. The 24-hour limit expressed in § 1909 is "an exception, not a norm, and it is not an outer limit within which a detention period is presumptively permissible." It is possible for a person to be detained for less than the 24 hours prescribed in § 1909 and the detainment be considered unreasonable. *Fullman v. State*, 389 A.2d 1292, 1298 (Del. 1978), states

While a delay may be "unreasonable" though less than the 24 hour outer limits set forth in 11 Del.C. § 1909, no clear-cut standards of reasonableness may be prescribed. Each case must be considered on its own facts with the number of hours of detention prior to the initial appearance together with all other circumstances being considered.

⁴ State v. Sumner, 2003 WL 21963008 at *65 (Del. Super. Aug. 8, 2003)(citing Foraker v. State, 394 A.2d 208 (Del. 1978)).

⁵ § 1909(a).

⁶ Webster v. State, 59 Del. 54, 60 (Del. 1965).

⁷ Wright v. State, 633 A.2d 329, 334(Del. 1965) (quoting Warren v. State, 385 A.2d 137, 142 (Del. 1978)).

The totality of the circumstances test is applied to determine the admissibility of statements made following delays between arrest and arraignment. The totality of circumstances analysis requires consideration of such factors as the length of the delay and the atmosphere surrounding the detention. The presence of cordiality, hostility or coercion during an interview is also considered. Delays in presentment imposed by the defendant or by circumstances out of the control of police will not be considered when determining reasonableness. The Court in *Fullman* ruled that a delay in presentment due to the defendant resting and taking a voluntary polygraph examination did not violate § 1909. In *State v. Banther*, 1998 WL 961765 (Del. Super. Sept. 24, 1998), although a police interview had ended, the delay in presentment caused by police responding to an unforeseen highway emergency was considered reasonable.

The cases *Parson v. State*, 222 A.2d 326 (Del. 1966) and *Hopkins v. State*, 501 A.2d 774 (Del. Super. 1985), demonstrate that delays arising out of investigative and administrative functions are permissible. The defendant in *Hopkins* was held nine hours from arrest to interrogation due to the chief investigator being occupied with search, seizure and inventorying of evidence relating to the investigation. ¹³

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⁸ Hopkins v. State, 501 A.2d 774, 776 (Del. 1985).

⁹ Wright, 633 A.2d at 334 (citing Deputy v. State, 500 A.2d 581 (Del. 1985)).

¹⁰ Deputy v. State, 500 A.2d 581, 589 (Del. 1985).

¹¹ Wright, 633 A.2d at 335.

¹² State v. Banther, 1998 WL 961765 (Del. Super. Sept. 24, 1998).

¹³ *Hopkins*, 501 A.2d at 777.

The defendant in *Parson* was detained for seven hours while the victim's body was recovered and the defendant was treated for injuries.¹⁴

Arrest is defined by 11 *Del. C.* § 1901(1) as "the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime." A person is arrested, "when, in view of all the circumstances, a reasonable person would believe that he is not free to leave." ¹⁵ Although Alexander could not leave the police station without encountering locked doors or requiring a police escort, a reasonable person would not have considered himself under arrest after he voluntarily arrived at a police station without being subject to any physical restraint or informed that he was under arrest. ¹⁶ Therefore, Alexander was not under arrest and § 1909 did not apply until 9:20 p.m., when an arrest warrant for Alexander was issued. Any delay occurring between 9:20 and 11:04 p.m. was reasonable.

If Alexander had been "arrested" the moment he entered the station and § 1909 was immediately applicable, under these facts there was no unreasonable delay in presentment. The two hour delay between Alexander's arrival at the police station

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¹⁴ Parson v. State, 222 A.2d 326 (Del. 1966).

¹⁵ State v. Rizzo, 634 A.2d 392, 395 (Del. 1993) (citing Michigan v. Chesternut, 486 U.S. 567, 574 (1988)).

¹⁶ State v. Andrus, 1996 WL 190031 at *5-6 (Del. Super. Jan. 16, 1996), the defendant in this case was interviewed in a secure room within the police station. The defendant could not leave without being escorted through multiple locked doors. The Court reasoned that the defendant was not under arrest due to the defendant not being physically restrained and police not intending to restrain his mobility.

and the issuance of his *Miranda* warnings was not unreasonable as indicated by the case *Webster v. State*, 59 Del. 54 (Del. 1965). The defendant in *Webster* sat alone for approximately 90 minutes before police began the interview. Although the defendant refused to answer police questions without an attorney, he continued to wait patiently in the interview room while the investigation continued and warrants were obtained.

The police made steady progress in this investigation which demonstrates that there was no unreasonable delay. Between the time Alexander invoked his right to counsel at 2:15 a.m. and police executed the warrant for Alexander's DNA at 8:58 a.m., no questioning was attempted. Multiple warrants were prepared and executed at various locations. The warrants included a Pen Register warrant that was obtained at 3:30 a.m. for Mary Dale's missing cell phone. The *Parson* and *Hopkins* cases demonstrate that the delay in presentment due to the steady progress of the police investigation was reasonable.

The four hours Alexander spent at the hospital cannot be attributed to police conduct and therefore should not be a factor in evaluating the delay in presentment. ¹⁷ In *Webster*, the Court ruled that delays in presentment not attributed to police conduct should not be considered when evaluating delays for

¹⁷ *Id*. at 60.

reasonableness. ¹⁸ Therefore, the Court does not consider delays attributed to the voluntary assistance from Alexander in retrieving evidence. ¹⁹ Alexander was discharged from the hospital at 2:52 p.m. and then transported back to Troop 2 by police officers without handcuffs. Alexander was then read his *Miranda* rights and he confessed to the murders between 3:54 p.m. and 6:30 p.m. The interview appeared to be cordial. In addition, Alexander took two smoke breaks and police provided Alexander with food and a blanket. Police conduct was reasonable and non-coercive. Moreover, Defense counsel conceded that the time that Alexander spent assisting the police in retrieving the evidence did not constitute unreasonable delay. Based on the totality of the circumstances, there was no unreasonable delay in presentment.

III. Inevitable Discovery

The State argues that, even if a § 1902 or § 1909 violation occurred, the statements and murder weapon would still be admissible under the inevitable discovery doctrine. The inevitable discovery doctrine allows for admission of evidence that, although obtained through illegal methods, would have eventually

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¹⁸ The defendant in *Webster* was held for nearly four hours before she confessed to the murder of her husband. Much of the time the defendant spent in police custody before confessing was at the hospital where the defendant was receiving treatment for injuries. The four hours was also occupied by police retrieving glasses and clothing for the defendant as requested.

¹⁹ See Foraker v. State, 394 A.2d 208 (Del. 1978), the defendant spent several hours assisting police with locating a body.

been discovered through legal means.²⁰ Applying the inevitable discovery doctrine requires use of the preponderance of the evidence standard.²¹ The definition of preponderance of the evidence has been defined as "the side on which 'the greater weight of the evidence' is found."²²

The reasoning for the inevitable discovery doctrine is explained in the case Nix v. Williams, 467 U.S. 431 (1984). Nix states "exclusion of physical evidence" that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial."²³ The rationale for the inevitable discovery doctrine is further explored in State v. Harris, 642 A.2d at 1250-1251 (Del. 1993) (quoting Nix, 467 U.S. at 448 (1984)), "[W]hen ... the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible."

Although the Court finds no violation of §§ 1902 or 1909, the Court also finds that, had there been a violation, the evidence would be admissible pursuant to the inevitable discovery doctrine. Detective Chambers' review of video footage showed a person matching Alexander's description place an item in a dumpster. The item was later retrieved by Detective Greer and determined to be a bag containing the murder weapon. Detective Chambers also testified at the

²⁰ Cook v. State, 374 A.2d 264, 267-268 (Del. 1977).

²¹ State v. Harris, 642 A.2d 1242 (Del. 1993).

²² Taylor v. State, 784 A.2d 914, *9 (Del. 2000)(TABLE)(citing Reynolds v. Reynolds, 237 A.2d 708, 711 (Del. 1967)).

²³ Nix v. Williams, 467 U.S. 431, 446 (1984).

suppression hearing to sending an email on August 26, 2013 at 9:12 a.m. requesting assistance from academy cadets in conducting a canvas of the area where the murder weapon was eventually recovered. The victims' cell phones were also recovered in the same area to be covered by the cadet canvas. Based on the preponderance of the evidence, the inevitable discovery doctrine is sufficient to remove any taint to the evidence that may exist because the police would have likely discovered the evidence based on the review of the surveillance footage, the employment of normal canvassing techniques, and the fact that they had arranged for the cadets to canvass the same area.

Conclusion

Based on the forgoing, Alexander's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.