

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :  
 : I.D. No. 1204015949  
 v. :  
 :  
 WILLIAM E. LEWIS, :  
 :  
 Defendant. :

Submitted: February 13, 2013  
Decided: May 20, 2013

**MEMORANDUM OPINION**

Upon Defendant's Motion to Suppress.  
*Denied.*

Kathleen A. Dickerson, Esquire, Department of Justice, Dover, Delaware; attorney for the State.

André M. Beauregard, Esquire of Brown Shiels & Beauregard, LLC, Dover, Delaware; attorney for the Defendant.

WITHAM, R.J.

### ***I. Introduction***

Defendant William Lewis (“Defendant” or “Lewis”) was indicted on July 2, 2012, on one count of Driving A Vehicle Under the Influence of Alcohol and/or Drugs, two counts of Endangering the Welfare of a Child, one count of Failure to Properly Restrain a Child, and one count of Failure to Carry a License. On September 28, 2012, he filed a motion to suppress challenging the validity of the traffic stop that led to his arrest. After the Court summarily denied Defendant’s suppression motion for failure to plead specific facts sufficient to overcome a presumption that probable cause supported his arrest, Defendant filed a motion for reconsideration on October 26, 2012. This Court granted Defendant’s motion for reconsideration on December 19, 2012, and held a suppression hearing on February 13, 2013. After considering the evidence presented at the suppression hearing, and the arguments of counsel, Defendant’s Motion to Suppress is denied.

### ***II. Factual Background***

At the suppression hearing, the State called Officer Richard L. Jefferson (“Officer Jefferson”) of the Milford Police Department as its only witness. Officer Jefferson testified that he has been employed by Milford Police for 25 years and is currently assigned to the patrol division. He received training in DUI enforcement while in the police academy and is certified in DUI enforcement, DUI detection and field sobriety testing.

Officer Jefferson testified that he was on routine patrol on the evening of April 12, 2012 when, at approximately 7:50 p.m., a dispatcher alerted him that a citizen had

reported a suspected drunken driver in the area of his patrol. The dispatcher told Officer Jefferson that the target vehicle, a dark-colored Jeep Wrangler, was driving “all over the road” and had parked in the rear lot of the Wawa convenience store located at 902 North Dupont Highway. When Officer Jefferson responded to the report, he observed three Jeeps matching the dispatcher’s description parked within the rear lot of the Wawa. Officer Jefferson eliminated two of the vehicles using the registration number the dispatcher gave him. He then saw the third Jeep, operated by Defendant, leave the parking lot and head toward Northwest 10th Street. Officer Jefferson followed Defendant’s vehicle as it traveled east on Northwest 10th Street and discovered that it bore the registration number the dispatcher had given him. Defendant then made a wide right-hand turn onto North Walnut Street, veering into the opposing lane of traffic. As Defendant proceeded southbound on North Walnut Street, Officer Jefferson observed that the vehicle continued to straddle the centerline of the roadway. At this point, Officer Jefferson activated his emergency lights, which, in turn, activated the recording device of the patrol car’s in-dash camera.

Defendant’s vehicle continued to swerve within its lane and occasionally cross the centerline. After traveling approximately three blocks on North Walnut Street, Defendant flashed his right-turn signal to indicate his intention to pull over, but instead turned left onto Northeast 5th Street. Rather than stopping along the right edge of the roadway, Defendant stopped his vehicle approximately three or four feet from the curb. As Officer Jefferson approached the passenger side of the vehicle, he noticed two males, approximately eight years old, buckled together in the front seat.

He also observed Defendant place a cough drop in his mouth and attempt to hide the wrapper under his right thigh. Suspecting that Defendant was impaired, Officer Jefferson asked Defendant to exit the vehicle. Once Defendant complied with this request, Officer Jefferson made several additional observations that confirmed his suspicions, namely that Defendant could not produce his driver's license, spoke in a slurred manner, had glassy and bloodshot eyes, and appeared unsteady on his feet when exiting the vehicle. When pressed about the cough drop, Defendant responded that he had a cold, but Officer Jefferson smelled alcohol on Defendant's breath once he removed the cough drop.

These observations prompted Officer Jefferson to administer field sobriety tests. Because Northeast 5th Street was slightly graded, Jefferson asked Defendant to move to an adjacent parking lot to conduct these tests.<sup>1</sup> Defendant performed five field sobriety tests: the alphabet test, the counting test, the horizontal gaze nystagamus ("HGN") test, the walk and turn test, and the one-leg stand test. He failed all five. Based on these observations, Officer Jefferson suspected Defendant was under the influence of alcohol and arrested him. Defendant was then transported to the Milford Police station, where Officer Jefferson administered an intoxilyzer test. The intoxilyzer test showed Defendant's Blood Alcohol Content ("BAC") to be 0.151 percent, well above the legal limit of 0.08 percent. Defendant was subsequently charged with the aforementioned charges.

---

<sup>1</sup> Although the parking lot provided a level surface, it was out of view of the in-dash camera. Thus, the administration of the field sobriety tests was not recorded.

### ***III. Discussion***

Defendant avers that the traffic stop of his vehicle and his subsequent arrest were accomplished without reasonable suspicion or probable cause to believe that Defendant was committing a crime. Therefore, he argues, the stop and arrest violated his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article 1, Section 6 of the Constitution of the State of Delaware,<sup>2</sup> and that any and all evidence acquired after the initiation of the traffic stop must be suppressed.

The State concedes that the traffic stop of Defendant's vehicle amounted to a seizure implicating the Fourth Amendment, but argues that Officer Jefferson had reasonable and articulable suspicion of Defendant's intoxication warranting additional investigation and the administration of field sobriety tests. The State contends that Defendant's arrest was constitutionally valid because, under the totality of the circumstances, Officer Jefferson had probable cause to arrest Defendant for driving under the influence of alcohol.

#### ***A. Standard of Review on Motions to Suppress***

When presented with a motion to suppress, Delaware courts have consistently stated that the Defendant bears the burden of establishing that the challenged search and seizure violated his rights under the United States Constitution, the Delaware

---

<sup>2</sup> An individual's right to be free from unreasonable searches and seizures is secured by the parallel mandates of the Fourth Amendment of the United States Constitution and Article 1, Section 6 of the Delaware Constitution. *See Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

Constitution, or the Delaware Code.<sup>3</sup> The Defendant must demonstrate that he is entitled to the relief requested by a preponderance of the evidence.<sup>4</sup>

### ***B. The Traffic Stop***

The Court will first determine whether the warrantless stop of Defendant's vehicle was constitutionally proper. Under the Fourth Amendment of the United States Constitution and Article I, Section Six of the Delaware Constitution, a traffic stop is a seizure of the vehicle and its occupants.<sup>5</sup> The stop must be justified, at its inception, by reasonable suspicion of criminal activity, and the scope of the stop must be reasonably related to the stop's initial purpose.<sup>6</sup> Reasonable suspicion is defined as the "officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.'"<sup>7</sup> "As a general matter, the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred."<sup>8</sup>

---

<sup>3</sup> *State v. Dollard*, 788 A.2d 1283, 1286 (Del. 2001) (citing *State v. Huntley*, 777 A.2d 249 (Del. Super. Ct. 2000)).

<sup>4</sup> *Id.* (citing *State v. Bien-Aime and Smalls*, 1993 WL 138719, at \*3 (Del. Super. Ct. Jan. 13, 1993)).

<sup>5</sup> *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

<sup>6</sup> *Id.* at 1045-46.

<sup>7</sup> *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

<sup>8</sup> *McDonald v. State*, 947 A.2d 1073, 1077 (Del. 2008) (quoting *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d. 89 (1996)).

The facts of this case support a finding that a traffic violation occurred, and, therefore, the officers had probable cause to stop the vehicle. A review of the in-dash camera footage revealed that, while driving North Walnut Street, Defendant crossed the centerline at least twice and veered into the opposing lane of traffic. The footage also showed Defendant using the wrong turn signal before turning left onto Northeast 5th Street. Failure to maintain a single lane of traffic,<sup>9</sup> failure to drive on the right side of the roadway,<sup>10</sup> and failure to use a proper turn signal<sup>11</sup> are all violations of Title 21 of the Delaware Code. Because both Officer Jefferson’s testimony and the in-dash camera footage support a finding that Defendant committed a number of motor vehicle offenses, the traffic stop was based on probable cause. It was therefore reasonable within the meaning of Article 1, Section Six of the Delaware Constitution and the Fourth Amendment of the United States Constitution.

***C. Continued Detention and Arrest***

Defendant also argues that Officer Jefferson lacked a reasonable articulable suspicion of any other criminal activity that would justify continued detention. I disagree. The Delaware Supreme Court has held that “the duration and execution of a traffic stop is necessarily limited to the initial purpose of the stop.”<sup>12</sup> For an officer

---

<sup>9</sup> *See* 21 Del. C. § 4122(1).

<sup>10</sup> *See id.* § 4114(a).

<sup>11</sup> *See id.* § 4155(a).

<sup>12</sup> *Caldwell*, 780 A.2d at 1047.

to conduct an investigation beyond that required in order to complete the purpose of the stop, the occupants must consent or the officer must have independent facts sufficient to justify this additional intrusion.<sup>13</sup> To possess these “independent facts,” the officer must have reasonable and articulable suspicion based upon “specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.”<sup>14</sup> Officer Jefferson testified that Defendant 1) had glassy and bloodshot eyes; 2) spoke in a slurred manner; 3) placed a cough drop in his mouth in an apparent attempt to mask the alcohol on his breath; and 4) could not produce identification when asked to do so. These observations, taken as a whole, gave rise to a reasonable, articulable suspicion that Defendant may have been driving while impaired, and thus justify Officer Jefferson’s decision to conduct field sobriety testing.

Defendant also contends that Officer Jefferson lacked probable cause to arrest him because his performance of the field sobriety tests was not recorded by the patrol car’s in-dash camera. He asks this Court to disbelieve Officer Jefferson’s testimony because he gave what Defendant deems is an “exaggerated” or overstated version of the events preceding Defendant’s arrest.

Before addressing whether probable cause existed to arrest Defendant, it is helpful to revisit the standard for determining probable cause within the context of

---

<sup>13</sup> *Id.* at 1046 (citing *Ferris v. State*, 735 A.2d 491, 499 (Md. 1999)).

<sup>14</sup> *State v. Milianny-Ojeda*, 2004 WL 343965, at \*3 (Del. Super. Ct. 2004) (citing *Jones v. State*, 745 A.2d 856, 861 (Del.1999)).

a DUI arrest. As the Delaware Supreme Court most recently articulated in *Lefebvre v. State*, probable cause to arrest a motorist for a DUI offense exists when an officer can “‘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 DUI offense.”<sup>15</sup> Whether probable cause exists to arrest a driver for a DUI offense is “‘generally decided by the arresting officer’s observations, which frequently include the quality of the driver’s performance on field sobriety tests.’”<sup>16</sup> In making this determination, this court is free to accept the arresting officer’s sworn testimony as true, and resolve any inconsistencies in the evidence in the officer’s favor.<sup>17</sup>

While field sobriety tests must be administered in strict compliance with standardized procedures, probable cause to arrest does not necessarily have to be based, in whole or in part, upon a suspect’s poor performance on one or more of these tests.<sup>18</sup> The totality of the facts and circumstances underlying the suspect’s arrest can support a finding of probable cause even where no field sobriety tests were

---

<sup>15</sup> *Lefebvre v. State*, 19 A.2d 287, 292 (Del. 2011) (quoting *State v. Maxwell*, 624 A.2d 929, 930 (Del. 1993)).

<sup>16</sup> *Id.* at 293.

<sup>17</sup> *See Dunlap v. State*, 812 A.2d 899, at \*2 (Del. Dec. 13, 2000) (unpublished table decision) (stating that the trial judge, sitting as the trier of fact at a suppression hearing, “is the sole judge of the credibility of witnesses and is responsible for resolving any conflicts in the testimony”).

<sup>18</sup> *See Lefebvre*, 19 A.2d at 293 (concluding that probable cause to arrest Lefebvre for a DUI offense existed before police administered any field sobriety test); *Perrera v. State*, 2004 WL 1535815, at \*1 (Del. June 25, 2004) (unpublished table decision).

*State v. William Lewis*  
Case No. 1204015949  
May 20, 2013

administered or where, as here, a defendant's performance of said tests was not recorded. Even if the Court were to set aside the results of Defendant's field sobriety tests on account that they cannot be corroborated, there is ample evidence to support a finding that there was probable cause to arrest Defendant for a DUI offense. Officer Jefferson's testimony during the suppression hearing showed that, before conducting any field sobriety test, he observed Defendant to have unsteady balance, bloodshot eyes, slurred speech, and an odor of alcohol emanating from his breath. The Court believes the facts and the circumstances, when viewed together, are sufficient to establish probable cause to arrest Defendant for driving under the influence.

*IV. Conclusion*

Because probable cause existed to arrest Defendant for a DUI offense, his motion to suppress is hereby **DENIED**. IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh  
oc: Prothonotary  
xc: Kathleen A. Dickerson, Esquire  
André M. Beauregard, Esquire