

I. INTRODUCTION

Before the Court is William C. Jones, III's ("Defendant") Amended Motion to Suppress all evidence, including blood test results resulting from the warrantless, forced blood extraction, obtained by police authorities following his detention on October 24, 2012. The Motion to Suppress alleges violations of the Defendant's Federal and State constitutional rights (Fourth Amendment and Article One, Section Six, respectively) prohibiting unreasonable searches and seizures, as well as a violation of 21 *Del. C.* § 2740.¹

Defendant also contends that Officer Donmoyer "did not have reasonable suspicion or probable cause [to] administer a blood test, or to arrest the [D]efendant for DUI."²

The Suppression hearing was conducted on April 19, 2013. On April 17, 2013, the Supreme Court of the United States published their decision in the case of *Missouri v. McNeely*,³ regarding the warrantless extraction of blood from a person under arrest for DUI. At the hearing the Court heard argument on *McNeely*'s applicability to the present Motion and asked for supplemental briefing. The final supplemental brief was received in chambers on July 2, 2013.

II. FACTS

At around 12:09 a.m. on October 24, 2012, Officer Donmoyer of the New Castle City Police Department, while conducting stationary patrol in a marked patrol vehicle near East

¹ 21 *Del. C.* § 2740:

Consent to submit to chemical test; probable cause; test required

(a) Any person who drives, operates or has in actual physical control a vehicle, an off-highway vehicle, or a moped within this State shall be deemed to have given consent, subject to this section and §§ 4177 and 4177L of this title to a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of §§ 4177 and 4177L or § 2742 of this title, or a local ordinance substantially conforming thereto.

² Def. Mot. to Suppress, at 2.

³ 133 S.Ct. 1552, 185 L.Ed.2d 696, 2013 WL 1628934 (Apr. 17, 2013).

Basin Road, New Castle, observed a motorcycle enter the intersection of East Basin Road and Frenchtown Road at a high rate of speed. Officer Donmoyer made the following observations: the operator of the motorcycle had difficulty stopping at a red light; the operator almost hit another vehicle; the operator lost traction and “fish-tailed” as he turned onto Frenchtown Road; and the operator passed three vehicles in the opposite lane of traffic. Officer Donmoyer approached the vehicle and activated his emergency equipment to initiate a traffic stop. The operator continued to drive in an attempt to flee from Officer Donmoyer. The operator then lost control of the motorcycle and crashed into a parked vehicle on Valley Forge Road. The operator then proceeded to flee on foot until he was caught by Officer Donmoyer. The operator was identified as the Defendant.

Upon placing the Defendant in handcuffs, Officer Donmoyer detected the odor of alcohol, and observed that the Defendant was naked from the waist down—having apparently lost his shoes, socks, pants, and underwear in the collision. Field sobriety tests were not administered because the Defendant refused to submit to a PBT test at the scene and also because the Defendant complained of injuries to his leg.⁴ The Defendant was then taken to Christiana Hospital by Corporal Dempsey.⁵ Officer Donmoyer requested a blood test be administered at the hospital. Because the Defendant refused to submit to a blood test, he was restrained and held down by a Constable.⁶ Defendant was arraigned at 8:09 a.m. at which point, he did agree to a PBT test.⁷ Those results showed a BAC of .029.⁸

⁴ Preliminary Hearing testimony of Officer Donmoyer p. 9 ln. 5–10, attached to Def. Am. Mot. to Suppress.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at ln. 14–22.

⁸ *Id.*

III. PARTIES' CONTENTIONS

Defendant contends that Officer Donmoyer lacked reasonable suspicion or probable cause to administer the blood test, or to arrest him for DUI.⁹

Defendant also asserts that, in light of the recent United States Supreme Court decision in *Missouri v. McNeely*, Officer Donmoyer violated the Defendant's State and Federal constitutional rights against unreasonable searches and seizures by the forced extraction of his blood in the absence of a search warrant, or sufficient probable cause and exigent circumstances to justify a warrantless blood extraction.¹⁰

IV. STANDARD OF REVIEW

In a Motion to Suppress, the State must prove by a preponderance of the evidence that the challenged search or seizure did not violate the defendant's constitutional rights.¹¹

V. DISCUSSION

A. Reasonable Suspicion

The Delaware Supreme Court has held that “[i]n certain circumstances . . . law enforcement officers may stop or detain an individual for investigatory purposes . . . if the officer has reasonable articulable suspicion to believe the individual to be detained is committing, has committed, or is about to commit a crime.”¹² The Court will defer “to the experience and training of law enforcement officers” in determining whether there was reasonable suspicion to justify a detention.¹³ Law enforcement officers must demonstrate reasonable suspicion by pointing to “specific and articulable facts which, taken together with

⁹ Def. Mot. to Suppress, at 2.

¹⁰ Def. Am. Mot. to Suppress, at 3.

¹¹ *Hunter v. State*, 783 A.2d 558, 561 (Del. 2001).

¹² *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

¹³ *Id.*

rational inferences from those facts, reasonably warrant the intrusion.”¹⁴ The Court “must examine the totality of circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same manner or similar circumstances, combining objective facts with such an officer’s subjective interpretation of those facts” in determining reasonable suspicion.¹⁵

Officer Donmoyer activated his emergency lights to conduct a traffic stop of the Defendant’s motorcycle after he observed the Defendant travel at a high rate of speed, have difficulty stopping at a red light, “fish-tail” through an intersection, and improperly pass¹⁶ three vehicles.

Based on the totality of circumstances and viewing them through the eyes of a reasonable, trained police officer, the Court finds that Officer Donmoyer had reasonable articulable suspicion to stop and detain the Defendant.

B. Probable Cause

Under 21 *Del. C.* § 2740, any person who operates a motor vehicle on a road in Delaware is deemed to have given their consent to chemical tests “to determine the presence of alcohol or drugs.”¹⁷ An officer may test a person’s blood “for the purposes of determining the presence of alcohol or a drug or drugs” when the officer “has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of § 4177 . . . of this title.”¹⁸ Because this testing constitutes a search, “constitutional protections require a

¹⁴ *Id.* at 1262–63 (citations omitted).

¹⁵ *Id.* (citations omitted).

¹⁶ 21 *Del. C.* § 4114:(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

¹⁷ See *Lefebvre v. State*, 19 A.3d 287, 292 (Del. 2011); *Bease v. State*, 884 A.2d 495, 497–98 (Del. 2005); 21 *Del. C.* § 2740.

¹⁸ 21 *Del. C.* § 2740.

police officer to have probable cause to believe a person was driving under the influence of alcohol or drugs before requiring the person to submit to chemical testing.”¹⁹

“Probable cause to arrest for a DUI offense exists when an officer possesses ‘information which would warrant a reasonable man in believing that [such] a crime ha[s] been committed.’”²⁰ Police are required to present facts that suggest, by the totality of circumstances, that there is a “fair probability” that the defendant has committed a DUI offense.²¹ There must be a “quantum of trustworthy factual information” that would suggest to a person of reasonable caution that the offense has been committed.²²

As previously stated, Officer Donmoyer observed the Defendant travel at a high rate of speed, have difficulty stopping at a red light, “fish-tail” through an intersection, improperly pass another vehicle, and almost hit another vehicle before he activated his emergency lights. Officer Donmoyer then approached the Defendant’s motorcycle to engage a traffic stop. Defendant disregarded Officer Donmoyer’s emergency lights and continued along Frenchtown Road until crashing his motorcycle, whereupon, the Defendant attempted to evade Officer Donmoyer on foot. When apprehended, the Defendant had no clothing on from the waist down and emitted an odor of alcohol.

In light of these facts, the Court finds that Officer Donmoyer possessed information that would warrant a reasonable man in believing that a DUI offense had been committed, the totality of circumstances demonstrated more than a fair probability that the Defendant committed a DUI offense, and that there is an adequate quantum of trustworthy factual information that would suggest to a person of reasonable caution that the DUI offense was

¹⁹ *Lefebvre*, 19 A.3d at 292; *Bease*, 884 A.2d at 498.

²⁰ *Lefebvre*, 19 A.3d at 292 (citing *Clendaniel v. Voshell*, 562 A.2d 1167, 1170 (Del. 1989)).

²¹ *State v. Maxwell*, 624 A.2d 926, 930 (Del. 1993); *see also Lefebvre*, 19 A.3d at 293.

²² *Lefebvre*, 19 A.3d at 292 (citing *Maxwell*, 624 A.2d at 931).

committed. Accordingly, the Court finds these facts to sufficiently to support probable cause to arrest the Defendant for DUI.

C. Warrantless Extraction of Blood

i. Missouri v. McNeely

The suppression of a warrantless blood extraction was recently affirmed by the United States Supreme Court in *Missouri v. McNeely*.²³ The Supreme Court held that “in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.”²⁴ The Court concluded that exigency in a drunk-driving “context must be determined case by case based on the totality of the circumstances.”²⁵

In *McNeely*, the defendant, who was stopped by a police officer for speeding and crossing the centerline, refused to take a breath test.²⁶ The defendant was taken to the hospital where a blood test was taken without the defendant’s consent.²⁷ After being charged with DWI, the defendant moved to suppress the blood test result, arguing that administering the test without a warrant violated his Fourth Amendment rights.²⁸ The trial court suppressed the evidence and the Missouri Supreme Court affirmed this decision.²⁹ Both Missouri courts found the case to be a “routine DWI investigation where no factors other than the natural dissipation of blood alcohol suggested that there was an emergency, and, thus, the

²³ 2013 WL 1628934.

²⁴ *Id.* at *1, *14.

²⁵ *Id.* at *3.

²⁶ *Id.* at *1, *3.

²⁷ *Id.*

²⁸ *Id.* at *3–4.

²⁹ 2013 WL 1628934, at *3–4.

nonconsensual warrantless test violated McNeely's right to be free from unreasonable searches of his person."³⁰

The U.S. Supreme Court did not discuss the relevant factors that can be taken into account in determining the reasonableness of acting without a warrant, because Missouri sought a *per se* rule that the natural dissipation of alcohol in the blood itself is an exigent circumstance to justify a warrantless blood test.

ii. Parties' Contentions

It is undisputed that the Defendant refused to submit to a PBT test after his arrest and refused to submit to a blood test at Christiana Hospital.³¹ According to the Preliminary Hearing testimony of Officer Donmoyer, the Defendant was restrained and held down by a Constable in order for the blood extraction to be accomplished.

Defendant contends that the warrantless, forced extraction of blood at the hospital violates his State and Federal constitutional rights against unreasonable searches and seizures, as well as a violation of 21 *Del. C.* § 2740.

The State contends that Officer Donmoyer had probable cause to arrest the Defendant for DUI and to obtain a blood sample. Additionally, the State contends that "the unique facts in this case create an exigency which permitted a nonconsensual, warrantless blood draw."³²

The special facts to support a warrantless blood test that the State points to are:

- Defendant was initially observed entering an intersection on a motorcycle and almost hitting another vehicle.
- [Defendant] then continued to improperly pass vehicles on a one-lane roadway at a high rate of speed.

³⁰ *Id.*

³¹ Def.'s Am. Mot. to Suppress, at 3; Preliminary Hearing testimony of Officer Donmoyer p. 9; State's Resp., at 3.

³² State's Resp. to Def.'s Am. Mot. to Suppress, at 2 (hereinafter "State's Resp.")

- When Officer Donmoyer activated his emergency lights to initiate a traffic stop, [D]efendant led him on a chase through the city of New Castle before crashing the motorcycle into a parked car.
- [Defendant] continued to flee on foot but was apprehended by officers a short distance later.
- Officer Donmoyer noticed that [D]efendant was completely naked from the waist down and emitted a strong odor of alcohol.
- Field tests were not completed due to [D]efendant complaining of injury to his leg.
- . . . Officer Donmoyer had to transport [D]efendant to Christiana Hospital in Newark and simultaneously investigate the accident caused by [D]efendant.
- . . . [D]efendant was uncooperative and combative throughout the entire investigation.
- Officer Donmoyer remained with [D]efendant to ensure the safety of the hospital staff as he was being treated.³³

The State points to the United States Supreme Court decision in *Schmerber v. California*,³⁴ where a warrantless blood test was deemed permissible. The Court in *Schmerber* held that 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.”³⁵ The *Schmerber* Court further held that, because “the percentage of alcohol in the blood begins to diminish shortly after the drinking stops . . . where time ha[s] 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.”³⁶

The State contends that because Officer Donmoyer had to transport the Defendant to Christiana Hospital and simultaneously investigate the scene of the accident, this case is similar to *Schmerber*, and the blood test should be upheld.

³³ *Id.* at 3.

³⁴ 384 U.S. 757 (1966).

³⁵ *Id.* at 770 (citations omitted).

³⁶ *Id.* at 770–71.

iii. Analysis

A physical intrusion beneath a person’s skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation “implicates an individual’s ‘most personal and deep-rooted expectations of privacy.’”³⁷ Absent an emergency, search warrants are required where intrusions into human body are concerned, even when the search was conducted following a lawful arrest.³⁸ The warrant requirement is subject to exceptions, one of them being “when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.”³⁹ “To determine whether a law enforcement officer faced an emergency that justified acting without a warrant, this Court looks to the totality of circumstances.”⁴⁰

The Court in *McNeely* held that “[i]n those drunk-driving investigations where police officers can *reasonably obtain a warrant* before a blood sample can be drawn *without significantly* undermining the efficacy of the search, the Fourth Amendment *mandates that they do so*.”⁴¹ The Court noted that “some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test.”⁴² Those circumstances are why the Court refused to adopt a *per se* rule and instead held that a case-by-case analysis of the totality of the circumstances is appropriate to determine if exigent circumstances were present.⁴³

The Court also emphasized that *Schmerber* was decided in 1966, and today a majority of the states allow for police officers to remotely apply for a warrant, and the warrant

³⁷ 2013 WL 1628934, at *5 (citations omitted).

³⁸ *Id.* (citing *Schmerber*, 384 U.S. at 770).

³⁹ *Id.* (citing *Kentucky v. King*, 131 S.Ct.1849, 1856 (2011)).

⁴⁰ *Id.* (citations omitted).

⁴¹ *Id.* at *7 (emphasis added).

⁴² *Id.*

⁴³ 2013 WL 1628934, at *7.

application process has been streamlined to include standard-form warrant applications for drunk-driving investigations.⁴⁴ These advancements, however, “do not guarantee that a magistrate judge will be available” to issue the warrant late at night, “[b]ut technological developments that enable police officers to secure warrants more quickly . . . are relevant to an assessment of exigency.”⁴⁵

In *McNeely*, the Court discussed so-called “routine” drunk-driving stops as opposed to ones involving “special facts.” One of the special facts the Court mentioned was “the need for police to attend to a car accident.”⁴⁶ The fact that a drunk-driving stop is “routine,” however, does not mean that a warrant is required.⁴⁷ “The relevant factors in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt *vary depending upon the circumstances in the case.*”⁴⁸

The State has pointed to several facts, that the State contends take this case out of the realm of “routine” DUI investigations, including investigating the accident and taking the Defendant to the hospital, and, most importantly, that the Defendant attempted to flee from Officer Donmoyer both on his motorcycle and on foot after the crash. The Court is not convinced, however, based upon the totality of the circumstances, that Officer Donmoyer was faced with such an emergency that justified acting without a warrant.

The Court is sympathetic with the fact that the New Castle City Police Department may not have the personnel and equipment advantages that other law enforcement agencies in the country or even the State possess. However, the State has not demonstrated, by a

⁴⁴ *Id.* at *8.

⁴⁵ *Id.* at *9.

⁴⁶ *Id.* at *13.

⁴⁷ *Id.*

⁴⁸ *Id.*

preponderance of the evidence, that the alleged exigencies of this situation made the needs of Officer Donmoyer so compelling that the warrantless blood draw was objectively reasonable under the Fourth Amendment.

VI. CONCLUSION

While the Court acknowledges the State's interest in maintaining safe roadways as well as the difficulties and obstacles officers may face in their efforts to obtain warrants for blood draws, the Court cannot disregard the legal precedent protecting the personal privacy interest which is at stake. It is for these reasons that the Defendant's Motion to Suppress is **GRANTED**.

IT IS SO ORDERED.

_____/s/_____
M. Jane Brady
Superior Court Judge