



## FACTS

On or about August 28, 2014, a police officer for the Cheswold Police Department was dispatched to the scene of a collision between a vehicle and a house. The officer arrived at the scene of the collision in the Town of Cheswold, Kent County, Delaware. The officer conducted an investigation of the accident scene and based on her training and experience, believed that the defendant appeared to be under the influence of alcohol and/or drugs. The officer then obtained a search warrant to extract the defendant's blood to search for the presence of alcohol and/or drugs in her blood. The sole issue in this case is the sufficiency of the affidavit of probable cause offered by the officer in support of the search warrant. The pertinent portions of the search warrant affidavit in this case state as follows:

AFFIANT OFFICER [NAME OMITTED] HAS BEEN EMPLOYED AS A CERTIFIED POLICE OFFICER SINCE 2004 AND HAS COMPLETED DUI TRAINING COURSE THROUGH WILMINGTON POLICE ACADEMY.

ON 8-28-14 AFFIANT WAS DISPATCHED TO 146 FOX POINT DRIVE, TOWN OF CHESWOLD, KENT COUNTY, STATE OF DELAWARE FOR AN ACCIDENT INVOLVING A VEHICLE INTO A HOUSE.

AFFIANT ARRIVED TO 146 FOX POINT DRIVE AND VIEWED DRIVER GREEN, ASHLEY B/F/N DOB [DATE OMITTED] SITTING IN DRIVER SEAT OF A 1994 NISSAN ALTIMA BLUE IN COLOR DE REGISTRATION [NUMBER OMITTED]. DRIVER/ASHLEY GREEN WAS SLUMPED OVER DRIVER SIDE DOOR AND DRIVER WINDOW WAS DOWN.

DRIVER/ASHLEY GREEN APPEARED TO BE ASLEEP AND AFFIANT NUDGED ASHLEY GREEN AND SHE AWOKE. ASHLEY GREEN WAS SLURRING HER WORDS AND WAS NOT AWARE SHE HAD STRUCK A HOUSE WITH HER VEHICLE. ASHLEY GREEN COULD NOT FOCUS ON AFFIANT AND COULD NOT GIVE ANY INFORMATION ON HER IDENTITY. AFFIANT LOCATED HER DRIVERS LICENSE IN HER PURSE LOCATED ON FRONT PASSENGER SEAT. DRIVER DOES NOT SMELL OF ALCOHOL.

AFFIANT EXPLAINED EVERY FIELD TEST TO DRIVER/ASHLEY GREEN PRIOR TO HER PERFORMING. ASHLEY GREEN PERFORMED THE WALK IN TURN TEST AND COULD NOT KEEP HER BALANCE DURING EACH STEP. DRIVER/TURNT AROUND AFTER FIRST 9 STEPS AND THEN STARTED WALKING BACKWARDS UNTIL AFFIANT ADVISED HER SHE WAS TO STOP. DRIVER/ASHLEY GREEN THEN PERFORMED FINGER TO NOSE WITH HER

EYES OPEN. ALL TESTS WERE PERFORMED AT CHESWOLD POLICE DEPARTMENT. PBT RESULTS WERE .000 ON BREATH ALCOHOL.

## DISCUSSION

If a defendant challenges the propriety of a search without a warrant, the State bears the burden of proving that the search was valid. *State v. Adams*, 13 A. 3d 1162, 1166 (Del. Super. Ct. 2008). But when a warrant has been issued by a magistrate, the burden shifts to the defendant to show a violation of his or her rights. *Id.* When a warrant has issued, a reviewing court must give “great deference” to the magistrate’s determination that sufficient probable cause was provided. *State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013). But “notwithstanding this deference, the reviewing court must determine whether the magistrate’s decision reflects a proper analysis of the totality of the circumstances.” *Id.* (Citing *LeGrande v. State*, 947 A. 2d 1103, 1108 (Del. 2008) (internal quotation marks omitted.) The Delaware Supreme Court has explained that when determining whether to issue a warrant, a magistrate “must make a practical, common-sense decision” and must examine “all of the circumstances set forth in the affidavit—including the veracity and the basis of knowledge of persons supplying hearsay information”. *Holden*, 60 A. 3d at 114. Only upon making such a reasoned analysis of the facts presented in the affidavit may a magistrate determine whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* A “court reviewing the magistrate’s determination has the duty of ensuring that the magistrate had a substantial basis for concluding that probable cause existed.” *Id.*

Because a search warrant had issued in this case, the burden is on the defendant to prove that the search violated her rights. The defendant here argues that the officer’s affidavit did not establish sufficient probable cause to enable a search warrant to issue. She argues that the affidavit was conclusory and that no observations of her were made by the officer to prove that

she was driving the car. The defendant also argues that there were no witnesses, and that nothing in the affidavit focuses suspicion on her.

In support of her position, the defendant cites this Court's opinion in *State v. Sharp*, and contends that the similarity of this situation to the facts of *Sharp* requires the Court to grant the defendant's suppression motion. 2014 WL 3534945 (Del. Ct. Comm. Pl. May 5, 2014). The defendant's reliance on *Sharp* is misplaced.

In *Sharp*, the police officer arrived at the scene of a two-car accident and noted that Clinton Sharp, one of the drivers involved in the accident, had slurred speech, bloodshot eyes, and a strong odor of alcohol. 2014 WL 3534945 at \*1. The officer noted all of these facts in the affidavit of probable cause. 2014 WL 3534945 at \*1-2. The court had to determine whether Sharp's slurred speech, bloodshot eyes, strong odor of alcohol, and his involvement in a car accident were sufficient to establish probable cause. 2014 WL 3534945 at \*4. The court held that the mere fact that Sharp had been involved in a two-car accident provided no weight to a finding of probable cause that Sharp had been driving under the influence because "the affidavit does not assign fault to the defendant, nor does it include a description of the accident that would lead a reasonable person to believe that the accident was attributable to the defendant." 2014 WL 3534945 at \*5. Having noted Sharp's involvement in a two-car collision and the lack of apportionment of blame to Sharp in the affidavit, the court determined that the combination of slurred speech, bloodshot eyes, and strong odor of alcohol were insufficient for a finding of probable cause upon which a search warrant could issue.

The facts before the Court in the present case are readily distinguishable from those of *Sharp*. In this case, the affidavit of probable cause states that Green was passed out behind the wheel of a car that had struck a house. In *Sharp*, the collision involved two moving vehicles, either of which could have been at fault. Thus, there, the mere fact of the collision provided no

weight to a finding that Sharp was driving under the influence of alcohol or drugs. By contrast, the collision between Green's car and an immobile house could only have occurred by movement of the car into the house. Therefore, it is reasonable for any reviewing magistrate to believe that Green caused the accident.

The affidavit of probable cause also indicates that Green slurred her words and appeared to be unaware of who she was or what had happened. Additionally, Green failed the walk-and-turn test and the finger-to-nose test. The Court takes note of Green's performance on the field tests combined with her glassy eyes and slurred speech, as well as the fact that she was slumped behind the wheel and appeared to be passed out. Despite the fact that the affidavit did not explicitly identify any witnesses who saw Green driving her car when it collided with the house, the Court finds that the facts articulated in the affidavit, considered in toto, establish probable cause for the Cheswold police officer to believe that Green had been driving under the influence of drugs or alcohol. As a result, the Court concludes that under the totality of the circumstances, sufficient probable cause existed for the search warrant authorizing the blood draw to issue.

### CONCLUSION

Based on the foregoing analysis, the Court finds that under the totality of the circumstances, the affidavit of probable cause was sufficient to enable a search warrant for a blood draw to issue. Therefore, the defendant's motion to suppress is DENIED.

**IT IS SO ORDERED this 4<sup>TH</sup> day of MAY, 2015.**



CHARLES W. WELCH  
JUDGE