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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 0509019148
	)	
LEONARD J. ROBINSON,	)	
Defendant.	)	

Submitted: April 21, 2006
Decided: May 1, 2006

UPON DEFENDANT'S MOTION TO SUPPRESS
DENIED

Sean P. Lugg, Esquire and Danielle J. Brennan, Esquire, Deputy Attorneys General, Wilmington, Delaware for the State.

Louis B. Ferrara, Esquire, Wilmington, Delaware, for the Defendant.

ABLEMAN, JUDGE

Before the Court is a Motion to Suppress blood evidence of defendant Leonard J. Robinson that was drawn by hospital staff at Christiana Care Systems ("CCS") following a fatal automobile collision in the early morning hours of July 3, 2005. As a result of the accident, defendant Robinson is charged with Murder Second Degree, Driving Under the Influence of Alcohol, and Failure to Produce an Insurance Card.

Following a hearing on this motion, at which the Chief Investigating Officer, Delaware State Police Corporal Nottingham, testified and the photographic and diagram exhibits were admitted into evidence, the Court ruled that the Motion to Suppress should be denied. This is the Court's Opinion setting forth the reasons for its decision.

Statement of Facts

On Sunday, July 3, 2005 at about 1:30 a.m., defendant and decedent, Brian Benson, were occupants in a 1996 four-door Lincoln Continental as it was traveling northbound on Interstate 95. According to the State, defendant was driving with Benson seated in the front passenger seat.[1] As defendant approached the fork where the road splits with Interstate 495, he swerved his vehicle to the left, crossing between

[1]Defendant does not concede that he was the driver of the car, which is contrary to the findings of the State's collision reconstruction expert. For purposes of this motion, the Court assumes that defendant was the driver, as it is his blood alcohol content that is sought to be suppressed.

two vehicles, narrowly missing one. The car then swerved back to the right lane, over the white striped "gore" area between the two highways, and onto I-495. Defendant then lost control, causing the car to swerve and rotate and its right rear to strike the rear of a Sentra, which was in the center lane of I-495. The Sentra then struck the steel guardrail next to the left shoulder. Because it had been struck so hard, it continued to rotate even after striking the guardrail. The Sentra eventually came to rest in an easterly direction, partially blocking the left and center lanes of the highway.

Meanwhile, defendant's car continued to rotate, crashed into the left and right guardrails a total of three times, with such force that it cracked the asphalt of the highway where the support beams of the rail were anchored. Eventually, the car traveled into a grassy area adjoining the right side of I-495 and struck two trees as it continued to spin. The force of the impact crushed the passenger side of the vehicle and caused both defendant and Benson to be ejected.

Corporal William Nottingham of the Delaware State Police was called to the scene and arrived at 1:45 a.m., approximately fifteen minutes after the collision occurred. While there, Cpl. Nottingham interviewed three witnesses, one of whom advised that the vehicle had been "doing at least 100 miles per hour," and stated that "the guy was

flying" down I-95. Another witness who saw the car's headlights behind him, cutting in and out of lanes, thought it was a state trooper. He estimated the speed at about 90 miles per hour. Both witnesses observed the car swerving in and out, and described its movement as erratic and reckless.

While at the scene, Cpl. Nottingham, who is a member of the State Police CRU[2] team since April 2003 and is trained, skilled, and experienced in collision scene analysis, speed and momentum calculations, and reconstruction investigations, gathered much of the data he needed to professionally analyze and reconstruct the scene, including observations and photographs of skid marks, damage to the guardrails, and both trees, the Sentra, and the Lincoln Continental. While at the scene, he was also informed of the positions in which the passengers had landed, and that both Robinson and Benson had been transported to Christiana Hospital, where Benson had died.

After completing what he could in his investigation of the scene,[3] Cpl. Nottingham went to the Christiana Hospital emergency department to interview family members. After asking to interview Robinson, Cpl. Nottingham was advised by staff that defendant had been so combative, that they had had to sedate him to treat his injuries. Believing that

[2]CRU is an acronym for "Collision Reconstruction Unit", formerly called the FARE team.
[3]It was still dark at the time. Cpl. Nottingham returned during the day to take additional photographs.

alcohol might be a factor, in light of all the other facts he had gathered, Cpl. Nottingham asked the nurse whether alcohol was involved, to which the nurse responded, "yes." He was also told by the nurse that defendant's blood alcohol content (B.A.C.) was .17. Cpl. Nottingham immediately asked the hospital staff to retain the samples, as he intended to return to collect them for further testing, but only after he had obtained a search warrant. No law enforcement officer from any state agency had authorized or requested either the drawing of the blood or the testing of it for its blood alcohol content.

Two days later, on July 5, 2005, Cpl. Nottingham prepared an affidavit for the purposes of obtaining a search warrant for defendant's blood. In the affidavit Cpl. Nottingham describes the facts of the collision, identifies the Lincoln Continental as belonging to defendant, and sets forth the fact that defendant and Benson had left a family barbecue earlier that night. He also included information that he learned from the autopsy, as well as his conclusion from his analysis of all of the data that defendant was in fact the driver of the car, and that Benson's injuries were consistent with him being seated in the front passenger side of the vehicle. Cpl. Nottingham noted the additional fact that a member of Christiana Hospital staff had informed him that alcohol was present in defendant's blood and that he had a B.A.C. reading of .17.

Contentions of the Parties

Defendant contends in his Motion to Suppress that Cpl. Nottingham's affirmative questioning of a member of Christiana Hospital staff concerning whether alcohol was involved, and the amount, constituted an unlawful search under the Fourth Amendment because he had neither defendant's consent nor probable cause to make such an inquiry. He argues that the Benson autopsy was not completed until later in the day of July 3, 2005 and that he therefore could not have known of the injuries the decedent suffered as being consistent with his not being the driver. In essence, defendant's argument is two-fold: Cpl. Nottingham's inquiries of the nurse constituted an unlawful search under the Fourth Amendment, and that Cpl. Nottingham was not then in possession of sufficient facts to have probable cause that defendant was under the influence. Additionally, defendant argues, without citing specific authority, that he had a constitutionally protected expectation of privacy, because Delaware law provides that a patient has a reasonable expectation of privacy that medical test results will not be shared with non-medical personnel without the patient's consent.

The State counters that the nurse's disclosure of the results of the blood testing did not violate defendant's rights as there could be no state action by Christiana Hospital, a private institution. Further, the State

submits that there was sufficient probable cause for the investigating officer to have conducted an independent blood analysis. Moreover, the doctor-patient privilege does not apply to the disclosure of such blood test results.

For reasons explained below, the Court rejects each of the arguments raised by defendant. The Court holds that Cpl. Nottingham's inquiry to the nurse did not constitute a "search" under the Fourth Amendment, that the hospital's drawing of defendant's blood was not State action, and that the affidavit contains sufficient probable cause to have justified the granting of the warrant, even if the Court were to exclude the language in the affidavit concerning the nurse's disclosures. Finally, no privacy interest of defendant was implicated here in light of the statutory exclusion of such chemical tests from the doctor/patient privilege. The Motion to Suppress is therefore denied.

Discussion

In evaluating a Motion to Suppress, the State has the burden to establish, by a preponderance of the evidence, that the conduct of law enforcement officers violated neither the United States Constitution, the Delaware Constitution or Delaware statutory law.[4] The Fourth Amendment to the United States Constitution, as well as Article I,

[4] *State v. Hughes*, 2003 WL 21213709 at *1 (Del. Super. Ct. 2003).

Section 6 of the Delaware Constitution of 1897 provide individual protection "against unreasonable searches and seizures."[5] The federal protections afforded by the Fourth Amendment, including the "exclusionary rule," have been incorporated and are protected by the states through the Fourteenth Amendment.[6] Police or law enforcement officers violate an individual's right to be free from unreasonable searches and seizures if, without a warrant, they search an area where a person had a reasonable expectation of privacy.[7]

The constitutional protections of the Fourth and Fourteenth Amendments preclude "representatives of the state" from engaging in unreasonable searches and seizures.[8] Conversely, these constitutional protections do not extend to the actions of private entities or individuals. The United States Supreme Court has "consistently construed this protection as proscribing only governmental action; it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any governmental official."[9]

[5]U.S. Const. Amend. IV; Del. Const. of 1897, Art. I, §6.
[6]*Mapp v. Ohio*, 367 U.S. 643 (1961).
[7]*Hughes*, 2003 WL 21213709 at *2.
[8]See generally, *New Jersey v. J.L.O.*, 469 U.S. 325 (1985).
[9]*United States v. Jacoben*, 466 U.S. 109, 114 (1984), citing *Walter v. United States*, 477 U.S. 649, 662 (1980); see also, *State v. Onumonu*, 2001 WL 695539, at *2 (Del. Super. 2001).

Thus, while the taking of blood from an individual, as here, has been held to fall within the coverage of the Fourth Amendment,[10] that protection is only implicated where the hospital tests an individual's blood with some involvement of law enforcement officials.[11] Because Christiana Care is a private entity and a member of its staff independently drew defendant's blood, the constitutional protections claimed by defendant do not apply in this instance.

Defendant was transported to the Christiana Hospital for treatment of the injuries he sustained during the automobile collision that occurred on July 3, 2005. During his treatment, a sample of defendant's blood was drawn by a member of Christiana Hospital staff and a chemical analysis was performed. Defendant's blood was not drawn at the direction or request of the police, the prosecutor, or state agents. Christiana Hospital is not a governmental agent or a government-owned hospital and there is no policy or agreement with police authorities in effect to obtain and screen blood samples for potential prosecution.[12] Since there is no evidence to suggest that the police or other governmental agents compelled the hospital to analyze

[10] *Schmerber v. California*, 384 U.S. 757, 766 (1966); *Onumonu*, 2001 WL 695539 at *2.
[11] *Onumonu*, 2001 WL 695539 at *5.
[12] *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), upon which defendant relies, is not applicable herein. The *Ferguson* Court held that a hospital's policy of obtaining evidence of a patient's drug use for law enforcement purposes was an unreasonable search where the patient had not consented and a valid warrant had not been obtained. The Court there relied upon the fact that the hospital was a state facility and the conduct of the hospital employees was undertaken pursuant to a policy developed by law enforcement officials. Those factors readily distinguish *Ferguson* from the case at bar.

defendant's blood, or otherwise requested the hospital's performance of the B.A.C. test, the Fourth Amendment was not implicated in this case.

In *State v. Onumonu*, the Delaware Supreme Court held that the blood tests taken by the Christiana Hospital and given to police were admissible, as there was no evidence to suggest that the police, or any other governmental agent, either compelled the hospital to draw the blood, or took an active role in the hospital's testing of the defendant's blood. Hence, the Court held that there was no Fourth Amendment constitutional violation. Defendant submits that *Onumonu* is dissimilar to the instant case, because the seizure of *Onumonu's* blood for testing without probable cause was upheld only because "the police did not play any role in the hospital personnel's decision to turn over the test results to the police." Defendant reasons that, because Cpl. Nottingham affirmatively asked hospital staff if alcohol was involved, at a time when he did not otherwise have probable cause, the blood test results in this case must be suppressed.

In the Court's judgment, defendant's effort to distinguish *Onumonu* is unavailing as it is a distinction without a difference. The fact is that Cpl. Nottingham's questioning of the nurse occurred after the seizure had occurred, had absolutely no bearing on whether or not the blood would have been drawn, and was no more than an inquiry of a civilian

employee. His question cannot itself constitute a search or a seizure under the Fourth Amendment, and amounted simply to normal law enforcement investigative procedure. Indeed, Cpl. Nottingham was careful to leave the blood sample in the hospital's custody until such time as he had obtained a proper warrant.

Moreover, and perhaps most significant to the Court's decision herein, defendant's assumption upon which he premises his Fourth Amendment argument -- that Cpl. Nottingham did not have probable cause to obtain a blood sample at the time he made his inquiry of the nurse -- is simply not supported by the evidence. Stated another way, even redacting from the affidavit any of the information provided by hospital staff in response to Cpl. Nottingham's inquiry, there is ample probable cause within the four corners of the affidavit to have justified issuance of the warrant.

Cpl. Nottingham's initial investigation of the accident scene and interviews with the witnesses provided him with plenty of information to suspect alcohol was involved. The facts, as Cpl. Nottingham had already learned, when viewed in light of the totality of the circumstances, would warrant a reasonable man to believe that a crime had been committed.[13] The car was traveling at a high rate of speed, swerving in and out of

[13] *State v. Maxwell*, 624 A.2d 926, 929-30 (Del. 1993).

lanes in an erratic manner. It was in the early morning hours of the second day of a three-day holiday weekend. There were seven different points of impact before the car in which defendant was traveling came to its final resting point after both defendant and the decedent were ejected. Witnesses described the car as "flying" at speeds of 90 to 100 m.p.h. One passenger was killed. When defendant arrived at the hospital, he was described as combative, behavior which is consistent with alcohol abuse. In fact, he had to be medically sedated in order to be treated. With these facts at the officer's disposal, it makes no difference to the finding of probable cause whether he already knew of the existence of the sample and its blood alcohol content, or not. He already had ample facts to justify the sample being turned over to the police.

Nor does it matter whether, or when, Cpl. Nottingham was aware of facts that led him to conclude defendant was the driver. It would make no difference in an investigation of this magnitude, where death resulted from a high speed collision, at what point in time Cpl. Nottingham concluded that defendant was the driver. He already suspected that alcohol was involved and needed to know the B.A.C. of either individual before charges could be filed. If his investigation had ultimately led to the conclusion that decedent was the driver, then defendant would not have been charged. Unfortunately for defendant, however, the facts eventually led to the filing of the charges which defendant is now

challenging. Whether he was the driver or not is simply not relevant to the Fourth Amendment claims at issue here.

Indeed, the possibility of innocent explanations for the facts does not preclude a finding of probable cause.[14] A finding of probable cause does not require the police to possess sufficient information to prove a suspect's guilt beyond a reasonable doubt. Nor does the officer even need to prove that guilt is more likely than not.[15] To establish probable cause, Cpl. Nottingham was only required to present facts that when viewed under the totality of the circumstances, suggest a fair probability that defendant had committed a crime. "The possibility that there may be a hypothetically innocent explanation for each of several facts revealed during the course of an investigation does not preclude a determination that probable cause exists . . ."[16]

The record reflects that, upon arrival at the accident scene, Cpl. Nottingham was informed that the two occupants of the vehicle had been taken to the hospital. Cpl. Nottingham, who was trained and skilled in accident reconstruction, determined that the vehicle had been traveling at a high rate of speed and had hit a second car, the guardrails several times, and two different trees. One of the occupants had not survived.

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[14] *Maxwell*, 624 A.2d at 930.
[15] *Jarvis v. State*, 600 A.2d 38, 43 (Del. 1991).
[16] *Id*. at 41-42.

Any one of the foregoing facts, considered alone may have been insufficient to establish probable cause. However, considering the totality of the circumstances, based upon his observations, training, experience, and investigation, Cpl. Nottingham possessed sufficient factual information to warrant his conclusion that probable cause existed to believe that Robinson was driving under the influence of alcohol at the time of the accident. Therefore, the State had sufficient probable cause to justify issuance of the warrant for the defendant's blood samples.

Defendant's final argument -- that he had a constitutionally protected expectation of privacy that the results of the blood tests would remain confidential -- is likewise unavailing. The Court is not clear from defendant's motion which privacy rights he is asserting, other than those guaranteed by the United States and Delaware Constitutions. If he is relying on the statutorily created doctor/patient privilege, that privilege does not apply to the disclosure of the B.A.C. test results to law enforcement personnel, pursuant to 21 Del.C. §2750(b). In light of that statute, the defendant has no reasonable expectation of privacy in preventing such disclosure, when probable cause exists, as the Court has found in this case. To the extent that there exist other state or federal statutorily created privacy rights, defendant's remedy lies not with the State or the police, and exclusion of the test results is not

required. As far as this Court is aware, the exclusionary rule does not apply to violations of laws other than the rights guaranteed by the United States or Delaware Constitutions.

Conclusion

For all of the foregoing reasons, defendant's Motion to Suppress the blood evidence drawn from him by a member of Christiana Hospital's staff on July 3, 2005 is hereby denied.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary – Criminal
cc: Sean P. Lugg, Esquire, DAG
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