IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	ID# 1507014460
	)	
CHE HENDERSON,	)	
	)	
Defendant.	)	

Submitted: December 11, 2015
Decided: January 5, 2016

Upon Defendant's Motion to Suppress, **DENIED.**

OPINION

Kelly L. Breen, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Jason R. Antoine, Esquire, Wilmington, Delaware, Attorney for Defendant.

MEDINILLA, J.

INTRODUCTION

On July 15, 2015, at 2:30 a.m., Amtrak Police Officers found Che Henderson ("Defendant") unresponsive in the driver's seat of a vehicle after they conducted a traffic stop. A .40 caliber Glock semi-automatic handgun was found on the passenger seat. As a result of the traffic stop, Defendant was arrested and charged with Possession of a Firearm While Under the Influence and Driving a Vehicle While Under the Influence of Alcohol, Any Drug, A Combination of Alcohol and Any Drug, or with a Prohibited Alcohol Content in violation of 11 Del. C. § 1460 and 21 Del. C. § 4177(a), respectively. Defendant moves to suppress evidence and argues there was insufficient probable cause to justify the warrantless seizure, that the stop was unreasonably attenuated and prolonged, and that he should have been given *Miranda* warnings[1]. For the reasons below, Defendant's Motion to Suppress is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

This Court heard evidence at the suppression hearing on December 11, 2015. The State presented evidence through Amtrak Police Officer Floyd Brinkley ("Officer Brinkley") and Delaware State Police ("DSP") Officer, Corporal Michael

[1] Defense counsel filed a separate Motion to Bar Statements Procured in Violation of *Miranda* and raised issues that were not presented in his Motion to Suppress or at the hearing on December 11, 2015. Since neither the Court nor the State had had an opportunity to review this second motion, this Court provided the State with an opportunity to respond, which it did on December 15, 2015. The parties agreed to proceed with the suppression hearing with an understanding that this Court would subsequently review the motion and the State's response, and determine if a separate hearing would be necessary. This Court does not require a separate hearing to decide Defendant's separate Motion to Bar Statements Procured in Violation of *Miranda.*

Ripple ("Officer Ripple"). Defendant testified on his own behalf. Before this Court is the following record:

On July 15, 2015, at approximately 2:30 a.m., Officer Brinkley and another Amtrak Police Officer stopped their fully marked patrol vehicle behind Defendant's vehicle at a red light on Delaware Route 4. Defendant's vehicle remained stationary after the light turned green and remained stopped throughout the entire light cycle. As a result, the officers activated their patrol vehicle's horns, lights, and siren to try to alert the driver that the light had changed to green.

After no response, Officer Brinkley approached the vehicle and found Defendant in the driver's seat unresponsive at the wheel with his foot on the brake and the vehicle running. The driver's side window was open. Officer Brinkley testified that he observed a .40 caliber Glock semi-automatic handgun on the passenger seat. He attempted to wake Defendant several times; at first talking to him, prodding, and eventually yelling at him. After Defendant awoke, Officer Brinkley observed that Defendant had glassy eyes, smelled of marijuana, talked very slowly, and seemed confused. Officer Brinkley directed Defendant to turn off and exit his vehicle. Officer Brinkley then had Defendant sit on a curb to wait for DSP assistance. Officer Ripple arrived within five to ten minutes.

Officer Ripple testified that when he arrived on the scene, within feet of Defendant, he detected a strong odor of alcohol. He testified that Defendant had bloodshot eyes, droopy eyelids, and his pattern of speech was slurred and confused. After a brief exchange, Defendant admitted to Officer Ripple that he had consumed two beers and had smoked "a little bit" of weed. Corporal Ripple then performed a battery of field tests and subsequently transferred Defendant to Troop 6 for investigation.[2] After a twenty-minute observation period, Defendant consented to an Intoxilyzer breath test, which registered a BAC of .091%. Defendant was charged, accordingly.

Defendant argues that there was insufficient probable cause to justify the warrantless seizure, that the stop was unreasonably attenuated and prolonged, and that he should have been given *Miranda* warnings. The State maintains there was sufficient probable cause, *Miranda* was not required and, in the alternative, argues that the community caregiver doctrine applies.[3] The Court agrees.

[2] This Court considered numerous objections raised by Defense counsel regarding the admissibility of the HGN and field tests results under *Zimmerman v. State*, 693 A.2d 311 (Del. Super. 1997) and *State v. Ruthardt*, 680 A.2d 349 (Del. Super. 1996), but need not consider them for purposes of finding sufficient probable cause in this matter.
[3] Although not necessary for purposes of this opinion, the Community Caretaker Doctrine is applicable where the record shows that the officers who encountered Defendant had reasonable articulable suspicion that Defendant was in apparent peril, distress, or need of assistance to stop and investigate for the purpose of assisting the person. *(See, Williams v. State*, 962 A.2d 210, 218-19 (Del. 2008)).

STANDARD OF REVIEW

Superior Court Criminal Rule 41(f) provides that a motion to suppress "shall state the grounds upon which it is made with sufficient specificity to give the State reasonable notice of issues and to enable the court to determine what proceedings are appropriate to address them."[4] As a general rule, "the defendant bears the burden of establishing that the challenged search or seizure violated his rights under the United States Constitution, the Delaware Constitution, or the Delaware Code."[5] "However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable."[6] Defendant has established that this was a warrantless seizure and, the State must therefore prove, "by a preponderance of the evidence that the actions of its agents were in accordance with constitutional protections."[7] This Court finds that the State has met its burden.

Miranda

Defendant contends that he "may have made certain statements" that should be suppressed but does not actually identify them. At the suppression hearing,

[4] Super. Ct. Crim. R. 41(f).
[5] *State v. Nyala*, 2014 WL 3565989, at *5 (Del. Super. 2014) (citing *State v. Babb*, 2012 WL 2152080, at *2 (Del. Super. 2012)).
[6] *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995); *see also Babb*, 2012 WL 2152080, at *2.
[7] *Nyala*, 2014 WL 3565989, at *5 (citing *Babb*, 2012 WL 2152080, at *2).

defense counsel objected to the admissibility of Defendant's admissions to Officer Ripple that he had consumed two beers and had smoked "a little bit" of weed. This Court will assume that these are the statements Defendant seeks to suppress. Defendant cites no authority, other than the "*Miranda* rule" generally, to support his position.

This Court finds that the routine investigatory questions asked by DSP Officer Ripple when he approached Defendant immediately upon arrival were part of his initial investigation, and not subject to *Miranda* warnings. Defendant was found unresponsive, unconscious or asleep at the wheel of a running vehicle in the middle of the road. Police should have unrestricted scope of general interrogation to properly investigate.[8] They did just that. The voluntary statements made by Defendant were made during an investigatory stop.[9] The officers were not required to read *Miranda* warnings while conducting this on-scene investigation.[10] As such, Defendant's Motion to Bar Statements Procured in Violation of *Miranda* is denied.

Probable Cause to Detain and Arrest

In Delaware, when a person operates a motor vehicle, he or she is deemed to have given consent to chemical tests, including a test of the breath to determine the

[8] *See Laury v. State*, 260 A.2d 907, 908 (Del. 1969).
[9] *Id.*
[10] *Id.*

presence of alcohol or drugs.[11] The tests "shall 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…"[12] Significantly, "[p]robable cause is determined by the totality of the circumstances and requires a showing of a probability that criminal activity is occurring or has occurred."[13] Probable cause is established "where the facts and circumstances within the police officer's knowledge, and of which the police officer had reasonably trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed."[14]

There was probable cause in this case and this Court is guided by the analogous case in *Bease v. State* in making this determination.[15] Just as in *Bease*, Defendant here was stopped after committing a traffic violation.[16] Specifically, Defendant failed to proceed through a full traffic light even after police prompted him several times to respond to the green light.[17] Like *Bease*, upon investigation, the officers "detected an odor of alcoholic beverage emanating from his

[11] 21 *Del. C.* §2740(a); *see Bease v. State*, 884 A.2d 495, 497-98 (Del. 2005).
[12] 21 *Del. C.* §2740(b); s*ee Bease*, 884 A.2d, at 498.
[13] *Bease*, 884 A.2d, at 498.
[14] *Id.*
[15] *See generally Bease*, 884 A.2d 495.
[16] *Id.* at 499; *see Perrera v. State*, 852 A.2d 926, 928 (Del. 1993)(affirming a finding of probable cause where a police officer stopped the defendant for a traffic violation, and observed that: she had bloodshot and glassy eyes; she smelled of alcohol; admitted to drinking two beers; beer cans were visible on the floor of her car, she failed the alphabet and counting field sobriety tests; and, she failed the portable breathalyzer tests).
[17] 21 *Del. C.* §4107(a) (Obedience To and Required Traffic-Control Devices. The driver of any vehicle shall obey the instructions of any traffic-control device applicable thereto…).

breath…"and admission to drinking.[18] Defendant here does the same. Defendant's eyes appeared both bloodshot and glassy upon observation. While the *Bease* Defendant exhibited rapid speech, [19] here, Defendant's speech was confused and slurred.

After looking at the totality of the circumstances, the officers had probable cause to detain and arrest Defendant. The observations included a traffic violation, Defendant unresponsive at the wheel, a firearm in plain view of the passenger seat, bloodshot and glassy eyes, slurred/confused speech, and the smell of alcohol and marijuana. Finally, there are Defendant's admissions to having smoked marijuana and consumed alcohol earlier that day. Even excluding the failed PBT and HGN results, there was sufficient probable cause to administer the intoxilyzer test.[20]

Finally, Defendant argues that the stop was unreasonably attenuated and prolonged such that all evidence gathered subsequent to the stop should be suppressed. This Court disagrees. The scope and duration of a detention must be reasonably related to the initial justification for the stop.[21] Further, the detention must be temporary and last no longer than reasonably necessary to effectuate the purpose of the stop, at which point the legitimate investigative purpose of the

[18] *Bease*, 884 A.2d at 499; *see Higgins v. Shahan*, 1995 WL 108699, at *3 (Del. Super. Ct. 1995) (an accident combined with the defendant's bloodshot and glassy eyes, odor of alcohol emanating from the defendant, his admission of consuming alcoholic beverages and refusal to perform field tests were found to establish probable cause).
[19] *Bease*, 884 A.2d at 499.
[20] *Id.*
[21] *State v. Miliany-Ojeda*, 2004 WL 343965, at *3 (Del. Super. Ct. 2004).

traffic stop is completed.[22] Here, the scope and duration of the detention were carefully tailored to ensure Defendant's safety, to conduct the field sobriety tests, to take Defendant to the station, to complete the *Miranda* interview, and to wait the twenty-minute observation period to complete the breath test. The entire encounter was not unreasonable given the totality of the circumstances.

For the forgoing reasons, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

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Judge Vivian L. Medinilla

cc: Prothonotary

[22] *Id.*