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

STATE OF DELAWARE)	
)	
V.)	
) ID No.	1306019828
HEATHER J. RYBICKI,)	
)	
Defendant.)	

On Defendant's Motion to Suppress Evidence

ORDER

- 1. Defendant Heather J. Rybicki has moved to suppress evidence obtained as a result of a blood draw. Defendant's blood was taken pursuant to a search warrant. Defendant argues that there was no probable cause justifying the arrest. Further, Defendant contends that there was an insufficient probability that she was impaired.
- 2. The State responded in opposition to Defendant's Motion. Both the State and Defendant have agreed that the issue is limited to the "four corners" of the search warrant and supporting affidavit. Therefore, the parties have agreed that a hearing is not necessary and that the Court may decide the Motion on the written submissions.

- 3. To determine whether probable cause exists to obtain a search warrant, the Court must review the totality of the circumstances.¹ "The task of the issuing magistrate is simply to make a practical common-sense decision whether, given all the circumstances set forth in the affidavit …, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."² This Court is required to review the affidavit to ensure that there was a substantial basis for concluding that probable cause existed.³
- 4. The question at issue is whether there was probable cause to believe that Defendant's blood would yield evidence of consumption of alcohol beyond the legal limit, or sufficient alcohol content to support a charge of driving while under the influence of alcohol. The police officer's affidavit offered in support of the search warrant states:

This Affiant responded to a one vehicle accident at S. College Ave. just south of Rt. 4. This Affiant observed the suspect's vehicle, a 2010 black nissan rogue, Delaware registration #743036, went up and over a grass embankment from the park and ride parking lot striking the curb and coming to rest facing w/b across the n/b lanes on S. College Ave. This Affiant contacted the driver, Heather J. Rybicki,

¹Illinois v. Gates, 462 U.S. 213, 230-32 (1983); 11 Del. C. § 2306, 2307.

²Gates, 462 U.S. at 238.

³Smith v. State, 887 A.2d 470, 473 (Del. 2005).

and could smell an odor of alcoholic beverages emanating from her breath. Ms. Rybicki refused all field sobriety tests, preliminary breath test and Intoxilyzer 5000.

5. The police officer personally observed the aftermath of a one-vehicle accident in which Defendant was the driver. Because of the position of the vehicle, it appeared that the driver lost control and ended up over an embankment, struck a curb and came to rest across traffic lanes. The nature of the accident, combined with the officer's personal observation of an odor of alcohol on Defendant's breath, constitute probable cause to believe that Defendant was under the influence of alcohol at the time of the accident, and that evidence of alcohol consumption could be obtained from a test of Defendant's blood.

THEREFORE, the affidavit having set forth sufficient facts to lead a reasonable person to believe that there was a fair probability that evidence of a crime would be found in Defendant's blood; and the "four corners" of the affidavit and search warrant demonstrating that the issuing magistrate had a substantial basis for concluding that probable cause existed, Defendant's Motion to Suppress Evidence is hereby **DENIED**.

IT IS SO ORDERED this 14th day of January, 2014.

The Honorable Mary M. Johnston