

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

ROBERT B. YOUNG
JUDGE

**SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947
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September 17, 2020

Mary Batten, Esquire
Department of Justice
114 East Market Street
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Office of Defense Service
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Re: State v. James L. Street
Def. ID# 1907006388

FILED PROTHONOTARY
SUSSEX COUNTY
2020 SEP 17 P 3:14

Dear Counsel:

This is the Court's decision on Defendant's Motion to Suppress evidence from trial on the claim that its acquisition was accomplished in violation of the 4th Amendment to the U.S. Constitution and Article 1, Section 7 of the Delaware Constitution, because of an absence of probable cause.

Corporal Baker, an experienced, articulate, trained, and certified officer of the Delaware State Police, was called to the home of a woman for a "welfare check," the details of which are irrelevant to this consideration. No one was found at that address, but a neighbor advised Corporal Baker that the woman might be

found at the home of her son, Defendant James L. Street, Jr., who lived a short distance away, off of the same Layton Davis Road, Millsboro, Sussex County, Delaware.

Corporal Baker went to that address. While he (Baker) was looking for the woman, Defendant Street drove a golf cart from Layton Davis Road on to that property. Although Corporal Baker was aware that Defendant had driven the golf cart on Layton Davis Road, he specifically perceived no indication of erratic or improper driving on Defendant's part. No issue was raised in this case concerning the cart's being a motor vehicle or the existence or propriety of any traffic stop to pursue an investigation.

In any event, Defendant drove his golf cart beside Corporal Baker, and, in response to questioning, identified himself as the son of the woman for whom Corporal Baker had been looking. During that exchange, Corporal Baker detected "a strong odor of alcohol" emanating from Defendant. Following that, he noted Defendant's bloodshot and watery eyes, and slurred speech. After inquiring of Defendant's education level and familiarity with the alphabet, Corporal Baker instructed Defendant to recite "a portion of the alphabet from E to P." Corporal Baker testified that Defendant attempted that task, but could merely respond, "E, P," failing the test. Counsel for Defendant cross-examined on the exchange, and

later argued that Defendant had questioned the task and then refused to respond. The video disc (Defendant's Exhibit 1) was inconclusive on that nuance. Corporal Baker, on the other hand, was explicit, and no other evidence was introduced. Corporal Baker then instructed Defendant to count backwards over a series of numbers. Defendant unaccountably said that he "couldn't," refusing to respond further.

Additionally, Corporal Baker felt it necessary to assist Defendant in walking, due to his instability. However, Corporal Baker testified that he couldn't be certain whether that condition was due to alcohol influence or a knee problem that Defendant pointed out. Hence, Corporal Baker did not calculate that in his assessment of Defendant's probability of alcohol influence. Similarly, Defendant's refusal to perform the one leg stand and heel-to-toe walk for the reason of that same physical problem was not considered by Corporal Baker.

On the basis of the odor-eyes-speech specifics, and the totality of Corporal Baker's experienced evaluation, he felt that the administration of the PBT test was called for. Given the absence of any illegal or erratic driving and the absence of any field test indications, save the contested alphabet finding, a determination of probable cause based exclusively on the foregoing could be argued. That, however, is not the case here, of course. In this case, the PBT was administered,

and Defendant failed it. Yet, the defense argues, that is not a legitimate foundation for probable cause, because it was a coerced administration.

As Corporal Baker and Defendant's Exhibit 1 reveal, with Defendant in the police vehicle, Defendant was advised that a PBT would be given. A relatively extensive discussion took place regarding how it would take place. Defendant expressed displeasure at the entire process, stressing that since he was not driving an automobile, no charge should be made, for example. In the course of that, Corporal Baker explained that if Defendant were not cooperative, he (Baker) could place handcuffs either behind Defendant's back or in front. Whether subjectively Defendant took that to suggest coercion to take the PBT test is academic. In fact, Corporal Baker never placed handcuffs on Defendant at all. More importantly, Corporal Baker was permitted to make use of them. Advising a person of legitimate consequences is not considered coercion. Being advised of potential lawful authority is not a violation of Fourth Amendment Rights.¹

Finally, counsel for Defendant, both during cross-examination and in closing, pursued Defendant's having attempted to engage the PBT machine several times. Of note is the absence of any resistance by Defendant to do so on any one of the multiple efforts. Defendant's point, though, was not that. The

¹*Higgins v. State*, 89 A.3d 77 (Del. 2014) (Table).

argument was that, because each unsuccessful effort required drawing new breath, a new 15 minute wait between each was necessary in order to “clear the mouth” from any previous consumption. No case law, statutory reference or administrative guideline was offered to support such a theory. Moreover, any such requirement would necessitate a new wait any time a subject opted to exhale heartily before commencing a test. One can easily envision hours passing at the behest of a savvy test taker, precluding the ability to obtain a test, but still not having the consequences of a “refusal.”

Be that as it may, the Court finds that the PBT test was appropriately administered.

In conclusion, the odor-eyes-speech observations were just that. No test was involved, no coercion existed. All of the field tests, except for the alphabet test, was refused by Defendant, and not part of Corporal Baker’s determination of probable cause. The alphabet test was executed entirely voluntarily. The assertion that a new wait period between each unrecordable “blow” is without legal or practical basis. No coercion upon Defendant to submit to the PBT test took place. Because of the observations made by Corporal Baker, the Defendant’s failure to

perform the alphabet test, and the propriety and validity of the PBT test results, probable cause existed herein. Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

Very truly yours,



Robert B. Young

RBV:tl

cc: Prothonotary's Office