IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 0706011340
	)	
JOHN BAFFONE,	)	
	)	
Defendant.	)	

Submitted: September 2, 2008
Decided: October 23, 2008

Casey L. Ewart, Esquire, Deputy Attorney General.
Louis B. Ferrara, Esquire, counsel for Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS BLOOD TEST RESULTS

On December 11, 2007, this Court held a suppression hearing in the above-captioned case. At the hearing, conflict arose concerning the admissibility of Defendant's blood test results at trial given the seemingly contradictory language of 21 *Del. C.* §§ 2742(a) and 2750. At the conclusion of the hearing, the Court reserved decision and afforded the attorneys an opportunity to provide written submissions on the interaction between 21 *Del. C.* § 2742(a) and 21 *Del. C.* § 2750. For the following reasons, the motion to suppress is denied and the blood test results are admissible at trial.

BACKGROUND

On June 3, 2007, a general broadcast was sent out via Suscom that a yellow Corvette had been involved in a hit-and-run accident on State Route 20. As Delaware State Police officer Trooper Dannaile Rementer approached the intersection of State Route 20, she noticed a yellow Corvette with damage to the driver's side of the vehicle. Trooper Rementer conducted a traffic stop on the Corvette driven by Defendant.

During the course of the stop, Trooper Rementer observed blood on Defendant's face and clothing, detected the odor of alcohol, and noted that Defendant had slurred speech as well as watery and bloodshot eyes. Based on these observations, Trooper Rementer ordered Defendant out of the vehicle and asked him to perform field sobriety tests. While Defendant performed the Horizontal Gaze Nystagmus test, he refused to perform any others. As a result, Defendant was arrested on the charges of Driving Under the Influence, 21 *Del. C.* § 4177(a); Leaving the Scene of a Property Damage Accident, 21 *Del. C.* § 4201(a); and Failure to Report an Accident, 21 *Del. C.* § 4203(a)(1).

After Defendant was taken into custody, Trooper Rementer transported Defendant to the Millville Emergency Room for a blood draw. There, Trooper Rementer asked Defendant if he would submit to a blood draw, but Defendant refused. Trooper Rementer then read Defendant the language contained in the Probable Cause and Implied Consent Form. Once again, Defendant refused to be tested. Under his reason for refusal, Defendant wrote on the form "my lawyer told me to refuse." Defendant also refused to sign the form. Trooper Rementer then submitted paperwork to the Department of Motor Vehicles ("DMV") indicating Defendant's refusal to be tested.

On December 11, 2007, at the suppression hearing, Trooper Rementer testified that a blood draw was administered despite Defendant's refusal. Based on these facts, Defendant objected to the admission of the blood test at trial, arguing that since Trooper Rementer read Defendant the Implied Consent Law and Defendant still refused to consent to a blood draw, the blood test is inadmissible at trial under 21 *Del. C.* § 2742(a), notwithstanding the contradictory language contained in 21 *Del. C.* § 2750(a).

DISCUSSION

Implied Consent Law Under 21 Del. C. § 2740(a)

Delaware's motor vehicle Implied Consent Law provides that anyone operating a motor vehicle within the state of Delaware is deemed to have constructively consented to testing for alcohol or drugs by an officer having "probable cause to believe" the operator was driving under the influence ("DUI"). 21 *Del. C.* § 2740(a); *Seth v. State*, 592 A.2d 436, 443 (Del. 1991). However, an officer is not required to advise a suspect of any "right" to refuse testing, or the penalty for such a refusal. *See* 21 *Del. C.* § 2741(a) ("at the time a chemical test specimen is required, the person *may* be informed that if testing is refused, the person's driver's license and/or driving privilege shall be revoked for a period of at least 1 year") (emphasis added). *See also Seth*, 592 A.2d at 444 (holding that "the reading of the implied consent law by an officer to the accused is now stated in permissive language"). Thus, a person suspected of DUI has no right to refuse testing "unless a police officer informs him that he may lose his license for a year if he withholds consent." *McCann v. State*, 588 A.2d 1100, 1101 (Del. 1991).

Irrelevancy of Implied Consent Law at Trial

The relevant portion of 21 *Del. C.* § 2742(a) provides that "*[i]f a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given* but the officer shall report the refusal to the Department." 21 *Del. C.* § 2742(a) (emphasis added). Defendant contends that because he was submitted to chemical testing in contravention of 21 *Del. C.* § 2742(a), the results of his blood test are inadmissible at trial. However, the relevant portion of 21 *Del. C.* § 2750(a) provides that:

> *Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while under the influence of alcohol . . . with respect to any chemical test taken by or at the request of the State, the court shall admit the results of a chemical test* of the person's breath, blood or urine *according to normal rules of search and seizure law. . . . Nothing contained in this section shall be deemed to preclude the admissibility of such evidence when such evidence would otherwise be admissible under the law relative to search and seizure law* such as when such evidence has been obtained by valid consent or other means making the obtaining of the evidence legal under the Fourth Amendment.

21 *Del. C.* § 2750(a) (emphasis added). Thus, Defendant insists that the language of 21 *Del. C.* §§ 2742(a) and 2750(a) somehow create a conflict which gives the Court room to interpret these statutes.

Generally, statutes "must be construed according to the fair import of their terms to promote justice and effect the purposes of the law, as stated in § 201 of this title." 11 *Del. C.* § 203. Thus, when interpreting statues, the Court's role is to determine and give effect to the legislature's intent. *Hudson Farms v. McGrellis*, 620 A.2d 215, 217 (Del. 1993). However, "where the intent of the legislature is clearly reflected by unambiguous language in the statute, the language itself controls." *Streett v. State*, 669 A.2d 9, 12 (Del. 1995).

The Court concludes that the plain language of 21 *Del. C.* § 2750(a) negates Defendant's argument. Even if the Court were to assume that Defendant was submitted to chemical testing in contravention of 21 *Del. C.* § 2742(a), the aforementioned portion of § 2750(a) clearly provides that the results of a chemical test are admissible at trial if the normal rules of search and seizure permit admissibility. Defendant, in making his argument, is not only asking the Court to disregard the plain meaning of § 2750(a), but also to overlook the most pertinent portion of the statute. The pertinent portion of 21 *Del. C.* § 2750(a) provides that:

> *The informing or failure to inform the accused concerning the implied consent law shall not affect the admissibility of such results in any case*, including a prosecution for a violation of § 4177 of this title. *The informing of an accused concerning the implied consent law shall only have application and be relevant at a hearing concerning revocation of the driver's license of said person for a violation of the implied consent law*.

21 *Del. C.* § 2750(a) (emphasis added). The Court concludes that this portion of the statute clearly provides that the Implied Consent Law is only relevant at a DMV hearing.

As this Court is bound by the plain language of a statute, *see State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002) ("[t]he plain meaning of words controls when a statute is unambiguous, and statutory interpretation is unnecessary"), the Court concludes that the language contained in § 2750(a) limits the applicability of the Implied Consent Law to DMV hearings only. As a result, even if a chemical test is administered in contravention of 21 *Del. C.* § 2742(a), the results of the test are admissible at trial, pursuant to 21 *Del. C.* § 2750(a), if the administration of the test did not violate the Fourth Amendment. *See Seth*, 592 A.2d at 445 (holding that even if an officer violates "the implied consent law, any argument to exclude the evidence is irrelevant [as] 21 Del. C. § 2750(a) eliminates any defense to admissibility not implicating the Fourth Amendment").

With that said, the last issue to address is whether the facts of the case at bar present a Fourth Amendment violation. The Court must determine: (1) whether Trooper Rementer had reasonable articulable suspicion to stop Defendant's vehicle; and (2) whether probable cause existed to draw Defendant's blood for chemical testing.

The law is well established that a police officer, may in appropriate circumstances, stop a person for the purpose of investigating possible criminal behavior, even though there is no probable cause for an arrest, as long as the officer has reasonable articulable suspicion that the person is engaged in criminal activity. *See Terry v. Ohio*,

392 U.S. 1, 30 (1968) (authorizing brief investigatory stops by law enforcement officers based on reasonable suspicion of criminal activity). The Delaware Supreme Court has defined reasonable and articulable suspicion as an "officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citing *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989) (quoting *Terry*, 392 U.S. at 21)). "A determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed from the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts." *Jones*, 745 A.2d at 861.

The record reflects that Trooper Rementer heard a general broadcast advising that a yellow Corvette had been involved in a hit and run on State Route 20. About fifteen to twenty minutes later, Officer Rementer saw a yellow corvette located about ten to fifteen miles from the accident site. This vehicle was extensively damaged as the driver's side window was shattered and there was damage from the left front fender to the gas tank. Based on these facts, the Court concludes, as it did at the suppression hearing, that there was reasonable articulable suspicion to stop Defendant's vehicle.

The Court must now determine if there was probable cause to test and arrest Defendant on the aforementioned charges. Case law provides that:

> [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. Probable cause exists where 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. The State bears the burden of establishing that there was probable cause . . ..

State v. King, 2007 WL 1153058 at *3 (Del. Super. Mar. 30, 2007) (citing *State v. Maxwell*, 624 A.2d 926, 928 (Del. 1993)).

The Court finds the following factors relevant in assessing whether Trooper Rementer had probable cause to arrest Defendant on the aforementioned charges: (1) The Defendant's vehicle matched the description of the vehicle(yellow corvette) involved in a hit and run accident; (2) Defendant's vehicle, as previously described, was extensively damaged; (3) Defendant's vehicle was stopped ten to fifteen miles away from where the accident occurred; (4) Defendant had blood on his face and on his clothing; (5) Defendant admitted to being involved in an accident; (6) Trooper Rementer detected the odor of alcohol coming from Defendant's person and Defendant's breath; (7) Trooper Rementer observed that Defendant's eyes were watery and bloodshot; (8) Trooper Rementer observed that Defendant had slurred speech; and (9) Defendant admitted to drinking before driving. Based on the totality of the circumstances, the Court concludes, as it did at the suppression hearing, that a reasonable police officer would find that there was enough evidence to form probable cause to test and arrest Defendant on the aforementioned charges.

As the totality of the circumstances presented reveals that probable cause existed to believe that Defendant had been driving under the influence, Trooper Rementer had sufficient probable cause to justify taking a sample of Defendant's blood for testing. *See Maxwell*, 624 A.2d at 931 (concluding that as the police had probable cause to believe that the defendant had been driving while under the influence of alcohol, probable cause existed to take a sample of the defendant's blood for testing). The Court holds that there

has been no Fourth Amendment violation and Defendant's blood test results are admissible at trial under 21 *Del. C.* § 2750(a).

CONCLUSION

For the foregoing reasons, Defendant's motion to suppress the blood test results is DENIED.

IT IS SO ORDERED, this _____ day of October, 2008.

_____
The Honorable Rosemary Betts Beauregard