

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) C.A. No. 0506005562
)
 TRINA M. CRESPO,)
)
 Defendant.)

Submitted: June 4, 2007
Decided: December 20, 2007

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OPINION
AFTER TRIAL AND ON DEFENDANT'S
MOTION TO SUPPRESS HER BLOOD EXTRACTION

Trina M. Crespo (hereinafter "Crespo") was arrested on May 26, 2005 for the offense driving While Under the Influence of Alcohol, in violation of *11 Del. C. § 4177*. The State filed an Information in this Court on September 10, 2005 and Crespo was arraigned on September 12, 2005. On April 28, 2006, Crespo filed a motion to suppress the field test and blood tests on the basis her

initial detention was not supported by reasonable, articulable suspicion and her arrest was not supported by probable cause in violation of her U.S. Constitutional Fourth Amendment rights.

Trial commenced on February 26, 2007. As is the procedure in this Court, the motion was heard first, and where the State was successful on the motion, all non-hearsay evidence was moved into the record for consideration of the charge on the merits. Crespo's motion to suppress her initial detention and subsequent arrest was denied. Thereafter, the Court granted the State's motion to move all non-hearsay evidence into the record. During trial, Crespo moved to suppress the forced extraction of her blood at State Police Troop 6 barracks on the basis that taking her blood in an unsanitary environment violated her rights against reasonable search and seizure under the provision of *21 Del. C. § 2742*, and both the U.S. and Delaware State Constitutions. The Court reserved decision on this question and ordered post-trial briefing. This is the Court's decision on the motion and merits of the State's case charging Crespo with Driving While Under the Influence of Alcohol.

Facts

The facts which led to Crespo's arrest indicate that on the night of May 26, 2005 she was driving on Ruther Drive in the County of New Castle, State of Delaware, and when turning onto Harmony Road, she was observed by

Corporal Eschenwald of the Delaware State Police. Corporal Eschenwald testified that at approximately 11:00 p.m. while on routine patrol on Harmony Road, he observed a vehicle, later identified as being operated by Crespo, strike the median resulting in two flat tires. The vehicle was traveling between 22-30 miles per hour but did not stop after the accident.

Eschenwald testified he made a u-turn and began to follow the vehicle. While not reflected in the police report, he testified he activated his emergency equipment and the vehicle failed to stop. The vehicle turned right onto Brookhaven Drive and stopped at a private residence. After the stop, he approached the operator of the vehicle and requested her license, registration and insurance card. Crespo, the operator, initially refused and said she was aware two tires were flat but did not stop because, as a female driving alone at night, she felt unsafe stopping along the roadside. Additionally, she believed she was able to drive to her Uncle's house which was only a short distance from the accident.

Corporal Eschenwald testified when speaking to Crespo he detected an odor of alcohol and decided to administer field sobriety tests. Crespo refused, stating she was not driving the vehicle and was on private property. Corporal Eschenwald took Crespo into custody and transported her to Troop 6.

At Troop 6, Crespo was requested to submit to an intoxilyzer breath test which she refused. Corporal Eschenwald decided to draw blood and not read Crespo the implied consent provision under *21 Del. C. § 2742*. A phlebotomist was summoned to the interview room where Crespo was located and she continued to refuse.

Crespo, who is 5'3 tall and weighs approximately 125 pounds, was seated in a wooden chair. She repeatedly refused to submit to blood being drawn. Corporal Eschenwald testified he and another female officer held Crespo down by her upper arms and elbows preventing her from moving and directed the phlebotomist to draw blood. After the blood was drawn, Crespo was arrested for Driving Under the Influence pursuant to *21 Del. C § 4177(a)*.

At trial Corporal Eschenwald testified it was his normal practice to hold down suspects forcing them to submit to a blood withdrawal in order to secure the safety of everyone present. Additionally, he testified no prior approval from a supervisor was required before forcing a suspect to submit to extraction of the blood. Corporal Eschenwald also testified he did not believe excessive force was used in holding Crespo down or that Crespo complained of any pain during the procedure. However, Crespo alleges excessive force was used and that it caused her pain and her arm was bruised during the incident. Thus,

Crespo alleged the force employed to extract her blood under these conditions is unreasonable under the statute.

DISCUSSION

Crespo contends the chemical test results must be suppressed because unreasonable force was used in extracting her blood pursuant to 21 Del. C. § 2742. The statute referred to as the “implied consent law” provides:

"If 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 police officer shall report the refusal to the Department. The police officer may, however, take *reasonable steps* to conduct such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law." (Emphasis added)

Thus, under the statute, if a suspect refuses to submit a chemical test after being read the implied consent law, the officer may not force chemical testing. A police officer may, however, take reasonable steps to conduct a chemical test, where the implied consent law is not read to the suspect.

The question in these proceedings is whether it is reasonable under 21 Del. C. § 2742, to force blood extraction from a defendant at the police station when arrested for a first offense Driving While Under the Influence of

Alcohol, absent a policy or administrative directive governing such process. It is Crespo's position that such blood extraction under the facts here at State Police Troop No. 6 violates her rights against unreasonable search and seizure under the Fourth Amendment of the U.S. Constitution and Article 1, Section 6 of the Delaware Constitution of 1897, and under *21 Del. C. § 2742*.

The general rule is that the warrantless extraction of a blood sample incident to a lawful arrest is not an unconstitutional search and seizure and the result of the analysis is admissible at later proceedings. The admissibility is however conditioned upon probable cause to arrest and the extraction of blood is reasonable.

The seminal case which addresses the issue of blood extraction without consent is *Schmerber v. California*, 384 U.S. 757 (1966). There, the defendant was arrested at a hospital where he was being treated for related injuries as a result of a motor vehicle accident. His blood was extracted in the hospital at the direction of the police by a physician. He was subsequently arrested and convicted for Driving While Under the Influence of Alcohol. He objected to admission of his blood analysis at trial. He contended, among other arguments, that the withdrawal of the blood and admission of the analysis in evidence denied him due process of law under the Fourth Amendment, and his right not to be subjected to unreasonable search and seizures.

When addressing this contention, the Court observed that one of the overriding functions of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State. The Court went on to state, compulsory administration of a blood test plainly involves the broad reach of the Fourth Amendment, which protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

The Court's focus is whether the means and procedures employed in taking the blood, when measured by Fourth Amendment standards, were reasonable. The Court then went on to conclude that the record indicated the test was performed in a reasonable manner because the blood was taken by a physician in a hospital environment pursuant to accepted medical practices. The Court specifically stated:

“We are not presented with serious questions which would arise if a search involving use of a medical technique, even the most rudimentary sort, were made by other than medical personnel or in other than a medical environment – for example, if it were administered by police in the privacy of the station house. To tolerate searches under these conditions, might be to invite an unjustified element of personal risk of infection and pain.”

In reaching the conclusion that the blood analysis was properly admitted at trial, the Court analyzed the reasonableness of the intrusion into the body by weighing an individual's human dignity interest and privacy against law

enforcement's justifiable intrusion to obtain evidence. *Id.* at 770. The question which is presented in this case was left open.

The reasonableness test in *Schmerber* was revisited in *Winston v. Lee*, 470 U.S. 753 (1985). The Court here set forth additional factors for determining "reasonableness" which include: (1) "the extent to which the procedure may threaten the individual's safety or health, (2) the extent of intrusion upon the individual's dignitary interests in personal privacy and bodily integrity; and, (3) the community's interest in fairly and accurately determining guilt or innocence." *Id.* at 754. The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) further addressed the issue of excessive force and concluded that such is to be analyzed under an objective standard of reasonableness. Here, the Court stated at 388:

"The reasonableness inquiry in excessive force cases is an objective one, the question being whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to the officers' underlying intent or motivation and without the 20/20 vision of hindsight." A balancing test is used in determining "reasonableness". *Id.* It considers "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* "Because the test of reasonableness is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.*

This analysis of reasonableness in evaluating the extent of force used "turns on the size and strength of the individual defendant. Less force will be necessary to restrain the proverbial 98 lb. weakling; however, considerably more force will be required to subdue the 280 lb. weightlifting champion." *Carleton v. The Superior Court of San Diego*, 170 Cal.App.3d 1182, 1191 (1985).

Delaware has not addressed this precise issue. However, in *McCann v. State*, Del. Supr., 588 A.2d 1100 (1991) the Delaware Supreme Court concluded that the use of a stun gun at the *hospital* was reasonable to restrain a suspect from harming the medical technician who was attempting to draw blood. In this case, however, the defendant had been convicted of a prior driving while under the influence offense. The Court while approving the force use stated:

“Our holding today, however, is not to be construed as authorizing the use of a stun gun or the threat of such use to compel submission to a blood test, in the absence of physical aggression on the part of a detainee, which would otherwise independently justify such force”

Additionally, the Superior Court in a bench ruling held the use of a stun gun by an officer at a hospital to subdue a suspect to extract blood was not unreasonable. *State v. Bell*, 190 WL 1222908 (Del. Super.). The suspect in that case was described by the Court as not aggressive or violent but, instead, resistant. Therefore, the stun gun was used as a tool to force the suspect into

cooperating with the blood withdrawal and not as a means to protect the individuals involved. There is no indication in the record of whether there was a prior conviction. Furthermore, in *Field v. Hall* 1995 WL 360744 (D. Del.), a civil rights action, the Federal District Court held that two police officers acted reasonably when they held down a suspect's arms during forced taking of blood at a "*hospital*" (emphasis added) because the officers were preventing the suspect from injuring himself during the procedure.

A review of the Delaware cases appears to suggest and support an officer's use of force as reasonable and permissible to prevent the suspect from endangering the health and safety of the individuals present during the blood extraction in a medical or hospital environment. However, I have been unable to find a Delaware case which has addressed the issue of blood extraction in a non-medical environment.

But jurisdictions outside of Delaware have addressed the issue of forcibly extracting blood at a police station house. For example, in *State v. Clary*, 2 P.3rd 1255 (Ariz. App. 2000) it was held that police officers used objectively reasonable force when they held a suspect down on the floor in a police station in order for a phlebotomist to draw his blood. In these proceedings, the police were required by state statute to obtain a judicially issued search warrant to extract blood. Additionally, when addressing the

Fourth Amendment claim of unreasonable search, the Court analyzed the reasonableness of the officer's conduct under *Graham*. Under *Graham*, the severity of the crime was serious because it was a class four felony.

This question was also addressed in *State v. Lanier*, 452 N.W. 2d 144 (1990). Here, the defendant moved to suppress the results of the blood alcohol test because blood was extracted in a jail rather than in a hospital. The Court in denying the motion, focused on the fact that the defendant was charged with a felony offense. However, even while approving the action of the police, the Court still required that the force to extract the blood be reasonable and not endanger the health or safety of the suspect.

In each of the cases where the Courts have approved the forced extraction of blood in a non-medical environment, the suspect was charged with a felony or the police had secured a search warrant. I have found no case where the forced extraction of blood was for a first offense charge of Driving While Under the Influence of Alcohol.

Applying the *Lee and Graham* factors to the reasonableness requirement under 21 Del. C. § 2742, there is a question of whether the standards are met. Considering the first factor, the severity of the crime, she was charged with a first offense of Driving Under the Influence, while serious, is a misdemeanor under Delaware law. The penalty consists of loss of license, monetary fine, and

possible imprisonment. The failure to submit to testing consists of loss of license and prosecution under the statute.

Secondly, under the procedure presently utilized by the Delaware State Police, the decision of whether to subject a suspect to forced extraction of blood is left to the sole discretion of the officer. The Court has not been referred to any standards or policies issued for their guidance. Thus, effectively one suspect may be subject to forced extraction when a person in a similar circumstance may not be subject to this procedure. This unfettered discretion surely cannot be deemed reasonable under the statute. This becomes especially evident when one considers that the blood is extracted in an area frequented by many individuals from various walks of life. The existence of infectious diseases and viruses which can be present in this environment and go undetectable for many months clearly gives basis for serious concern. This intrusion without oversight into the personal privacy and bodily integrity at the station cannot be what the legislature envisioned when it enacted the reasonable standard in the statute. As the Court stated in *Lanier* one of the factors which the Court must consider in the balancing test is the extent which the procedure may threaten the safety or health of the individual.

Finally, Crespo did not pose an immediate threat to neither the officers nor the public. She was not physically aggressive or violent towards the

officers nor the phlebotomist. Instead, she was verbally resistant. Under Delaware law, when Crespo refused to submit to the test, her driving privileges would be suspended so her potential danger to the public is minimized.

The State argues that Corporal Eschenwald used force in order to ensure the safety of everyone involved. However, the record lacks any evidence demonstrating the need for such force. Unlike the suspect in *Clary*, Crespo is not charged with a felony. Also, it is unlikely that she could have harmed the two officers because of her petite frame. Lastly, Crespo was not actively resisting arrest. She did not physically assault the officer, attempt to flee, nor was she even verbally abusive. She simply refused the officer's request. For these reasons, I find it was unreasonable for the officers to hold down Crespo and force taking a blood sample.

The provisions of *21 Del. C. § 2742*, provide police officers may read the suspect the provision for refusal, which results in the suspect's license suspension. This individual was charged with a first offense Driving Under the Influence of Alcohol and if convicted, she would have been subject to a period of suspension. Therefore, to force Crespo to give a blood sample at the police station under these facts without administrative oversight clearly goes beyond what can be considered reasonable under the statute. Thus, since I conclude

the forced extraction was unreasonable under the statute and need not reach Crespo's state constitutional claim.

CONCLUSION

I find, absent a policy by the Delaware State Police governing the force extraction of blood, forcing the Defendant to give her blood at a police station house for a first offense charge of Driving While Under the Influence of Alcohol is unreasonable pursuant to *21 Del. C. § 2742*. Crespo's motion to suppress the results of the blood test is Granted. Accordingly, I find that the remaining evidence in the record fails to prove beyond a reasonable doubt the guilt of the defendant and she is found Not Guilty.

SO ORDERED

Alex J. Smalls
Chief Judge