



pursuant to the Fourth Amendment of the United States Constitution and Article I, §6 of the Delaware Constitution.<sup>1</sup>

Finally, in paragraph six (6) of his Motion "... that the action of the DRBI in yanking him out of his car and slamming his head into the ground was coercive and as a result, the [defendant] was in no position, having been taken into custody in that manner, to validly consent to performing field tests or taking the breathalyzer test." *See, e.g., Bertmeau v. State*, 310 A.2d 86 (Del.1973); *State v. Laplen*, Del.Com.Pl., Cr.A. No.: 96-05-0077101, Disabatino, J. (December 3, 1996); *Shipley v. State*, 570 A.2d 1159 (Del. 1990).

## **(II) The State's Response**

The State contends in its post argument brief in response to defendant's Motion filed with the Court on April 3, 2009 that the DRBA officers executed a lawful arrest pursuant to 11 *Del.C.* §1911(b) "when the removed the defendant from his car, placed him in handcuffs and patted him down". The State contends therefore that at the time of the defendant's arrest DRBA officers had reasonable grounds to believe that the defendant was committing a felony because the defendant disregarded their commands to pull over for at least one and a half miles in violation of 21 *Del.C.* §4103(b).

The State also contends probable cause existed to arrest the defendant for both disregarding a police signal and resisting arrest because "sufficient facts and circumstance exist in the record to warrant a person of reasonable caution to believe that the defendant disregarded the police". The State also contends DRBA had probable cause to arrest defendant for resisting arrest in violation of 11 *Del.C.* §1257(b) because

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<sup>1</sup> Defense counsel also asserted in its motion that Coreano's injuries sustained during the arrest rendered him unable to validly consent to field tests or breathalyzer tests. Because the Court finds that the arrest itself was not supported by probable cause, this issue should not be addressed in this opinion.

... “[a] person is guilty of resisting arrest when he or she intentionally prevents or attempt to prevent a peace officer from arrest or detention of the person.”

The State contends probable cause existed because the defendant attempted to prevent Officer Young from arresting him when failed to comply with Officer Young’s repeated commands to unlock or step out of the car.

Finally, the defendant contends that the Attorney General’s subsequent decision to enter a *nolle prosequi* on the disregarding a police signal charge does not preclude this Court from finding probable cause. *See e.g., Brown v. State*, 2009 WL 659070, at \*2-3 (Del. Supr. 2009).

Upon consideration of the suppression hearing testimony and the parties’ supplemental briefing, the Court concludes that both the evidence seized and statements made were in violation of the Fourth Amendment of the United States Constitution and Article I, §6 of the Delaware Constitution. Although Coreano had been subject to a valid investigatory traffic stop, the officers did not have probable cause to arrest Coreano for the two (2) offenses asserted in the State’s post Suppression Memorandum. (11 *Del.C.* §1257(b) and 21 *Del.C.* §4103(b). For the reasons set forth more fully herein, Coreano’s Motion to Suppress is granted.

### **(III) Statement of Facts**

On Friday, June 2, 2008, Delaware River and Bay Authority (DRBA) Police responded to an anonymous report of an intoxicated subject in the parking lot at Damon’s restaurant located at 149 DuPont Highway, New Castle, Delaware. The reporting person did not identify her name at the time, but was later identified as Leticia Gomez (“Gomez”), the mother of Coreano’s then 2-year-old child. Gomez informed the operator

that Coreano was “drunk” and was about to drive away from Damon’s restaurant on Route 13 with her child in the backseat of the car. Gomez described Coreano’s car as a white Mercedes and provided the 911 operator with the license plate number. While remaining on the phone with the 911 operator, Gomez followed the defendant’s vehicle with her blinkers flashing so that the police could easily identify her vehicle once they were able to respond to her location.

DRBA Officers Douglas Young and Sheila Exum as well as Sergeant Kenneth Sheeky responded to the area of Damon’s restaurant. Exum and Sheeky each traveled in separate, fully marked patrol vehicles. Young traveled in an unmarked police vehicle equipped with lights and sirens. While en route, dispatch of DRBA informed the officers that the defendant’s Mercedes exited Damon’s parking lot and traveled southbound on Route 13. Young, Exum, and Sheeky located Gomez’s car and obtained a visual of the defendant’s white Mercedes. Once the officers arrived, Gomez drove onto the shoulder and allowed the officers to take over following the defendant. Route 13 had light to medium traffic at the time.

The three DRBA officers initiated a slow-speed pursuit in order to stop Coreano’s vehicle. Shortly after continuing from Route 13 southbound to Route 40 westbound, Coreano pulled his vehicle to the right shoulder of the road. The three officers stopped their cars and approached Coreano’s vehicle. Officer Young first attempted to open the driver’s side door, but the door was locked. Officer Young then ordered Coreano to open the door. Coreano responded by lowering the driver’s side front window, at which point Officer Young immediately reached inside, unlocked, and then opened the door. Officer Young then grabbed the defendant’s left arm as Sgt. Sheeky simultaneously grabbed the

defendant's right arm. Together, both officers forcibly removed the defendant from the car and onto the ground.

Officer Young and Sgt. Sheeky handcuffed Coreano, patted him down, and then placed him into Young's vehicle. Officer Young searched the defendant's vehicle and observed a 2-year-old child strapped into the car seat. The car seat, however, according to DRBA officers, was not fully secured to the backseat of the defendant's car. Young transported the defendant to DRBA Troop 1 for a paramedical evaluation and processing. While transporting the defendant to DRBA Troop 1, Officer Young noticed an odor of alcohol and observed the defendant's speech to be both "mumbled" and "incoherent". Upon arrival at DRBA Troop 1, the paramedics advised that the defendant was alert and that the defendant refused further medical treatment. Subsequently, while the defendant was still at the troop, the DRBA decided to conduct a follow up Driving Under the Influence of Alcohol Investigation.

Following the DRBA's investigation, the defendant was charged with Disregarding a Police Officer's Signal in violation of 21 *Del.C.* §4103(b), Endangering the Welfare of a Child while Driving Under the Influence in violation of 11 *Del.C.* §1102(a)(5), Resisting Arrest in violation of 11 *Del.C.* §1257(b), No Child Restraint in violation of 21 *Del.C.* §4803(a), Driving in an Improper Lane or Direction in violation of 21 *Del.C.* §4126, and Driving Under the Influence of Alcohol in violation of 21 *Del.C.* §4177(a).

#### **(IV) Procedural History**

On June 23, 2008, Judge Balick, during a preliminary hearing, heard testimony from DRBA Officer Exum regarding the defendant's arrest and DRBA's subsequent

investigation. Judge Balick found probable cause to bind the case and charges over to Superior Court. On June 25, 2008, the State entered a *nolle prosequi* on the original charges filed in Superior Court. The State subsequently alleged, by information filed with the Criminal Clerk in the Court of Common Pleas that Coreano committed the following offense: (1) Driving Under the Influence of Alcohol in violation of 21 *Del.C.* §4177(a); (2) Endangering the Welfare of a Child While Driving Under the Influence in violation of 11 *Del.C.* §1102(a)(5); (3) Resisting Arrest in violation of 11 *Del.C.* §1257(b); and (4) No Child Restraint allegedly in violation of 21 *Del.C.* §4803(a). The charge of 21 *Del.C.* §4103(b), disregarding a police officer's signal, was dismissed by *nolle prosequi* by the Attorney General.

On March 18, 2009, this Court held a hearing on Coreano's Motion to Suppress. Procedurally, this Court bifurcated the hearing. The March 18, 2009 hearing addressed Defendant's Motion to Suppress and whether the DRBA officers had probable cause to arrest the defendant. By Order date March 19, 2009, this Court requested cross memoranda briefing by the parties, specifically requesting that the following relevant and legal issues be addressed: (1) articulate the exact time, as set forth in the suppression record, when the defendant was arrested pursuant to 11 *Del.C.* §1911(a); (2) specify the crimes for which the DRBA officers developed probable cause to arrest Coreano at the time of his arrest and point to the underlying facts in the record that support these findings; (3) cite case law authorizing the Attorney General to prosecute a felony for probable cause. Specifically, counsel was directed to point to case authority that enables this Court to find probable cause for an arrest even though the arrest is, in part, based on a felony charge over which the Court does not have jurisdiction and for which no

equivalent downgraded misdemeanor or traffic charge is not before the Court at this time; and finally, (4) summarize what evidence should or should not be suppressed.

#### **(V) Standard of Review**

On a Motion to Suppress evidence seized during a warrantless arrest, the State bears the burden of proof to establish that the “[c]hallenged police conduct comported with the rights guaranteed [to the defendant] by the United States Constitution, the Delaware Constitution, and Delaware statutory law.”<sup>2</sup> The burden of proof on a motion to suppress is proof by a preponderance of the evidence.<sup>3</sup>

#### **(VI) Discussion and Findings of the Court**

##### **A. Was the Initial Traffic Stop of the Defendant Valid?**

An individual’s right to be free from unreasonable searches and seizures is secured in Delaware by both the Fourth Amendment to the United States Constitution<sup>4</sup> and Article I, §6 of the Delaware Constitution.<sup>5</sup> In *Terry v. Ohio*, the United States Supreme Court held that a law enforcement officer may conduct a brief, investigatory seizure of an individual based on the officer’s reasonable and articulable suspicion that criminal activity is afoot.<sup>6</sup>

A brief investigatory automobile stop based on anonymous tip of criminal activity or erratic driving is permissible where the tip at issue has sufficient indicia of reliability to give rise to reasonable suspicion.<sup>7</sup> To support reasonable suspicion for a brief investigatory stop of a motor vehicle,

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<sup>2</sup> *State v. Kang*, 2001 WL 1729126 at 3 (Del. Super. 2001)

<sup>3</sup> *Id.*

<sup>4</sup> See U.S. Const. amend. IV

<sup>5</sup> See Del. Const. art. I, §6

<sup>6</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968)

<sup>7</sup> *Jones v. State*, 745 A.2d 856 (Del. 1999); *Bloomington v. State*, 842 A.2d 1212, 1222 (Del. 2004)

Anonymous tips normally should provide sufficient information, such as an accurate description of the vehicle, its license tag number, its location and direction of travel, or other details, to enable the officer to be certain she has identified the correct vehicle. In addition, if the time period between the receipt of the tip and the officer's location of the vehicle is brief, the information's reliability is enhanced. The tip also must provide sufficient information to support the inference that the information has actually witnessed a traffic violation that warrants an immediate stop.<sup>8</sup>

The tip at issue in this case meets this standard of reliability. Gomez gave particular information to DRBA regarding the location of the vehicle and the direction it was travelling, as well as the make, model, color, and license plate of the vehicle. Furthermore, although the tip was not completely anonymous, Gomez identified herself as the mother of Coreano's child, and also followed Coreano's vehicle with her emergency signals flashing so that the authorities could properly identify the vehicle.

Therefore, based on Gomez's reliable tip that Coreano was driving while under the influence of alcohol, the DRBA officers were permitted to conduct a brief, investigatory stop of Coreano's vehicle. However, this does not mean that the DRBA officer's were permitted to arrest Coreano based on the tip alone. A tip cannot form the basis for an arrest unless it is supported by other facts within the officer's knowledge.<sup>9</sup> The suppression record and testimony does not reflect that the officers possessed any additional information regarding Coreano's alleged intoxication at the time of the arrest. Therefore, the State thereafter contends in its post-argument brief that probable cause existed to arrest Coreano only for Disregarding a Police Officer's Signal in violation of 21 *Del.C.* §4103(b) and Resisting Arrest in violation of 11 *Del.C.* §1257.

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<sup>8</sup> *Bloomingdale*, 842 A.2d at 1222

<sup>9</sup> *Finocchairo v. State*, 614 A.2d 1275 (Del. 1992)



**B. At What Point was the Defendant Actually Arrested?**

“Whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.”<sup>10</sup> It is therefore clear from the testimony and evidence presented, as well as the parties’ post-argument briefs, that Coreano was arrested when the DRBA officers removed him from his car, forced him to the ground, and placed him in handcuffs.

**C. Did Probable Cause Exist for the Arrest of the Defendant?**

In order to prevail on Coreano’s Motion to Suppress, the State must show that Coreano’s arrest was supported by probable cause. The Delaware Supreme Court has defined probable cause as follows:

[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 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.<sup>11</sup>

During the suppression hearing, the Court had the opportunity to view a video of the DRBA pursuit and arrest that was taken from a camera located in Officer Young’s vehicle. The Court also carefully examined the video after the hearing. The following is a summary of the relevant contents of the video, admitted into evidence at State’s Exhibit #4.

**(VII) DRBA Officer Young’s Video**

The video begins at 21:58:22 (military time), showing Officer Young’s vehicle weaving through traffic in pursuit of Coreano’s vehicle on Route 13, which consists of

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<sup>10</sup> *Terry v. Ohio*, 392 U.S. 1, 16 (1968)

<sup>11</sup> *Bease v. State*, 884 A.2d 495, 498 (Del. 2005) (citing *State v. Maxwell*, 624 A.2d 926, 928-930)

four southbound lanes. At this point, Coreano's vehicle is not visible from the vantage point of Officer Young's vehicle. Forty-six seconds later, at 21:59:08, Gomez's vehicle, with its emergency blinkers flashing, is visible. Nine seconds after that, at 21:59:17, Coreano's car is visible in the video. Another nine seconds later, at 21:59:26, the first siren is audible.<sup>12</sup> Gomez then pulls her vehicle to the shoulder at 21:59:31, and Officer Young's vehicle moves to the rightmost lane, where Gomez had been travelling. At 21:59:33, the final vehicle between Officer Young's car and Coreano's car pulls to the side of the road, giving Officer Young an obstructed view of Coreano's car. At this point, the vehicles approach a portion of Route 13 that splits into two separate two-lane sections, with the two leftmost lanes flowing onto Route 13 and the two rightmost lanes flowing onto Route 40. Coreano's vehicle is travelling in the second lane from the right.

Officer Exum's vehicle is travelling in the third lane from the right, approximately two to three car lengths behind Coreano's vehicle. At 21:59:34, just before the highway splits, Coreano activates his right turn signal, begins braking, and moves to the rightmost lane. Officer Exum's vehicle then moves one lane to the right, resuming its position to the left of and slightly behind Coreano's vehicle. Coreano then re-activates his right turn signal at 22:00:08, continuing to reduce his speed by braking. At 22:00:25, Coreano pulls to the shoulder of the road and continues reducing his speed. By 22:00:42, Coreano's vehicle comes to a complete stop on the right shoulder of the road. Officer Young subsequently approaches Coreano's vehicle and attempts to open the driver's side front door at 22:00:58.

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<sup>12</sup> As the video begins, the audio portion of the recording has not yet been activated. However, approximately thirty seconds after the video begins, sound is clearly audible.

Finding that the door is locked, Officer Young repeatedly commands Coreano to “open the door” at 22:01:00, 22:01:02, and 22:01:04. Coreano then rolls down the front driver’s side window, and Officer Young reaches into the car to unlock the door. At 10:01:06, Officer Young opens the door and immediately enters the cabin of the car, ordering Coreano to “get out of the car” at 10:01:08 and again at 10:01:10, forcefully removing Coreano at the same time. Finally, at 10:01:13, Officer Young and Sgt. Sheeky pull Coreano from the car and force him to the pavement while holding his hands behind his back. The officers then apply handcuffs to Coreano.

**a. Disregarding a Police Officer’s Signal in violation of 21 *Del C.* §4103(b)**

A police officer may arrest a person without a warrant for Motor Vehicle Code (Title 21) violations committed in the officer’s presence.<sup>13</sup> A police officer may also arrest a person without a warrant where “the officer has reasonable grounds to believe is committing or attempting to commit a felony in the officer's presence.”<sup>14</sup> The State alleges that probable cause existed to arrest Coreano for Disregarding a Police Officer’s Signal in violation of 21 *Del.C.* §4103(b). That section provides:

Any driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver's vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or extinguishes the vehicle's lights and attempts to flee or elude the police officer shall be guilty of a class G felony.<sup>15</sup>

The first issue in determining whether probable cause existed relating to this offense, 21 *Del.C.* §4103(b) is whether there was a “clearly discernible police signal to

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<sup>13</sup> 21 *Del.C.* §701(a)(1)

<sup>14</sup> 11 *Del.C.* §1911

<sup>15</sup> 21 *Del.C.* §4103(b)

bring the driver's vehicle to a stop." The officers did not activate their audible sirens until 21:59:26, less than a minute before Coreano pulls off the road and onto the shoulder. In addition, there are numerous other vehicles between the officers' cars and Coreano's car during the pursuit. The State asserts in its post-argument brief that "there were no cars between the defendant's vehicle and the three DRBA vehicles." The video suggests otherwise; the video depicts Officer Young's car maneuvering around several vehicles before positioning itself behind Coreano's car. In fact, the last vehicle between Officer Young's vehicle and Coreano's vehicle does not pull off of the road until 21:59:33, which is less than a minute before Coreano pulls off the road and onto the shoulder. In order for a police signal to be "clearly discernible," it must put the driver on notice that the officers intend to stop the driver's vehicle. Based on the totality of the circumstances, the Court finds that the police signal here did not become "clearly discernible" until less than a minute before Coreano stopped his vehicle. The Court therefore finds that any alleged disregard of that signal could therefore only have persisted for a relatively short period of time.

It is also clear from the video of the pursuit and arrest that Coreano did not exhibit overtly evasive behavior during the low-speed pursuit. He did not increase his speed, extinguish his vehicle's lights, or attempt multiple lane or route changes. In fact, the video shows Coreano reducing his speed and using his turn signal prior to moving towards the shoulder and eventually pulling off of the highway.

In sum, the video depicts Coreano continues driving at a low rate of speed with his turn signal on for less than a minute after it is clear that the DRBA officers intend to stop his vehicle. Based on the totality of the circumstances, the Court finds that this is not

sufficient to support a finding that the DRBA officers had probable cause to arrest Coreano for Disregarding a Police Officer's Signal in violation of 21 *Del.C.* §4103(b).

Finally, while counsel has not provided case law on point, this Court finds problematic that the State argues probable cause for a violation of 21 *Del.C.* §4103(b) but has decided to enter a *nolle prosequi* in Superior Court and then file Informations in the Court of Common Pleas lacking this Count. In addition, the lesser misdemeanor Count in 21 *Del.C.* §4103(a) was also not charged by Information filed with the Clerk of the Court.

**b. Was the Resisting Arrest of Defendant a Violation of 11 *Del.C.* §1257?**

A police officer may arrest a person without a warrant where the officer has reasonable grounds to believe is committing or attempting to commit a misdemeanor in the officer's presence.<sup>16</sup> The State asserts that the DRBA officers had probable cause to arrest Coreano for resisting arrest in violation of 11 *Del.C.* §1257, a Class A misdemeanor. That section provides that “[a] person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person or intentionally flees from a peace officer who is effecting an arrest.” The State contends that probable cause existed because Coreano failed to comply with Officer Young's commands to unlock his door or step out of the car.

The video taken from Officer Young's vehicle clearly shows that Officer Young did not give Coreano a reasonable opportunity to comply with his rapidly repeated demands to open the door and exit the vehicle. The Court finds that within six seconds of initially demanding that Coreano open the car door, Coreano had rolled down the window and Officer Young had opened the door. Within five seconds after initially demanding

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<sup>16</sup> 11 *Del.C.* §1904(a)(1)

that Coreano get out of the car, Officer Young and another officer had forced Coreano to the pavement.

Officer Young testified on cross-examination that he had ordered Coreano to get out of the car before he attempted to open the driver's side door. However, this is not supported by the evidence. The uninterrupted video, with accompanying audio, shows that Officer Young did not order Coreano out of the car until he had already opened the car door. Officer Young clearly failed to afford Coreano a reasonable amount of time to comply with his demands to open the car door and exit the vehicle. Therefore, the Court finds that there is insufficient evidence to support a finding that the DRBA officers had probable cause to arrest Coreano for resisting arrest in violation of 11 *Del.C.* §1257.

**(VIII) Conclusion**

For the foregoing reasons, the Defendant's Motion to Suppress is hereby GRANTED. Trial shall be scheduled by the Clerk of the Court with notice to counsel of law and results of the field tests and breathalyzer tests are hereby suppressed.

**IT IS SO ORDERED** this 21<sup>st</sup> day of April, 2009.

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John K. Welch  
Judge

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cc: Ms. Juanette West, Scheduling Supervisor  
CCP Criminal Division