IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

State of Delaware,	:	Cr.A. No. 06-09-1429
	:	Case No. 0509022085
vs.	:	
	:	
Amber F. McIlroy,	:	
	:	
Defendant.	:	

Decision after Trial

Submitted: January 9, 2007

Decided: January 17, 2007

Upon Defendant's Motion to Suppress

Defendant's Motion to Suppress is granted.

Defendant found not guilty.

Daniel Simmons, Esquire, Department of Justice, 102 West Water Street, Dover, Delaware 19901, attorney for the State.

John R. Garey, Esquire, 48 The Green, Dover, Delaware 19901 , attorney for Defendant.

Trader, J.

This is the Court's ruling on defendant's motion to suppress in a driving under the influence case. I conclude that the motion must be granted because the police officer that stopped the defendant's vehicle did not have reasonable and articulable suspicion that the motorist committed a violation of the law. Hence, the evidence seized as a result of the illegal stop must be suppressed.

The relevant facts are as follows: On September 10, 2005, an anonymous caller stated to the Delaware State Police at Troop 3 that there was a party with underage drinking on John Hurd Road, near Felton, Delaware on abandoned property. Trooper Argo was dispatched to the scene of the alleged party for a property check. When he arrived at the scene, one car left the property at a high rate of speed and other persons fled on foot. A vehicle was attempting to leave the property and was blocked in by the state police vehicle. The police officer testified that he did not observe any criminal activity by the driver of the vehicle.

After the stop, the police officer approached the vehicle and asked for the defendant's driver's license. When the defendant produced her license, Trooper Argo smelled a strong odor of alcoholic beverage on the defendant's breath. Thereafter, he required the defendant to perform certain field coordination tests. After the defendant failed most of the coordination tests, she was arrested on a charge of driving under the influence of alcohol.

At trial the defendant presented a motion to suppress evidence on the basis of an illegal stop and also on the basis of the lack of probable cause to arrest the defendant for driving under the influence. I determine that there was probable cause to arrest the defendant for driving under the influence, but I reserved decision on the issue of a reasonable and articulable suspicion to stop the defendant's motor vehicle.

Stopping an automobile and detaining its occupants constitute a seizure within the meaning of the Fourth and Fourteenth Amendments even though the purpose of the stop is limited and the resulting detention is quite brief. *Delaware v. Prouse*, 440 U.S.C. 648, 653 (1979). In the case before me, it is not disputed that a seizure for the purposes of Fourth Amendment analysis occurred when the arresting officer blocked the defendant's vehicle and prevented it from leaving the scene. *See Riley v. State,* 892 A. 2d 370, 374 (Del. 2006).

The issue in this case is whether the officer had a reasonable and articulable suspicion of criminal activity by the defendant. The facts and rational inferences taken therefrom must support the impression that the individual sought to be detained was in the process of violating the law. *Cummings v. State*, 765 A.2d 945, 948 (Del. 2001).

A reasonable and articulable suspicion is defined as an "officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). Reasonable suspicion "must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts." *Id*. It "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence . . . ." *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). The State bears the burden of proving that the actions of its police officers were constitutionally sound for purposes of the Fourth Amendment and Article I, § 6 of the Delaware Constitution. *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

> In determining whether police officers had a reasonable and articulable suspicion, a court may consider flight, the character of the area in terms of past and/or ongoing criminality, time of day and tips from citizens in the area if corroborated by other information. However, certain factors do not provide an adequate basis. For example, reasonable and articulable suspicion cannot be based on a defendant's presence in a particular neighborhood at a particular time of day with no independent evidence that the defendant has committed, is committing or is about to commit a crime. Furthermore, an "officer's subjective impressions or hunches are insufficient."

State v. Kelly, 2003 Del. Super. LEXIS 257 at **11–12 (Del. Super. July 29, 2003) (citations omitted).

Additionally, "leaving the scene upon the approach, or the sighting, of a police officer is not, in itself and standing alone, suspicious conduct." *Cummings,* 765 A.2d at 949.

In *Flonnory v. State,* 805 A.2d 854 (Del. 2001), the police responded to an anonymous tip alleging an occupant at the corner of a specific street possessed an illegal substance. When the police arrived, the vehicle matched both the color and license number given by the tipster. The police officer observed the defendant scrambling low in the front seat. The Court held that "the simple confirmation of readily observable facts does not enhance the reliability of an anonymous tip to the level required for a finding of reasonable suspicion" where there is simply "an anonymous tip that provides the police with no predictive information that they may use to assess the reliability and knowledge of an informant…." *Flonnory v. State*, 805 A.2d at 858.

In the case before me, the officer was responding to an anonymous tip that underage drinking was occurring at a party taking place at an abandoned house. Although he observed a car leaving the scene at a high rate of speed and several individuals fleeing on foot, he only observed the defendant attempting to drive her vehicle on to John Hurd Road.

The police officer testified that he did not personally observe the defendant violate any traffic or criminal law and the anonymous tip did not focus any individualized suspicion on the defendant. Despite the flight of others, there was no independent evidence that the defendant had committed a crime or was committing a crime. Therefore, the facts do not arise to the level of reasonable and articulable suspicion necessary to justify the seizure of the defendant.

The State argues that the defendant may have been trespassing on the property of the abandoned house. The defendant was not arrested for trespassing and the officer testified that he did not did not observe the defendant commit any violation of the law. As the Delaware Supreme Court noted in *Jones*, 745 A.2d at 868 (quoting an opinion of the Connecticut Supreme Court):

> In a close case like the present one, the balance ought to be struck on the side of the freedom of the citizen from governmental intrusion. To conclude otherwise would be to elevate society's interest in apprehending offenders above the right of citizens to be free from unreasonable stops.

Since I conclude that the police officer did not have a reasonable and articulable suspicion to seize the defendant's vehicle, the defendant's motion to suppress must be granted. All evidence obtained a result of the violation of the Fourth Amendment must be suppressed as fruit of the poisonous tree. Without such evidence, the State cannot prove the defendant guilty beyond a reasonable doubt. Accordingly, I return a verdict of not guilty.

IT IS SO ORDERED.

Merrill C. Trader
Judge