COURT OF COMMON PLEAS
STATE OF DELAWARE

WILMINGTON, DELAWARE 19801

JOHN K. WELCH
JUDGE

April 20, 2010

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Re: *State of Delaware v. Suzanne Valle*
Case No.: 0906005507

Date Submitted: April 12, 2010
Date Decided: April 20, 2010

MEMORANDUM OPINION

Dear Counsel:

On Monday, April 12, 2010 a hearing was held in the Court of Common Pleas, New Castle County, State of Delaware on Susan Valle's ("Defendant") Motion to Suppress filed pursuant to Court of Common Pleas Criminal Rule 12. Defendant alleges in her motion, *inter alia*, that any evidence offered by the State should be suppressed because the arresting officer did not have a reasonable and articulable suspicion "that defendant had committed, was committing, or was about to commit an offense." (¶ 2(a), Motion).

The Defendant was charged by Information filed with the Criminal Clerk, with one count of Driving Under the Influence of Alcohol on June 7, 2009, on Interstate 95 southbound, Wilmington, New Castle County at 412 North 6th Street in violation of 21 Del. C. §4177(a).

This is the Court's Final Decision and Order on Defendant's Motion to Suppress. For the following reasons the Court finds there was no reasonable articulable suspicion to order Defendant out of the vehicle and detain her or arrest defendant for a violation of 21 Del. C.§4177(a). Therefore, the Court **GRANTS** Defendant's Motion to Suppress.

I. THE FACTS

Trooper Mark Hogate ("Trooper Hogate"), a corporal with the Delaware State Police Troop 1 for four (4) years experience was on routine patrol on the date charged in the Information, June 7, 2009 at 3:50 a.m. Trooper Hogate was traveling to a motor vehicle located on Interstate 95 ("I-95") after a RECOM call and noticed defendant's Saturn vehicle on the shoulder. Trooper Hogate had received a communication on his radio from Trooper John Forrester ("Trooper Forrester") who had stopped another motor vehicle on I-95 southbound where there are two (2) lanes southbound I-95 south becomes three (3) lanes with a fifty-five (55) mile per hour speed zone.

Trooper Hogate pulled behind the defendant's motor vehicle to render what he believed some assistance. As he exited his motor vehicle, the defendant drove away

onto I-95 south. He then yelled "Whoa!" Trooper Hogate was in a marked vehicle with his overhead lights and according to Trooper Hogate, the defendant did not appear see him drive up.

On cross-examination, Trooper Hogate testified he had been previously employed with the Wilmington Police Department. He had been on the road for three (3) years as a State Trooper and at the time was providing back up for Trooper Forrester. Trooper Hogate received a communication on his police radio that Trooper Forrester had stopped someone and was administering field tests on I-95. He observed the defendant's car approximately ⅛ – ¼ of a mile south of Trooper Hogate's police vehicle. Officer Hogate could see Trooper Forrester's lights when he pulled up behind the defendant's motor vehicle.

On cross-examination, Trooper Hogate testified the basis for the stop was that he wondered if the defendant had a medical or mechanical problem with her motor vehicle.

On re-direct, Trooper Hogate could not tell this Court whether the defendant was committing, about to commit, or had committed a motor vehicle offense or crime. *See*, Title 21, Title 11, Delaware Code.

On re-direct, Trooper Hogate testified that he was unaware of any State Police policies involving assisting people on the road. He had no knowledge that an accident had taken place with the defendant's vehicle. He candidly admitted he did not know "what was actually going on in the defendant's motor vehicle" or what her state of

mind was. He conceded that when the defendant drove away the issue of whether she had a mechanical issue or medical problem was no longer an issue in his investigation. He also testified he observed no evidence of erratic driving on behalf of the defendant. Nor had the defendant committed, or was about to commit a Title 21 violation of the Delaware Code.

II. THE LAW

The argument expressed in Defendant's Motion to Suppress, ¶ 2(a), was that there was no reasonable and articulate suspicion for Officer Hogate to order Defendant out of the vehicle. Defense counsel argued at the suppression hearing that the Trooper did not have authority to detain defendant because he thought there was no crime suspected about to be committed, or had been committed by the defendant. *See*, 10 *Del. C.* §1902. Having observed no Title 21 or Title 11 violations, or that the defendant was not committing, had committed or about to commit a crime, the issue before the Court is whether Trooper Hogate had reasonable articulable suspicion prior to asking Defendant to exit her motor vehicle.

The Fourth Amendment of the Delaware and the United States Constitutions protects an individual's right to be free from searches and seizures. U.S. Const. amend. IV; Del. Const. Art. I §6. Accordingly, a police officer must justify any seizure of a citizen, with the level of justification varying depending on the magnitude of the intrusion. *State v. Arterbridge*, Del. Super. Ct., Cr. A. Nos. 94-08-0845 and 94-08-0846, 1995 WL 790965, Barron, J. (December 7, 1995); *See, U.S. Hernandez*, 854 F.2d 295,

297 (8th Cir. 1988); *See also, State v. Dinan*, Del. Com. Pl., Cr. A. Nos. MN98-07-0111 and MN 98-07-0112, 1998 WL 1543573, Welch, J. (October 15, 1998) (where this Court applied this standard to a motor vehicle stop by a police officer).

Reasonable and articulable suspicion is required for a seizure of a citizen. A police officer may detain an individual for investigatory purposes for a limited scope, if supported by reasonable and articulable suspicion of criminal activity. *Jones v. State*, 745 A.2d 856 (Del. 1999) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). A determination of reasonable and articulable suspicion must be evaluated by the totality of the circumstances as viewed though the eyes of a reasonable, trained police officer under the same or similar circumstances, combining objective facts with the officer's subjective interpretation of them. *Id.* The Delaware Supreme Court defines 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 the intrusion. *Id.* In the absence of reasonable and articulable suspicion of wrongdoing, detention is not authorized. *State v. Munzer*, Del. Com. Pl., No. 0805019677, 2008 WL 5160105, Welch, J. (December 9, 2008); *see, e.g., State v. McKay*, Del. Com. Pl., No. 0705027402, 2008 WL 868109, Welch, J. (April 2, 2008) (where the Court held there was no reasonable suspicion where the officer viewed the defendant's car speeding in the opposite direction but there were no radar logs to substantiate this allegation); *State v. Jacobs*, Del. Com. Pl., No. 0310022057, 2004 WL 2378814 (October 6, 2004) (no reasonable suspicion where officer alleged defendant's

vehicle had non-working brake lights and defendant failed to signal, but both claims were omitted from the police report); *contra*, *State v. Lahman*, Del. Super. Ct., Cr. No. 94-10011118, 1996 WL 190034, Cooch, J. (January 31, 1996) (officer's observation of a beer can on the roof of the car and a child on driver's lap constituted reasonable suspicion for stop of the vehicle); *State v. Dinan*, Del. Com. Pl., Cr. A. Nos. MN98-07-0111 and MN 98-07-0112, 1998 WL 1543573, Welch, J. (October 15, 1998) (where reasonable suspicion was found for motor vehicle violations, including here where defendant's car crossed the double-yellow line ten times during officer observation).

There are three categories of police-citizen encounters. *Hernandez*, 854 F.2d at 297. First, the least intrusive encounter occurs when a police officer simply approaches an individual and asks him or her to answer questions. This type of police-citizen confrontation does not constitute a seizure. *Robertson v. State*, 596 A.2d 1345, 1351 (1991) (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991)). Second, a limited intrusion occurs when a police officer restrains an individual for a short period of time. This Terry stop encounter constitutes a seizure and requires that the officer have an "articulable suspicion" that the person has committed or is about to commit a crime. This is also codified under Delaware law, 11 *Del. C.* §1902(a), which reads, "a peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination." Third, the most intrusive encounter occurs when a police officer actually arrests a

person for commission of a crime. Only "probable cause" justifies a full-scale arrest. *Hernandez*, 854 F.2d at 297.

The stop of an automobile triggers the second category of a police-citizen encounter which requires that the officer have "reasonable articulable suspicion" for the seizure. *Delaware v. Prouse*, 440 U.S. 648 (1979). A seizure is quantified when the police encounter "convey[s] to a reasonable person that he or she is not free to leave." *U.S. v. Mendenhall*, 446 U.S. 544, 545 (1980); *Florida v. Royer*, 460 U.S. 491, 502 (1983). "The Court must make this decision objectively by viewing the totality of circumstances surrounding the incident at that time." *State v. Munzer*, Del. Com. Pl., No. 0805019677, 2008 WL 5160105, Welch, J. (December 9, 2008) (quoting *Mendenhall*, 446 U.S. at 545).

The legal standard for the stop is the crux of this case. The quantum of evidence required for reasonable articulable suspicion is less than that of probable cause. *Downs v. State*, 570 A.2d 1142, 1145 (Del. 1990). The former requires that an objective standard be met: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry*, 392 U.S. at 22. "In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21.

In order for the Court to establish whether reasonable suspicion exists, all of the circumstances surrounding the search or seizure must be scrutinized. The Delaware Supreme Court has declared "that the 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." *State v. Bloomingdale*, Del. Com. Pl., Cr. A. No. 99-09-3799, 2000 WL 33653438, Smalls, C.J. (July 7, 2000) (quoting *Jones*, 745 A.2d at 861 (Del. 1999)).

III. DISCUSSION

This Court, at best, has very limited factual record before it in deciding defendant's Motion. The legal issue pending before the Court is whether there was a reasonable articulable suspicion to justify defendant's ***seizure***; did Trooper Hogate have the requisite legal authority to order defendant out of her motor vehicle? The Court must consider the totality of the circumstances by examining the officer's ability to point to specific and articulable facts, taken with rational inferences that could reasonably warrant the intrusion by Trooper Hogate. For the reasons stated below, this Court concludes that there was no reasonable articulable suspicion to warrant the seizure of the Defendant.

IV. CONCLUSION and ORDER

Trooper Hogate was candid in that he could not testify that the defendant was committing, had committed or was about to commit a crime at the

time of the motor vehicle stop. Candidly, when looking at the totality of circumstances which included the fact the defendant had not committed any motor vehicle violation or Title 11 offense. The candid testimony that when the defendant drove away any mechanical or medical issues in Trooper Hogate's mind with regards to the defendant was no longer an issue, leads this Court to conclude that no reasonable articulable suspicion that a crime was about to occur, or had occurred or was occurring as set forth in Title 21, or Title 11, of the Delaware Code.

The Attorney General did not argue that 11 *Del.C.* §1902 applied. In essence, when Trooper Hogate stopped the defendant there was no reasonable articulable suspicion based upon the totality of circumstances that a motor vehicle Title 21 offense had been committed. At the time the defendant was stopped by Trooper Hogate, she was not swerving, committing a motor vehicle violation, had a head light violation or other Title 21 violation. There was no anonymous tip involved that she had been involved in an accident or fleeing from the location, or was otherwise driving impaired in violation of 21 *Del.C.* §4177(a)

Ultimately, as this Court has recently ruled in *State of Delaware v. Russell Stewart*, Del.Com.Pl. No.: 0904016108, Welch, J. (March 12, 2010) in the situation where a suspect is acting in accordance with the law, it is unreasonable under the Fourth Amendment of the Delaware Constitution to detain him/her in a way that would constitute a seizure. This case is similar to the situation argued before this Court in *State v. Munzer*, Del.Com.Pl. No. 0805019677, 2008 WL 5160105, Welch, J. (Dec. 9,

2009). In *Munzer*, a police offer ordered Mark J. Munzer (the defendant) out of his vehicle because "he wanted to know 'what was going on' without reference to any motor vehicle violation." *Id.* at 5. Munzer was stopped after the officer witnessed him turn of his car engine while waiting for a train to pass. *Id.* at 2. Although the State argued that Munzer had obstructed traffic in violation of 21 *Del. C.* §4130 and failed to maintain a minimum speed in violation of 21 *Del C.* §4171, the officer's proffer to the Court was without reference of any actual violation of Title 21. *Id.* at 2, 4. The Court concluded in *Munzer* and *Stewart* the officer did not have reasonable articulable suspicion that the defendant had committed or was about to commit a crime. *Munzer Id.* at 5.

This Court must grant Defendant's Motion to Suppress. "In a Motion to Suppress the State bears the burden of establishing the challenged search or seizure comported with the rights guaranteed by the United States Constitution, the Delaware Constitution and Delaware statutory law. The burden of proof on a Motion to Suppress is proof by a preponderance of the evidence." *Hunter v. State*, 783 A.2d 558 (Del. 2001) (Mem. Op. at 5-6); *State v. Bien-Aime*, Del. Super. Ct., Cr. A. No. IK92-08-321, 1993 WL 138719, Toliver, J. (March 17, 1993) (Mem. Op.) (citations omitted). Again, as in *Stewart* and *Munzer*, the State has not met this burden today. Applying the totality of circumstances test set forth in the case law above, the Court finds that Officer Hogate did not have a reasonable articulable suspicion the defendant had

committed, was committing or was about to commit a crime. Defendant's seizure was thus unlawful.

OPINION AND ORDER

The Court therefore **GRANTS** Defendant's Motion to Suppress.

IT IS SO ORDERED this 20th day of April, 2010.

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John K. Welch
Judge

cc: Diane Healy, Case Manager
CCP, Criminal Division