

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

MARK T. RUSSELL

Defendant.

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Cr.A. No. 0302012322

Submitted: August 20, 2003;
Decided: August 22 2003.

O R D E R

*Upon consideration of defendant's Motion to Suppress—***DENIED.**

From the record and the briefings of the parties it appears that:

(1) Newport police were dispatched to a Wendy's in response to a call that a man with an open beer between his legs had passed out behind the wheel of a running car, parked in the restaurant's "drive-thru" lane. Defendant informed the responding ambulance crew that he thought he was at "Steve's Liquors" and not at Wendy's. Officers administered field sobriety tests prompted by defendant's slurred speech and the "moderate" odor of alcohol. He failed. After being taken into custody blood tests confirmed defendant's .22 blood alcohol content; more than twice the legal limit.

(2) Defendant filed this motion to suppress "any evidence offered by the state" in relation to charges of driving under the influence of alcohol. Defendant's motion, in its entirety, asserts:

- (a) The initial detention was not based upon a reasonable, articulable suspicion that [d]efendant had committed or was about to commit an offense;
- (b) The arrest of [d]efendant was not founded upon probable cause;
- (c) The defendant produced his license, registration and proof of insurance without any difficulty;
- (d) The defendant exited the vehicle without any difficulty;

- (e) The color of defendant's face was normal, his eyes were not watery, bloodshot or glassy, is [sic] attitude talkative and he did not display any unusual actions;
- (f) The BAC testing of [d]efendant was not founded upon probable cause;
- (g) The field testing of [d]efendant was done in violation of [d]efendant's Fourth Amendment rights;
- (h) The field tests were not conducted within the NITSA guidelines. The officer inquired as to whether [d]efendant suffered any [sic] physical defects and was advised by [d]efendant that he had bad knees and ankles. Despite that the Officer conducted the one leg stand and walk and turn test;
- (i) The interrogation of [d]efendant was done in violation of [d]efendant's Fifth Amendment rights;
- (j) Field testing or BAS testing of [d]efendant was not in compliance with the procedures required by U.S. Constitution, Delaware Constitution and statute, judicial decision or police procedure.¹

Finally, defendant alleges that the State "is not in a position to establish the fact that the [d]efendant's blood alcohol reading was above a .10 at the time he was operating his vehicle..."²

(3) The State responds that "[d]efendant's unsupported Motion to Suppress alleges no factual basis sufficient to require a hearing. In a general and conclusory manner, the Motion merely states that the defendant was initially detained without the officer obtaining reasonable, articulable suspicion..."³ The Court agrees.

(4) The Court will summarily deny a suppression motion unless the motion, reasonably on its face, alleges a sufficient factual basis upon which relief may be granted.⁴ Mere general allegations and conclusory statements do not trigger a hearing.⁵

¹ Def.'s Mot. Suppress.

² *Id.* (citing *State v. Baker*, 720 A.2d 1139 (Del. 1998)).

³ State's Resp. Letter to Def.'s Mot. Suppress.

⁴ *State v. Manley*, 706 A.2d 535, 540 (Del. Super. 1996).

⁵ *Id.* (citing Wright, Federal Practice and Procedure, §645 (1969)). See e.g. *U.S. v. Migley*, 596 F.2d 511, 513 (1st Cir. 1979) *cert. denied* 442 U.S. 943 (holding that the presence of a substantial claim sufficient to survive its summary dismissal demands definite, specific, detailed factual allegations premised on more than conjecture).

(5) A police officer in Delaware may initiate a warrantless arrest and search when sufficient probable cause exists to believe that the person to be arrested has committed a crime.⁶ “Probable cause to arrest exists if the totality of the circumstances as viewed by a reasonable police officer in light of his training and experience leads him to believe that a crime has been committed.”⁷ Ultimately, an arrest surrounding an alleged incident of driving under the influence is sufficient probable cause for an officer to initiate a blood alcohol examination.⁸

(6) The limited factual allegations presented in defendant’s motion are facially insufficient to support any conclusion that would lead to an alternate outcome with respect to probable cause in this case. The totality of the circumstances surrounding the initial contact leading to the defendant’s failed field sobriety tests is patent. Defendant has not articulated any specifics of his alleged knee and ankle trouble, much less how it worked to inhibit his ability to successfully complete the field sobriety tests. Further, defendant’s mere unsupported conjecture that field tests administered that evening failed to pass NITSA guidelines does not illuminate any specific discrepancy in aid of his case.

(7) Finally, defendant does not offer any basis for his conclusion that “the State is not in a position to establish the fact...” that defendant’s blood alcohol reading was above .10 while he was driving. First, such a fact even if true, does not change that reality that the officer in this situation had probable cause to make an arrest. Furthermore, mere conjecture without more, militates against convening a suppression hearing merely for the purpose of discovering facts

⁶ See *Glass v. State*, 1988 WL 61582, 543 A.2d 339 (Del. 1988)(Table)(citing *Garner v. State*, 314 A.2d 908, 910 (Del. 1973)).

⁷ *Glass v. State*, 1988 WL 62582 (citing *Beck v. Ohio*, 379 U.S. 89 (1964)).

⁸ *State v. Cooley*, 457 A.2d 352, 354 (Del. 1983).

potentially helpful to the ultimate outcome of defendant's case; that end is best pursued through use of this Court's Rules of Criminal Procedure.

Defendant has failed to articulate sufficient factual bases that would entitle him to relief and therefore the Motion to Suppress is **DENIED**.

IT IS SO ORDERED

Judge Jan R. Jurden

Original to Prothonotary

xc: Louis B. Ferrara, Esquire
R. David Favata, Esquire