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

JOSHUA BROWN,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. 0707004683-JEB
	)	
STATE OF DELAWARE,	)	
	)	
Appellee.	)	

Submitted: February 26, 2009
Decided: March 13, 2009

Appeal from a Decision of the Court of Common Pleas.
Affirmed.

OPINION

Appearances:

Sean A. Motoyoshi, Esquire, Wilmington, DE. Attorney for Joshua Brown.

Daniel McBride, Esquire, DAG, Wilmington, DE. Attorney for the State of Delaware.

JOHN E. BABIARZ, JR., JUDGE

Before the Court is Defendant Joshua A. Brown's appeal of his convictions for driving at an unreasonable speed[1] and driving under the influence of alcohol.[2] Defendant argues that the trial judge in the Court of Common Pleas erred at the suppression hearing in finding that the arresting officer had reasonable, articulable suspicion to stop Brown and in finding that the evidence obtained during the stop was admissible. The State argues that the trial court did not err and that the police officer did have reasonable articulable suspicion to stop Defendant for speeding. For the reasons explained below, the trial judge's decision is affirmed.

The facts are straightforward. Trooper Matthew Owens of the Delaware State Police testified that at approximately 1:00 a.m. on July 4, 2007, he was in his patrol car at the parking lot of a Shell gas station on Concord Pike near Murphy Road. He and another officer were sitting in their cars talking. Owen's car was facing north on Concord Pike and parallel to it. As he talked, Owen's attention was drawn to a car driving southbound, which he observed to be traveling at a high rate of speed. Owens

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[1] *See* 21 *Del. C.* § 4168(a), which provides in part:
No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing.

[2] *See* 21 *Del. C.* § 4177(a), which provides in part:
No person shall drive a vehicle. . . (2) When the person is under the influence of alcohol.

believed the loud sound of the car to be an indication that it was traveling fast. The car, a white Jetta, was approximately 150 to 200 feet in front of Owens when he first saw it "moving very fast in the right lane." Transcript at 7. Owens testified that based on his experience enforcing traffic and speeding laws, he is able to determine when a vehicle is speeding, even without radar or other equipment. Owens saw that the Jetta traveled the 150 to 200 feet in a very short period of time and covered the fairly long distance to the next traffic light in a short time as well. He believed the car to be exceeding the 40 mph posted speed limit. Within a few seconds, Owens pulled patrol car out of the parking lot and pursued the Jetta. He pulled up behind the Jetta at a red light and conducted a traffic stop which led to Defendant being arrested for DUI and driving at an unreasonable speed.

Prior to trial, Defendant filed a motion to suppress any evidence or observations obtained as a result of an unconstitutional stop that was conducted without reasonable articulable suspicion. After hearing evidence from Trooper Owens, the trial court concluded as follows:

> On a motion to suppress the stop on the basis that the officer lacked reasonable articulable suspicion to conclude that the defendant has committed or was about to commit a traffic infraction, the testimony is to be analyzed in the light based upon what a reasonable officer would conclude, in a similar circumstance with similar facts.

> The officer testified that he had six years experience in enforcement of speed and traffic regulations, that he was in a position to observe the vehicle pass him, that the vehicle did, in fact, pass him. He observed the vehicle proceed at a high rate of speed, based on is training and observation at that time.
>
> I conclude that the officer had reasonable articulable suspicion to stop the vehicle, to inquire further, and that he had a basis to believe he had committed a traffic violation. The motion is hereby denied. Tr. at 21.

The Court reviews a grant or denial of a motion to suppress for an abuse of discretion.[3] The trial judge's legal conclusions are reviewed *de novo* for errors in formulating or applying legal precepts.[4] Factual findings are reviewed for whether the trial judge abused his discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.[5] A denial of a motion to suppress based on an allegedly illegal stop and seizure is reviewed *de novo* to determine whether the totality of the circumstances, in light of the trial judge's factual findings, support a reasonable and articulable suspicion for the stop.[6]

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[3] *Culver v. State*, 2008 WL 2987183, at *3 (Del.).

[4] *Chavous v. State*, 2008 WL 2527344, at *3 n. 15 (Del.).

[5] *Id.*

[6] *State v. Rollins,*, 922 A.2d 379, 382 (Del. 2007).

Defendant argues that the trial court erred in finding that the State established that the police had reasonable articulable suspicion to stop Defendant for driving at an unreasonable speed, the traffic violation with which he was charged. The trial judge found that there was reasonable articulable suspicion to believe that Defendant had committed a "traffic violation," not the specific violation of driving at an unreasonable speed pursuant to 21 *Del. C.* § 4168(a). Defendant seems to argue that the trial court's finding was insufficient to proceed with the trial because of the phrase "traffic violation." However, the requirements to detain a suspect are that the police officer has reasonable grounds to suspect that the person is committing, has committed or is about to commit a crime. 11 *Del. C.* § 1902(a). This is what Trooper Owens testified to, and the trial judge accepted his testimony and found reasonable articulable suspicion for a traffic stop. The subject matter at the suppression hearing was whether the initial stop was valid, and this Court finds no error in the trial judge's reference to a "traffic violation."

Defendant also argues that there was no reasonable articulable suspicion for any stop whatsoever. To evaluate this claim, it is helpful to review the following summary of types of intrusion that may occur under the Fourth Amendment:

> For each encounter between a private citizen and a law enforcement agent, the degree of suspicion required varied with the nature of the seizure. As the stop becomes more invasive, the articulable facts which

> form the basis of the stop must edge towards probable cause from reasonable suspicion.
>
> The minimum level of detention is the brief investigatory stop identified in *Terry*. Since a stop does not rise to the level of an arrest, probable cause is not required. Of course, a vague hunch or feeling that the defendant "looked suspicious" will not do. The officer must have a "reasonable, articulable suspicion that a crime had just been, was being, or was about to be committed."... "The officer must be able to point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion."[7]

The Court notes that even for a *Terry* stop, as implicated in this case, a "vague hunch" is not enough. Trooper Owens had more than such a hunch – he had an opinion based on six years of training including specific involvement with speeding regulations. He testified that by working with radar he had learned to recognize speeders and was certain that Defendant was traveling at a speed greater than the posted speed of 40 mph.[8] The *Robertson* Court also notes the requirement for specific and articulable facts. Trooper Owens first heard a car that sounded as though it were traveling quickly. He then saw it speeding toward him as he looked northward on Route 202 and then watched it continue at a high rate of speed as it passed him heading south. Under *Robertson*, these observations easily give way to the reasonable inference that

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[7] *Robertson v. State*, 596 A.2d 1345, 1350 (Del 1991).

[8] *See Yankanwich v. Wharton*, 460 A.2d 1326, 1329 (Del. 1983)(state troopers who had several years of experience in enforcing motor vehicle laws and who were near the scene of the accident were qualified to testify as to their opinion as to what would have been proper and safe speed on road where accident occurred).

Defendant was driving faster than 40 mph, thereby justifying the intrusion of a *Terry* stop. The facts as recited by Owens also pass muster under Delaware's statutory requirement for questioning a suspect under 11 *Del. C.* § 1902(a), as quoted above.

As noted by Defendant, the determination of reasonable articulable suspicion must be based on 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 an officer's subjective interpretation of those facts."[9] Viewing the facts from this standpoint, the Court concludes that the trial judge did not commit reversible error or abuse his discretion in finding reasonable articulable suspicion for the *Terry* stop. For these reasons, the trial court's decision is ***Affirmed.***

It Is So ORDERED.

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Judge John E. Babiarz, Jr.

JEB,jr/ram/bjw
Original to Prothonotary

[9] *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).