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

STATE OF DELAWARE,	)	
	)	
v.	)	ID. No. 1303004741
	)	
GARY R. DICKENS.	)	
	)	

ORDER

On this 8th day of October, 2013, **IT IS ORDERED** as follows:

Introduction

Before the Court is Defendant Gary Dickens' ("Defendant") Motion to Suppress, brought by counsel. Defendant argues that his statements were involuntary and given without *Miranda* warnings. Defendant also seeks to suppress the results of a blood test administered in connection with his arrest for Driving Under the Influence ("DUI") for lack of probable cause.[1] The Court has reviewed the motion and the State's response and held a suppression hearing; for the following reasons, the Defendant's motion is **DENIED.**

[1] Defendant originally argued that the blood draw was an unlawful, nonconsensual blood draw based on the U.S. Supreme Court's decision in *Missouri v. McNeely*, 569 U.S. 1552 (2013). However, at the hearing, Defense counsel informed the Court that he would not be pursuing a *McNeely*-based argument since Defendant signed a consent form in this case.

Findings of Fact

On March 7, 2013, a 911 caller reported an accident in which a single car collided with an industrial dumpster. The caller witnessed the driver, a man in a grey sweat-suit, leaving the scene. When Officer John O'Hara ("Officer O'Hara")[2] and his field training officer, Officer Heckman, were dispatched to the scene, they observed the left side of a Silver Pontiac G6, with a temporary tag, compacted against a green industrial dumpster.[3] The vehicle was inoperable, its airbags were deflated, and there were spots of blood in, on, and around the vehicle.[4]

Officer O'Hara conducted a CJIS inquiry of the vehicle and discovered that the car was registered to Eve Smallwood ("Ms. Smallwood"), who resided about one mile away from the scene. The officers went to the residence to determine the circumstances relating to the accident, including the identity of the driver and the extent of the injuries sustained. Officer O'Hara knocked and, when Ms. Smallwood opened the door, he explained that an accident occurred and that police were trying to identify the driver. Ms. Smallwood responded that her stepfather,

[2] Officer O'Hara was the only witness who testified at the suppression hearing. He has been employed by the New Castle County Police Department for about nine months and has attended a forty-hour National Highway Traffic Safety Administration DUI investigation training course.
[3] State's Exs. 5, 6, 7, 8, 9,10.
[4] State's Exs. 9, 10, 17.

Defendant, used her car to go to the liquor store and had arrived at the home ten minutes before the officers arrived. Ms. Smallwood allowed the officers to enter and informed them that Defendant had a gash on his head that may require medical treatment.

Defendant was in an upstairs bedroom. Officer O'Hara observed the large gash in Defendant's head[5] and blood on Defendant's grey sweat-suit. After Defendant exited the bedroom, Officer O'Hara directed him to come downstairs and sit at the kitchen table.[6] While awaiting medical personnel, Officer O'Hara asked Defendant about what had occurred in order to gather more information about the accident.[7] Defendant replied that he was returning from getting cigarettes at Wawa when, "the dumpster popped out of nowhere." Defendant also informed Officer O'Hara that he left the scene because he didn't have a license. Officer O'Hara smelled alcohol emanating from Defendant's breath and observed that his eyes were glassy and bloodshot. Officer O'Hara then asked whether Defendant had been drinking and Defendant stated that he had been drinking a little. When Officer O'Hara asked him again, Defendant admitted to having a half-pint of

[5] State's Ex. 11.
[6] Officer O'Hara testified that he could not remember whether or not he entered the bedroom prior to Defendant entering the stairway.
[7] Officers O'Hara and Heckman were accompanied by three other officers during the time they were attempting to locate the driver. Two of the officers returned to the accident scene once the officers located Defendant. The third officer was with Defendant and Officers Heckman and O'Hara while they were in the kitchen, but did not stay until the ambulance arrived.

bourbon before he went to the liquor store. Defendant's speech was slurred and, at times, incoherent and incomplete.[8]

Once the ambulance arrived to transport Defendant to the hospital, Officers O'Hara and Heckman officers returned to the accident scene. About forty-five minutes to an hour later, Officers O'Hara and Heckman went to the hospital and asked hospital staff where Defendant was located. They were directed to a hospital room and informed by hospital staff that Defendant's diagnostic tests were negative.[9]

Officer O'Hara did not attempt a Portable Breath Test ("PBT"), nor did he attempt to administer Field Sobriety Tests ("FSTs"). Nevertheless, Officer O'Hara asked Defendant if he would consent to a blood draw. Officer O'Hara read an "Implied Consent and Probable Cause Form" to Defendant.[10] Under the section marked "Probable Cause," Officer O'Hara signed the section acknowledging that he had probable cause, conducted a chemical test, and arrested the defendant. In a separate "Specimen Acquisition Authorization" form, Defendant signed the section that stated, "I hereby give permission to the Christiana Health Services to take the specimens requested for police purposes […]."[11]

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[8] Defendant was not handcuffed.
[9] *See* State's Ex. 2, "Diagnostic Imaging."
[10] State's Ex. 3, "New Castle County Police Department Implied Consent and Probable Cause Form."
[11] State's Ex. 2, "Specimen Acquisition Authorization."

A blood draw was obtained at 3:08 a.m. resulting in a blood alcohol content reading of 0.16. After he was read discharge instructions and acknowledged that he understood them,[12] Defendant was discharged from the hospital at 4:08 a.m.[13]

Discussion

I. Defendant's statements will not be suppressed because they were given voluntarily and he was not subject to custodial interrogation.

In order to protect the privilege against self-incrimination,[14] law enforcement officials are constitutionally required to advise citizens of certain rights prior to subjecting them to custodial interrogation.[15] However, the advisement of these rights, also known as "*Miranda* warnings," is not required merely because the person being question is suspected by the police of criminal conduct.[16] Unless a defendant is both 1) in custody or in a custodial setting *and* 2) subject to interrogation, he will not be entitled to a reading of *Miranda* warnings.[17]

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[12] State's Ex. 2, "Exit Care Patient Information."
[13] State's Ex. 2, "Patient Demographics/ Insurance Information."
[14] U.S. Const. Amend. 5; Del. Const., Art. I, § 7.
[15] *Marine v. State*, 607 A.2d 1185, 1192 (Del. 1992)(citing *Miranda v. Arizona,* 384 U.S. 436, 436 (1966)).
[16] *State v. Brotman*, 1991 WL 138421, at *4 (Del. Super. July 11, 1991) (citing *Oregon v. Mathiason,* 429 U.S. 492,495 (1977)).
[17] *Loper v. State*, 8 A.3d 1169, 1176 (Del. 2010)(citing *McAllister v. State,* 807 A.2d 1119, 1125–26 (Del.2002)).

For purposes of *Miranda*, a person is in custody when, under the totality of the circumstances, a reasonable person in the same position would not feel free to leave.[18] This standard requires the Court to weigh objective circumstances, not the subjective views of the individual or the officers.[19] Interrogation may be "actual questioning" or its "functional equivalent," which

> includes 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.' The later part of the definition is concerned with the perspective of the suspect, not the intent of the police.[20]

Defendant has set forth three circumstances under which he believes he was subjected to custodial interrogation. Defendant first asserts that custody began as soon as Officer O'Hara directed him to come downstairs and sit at the kitchen table. Second, Defendant asserts that custody began after he stated that the "dumpster popped out of nowhere" because Officer O'Hara testified that it was at that point that he believed Defendant wasn't free to leave. Third, Defendant asserts that he was in custody when he was at the hospital.[21]

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[18] *Id.*
[19] *State v. Andrus*, 1996 WL 190031, at *5 (Del. Super. Jan. 16, 1996)(quoting *Stansbury v. California,* 114 S.Ct. 1526, 1529 (1994)).
[20] *Tolson v. State*, 900 A.2d 639, 643-44 (Del. 2006)(quoting *Upshur v. State*, 844 A.2d 991, at *1, n5. (Del. 2004)(TABLE)).
[21] Defendant has not identified any specific questions asked or statements made while at the hospital.

Although factually dissimilar, the Court finds the Supreme Court's holding in *Conyers v. State,* 396 A.2d 157 (Del. 1978) to be instructive here. In *Conyers*, an officer was called to investigate a possible death at a defendant's apartment and was permitted to enter the apartment by the defendant and his roommate.[22] When medical personnel discovered that the victim had a gunshot wound, the officer ordered the defendant to stay in the living room in order to preserve the scene for investigation.[23] The Delaware Supreme Court held that

> confining the defendant in the living room to preserve the murder scene, although accompanied by an unarticulated intent of the police to detain the defendant, did not significantly deprive the defendant of his freedom of action, and therefore, did not constitute 'custodial interrogation' under Miranda. The statements in issue fit the exception recognized by Miranda for 'general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process.'[24]

Like the officer's instruction in *Conyers*, Officer O'Hara's mere direction to Defendant to come downstairs and to sit at the table "did not significantly deprive the defendant of his freedom of action."[25] Defendant was not physically restrained in any way. In addition, the officers were informed that Defendant required medical attention, observed Defendant's gash and blood-covered clothing, and remained with Defendant to await the arrival of medical personnel. The

[22] *Id.* at 158.
[23] *Id.*
[24] *Id.* at 159 (quoting *Miranda*, 486 U.S. at 477-78).
[25] *Id.*

totality of these circumstances does not suggest that Defendant was in custody or in a custodial setting. Since the Court is required to weigh the objective circumstances and not the subjective views of the officer, Officer O'Hara's subjective belief that Defendant was not free to leave once he stated that the dumpster popped out of nowhere does not change the Court's analysis.[26] The Court also finds that Officer O'Hara's questions were general investigatory questions asked for the purpose of determining the circumstances of surrounding the accident and, thus, not subject to the requirements set forth in *Miranda.* Furthermore, Defendant's self-inflicted intoxication did not render his statements involuntary.[27]

Defendant was not in custody during the period of time that officers arrived at the hospital and Officer O'Hara asked for his consent for the blood draw. Defendant was at the hospital to receive medical treatment.[28] The officers did not follow the ambulance to the hospital nor did they know where he was located when they arrived about an hour later. Additionally, there was no evidence that Defendant was restrained.

II. Officer O'Hara had sufficient probable cause to administer the blood test.

[26] *Andrus*, 1996 WL 190031, at *5 (quoting *Stansbury,* 114 S.Ct. at 1529); *Cf. Conyers,* 396 A.2d at 159; *Cf. Brotman,* 1991 WL 138421 at *4.
[27] *See Downes v. State*, 676 A.2d 902, at *3 (Del. 1996)(TABLE).
[28] *See State v. DeJesus,* 1992 WL 354179, at *3 (Del. Super. Nov. 6, 1992).

Defendant asserts that the blood draw was taken without probable cause. In Delaware, a person is deemed to have consented to chemical testing for the purpose of determining the presence of alcohol when he or she "drives, operates, or [is] in physical control of a vehicle […]"[29] However, since a blood test constitutes a search, such testing is permissible only where the "officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of §§ 4177 and 4177L or § 2742 of [Title 21], or a local ordinance substantially conforming thereto."[30] "[A] police officer has probable cause to believe a defendant has violated 21 *Del.C.* § 4177 (Driving under the Influence of Alcohol) when the officer possesses information which would warrant a reasonable man in believing that [such] a crime has been committed."[31]

Officer O'Hara had probable cause to believe Defendant had been operating the silver Pontiac found at the scene of the accident under the influence of alcohol. The officers were dispatched to the scene after the 911 caller reported that a single car collided with the dumpster and a man wearing a grey sweat-suit left the scene. When Officers arrived, they determined that the vehicle belonged to Ms. Smallwood, who resided about

[29] 21 *Del C.*§ 2740(a).
[30] *Id.*; *Lefebvre v. State*, 19 A.3d 287, 292 (Del. 2011), *reargument denied* (May 26, 2011)(citing *Bease v. State,* 884 A.2d 495,498 (Del. 2005).
[31] *State v. Maxwell*, 624 A.2d 926, 929-30 (Del. 1993)(quoting *Clendaniel v. Voshell,* Del.Supr., 562 A.2d 1167, 1170 (1989)(internal quotations omitted).

a mile away. Ms. Smallwood then stated Defendant had just used her vehicle to go to the liquor store and arrived shortly before the officers. Defendant, who was wearing a grey sweat-suit, admitted to driving the vehicle and drinking. Officer O'Hara also observed Defendant's bloodshot, glassy eyes, smelled alcohol on Defendant's breath, and found his speech to be slurred, incomplete, and incoherent at times. Although Officer O'Hara did not conduct FSTs or a PBT, the Court finds these facts sufficient to constitute probable cause.[32]

Conclusion

For the aforementioned reasons, Defendant's Motion to Suppress is **DENIED.**

IT IS SO ORDERED.

/S/ CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

[32] *See State v. Betts*, 2009 WL 388952, at *5 (Del. Super. Feb. 3, 2009).