

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, :
 :
 v. : ID No. 1509002281
 : In and for Kent County
 :
 RALPH J. PATTERSON, :
 :
 Defendant. :
 :

ORDER

This is the Court’s decision on Ralph Patterson’s “(Defendant”) Motion to Suppress all evidence of Defendant’s Intoxication filed on January 20, 2016. The State filed a response on February 16, 2016. A hearing took place on March 22, 2016. At the end of the hearing, the parties requested to supplement the record with written submissions.

Here we have a case where a traffic violation was observed, and a traffic stop for that violation was pursued in a completely lawful and justifiable manner.

The stop having been made, the ticketing for that was appropriately completed. In the normal course thereof, Defendant was asked for the vehicle registration and his drivers license. The former was produced, checked, and found to be appropriate. The latter was a Delaware Identification (“ID”) card. As the officer presumed, the ID card was produced, because Defendant did not possess a valid license. Confirming that Defendant was driving without a license, he reasonably determined that Defendant was driving though his license had been suspended. That, of course, is a separate offense for which Defendant could be charged. Because of that, Defendant was instructed to arrange for a licensed driver to pick up both the motorcycle and Defendant, or else the motorcycle would be towed.

At that point, the traffic violation, reasonably and articulately commenced, was

complete. The officer agreed that, at that point, no basis for probable cause to arrest or investigate for driving while intoxicated existed.

The officer, however, remained. He decided to investigate the reason for Defendant's having a suspended license. Defendant was still at the scene. Was he being detained; or was he simply there awaiting a ride; or was it something in between? In this particular case, that presents an excruciatingly fine distinction.

Be that as it may, the officer did not simply drive away. Rather, acting on his experience, he wondered whether the reason for Defendant's license having been suspended was because of a prior Driving Under the Influence ("DUI") involvement. He checked for that, and found that it was.

On that basis, he reasoned that perhaps Defendant, previously having driven while intoxicated, was intoxicated while driving yet again. Then, recognizing that he had earlier detected some bouquet of alcohol in the air, he decided to test Defendant for DUI. Defendant's responses to earlier consumption of the ever present two beers, and his imperfect performance of field tests led the officer to administer a breath test, which indicated a blood alcohol concentration in excess of the amount permissible for motor vehicle operation.

The steps in this, therefore, are as follows: 1) stop for traffic violation; 2) check for license; 3) determination of suspended driving privileges; 4) check for basis of suspension; 5) discovery of DUI history; 6) extrapolation to suspicion of intoxication; 7) testing for present condition; and 8) determination of DUI.

The first three steps are completely – in fact, absolutely – justified. The fourth is, at least, harmless, as Defendant was sitting in the area. The fifth is simply a consequence of the fourth. Neither is problematic.

Step 6 is probably understandable and creditable police instinct. The question, though, is whether that supposition is the equivalent of reasonable articulable suspicion of the ultimately tested for and charged DUI.

The conclusion must be that it is not. The testimony of the officer was commendably candid. The officer said that “Defendant didn’t seem intoxicated.” Defendant exhibited no indicia of intoxication prior to the field tests. Those tests were undertaken not because of any indicia, but merely because the officer suspected that a person with a history of driving while intoxicated was at it again.

However tragically likely that may be, it does not provide reasonable, articulable suspicion to test for intoxicated driving. Accordingly, Defendant’s Motion to Suppress all evidence obtained of field tests, odors of alcohol, or mechanical tests is SUSTAINED.

So Ordered this 8th day of April, 2016.

/s/ Robert B. Young

J.

RBV/dsc

oc: Prothonotary
cc: D. Benjamin Snyder, Esquire
John R. Garey, Esquire