

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, )  
 )  
 v. ) ID No. 1802004240  
 ) In and for Kent County  
 CARL L. BENNETT, )  
 )  
 Defendant. )

Submitted: August 1, 2018  
Decided: August 15, 2018

Upon Defendant's Motion to Suppress.  
*Denied* in part, *Granted* in part.

**ORDER**

Upon consideration of Carl L. Bennett's ("Defendant") Motion to Suppress and the State's Response in opposition, it appears that:

1. On February 6, 2018, two Delaware State Police officers, Corporal Nicholas J. Ciglinsky and Sergeant Justiniano (hereinafter "officers") responded to a report that a vehicle had driven into a ditch near Buffalo Road and Barratts Chapel Road, in the area of Frederica in Kent County, Delaware.
2. Upon arrival at the scene, the officers observed a single vehicle located in the ditch, with two men sitting near it.
3. The officers contacted the two men, verifying their identities as Defendant and Paul Yuskiewicz, before the officers began questioning the men regarding what occurred.
4. The officers also identified the vehicle as belonging to Defendant's wife. The officers searched the vehicle, prior to having it towed, whereby they found beer cans and a cell phone that reportedly belonged to Defendant.

5. During this time, Defendant made several incriminating statements to one of the officers, Trooper Ciglinsky, but refused any sobriety tests. He furthermore informed Trooper Ciglinsky that he “hurt all over.”

6. Having complained that he was injured, Defendant was transported to the hospital by an ambulance. The officers did not accompany him in the ambulance.

7. While Defendant was being treated at the hospital, Trooper Ciglinsky obtained a warrant to search Defendant’s blood.

8. Thereafter, Trooper Ciglinsky contacted Defendant at the hospital. Defendant made additional incriminating statements prior to having his blood drawn.

9. Finally, as soon as the blood draw finished, Defendant was arrested for suspicion of driving under the influence.

10. Defendant, consequently, has been charged with Driving a Vehicle While Under the Influence of Alcohol and/or Drugs, a felony, in violation of 21 *Del. C.* § 4177, Driving While Suspended or Revoked, a misdemeanor, in violation of 21 *Del. C.* § 2756, Failure to Have Insurance Identification in Possession, a misdemeanor, in violation of 21 *Del. C.* § 2118, Failure to Have Registration Card in Possession, a misdemeanor, in violation of 21 *Del. C.* § 2108, and Improper Lane Change, in violation of 21 *Del. C.* § 4122.

11. On June 27, 2018, Defendant filed the instant motion to suppress seeking to exclude his statements to the police and the contents of his cell phone from trial. First, Defendant contends that his statements were taken in violation of *Miranda v.*

*Arizona*<sup>1</sup> because he was in custody when he made the statements and police did not administer *Miranda* warnings before conducting either interrogation in the ditch or at the hospital. Second, Defendant contends that the officers searched his cell phone without a warrant.

12. On July 12, 2018, the State filed its Response in opposition. First, the State contends that Defendant was not in custody for purposes of *Miranda* when he made either incriminating statement to police. Second, the State contends that Defendant's phone was not searched by police. Rather, the officers asked Defendant if the cell phone was his, whereby Defendant indicated that it was.

13. In order for *Miranda* protections to apply, a person must be in custody at the time of questioning and the questioning must rise to the level of interrogation.<sup>2</sup> The Delaware Supreme Court in *Loper v. State* explained:

A person is "in custody" when considering the totality of the circumstances, "a reasonable man in the suspect's position would feel a restraint on his freedom of movement fairly characterized as that 'degree associated with formal arrest' to such an extent that he would not feel free to leave."<sup>3</sup>

14. In *Fuentes v. State*, this Court clarified the applicability of *Miranda* to police investigation of a motor vehicle accident.<sup>4</sup> The Court, equating on-scene

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<sup>1</sup> 884 U.S. 436 (1966).

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>3</sup> *Loper v. State*, 8 A.3d 1169, 1176 (Del. 2010).

<sup>4</sup> *Fuentes v. State*, 2002 WL 32071656, at \* 2 (Del. Super. Dec. 30, 2002).

investigation of a motor vehicle accident to that of on-scene investigation of a crime scene, held that police were not required to administer *Miranda* warnings to the defendant because Delaware and United States Supreme Court jurisprudence makes clear that *Miranda* warnings are not required during “routine, initial, on-scene investigation by police.”<sup>5</sup> “The protections afforded by *Miranda* are only applicable when the investigation reaches the controlling stages of accusation or custodial interrogation.”

15. In *State v. McDowell*, this Court recently analyzed a case where the officer began his contact with the defendant under the community caretaker exception.<sup>6</sup> The officer had assisted the defendant, who had run out of gas, and in doing so the officer developed a reasonable articulable suspicion to begin a DUI investigation.<sup>7</sup> The officer detected an odor of alcohol, glassy eyes, and a flushed face, while the defendant also seemed confused during the encounter.<sup>8</sup> The Court specifically found the defendant was not in custody for the purposes of *Miranda*: “While a DUI investigation is more serious than an ordinary traffic stop it does not automatically rise to the level of custodial interrogation.”<sup>9</sup>

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<sup>5</sup> *Id.* (citing *Laury v. State*, 260 A.2d 907, 908 (Del. 1969); *Orozco v. Texas*, 394 U.S. 324 (1969)).

<sup>6</sup> *State v. McDowell*, 2016 WL 6462143 (Del. Super. Oct. 31, 2016).

<sup>7</sup> *See id.* at \*3.

<sup>8</sup> *See id.*

<sup>9</sup> *Id.*

16. Here, officers were dispatched to investigate a report that a vehicle had driven off the road into a ditch. At this stage, pursuant to *Fuentes*, officers were permitted to ascertain what caused the vehicle to leave the roadway by questioning the gentlemen standing next to the vehicle. After approaching Defendant, it is apparent from the motor vehicle report that he may have been under the influence of alcohol or drugs. Defendant was unsteady on his feet, slurred his responses to officers' questions, and admitted that he had been drinking that evening. These facts warranted the initiation of a DUI investigation, but did not transform the encounter into one where Defendant was unquestionably in custody. Absent additional facts, such as the use of handcuffs, force, significant police presence, or other circumstances where a reasonable person would not feel free to leave, the mere fact of an accident and a DUI investigation does not implicate *Miranda*.<sup>10</sup>

17. In sum, Defendant's statements to police prior to his transportation to the hospital will not be excluded for lack of *Miranda* warnings because Defendant was not in custody for the purposes of *Miranda*. Defendant's statements to police at the hospital, however, are a different story.

18. There is no *per se* "hospital rule" in a custody inquiry because each case must be determined on a case-by-case basis.<sup>11</sup>

19. In *Hammond v. State*, the defendant was taken to a hospital for treatment

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<sup>10</sup> See *Loper*, 8 A.3d at 1176.

<sup>11</sup> *DeJesus v. State*, 655 A.2d 1180, 1191 (Del. 1995).

of injuries suffered as a result of a vehicle accident.<sup>12</sup> The other two passengers were also taken to the hospital, but died as a result of their injuries.<sup>13</sup> In an attempt to correctly identify the deceased passengers, an officer questioned the defendant regarding their names.<sup>14</sup> The Court found that the defendant was not in custody at the time that the officer questioned him because he was in the hospital as a result of his medical condition only, and not as a result of any police action.<sup>15</sup> Additionally, the Court found that the defendant had no reason to believe his freedom of action or movement was restricted when the officer spoke with him after he had been treated for relatively minor injuries.<sup>16</sup> Finally, the Court concluded that the officer's questions were brief and limited to the identity of the deceased passengers, which it determined was more in vein of a routine, on-scene investigation by police.<sup>17</sup>

20. Here, having reviewed the testimony of Trooper Ciglinsky, the Court finds that although *Hammond* is relevant to the Court's analysis, it is not controlling. First, unlike *Hammond*, Trooper Ciglinsky indicated in his testimony that he asked another officer to prevent Defendant from leaving the hospital while Trooper Ciglinsky obtained a warrant and prepared a police report. As the guarding of a person's room

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<sup>12</sup> *Hammond v. State*, 569 A.2d 81, 93 (Del. 1989).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 94.

<sup>16</sup> *Hammond*, 569 A.2d at 94.

<sup>17</sup> *Id.*

by police, so as to prevent escape, has been cited by this Court as relevant in determining whether a defendant was in custody for *Miranda* purposes,<sup>18</sup> this fact weighs in favor of finding that Defendant was in custody at the hospital. Second, it is significant that Defendant was arrested shortly after his statements to Trooper Ciglinsky at the hospital. As the length of time between questioning and formal arrest has been cited by this Court as relevant in determining whether a defendant was in custody for *Miranda* purposes,<sup>19</sup> this fact also weighs in favor of finding that Defendant was in custody at the hospital. For the foregoing reasons, the Court finds that a reasonable person in Defendant's circumstances would conclude that he was not free to leave the hospital when Trooper Ciglinsky questioned him. Thus, Defendant was in custody for *Miranda* purposes at that time and any statements that he made at the hospital must be suppressed.

21. Moving to Defendant's contention that his cell phone was illegally searched without a warrant, Trooper Ciglinsky indicated that he did not search the cell phone but merely asked Defendant if the phone belonged to him. As this does not constitute a search, this issue is moot.

22. To conclude, Defendant's motion to suppress his statements made to police at the side of the road is hereby **DENIED**, while his motion to suppress his statements

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<sup>18</sup> See *State v. Mauk*, 2014 WL 4942177, at \*4 (Del. Super. Sep. 29, 2014) (citing *DeJesus v. State*, 655 A.2d 1180, 1191)).

<sup>19</sup> See *State v. Brotman*, 1991 WL 138421, at \*4 (Del. Super. July 11, 1991) (citing the importance of the fact that after the police questioned the defendant at the hospital, they did not arrest him, nor contact him for an additional twenty days).

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made to police while at the hospital is hereby **GRANTED**.

**IT IS SO ORDERED.**



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Hon. William L. Witham, Jr.  
Resident Judge

WLWJr./dsc

oc: Prothonotary  
cc: Stephen E. Smith, Esquire  
Zachary A. George, Esquire