

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE :  
 : I.D. No. 0207015964  
 v. :  
 :  
 PAUL R. HUGHES, :  
 :  
 Defendant. :

Submitted: April 10, 2003  
Decided: May 6, 2003

**ORDER**

Upon Defendant's Motion to Suppress.  
Denied.

Kenneth M. Haltom, Esquire, Department of Justice, for the State of Delaware.

John M. Willard, Esquire, Wilmington, Delaware, attorney for the Defendant.

WITHAM, J.

### ***I. Introduction***

Before this Court is Defendant Hughes' Motion to Suppress the results of the blood alcohol test and all statements contained within. This Court having reviewed the Defendant's Motion and heard oral arguments on the motion determines that the Motion to Suppress is *denied*.

### ***II. Background***

This case arose from an accident involving Hughes. After the accident Hughes was questioned by police and submitted to a Breathalyzer test. Hughes contends that the blood alcohol test should be suppressed because - (1) the test was done in violation of the 20 minute observation rule; (2) the test was done in violation of the 4 hour rule; (3) the arresting officer did not have sufficient probable cause because the roadside tests were either not conducted or not conducted properly; (4) the test was conducted in such a manner that there was a rising blood situation; (5) the test was conducted after Hughes consumed alcohol after driving the vehicle; and (6) inculpatory statements were taken after Hughes was in custody without Miranda warnings being given.<sup>1</sup>

During the Suppression Hearing the investigating officer, Officer Melvin, testified that he arrived on the scene after a 911 call concerning a three car accident occurring on July 20, 2002 at a red light on US 13 north of Dover. Two witnesses operating their vehicles in the accident testified that the Defendant was the operator of a Jeep-like vehicle. The officer ran a registration check at the scene and the

---

<sup>1</sup>See Defendant's Motion to Suppress.

*State v. Paul R. Hughes*

**I.D. No. 0207015964**

May 6, 2003

owner was quickly identified. Officer Hopkins was sent to locate the driver at his home near the accident scene. Two drivers of the other vehicles said that the Defendant exited his vehicle and walked away. The Defendant was located as he attempted to enter his father's home which was the address on the Defendant's vehicle registration. Officer Hopkins noticed a strong odor of alcohol and the fact that he was moving sluggishly. The Defendant was brought back to the scene for a positive identification. A strong odor of alcohol, glassy eyes, slurred speech and disarrayed clothes were noted by Officer Melvin at the scene. Defendant readily admitted he was involved and had been at a bar prior to the accident. He stated he had drunk a half of a pint after he left the scene and was too drunk to perform any of the field tests asked of him. He did in fact fail all of the field tests asked of him as well as the PBT test. Although the officer appeared to be unfamiliar with some of the field tests asked by counsel for the Defendant, there is no evidence that the tests given were not given properly and within the time limits for the chemical test.

### ***III. Analysis***

On a Motion to Suppress evidence seized during a warrantless search, the State bears the burden by a preponderance of the evidence<sup>2</sup> to establish "that the challenged police conduct comported with the rights guaranteed [defendant] by the

---

<sup>2</sup>*Hunter v. State*, 783 A.2d 558 (Del. 2001); *State v. Powell*, 2002 Del. Super. LEXIS 412, \*9-\*10 (Del. Super. Ct. 2002).

*State v. Paul R. Hughes*

I.D. No. 0207015964

May 6, 2003

United States Constitution, the Delaware Constitution and Delaware statutory law.”<sup>3</sup>

The results of a Breathalyzer test shall be admissible unless there is a violation of the Fourth Amendment.<sup>4</sup> The Defendant claims that his Fourth and Fourteenth Amendment rights were violated because the police conducted an illegal search and seizure due to the fact that it was conducted without a warrant, probable cause or consent.<sup>5</sup>

“The test to determine whether a person has a protected Fourth Amendment privacy right is whether that person has a reasonable expectation of privacy in the

---

<sup>3</sup> *State v. Kang*, 2001 Del. Super. LEXIS 507 (Del. Super. Ct. 2001) (citing *Hunter*, 783 at 560).

<sup>4</sup> DELAWARE CODE ANN. tit. 21, § 2750 (a) stating:

Admissibility in evidence of results of chemical test

(a) Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while under the influence of alcohol, a drug or drugs, with respect to any chemical test taken by or at the request of the State, the court shall admit the results of a chemical test of the person's breath, blood or urine according to normal rules of search and seizure law. The informing or failure to inform the accused concerning the implied consent law shall not affect the admissibility of such results in any case, including a prosecution for a violation of § 4177 of this title. The informing of an accused concerning the implied consent law shall only have application and be relevant at a hearing concerning revocation of the driver's license of said person for a violation of the implied consent law. Nothing contained in this section shall be deemed to preclude the admissibility of such evidence when such evidence would otherwise be admissible under the law relative to search and seizure law such as when such evidence has been obtained by valid consent or other means making the obtaining of the evidence legal under the Fourth Amendment.

*See also Powell*, 2002 Del. Super. LEXIS 412 at \*9–\*10.

<sup>5</sup> *See* Defendant's Motion to Suppress.

*State v. Paul R. Hughes*

I.D. No. 0207015964

May 6, 2003

area invaded by government action.”<sup>6</sup> In Delaware, the breath sample is required to be turned over to the police under Delaware Code, title 21, section 2740(a), which states that “any person who drives . . . within this State shall be deemed to have given consent . . . to a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or drugs.”<sup>7</sup> Therefore, in the case at bar, the Defendant had no reasonable expectation of privacy in the Breathalyzer sample taken.<sup>8</sup>

Nevertheless, Delaware's implied consent law, which removes the expectation of privacy, is subject to the requirement that the police have probable cause that a DUI offense has been committed.<sup>9</sup> Probable cause is a factual, practical, and nontechnical concept that must be measured by the totality of the circumstances.<sup>10</sup>

---

<sup>6</sup>*State v. Onumonu*, 2001 WL 695539 at \* 3 (Del. Super. Ct.) (citing *Katz v. United States*, 389 U.S. 347, 349 (1967)).

<sup>7</sup> DELAWARE CODE ANN. tit. 21, § 2740 (a); *see also State v. Baker*, 720 A.2d 1139 (Del. 1998) (discussing constitutionality of statute).

<sup>8</sup> *Powell*, 2002 Del. Super. LEXIS 412, \*10–\*11. In *Powell* this Court further stated that “even if this Court found that the Fourth Amendment was implicated here because there was government action and a reasonable expectation of privacy in the breath sample, the search was still proper for two reasons. The most obvious reason is the consent statute cited above. Secondly, the search was constitutionally permissible as a search for evanescent evidence under exigent circumstances.” *Id.* at \*14 (citations omitted).

<sup>9</sup> *Powell*, 2002 Del. Super. LEXIS 412 at \*11 (citing *State v. Brown*, 1995 Del. Super. LEXIS 225 (Del. Super. Ct.), *aff'd*, 676 A.2d 907 (Del. 1995)).

<sup>10</sup> *Id.* (citing *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989)).

*State v. Paul R. Hughes*  
I.D. No. 0207015964  
May 6, 2003

Probable cause “lies between suspicion and sufficient evidence to convict.”<sup>11</sup>

In *State v. Maxwell*<sup>12</sup> the Delaware Supreme Court dealt with an accident case similar to the case at bar. The Supreme Court explained that the police do not have to eliminate innocent explanations for the facts revealed during their investigation of the accident in order to have probable cause to perform a chemical analysis test. Specifically the Supreme Court stated:

This Court has held that 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.'" A finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not. To establish probable cause, the police are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime. The possibility that there may be a hypothetically innocent explanation for each of several facts revealed during the course of an investigation does not preclude a determination that probable cause exists for an arrest.<sup>13</sup>

Although the facts considered in isolation may be insufficient to establish probable cause, when viewing the facts in the totality of the circumstances it appears that the police possessed enough trustworthy information to “warrant a

---

<sup>11</sup> *Id.* at \*12 (quoting *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988)).

<sup>12</sup> *State v. Maxwell*, 624 A.2d 926 (Del. 1993).

<sup>13</sup> *Id.* at 929–30.

*State v. Paul R. Hughes*

**I.D. No. 0207015964**

May 6, 2003

man of reasonable caution” to conclude that Hughes was driving under the influence of drugs. Furthermore, the fact that there may be an innocent explanation for some of those facts - that Hughes drank alcohol after the accident<sup>14</sup> - does not negate the officers finding of probable cause.

#### ***IV. Conclusion***

In conclusion, after viewing the facts in the totality of the circumstances it appears to this Court that the on scene officer did have probable cause to suspect

---

<sup>14</sup>According to Delaware Code title 21 section 4177:

(b) In a prosecution for a violation of subsection (a) of this section: . . . 2) a. No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .10 or more within 4 hours after the time of driving. b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .10 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .10 or more within 4 hours after the time of driving. DELAWARE CODE ANN. tit. 21, § 4177 (b)(2).

However, whether or not Hughes consumed alcohol before the accident or after the accident or both is a question for the jury to decide. The prosecution presented testimony which would make Defendant's contention that he drank after the accident unlikely. Therefore, at this point this Court can not conclude that as a matter of law Hughes should not be charged with this offense because he consumed alcohol after the accident.

*State v. Paul R. Hughes*

**I.D. No. 0207015964**

May 6, 2003

Hughes of driving while under the influence; therefore, Hughes' motion to suppress the blood alcohol test is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

dmh

oc: Prothonotary

xc: Order Distribution

File