

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

[Filed: November 4, 2015]

STATE OF RHODE ISLAND

:

VS.

:

K3-2015-0304A

:

ANDREW N. FALANDES

:

:

DECISION

STERN, J. Before the Court is Andrew Falandes’s (Defendant) “Motion to Suppress Breath Test Results.” Defendant avers that his consent to a breath test administered by the East Greenwich Police Department (the Department) was invalid because he was not adequately warned of all penalties and consequences that could be imposed upon him if he refused to take the breath test. The State maintains that Defendant’s consent was valid because the “Rights for Use at Station” form (Rights Form) that was read, acknowledged, and signed by Defendant was adequate. For the foregoing reasons, the Court denies Defendant’s motion to suppress.

I

Facts and Travel

On April 18, 2015, Defendant was arrested by officers of the East Greenwich Police (the Police) on suspicion of driving under the influence. He was taken into custody and transported to the Department, where he was read a Rights Form. Defendant consented to a breath test, which revealed his blood alcohol content (BAC) to be .15 percent, almost twice the legal limit of .08 percent. The State brought charges against Defendant for driving under the influence of alcohol. Defendant filed the instant motion to suppress, and an evidentiary hearing (the Hearing) was scheduled and heard on October 15, 2015. At the Hearing, the arresting officer, Patrolman Matthew Larson (Officer Larson), testified for the State.

Officer Larson has worked for the Department since graduating from the Municipal Police Academy (the Academy) in 2012. He received training in identifying suspects driving under the influence at the Academy and continues to receive DUI training annually at the Department.

Officer Larson was on duty the night of April 18, 2015, patrolling “District Two,” which encompasses the area in East Greenwich between Post Road and Route 4. Around 6:00 p.m., Officer Larson was observing traffic on Main Street from an abandoned Sunoco gas station when he received a broadcast from the Department’s Dispatch Officer (Dispatch). Dispatch advised Officer Larson that there was an “erratic operator” driving northbound in a red sports car with Massachusetts registration plates. A few minutes later, Officer Larson observed a red Mitsubishi Eclipse—with a Massachusetts registration—traveling northbound at a high rate of speed. The car proceeded to “cut off” another automobile and commit several other motor vehicle violations. Officer Larson activated his overhead lights and initiated a traffic stop.

As Officer Larson approached the vehicle, he noticed Defendant in the driver’s seat and an unidentified female passenger. He also detected an odor of alcohol emanating from the car. Officer Larson asked Defendant if he had been drinking; Defendant answered in the negative. In addition to smelling alcohol, Officer Larson observed Defendant’s eyes to be bloodshot and watery, and his speech was slurred. Officer Larson again asked Defendant if he had consumed alcohol, and Defendant responded that he had consumed “a few” drinks at the beach. Subsequently, Officer Larson ordered Defendant out of the car and conducted several field sobriety tests, such as the “horizontal gaze” and “one leg balance” tests, among others. Based on Defendant’s poor performance of these tests, he was placed under arrest and transported to the Department.

At the Department, Defendant read, acknowledged, and signed a Rights Form, agreeing to submit to a breath test. The Rights Form, in relevant part, states the following:

“You do not have to submit to a chemical test at my request. If you refuse, none shall be given. However, you will be charged with Refusal to Submit to a Chemical Test and a report will then be sent to a Rhode Island Traffic Tribunal Magistrate or a District court Judge, who upon receipt and review may promptly order that your Rhode Island driver’s license or privilege to operate a motor vehicle in this state be suspended. If the Refusal charge is sustained after a hearing, the following mandatory sanctions shall be imposed:

“(1) For a first violation within Rhode Island, suspension of driver’s license or privilege to operate a vehicle for six (6) to twelve (12) months; a fine of \$200 to \$500; public community service of 10 to 60 hours; and a course on driving while intoxicated and/or alcohol or drug treatment. The sentencing court may also prohibit you from operating a motor vehicle that is not equipped with an ignition interlock device for 6 months to [two] years.”

[. . .]

“(4) In addition to the above penalties, all violators shall pay a \$500 highway safety assessment fee, a \$200 department of health chemical testing programs assessment fee, and a \$350 license reinstatement fee. In determining the period of license suspension, a prior violation shall include any conviction of driving while under the influence of liquor and/or drugs, within a five (5) year period in the State of Rhode Island.

“(5) Violators will be required to maintain proof of financial responsibility for three (3) years, and all Rhode Island registrations in your name will be suspended unless proof of financial responsibility is provided for such vehicles.”
State’s Ex. 1.

Officer Larson “did not tell him about anything not on [the Rights] Form,” and further “told him it was his choice” whether to refuse or take the breath test. Defendant submitted to two chemical tests, which revealed his BAC to be .15 percent, almost twice the legal limit. Defendant was released from the Department around 8:25 p.m.

On cross-examination, Officer Larson conceded that the Rights Form had been changed twice since Defendant's arrest, and the Rights Form currently used (the New Rights Form) was submitted into evidence as Defendant's Exhibit A. See Def.'s Ex. A. In comparing the two rights forms, the New Rights Form differs from the Rights Form read to Defendant inasmuch as it advises, "[y]ou may also qualify for a conditional hardship license to get to and from employment, which can only be granted in conjunction with the installation of an interlock system." Additionally, Officer Larson affirmed that there was no discussion regarding an ignition interlock device or conditional hardship license.

On April 18, 2015, the State filed a criminal complaint (the Complaint) in District Court charging Defendant with driving under the influence of liquor, first offense, in violation of G.L. 1956 § 31-27-2(d)(1). The Complaint alleges that Defendant "[d]id operate a vehicle in this state while under the influence of intoxicating liquor and/or drugs in violation of § 31-27-2 greater than .15+ BAC." Subsequently, on May 1, 2015, the Complaint was filed with the Superior Court. Defendant filed a "Motion to Suppress Breath Test Results" with this Court, arguing that he did not knowingly and voluntarily consent to the chemical test because he was not informed of potential penalties that could be imposed upon him. Additionally, Defendant maintains that his consent was coerced because the Police overstated the penalties that could be imposed upon him. The State filed an objection.

II

Relevant Statutes

The Rhode Island General Assembly amended § 31-27-2, entitled "Driving under [the] influence of liquor or drugs" (the DUI Statute), with an effective date of January 1, 2015. The relevant part of the DUI Statute provides as follows:

“(a) Whoever drives or otherwise operates any vehicle in the state while under the influence of any intoxicating liquor . . . shall be guilty of a misdemeanor except as provided in subdivision (d)(3) and shall be punished as provided in subsection (d) of this section.

[. . .]

“(b)(1) Any person charged under subsection (a) of this section whose blood alcohol concentration is eight one-hundredths of one percent (.08%) or more by weight . . . shall be guilty of violating subsection (a) of this section

[. . .]

“(d)(1)(iii) Every person convicted of a first offense whose blood alcohol concentration is fifteen hundredths of one percent (.15%) or above . . . shall be subject to a fine of five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of public community restitution and/or shall be imprisoned for up to one year . . . The person’s driving license shall be suspended for a period of three (3) months to eighteen (18) months . . . The sentencing judge or magistrate shall prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.” Sec. 31-7-2.

Accompanying the DUI Statute is § 31-27-2.1(b)(1), entitled “Refusal to submit to chemical test” (the Refusal Statute). The Refusal Statute provides that, upon a suspect’s first refusal of a breath test, the following sanctions shall be imposed:

“[A] fine in the amount of two hundred dollars (\$200) to five hundred dollars (\$500) and shall order the person to perform ten (10) to sixty (60) hours of public community restitution. The person’s driving license in this state shall be suspended for a period of six (6) months to one year . . . The traffic tribunal judge or magistrate may prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.” Sec. 31-27-2.1(b)(1).

Notably, the Refusal Statute and DUI Statute are two separate statutes and thus can be enforced independently. See State v. DiStefano, 764 A.2d 1156, 1162 (R.I. 2000) (“[W]e often have stated that the DUI and the refusal statutes are two separate and distinct offenses.”).

Both the Refusal and DUI Statutes reference § 31-27-2.8, which is entitled “Ignition interlock system imposed as part of sentence—Requirements” (the Interlock Statute). The Interlock Statute was also amended by the General Assembly and took effect on January 1, 2015.

The Interlock Statute provides, in relevant part, as follows:

“(a) Any person convicted under the provisions of § 31-27-2(d)(1) . . . may be prohibited by the sentencing judge or magistrate from operating a motor vehicle that is not equipped with an ignition interlock system.

“(b) Notwithstanding any other provisions contained in this chapter, after a finding of eligibility, any mandatory period of license suspension may be reduced by the imposition of an ignition interlock system ordered by the court or traffic tribunal as follows:

“(2) For a violation of § 31-27-2.1(b)(1), a person shall be subject to a minimum thirty-day (30) license suspension and an imposition of an ignition interlock system for a period of six (6) months to two (2) years.

[. . .]

“(7) In any case where a person is convicted of a first offense under the provisions of § 31-27-2(d)(1), or a second offense under the provisions of § 31-27-2(d)(2), or under § 31-27-2.1(b)(1), the sentencing judge or magistrate may grant the person a conditional hardship license during the period of license suspension . . . A hardship license shall only be granted in conjunction with the installation of an ignition interlock device. . . . Sec. 31-27-2.8.

II

Standard of Review

Defendant brings the instant motion pursuant to Super. R. Crim. P. 41(f). As such, at a suppression hearing, the state bears the burden of establishing valid consent ““by a fair preponderance of the evidence.”” State v. Barkmeyer, 949 A.2d 984, 997 (R.I. 2008) (quoting

State v. O'Dell, 576 A.2d 425, 427 (R.I. 1990)); see also State v. Tavarez, 572 A.2d 276, 279 (R.I. 1990).¹

III

Analysis

Defendant challenges the admissibility of the breath test on two grounds. First, Defendant maintains that his consent to the breath test was invalid because he was improperly warned of the penalties that would be imposed upon him if he refused the test. He contends that because the Interlock Statute is referenced by the DUI and Refusal Statutes, the Police were required to inform him of the Interlock Statute's provisions, specifically that he could reduce his mandatory license suspension to thirty days, or that he could qualify for a conditional hardship license. Second, Defendant avers that his consent was coerced because the Police overstated the penalties associated with refusing a breath test by failing to inform Defendant of the mitigating circumstances of license suspension, such as imposition of an ignition interlock system or an application for a conditional hardship license.

¹ Defendant avers that the State must prove that the Defendant gave the Police valid consent by clear and convincing evidence, citing State v. Leavitt, 103 R.I. 273, 237 A.2d 309 (1968). However, Defendant's reliance on Leavitt is misplaced. Our Supreme Court has held that obtaining a breath sample for the purpose of determining a suspect's BAC is a search under the Fourth Amendment. State v. Locke, 418 A.2d 843, 846-47 (R.I. 1980). The Court affirmatively adopted the "fair preponderance" standard for suppressing Fourth Amendment violations. See Tavarez, 572 A.2d at 279. The Tavarez Court held that "we decline to impose the clear and convincing standard in respect to cases involving the establishment of reasonable suspicion or probable cause for Fourth Amendment purposes. We believe that the 'fair preponderance' standard employed by the Supreme Court in Connelly, supra, and Matlock, supra, places a sufficient burden upon the state at a Fourth Amendment suppression hearing." Id. The Court explicitly clarified that "[t]o the extent that Leavitt, supra, as a Fourth Amendment case is inconsistent with this holding, it is no longer controlling." Id.

A

Consent²

Defendant contends that his consent was not valid because he was not informed of certain penalties that may be imposed if he refused a breath test, specifically that he could reduce his license suspension if he had an ignition interlock device installed in his car or that he could obtain a conditional hardship license.³ Section 31-27-2(c) controls the admissibility into evidence of the results of a breathalyzer test in a criminal prosecution for driving under the influence. In re Kean, 520 A.2d 1271, 1273 (R.I. 1987). The statute, in pertinent part, provides:

“In any criminal prosecution for a violation of [driving under the influence of alcohol], evidence as to the amount of intoxicating liquor . . . in the defendant’s blood at the time alleged as shown by a chemical analysis of the defendant’s breath . . . shall be admissible and competent, provided that evidence is presented that the following conditions have been complied with:

“(1) The defendant has consented to the taking of the test upon which the analysis is made.” Sec. 31-27-2(c).

Therefore, valid consent is a statutory prerequisite to the admissibility of a breath test. Consent must be actual and not implied. State v. Berker, 120 R.I. 849, 857, 391 A.2d 107, 112 (1978). The state “has the burden of demonstrating that the consent was ‘freely and knowingly given.’” State ex rel. Town of Middletown v. Anthony, 713 A.2d 207, 212 (R.I. 1998).

The “knowingly” requirement requires that a suspect be informed of all potential penalties and consequences of refusing a breath test. See Anthony, 713 A.2d at 212. For

² While Defendant outlined two arguments in his papers, he limited his oral argument to whether he “knowingly consented” to the breath test.

³ Ever since the DUI Statute was amended, the Defense Bar has argued identical motions to the District Court; however, the dearth of case law has resulted in a wide array of inconsistent results. See Pat Murphy, DUI attorneys aim to exploit rights form “fix”, LAWYERS WEEKLY, Jun. 11, 2015, <http://rilawyersweekly.com/blog/2015/06/11/dui-attorneys-aim-to-exploit-rights-form-fix/>; Noah Schaffer, Defense bar mounts broad challenge to breath tests, LAWYERS WEEKLY, Apr. 24, 2015, <http://rilawyersweekly.com/blog/2015/04/24/defense-bar-mounts-broad-challenge-to-15-breath-tests/>.

example, in Anthony, our Supreme Court held that, among other things, a police officer “must inform the person under arrest . . . of his right to refuse to submit to the breathalyzer examination, and of the consequences of the failure to consent to the test.” Id. at 212 (emphasis in original). “Moreover, in order to be admissible in a trial adjudicating a charge of driving under the influence, chemical test results must be obtained after the party has been warned of penalties that, although not expressly listed within [the Refusal Statute], are incurred as a direct result of refusal.” Id. at 212 (emphasis in original). As a result, police must disclose all enumerated penalties in the Refusal Statute and all penalties that are a “direct result” of refusing a breath test.

The term “direct result of refusal” extends beyond those penalties found in the Refusal Statute. Without an explicit definition of what a “direct result of refusal” entails, the Court must determine what penalties outside the Refusal Statute warrant a warning before a suspect refuses a breath test. For instance, in Levesque v. Rhode Island Dep’t of Transp., the Court held that “police must inform a suspected drunk driver of the possible penalty of loss of his or her registration because of his or her refusal to submit to a chemical test.” 626 A.2d 1286, 1289 (R.I. 1993). The Court defined a “penalty” as “punishment of some sort [which] can be either civil or criminal in nature.” Id. The Court noted that Black’s Law Dictionary defines “penalty” as “[a]n elastic term with many different shades of meaning; it involves idea of punishment, corporeal or pecuniary, or civil or criminal, although its meaning is generally confined to pecuniary punishment.” Id. at n.2. Based on these definitions, the Court explicitly rejected the argument that police officers only need to inform a suspect of penalties enumerated in the Refusal Statute. Id. at 1289-90. The Court explained that although the suspension of a suspect’s registration is not an enumerated penalty in the Refusal Statute, police must still warn of it

because license suspension is mandatory under the Refusal Statute and will “automatically trigger” a registration suspension under § 31-32-4.⁴ Id. Because the license suspension was automatic, thereby making the registration suspension mandatory, the police had to warn the suspect of the possible registration suspension.⁵ See id.; see also Brown v. Rhode Island Dep’t of Transp., 638 A.2d 1052, 1054 (R.I. 1994).

Conversely, in Anthony, the Supreme Court held that a rights form adequately advised a suspect of the penalties of refusing a breath test despite the suspect’s contention that he was not informed of a recent penalty enhancement. 713 A.2d at 213. The rights form warned “a prior violation shall also consist of any conviction of driving while under the influence of liquor and/or drugs, within a five (5) year period in the State of Rhode Island.” Id. at 210. The suspect contended that he was not advised of a recently enacted Public Law that had been amended to provide that “out-of-state conviction for driving under the influence could be considered a prior offense for purposes of imposing penalties in a Rhode Island court on a similar charge.” Id. The suspect maintained that the breath test should be suppressed because this omission failed to fully apprise him of the consequences of refusing to submit to chemical testing. Id. The Court did not agree, concluding that the “current rights form adequately advise[d] the driver.” Id. at 213.

⁴ Sec. 31-32-4(a) states in pertinent part:

“Whenever the license of any person is revoked pursuant to the provisions of § 31-11-6 [(which includes a revocation for driving under the influence of liquor)] . . . suspends or revokes the license of an operator or chauffeur upon a showing by its records or other sufficient evidence that the licensee has committed an offense for which mandatory revocation of license is required upon conviction, the division of motor vehicles shall suspend the registration of all vehicles registered in the name of the person as owner.” (Emphasis added.)

⁵ Importantly, the Court noted that if police fail to inform a suspect of certain penalties that could be imposed upon refusal of a breath test, the remedy is not suppression of the breath test; rather, the suspect cannot be subject to the penalty that was undisclosed—only disclosed penalties may be imposed. Id. at 1291.

The Supreme Court has also found that other de minimis and technical inadequacies in rights forms were insufficient to invalidate a suspect's consent to a breath test. For instance, in Link v. State, the Court determined that "whether a charge of refusal to submit to a breathalyzer test is sustainable only when the hearing judge finds that the law-enforcement report required by § 31-27-2.1(a) precisely enumerates all penalties imposed for refusal." 633 A.2d 1345, 1348 (R.I. 1993). In Link, a rights form stated that an imposed fee was \$115, although it was actually \$147. Id. at 1346-47. Despite this error, the Court found the suspect's consent to be valid. Id. at 1349; see State v. Leca, 654 A.2d 1219 (R.I. 1995) (denying a motion to suppress, despite the fact that the suspect was not informed of a right to a hearing before a suspension of his registration, because "all practical notice requirements were fulfilled"); State v. Ryll, 648 A.2d 1360, 1361 (R.I. 1994) ("[t]he fact that the rights form warned of a minor monetary sanction that is no longer in effect was not shown to have affected the voluntariness of his decision").

Here, this Court finds that the Police were not required to inform Defendant of the possible imposition of an ignition interlock device and subsequent reduction in the duration of a license suspension, because the imposition of such is not a "penalty" under the Refusal Statute. See Levesque, 626 A.2d at 1289-90. Provisions in the Interlock Statute are not penalties; rather, the Interlock Statute is an avenue for a judge to mitigate the underlying "penalty" being imposed—the mandatory license suspension pursuant to the Refusal Statute. Simply, the Interlock Statute complements the Refusal Statute and does not provide for a new "penalty." If penalty "enhancements" need not be warned of, it logically follows that neither do penalty mitigations. See Anthony, 713 A.2d at 213.⁶

⁶ The Court notes that Defendant's BAC was .15 percent, making the imposition of an interlock device mandatory under subsection (d)(1)(iii) of the DUI Statute. However, such imposition of

Further, the interlock device is not a “penalty” because it is not mandatory. The Refusal Statute provides “[t]he traffic tribunal judge or magistrate may prohibit that person from operating a motor vehicle that is not equipped with an ignition interlock system as provided in § 31-27-2.8.” Sec. 31-27-2.1(b)(1) (emphasis added). Further, the Interlock statute states “[a]ny person convicted under the provisions of [the DUI Statute], or whose violation is sustained under the provisions of [the Refusal Statute], may be prohibited by the sentencing judge or magistrate from operating a motor vehicle that is not equipped with an ignition interlock system.” Sec. 31-27-2.8(a) (emphasis added). Additionally, it states “after a finding of eligibility, any mandatory period of license suspension may be reduced by the imposition of an ignition interlock system ordered by the court or traffic tribunal” Sec. 31-27-2.8(b)(1) (emphasis added). The use of the word “may” implies that the imposition of an ignition interlock system is discretionary, not mandatory. Section 31-27-2.8(a) grants a court the authority, in its discretion, to order the installation of an ignition interlock system. Sec. 31-27-2.8(b)(1) permits a court, also in its discretion, to reduce the mandatory license suspension upon the fitting of an ignition interlock system. As it is not mandatory, it is not a “penalty” that a suspect must be apprised of when refusing to submit to a breath test. See Levesque, 626 A.2d at 1289-90; see also Brown, 638 A.2d at 1054. For instance, the installation of an ignition interlock device is not “automatically triggered” upon a conviction of driving under the influence and therefore is not a “penalty.” See Levesque, 626 A.2d at 1289-90.⁷

an interlock device is not pursuant to the Refusal Statute and thus cannot be a “penalty” of the Refusal Statute as it is independent from the DUI Statute.

⁷ At the Hearing, Defendant asked the Court to consider and adopt the reasoning found in Meigs v. Kansas Dep’t of Revenue, 840 P.2d 448 (Kan. 1992), a case from the Supreme Court of Kansas. However, the Court finds Meigs to be distinguishable from the case at bar. In Meigs, a police officer gave the defendant statutorily-required notice that her license could be suspended for up to 180 days if she refused a breath test. Id. at 450. However, the 180-day suspension was

For the same reasons, this Court find that the conditional hardship license provision of the Interlock Statute is not a “penalty”; thus, the Police were not obligated to apprise Defendant of this provision. The statute states “[i]n any case where a person is convicted of a first offense under the provisions of § 31-27-2(d)(1), or a second offense under the provisions of § 31-27-2(d)(2), or under § 31-27-2.1(b)(1), the sentencing judge or magistrate may grant the person a conditional hardship license. . . .” Sec. 31-27-2.8(b)(7) (emphasis added). Again, the use of the word “may” implies discretion on part of the judge. As the invocation of the statute is discretionary, and does not fit the definition of penalty, it cannot be a “penalty” under the Refusal Statute. See Levesque, 626 A.2d at 1289-90.⁸

As requirements of the Interlock Statute are not “penalties,” the Police had no obligation to inform Defendant of the statute’s provisions. For the same reasons, the Police did not need to

based on a statute from 1989. Id. A newly enacted 1990 statute required that the notices inform the defendant that if he or she refused testing, driving privileges would be suspended for at least one year. Id. The Kansas Supreme Court focused on whether the 180-day warning “substantially complied” with the new, one-year suspension and whether or not the defendant need show prejudice. Id. at 450-52. The Court held that the 180 day warning did not substantially comply with the one-year warning and that the defendant did not need to show prejudice. Id. at 451-52. However, this Court finds that the Rhode Island Supreme Court has already addressed these situations in Link, Ryll, and Leca discussed supra, and pursuant to those decisions, could be couched as a “technical inadequacy.” Moreover, in Meigs, the Kansas Court investigated the adequacy of the warning given to the defendant; in the instant matter, this Court is tasked to determine whether a warning was necessary rather than sufficient. While the Meigs decision contains some similar facts, the decision rests on a different legal analysis.

⁸ The Defendant argues that the inclusion of information pertaining to a conditional hardship license on the New Rights Form is evidence of a remedial measure implemented to cure a defect in the original Rights Form. However, while such evidence is probative, the Court finds this argument unavailing. In light of the Court’s aforementioned ruling that a conditional hardship license is not a “penalty,” and absent any further evidence offered by Defendant, the mere addition of a provision in the New Rights Form does not make the original Rights Form constitutionally deficient. In fact, the Defense Bar has conceded to this argument, stating “[i]t is theoretically possible to maintain that the prior form was good enough, but this [new] form is better.” See Murphy, supra n.3. Consistent with the Court’s above ruling, the Court sees the inclusion of information on a conditional hardship license on the New Rights Form as the addition of information in excess of what is constitutionally necessary to obtain valid consent.

inform Defendant of the possibility of a conditional hardship license. Moreover, the Court notes that according to Supreme Court precedent, even if it were to find that Defendant was improperly warned, suppression of the breath test would be improper. See supra, n.4.

B

Coerced Consent

Defendant argues that his breath test should be suppressed because the Police coerced his consent by overstating the duration of his license suspension and failing to inform him of the availability of a conditional hardship license. Specifically, he avers that he consented to the breath test out of fear of not being able to get to work and potentially losing his job. While not explicitly stated in Defendant's papers, this Court gathers that his contention is whether his consent was constitutionally obtained. Above, this Court determined that the Interlock Statute is not a "penalty," and the Police did not need to apprise Defendant of its provisions. Therefore, Defendant's argument that his consent was coerced by the Police's failure to inform him of the ignition interlock system and conditional hardship license must fail. However, this Court will still consider whether the Police's stating to Defendant enumerated penalties constituted a "threat" that coerced the Defendant's confession.

In Locke, our Supreme Court addressed coerced consent in the context of a breath test. 418 A.2d at 848-49. There, police informed a suspect that if he refused to submit to a breath test, his driver's license could be suspended. Id. at 848. The suspect argued "[t]he exercise of his right to refuse the breathalyzer search . . . cannot, in consistency with the Fourth Amendment guarantees, be conditioned on the forfeiture of his driver's license." Id. The Locke Court relied upon Schmerber v. California, 384 U.S. 757, 768 (1966), which held that taking of a blood sample from a driving under the influence suspect was justified in the circumstances and

conducted according to reasonable procedures. Locke, 418 A.2d at 848. The Locke Court reasoned that the threat did not originate from the police, but from the State's driving under the influence statute. The Court stated the following:

“In response to defendant's contention that his consent to the test was the product of coercion built into the statutory scheme, we believe that the driving-under-the-influence statute represents a valid exercise of state police power to regulate conduct that by its very nature directly affects the lives, health, and general welfare of the people of the state.” Id. at 849.

The Court found the driving under the influence statute's revocation of a suspect's license to be constitutional. It reasoned that an “individual's right to immunity from such invasion of the body as is involved in a properly safeguarded blood test is far outweighed by the value of its deterrent effect due to public realization that the issue of driving while under the influence of alcohol can often by this method be taken out of the confusion of conflicting contentions.” Id. at 849-50 (quoting Breithaupt v. Abram, 352 U.S. 432, 439-40 (1957)). The Court noted “[t]he penalty of license forfeiture is a nonviolent method of exacting consent to the minimal intrusion necessary to obtain evidence of intoxication,” and that “the threatened suspension under the statute is critical to attainment of the goal of making the highways safe by removing drivers who are under the influence.” Id. at 850. The Court held that the statutory suspension of the suspect's license (or “threat”) is not so coercive to find a suspect's consent to be coerced, stating “[t]he statutory suspension provision effectuates the state's vital interest and does not impermissibly impose an element of coercion on the actual consent.” Id. It concluded “[t]he police in the instant case in no way prevented [the defendant] from refusing his consent and precluding the admissibility of the test results in evidence. [The defendant] had a choice; if he chose not to submit to the test, it would not have been given.” Id.

Here, just as the Locke Court found Schmerber to be directly applicable, this Court finds Locke to be indistinguishable. The police in Locke and the present case both informed the suspect of enumerated penalties prescribed by law. For instance, in Locke, the police informed the suspect of a driver's license suspension. In the instant matter, the Police informed Defendant of all the penalties on the Rights Form. As informing the Defendant of enumerated penalties cannot constitute a threat, Defendant's consent to the breath test was voluntary. Locke, 418 A.2d at 850.

IV

Conclusion

As § 31-27-2.8(a)-(b) is not a "penalty," the Police did not need to inform Defendant of its provisions; therefore, Defendant's consent was voluntary and was not coerced. Accordingly, Defendant's motion must be DENIED.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: State of Rhode Island v. Andrew N. Falandes

CASE NO: K3/2015-0304A

COURT: Kent County Superior Court

DATE DECISION FILED: November 4, 2015

JUSTICE/MAGISTRATE: Stern, J.

ATTORNEYS:

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