

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,

v.

**GIOVANNI FERRANTE,
Defendant.**

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Case Nos.: 1009015961; 1010003283

Submitted: February 20, 2012

Decided: March 7, 2012

On Defendant's Motion to Suppress

DENIED

MEMORANDUM OPINION and ORDER

Periann Doko, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, 7th Floor, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

Edmund Daniel Lyons, Esquire, The Lyons Law Firm, 1526 Gilpin Avenue, P.O. Box 579, Wilmington, Delaware, 19899. Attorney for Defendant.

ROCANELLI, J.

On January 9, 2012, Defendant Giovanni I. Ferrante presented a Motion to Suppress Evidence gathered by the State during a traffic stop on September 17, 2010. The Court heard testimony from Delaware State Police Corporal Michael J. Cahall and limited legal argument from the parties. The parties submitted written legal argument pursuant to a briefing schedule.

At the conclusion of the January 9, 2012 hearing, the parties stipulated and agreed to the following:

1. The State conducted a sobriety checkpoint on September 17, 2010. The State did not respond to discovery requests by Defendant related to the sobriety checkpoint and did not present any evidence to support the legality of the sobriety checkpoint.
2. Prior to entering the sobriety checkpoint on September 17, 2010, Defendant made an illegal U-Turn, crossing a concrete median strip. This traffic violation was witnessed by Cpl. Cahall.

This is the Court's Memorandum Opinion and Order after consideration of the factual record and arguments with respect to Defendant's Motion to Suppress.

According to Defendant, because the State has not presented record evidence to establish that the September 17, 2010 roadblock was lawful and proper, the State cannot lawfully detain a driver who makes an illegal U-turn to avoid that roadblock.¹ Defendant argues that by setting up what should be considered an unlawful roadblock, the Delaware State Police impermissibly created exigent circumstances which resulted in Defendant's illegal U-turn. Therefore, the traffic stop of Defendant violated Defendant's

¹ *State v. Butler*, 2011 WL 2552546, at *2 (Del. Super. Apr. 11, 2011) (sobriety checkpoints must be conducted in substantial compliance with Delaware State Police procedures, and the procedures must be such that officers have no discretion over which vehicles to stop).

right to be free from unreasonable search and seizure. For this proposition, Defendant relies upon the recent United States Supreme Court decision in *Kentucky v. King*.²

The State argues that *King* is distinguishable because, in that case, the United States Supreme Court held that law enforcement may not create exigent circumstances supporting the warrantless entry of a home.³ There is no warrant requirement for traffic stops based on reasonable articulable suspicion.⁴ The State argues that because Cpl. Cahall personally observed Defendant make an illegal U-turn, the stop was supported by reasonable articulable suspicion that a motor vehicle violation had been committed, and therefore is constitutionally permissible.⁵

On a motion to suppress, the State bears the burden to establish by a preponderance of the evidence that the challenged search or seizure was lawful.⁶ As a threshold matter, the Court finds that the police-created exigent circumstances doctrine addressed in *King* is inapplicable here. *King* concerned whether the government is precluded from arguing that a warrantless entry into a home was justified by the exigent circumstances exception to the warrant requirement when law enforcement, by its own conduct, created the exigent circumstances.⁷ The United States Supreme Court held that the touchstone is not whether police created the exigent circumstances later relied upon.

² 131 S. Ct. 1849 (2011).

³ *Id.*

⁴ *State v. Arterbridge*, 1995 WL 790965, at *3-4 (Del. Super. Dec. 7, 1995).

⁵ 21 *Del. C.* § 701(a)(1).

⁶ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001); *State v. Tieman*, 2008 WL 5160100, at *4 (Del. Com. Pl. July 10, 2008).

⁷ 131 S. Ct. at 1858.

Rather, according to *King*, the question is whether the circumstances surrounding the warrantless entry support a finding that law enforcement acted reasonably.⁸

King does not apply here because it addresses the exigent circumstances exception to the general rule that searches and seizures inside a home without a warrant are presumptively unreasonable. The charges in the instant case arise out of a traffic stop for an illegal U-Turn personally observed by a police officer. Statutory and decisional authority provides that traffic stops need only be supported by reasonable articulable suspicion.⁹ An illegal U-turn is an offense for which Cpl. Cahall could lawfully detain Defendant without a warrant.¹⁰

For similar reasons, analysis into whether the State offered sufficient foundational testimony for the roadblock is not relevant. This is not a roadblock case. Cpl. Cahall observed Defendant make an illegal U-Turn before Defendant reached the roadblock. Therefore, the legal basis supporting the traffic stop here is unrelated to the roadblock. The legal basis supporting the traffic stop is an illegal U-Turn on a public roadway. Analysis into the propriety of the roadblock is unnecessary because Defendant's illegal U-Turn provided the State with an independent legal justification for the traffic stop.

Finally, the Court rejects Defendant's argument that this case is similar to *Howard v. Voshell*, where the court held that making a *legal* turn to avoid a roadblock does not

⁸ *Id.*

⁹ 21 *Del. C.* § 701(a)(1); *State v. Arterbridge*, 1995 WL 790965, at *3-4 (Del. Super. Dec. 7, 1995).

¹⁰ 21 *Del. C.* § 701(a)(1).

alone create reasonable articulable suspicion.¹¹ This argument is without merit. In this case, Defendant did not make a *legal* turn to avoid a roadblock. Instead, Defendant made an admittedly *illegal* U-Turn on a public roadway, which is an offense constituting reasonable articulable suspicion for a traffic stop.¹²

Therefore, the State has met its burden to establish that the traffic stop was justified by reasonable articulable suspicion. Accordingly, the State has met its burden in that the State established by a preponderance of the evidence that the challenged seizure was lawful. Defendant's Motion to Suppress is **DENIED**. This matter shall be scheduled for disposition on the merits before this judicial officer.

IT IS HEREBY ORDERED this 7th day of March, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

¹¹ *Howard v. Voshell*, 621 A.2d 804, 807 (Del. Super. 1992).

¹² *State v. Walker*, 1991 WL 53385, at *2 (Del. Super. Mar. 18, 1991) (Steele, J.).