

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :  
 :  
 : Case No. 0309015889  
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 : Plaintiff :  
 :  
 : vs. :  
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 : BARRY A. SPICER. :  
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 : Defendant. :  
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**Upon Defendant's Motion to Suppress**

**Dated Submitted: 10/15/04**

**Date Decided: 10/19/04**

**Defendant's Motion to Suppress is denied.**

Gregory R. Babowal, Deputy Attorney General, Department of Justice, 102 West Water Street, Dover, Delaware 19904, Attorney for Plaintiff.

Scott E. Chambers, Esquire, Schmittinger & Rodriguez, P.A., 414 South State Street, P.O. Box 497, Dover, Delaware 19903, Attorney for Defendant.

J. Trader

In this criminal case I hold that the police officer had reasonable and articulable suspicion to stop the defendant's vehicle based on the operation of a farm vehicle not used for farm purposes in violation of 21 Del. C. Sec. 2113(2) and also based on driving without insurance in violation of 21 Del. C. Sec. 2118(a). Hence, the defendant's motion to suppress is denied.

On September 20, 2003, Patrolman Marvel was dispatched to a private campground located off Leipsic Road, Kent County, Delaware. It was race weekend and people called the police about a vehicle that was told to move and failed to do so. When the police officer made contact with the defendant he saw that there was a farm vehicle tag displayed on his truck. Patrolman Marvel determined that the defendant's address was Townsend, Delaware and Townsend is about twenty to thirty miles from the place where the police officer encountered the defendant. At that time, Patrolman Marvel cited the defendant for operation of a farm vehicle for other than farm use and for the failure to produce proof of insurance. Patrolman Marvel also observed that the defendant had been drinking and he told the defendant that he did not want to see the vehicle on the road again.

An hour later the patrolman saw the defendant's vehicle going northbound on U.S. Route 13. He then stopped the vehicle based on a violation of 21 Del.C. Sec. 2113. After the stop, the defendant was given certain sobriety coordination tests. He was subsequently arrested for driving under the influence and was given an intoxilyzer test at Troop 3.

The defendant has moved to suppress the results of the intoxilyzer test. He contends that the investigative stop was illegal and the test should be suppressed. I

disagree. When a warrantless search is conducted, the state bears the burden of proof on a motion to suppress evidence seized as a result of the search and seizure. *Hunter v. State*, Del. Supr., 783 A.2d 558, 560 (2001). An officer may conduct a brief investigative stop of a vehicle; however, such stop must be justified by specific, articulable facts sufficient to give rise to reasonable suspicion that a violation of the law has occurred. *Delaware v. Prouse*, 440 U.S. 648 (1979). “Investigative stops of vehicles are analogous to Terry-type stops and are invalid if based upon ‘unparticularized suspicion,’ or a ‘hunch’ or if there is no probable cause to believe that a driver is violating applicable traffic regulations.” *State v. Bishop*, Del. Super., Gebelein, J. (May 4, 1990) (Mem.Op.)

In *State v. Bishop, supra*, the police officer observed a car parked on the street and he noted that there was no license tag on the vehicle’s bumper. He erroneously believed that the defendant’s vehicle was not subject to being stopped for a motor vehicle violation because the vehicle was not in motion. Once the vehicle was in motion, the officer stopped the car. After he stopped the vehicle, he observed a registration tag taped to the rear window. Since the police officer observed no license plate displayed on the vehicle as required by Delaware law, the Delaware Superior Court held that there was a valid reason for the stop.

In *State v. Scott*, Del. Super., Cr.A. No. IK04-02-0299, Witham, J. (July 28, 2004) (ORDER), the police officer stopped the vehicle because the license plate that was visible was invalid. The owner of the car had placed a temporary tag in the back window, but the police officer did not see the tag before he stopped the car. Although the police officer did not notice the temporary tag in the rear window until he walked up to the vehicle, the stop based upon an invalid tag was proper.

In *State v. Brohawn*, Del. Super., Ableman, J. (Mar. 6, 2001), a police officer stopped a vehicle after another officer radioed him that the defendant had committed a traffic violation by making an unsafe lane change. The officer who stopped the vehicle incorrectly informed the driver that he was stopped for failing to signal during a lane change. The defendant subsequently signed a consent authorizing the search of his car, where officers discovered drugs. During his trial, the defendant contended that the search was unlawful because the initial traffic stop was invalid as a result of the officer inaccurately stating the nature of the motor vehicle violation. The Superior Court held that even though the police officer believed that he stopped the defendant's vehicle for failure to signal before changing lanes rather than driving in an unsafe manner, it was not relevant in determining whether there was reasonable and articulable suspicion to stop the vehicle. From the perspective of the officer that stopped the car there was evidence that the defendant had violated several other traffic laws. Even assuming that the defendant might ultimately prevail in defending against the traffic violation, the law does not require an officer to possess proof beyond a reasonable doubt before stopping a vehicle for a traffic offense. *Id.*

In the case before me, the defendant's vehicle was stopped because the defendant was using a farm vehicle for other than farm use in violation of 21 Del.C. Sec. 2113. Although the police officer incorrectly issued a citation for farm truck tag violation pursuant to 21 Del.C. Sec. 2113(1), there were specific and articulable facts that the defendant had committed several traffic violations. For example, there was evidence that he was operating a farm vehicle for other than farm use more than twenty miles from his residence in Townsend, Delaware. The officer's invalid reason for the stop is not

relevant to the issue of whether there are specific and articulable facts that support the conclusion that the defendant was operating a farm vehicle for other than farm purposes in violation of 21 Del.C. Sec. 2113(2). Although the defendant might prevail on the motor vehicle violation, the law does not require proof beyond a reasonable doubt before stopping a vehicle for a traffic offense.

The police officer also had reasonable and articulable suspicion to stop the defendant's vehicle based on the fact that the defendant was driving without insurance in violation of 21 Del.C. Sec. 2118(a). The defendant had been cited for failure to produce insurance on the first stop.

It is true that there is no good faith exception to the search warrant requirement under the Delaware Constitution pursuant to *Dorsey v. State*, Del. Supr. 761 A.2d 807, (2000). Because I have held there were specific and articulable facts to support the stop, I need not address the good faith belief of the police officer.

Since I conclude that the investigative stop is justified by specific and articulable facts sufficient to give rise to reasonable suspicion of criminal activity, the defendant's motion to suppress is denied.

**IT IS SO ORDERED.**

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Merrill C. Trader  
Judge