

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

December 1, 2008

Louis B. Ferrara, Esquire  
Ferrara & Haley  
1716 Wawaset Street  
P.O. Box 188  
Wilmington, DE 19899

RE: *State v. Michael Greene*  
ID# 0803009562

Dear Mr. Ferrara:

On July 25, 2008, I denied Defendant's motion to suppress after finding Corporal Malkin had reasonable suspicion to stop Defendant. I received your October 15, 2008 request for reconsideration, along with *Lopez-Vazquez v. State*.<sup>1</sup> After considering your submission, the court stands by its bench ruling.

It is settled that an officer must possess reasonable suspicion to support a traffic stop.<sup>2</sup> A traffic violation constitutes reasonable suspicion.<sup>3</sup> An officer is also justified to stop a vehicle for erratic driving in order to deter an accident and threat to public safety.<sup>4</sup>

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<sup>1</sup> 956 A.2d 1280 (Del. 2008).

<sup>2</sup> See *Caldwell v. State*, 780 A.2d 1037, 1045-46 (Del. 2001); *State v. Friend*, 0804002890 (Del. Super. Nov. 26, 2008) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)).

<sup>3</sup> *Howard v. State*, 931 A.2d 437 (Del. 2007) (TABLE) (ORDER) (citing *State v. Godwin*, 2007 WL 2122142 (Del. Super. July 24, 2007) (finding that a driver almost hitting a curb, and swerving over the center line, created reasonable suspicion to stop)).

<sup>4</sup> *Bloomingtondale v. State*, 842 A.2d 1212, 1221 (Del. 2004) ("The great risk of harm and few investigatory options in erratic driving cases outweigh the relatively less invasive nature of a

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*Lopez-Vazquez* is inapplicable. It concerns an invalid *Terry* stop stemming from officers seizing Lopez-Vazquez after he walked out of an apartment building that was under police surveillance. Lopez-Vazquez was heading to his vehicle when he was approached by an officer. *Lopez-Vazquez* held that even though Lopez-Vazquez was visibly nervous and had interacted with a known drug suspect, the facts did amount to reasonable suspicion to stop a citizen on foot. Those facts are completely distinguishable from this case's.

Here, the police saw Defendant commit an actual traffic violation.<sup>5</sup> That gave them reasonable suspicion to stop Defendant. Corporal Malkin testified that he watched Defendant leave the traffic lane, almost hit a cement curb, and then abruptly reenter the roadway. Defendant's driving can be considered careless and erratic, regardless of whether Defendant used his turn signal or whether a shopping plaza entrance was nearby. At the least, Defendant's driving gave the officer reason to stop him and ask about what the officer saw, and check Defendant's license, registration, and insurance.<sup>6</sup>

For the foregoing reasons, the court adheres to its earlier decision and finds no cause to adjust it in light of *Lopez-Vazquez*.

Very truly yours,

FSS: mes

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traffic stop...").

<sup>5</sup> Defendant was cited for improper lane change under 21 *Del. C.* § 4122.

<sup>6</sup> *Bloomingtondale*, 842 A.2d at 1221 (holding that short of stopping the vehicle, an officer's options are limited upon observing erratic driving); *see also United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir. 2001) (officers are permitted to request and verify documentation); *United States v. Childs*, 277 F.3d 947, 952 (7th Cir. 2002) (same).

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cc: Prothonotary (Criminal)

Susan S. Dwyer, Deputy Attorney General