IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	DEF. ID# 1001013876
v.	)	
	)	
DANIEL BROWN	)	
	)	
Defendant.	)	

ORDER

On this 22nd day of July, 2010, upon consideration of Defendant's Motion to Suppress, oral argument, and the supplemental briefing submitted by the parties, it appears that:

1. On January 19, 2010, Officers Ernest Melvin and Bruce Pinkett of the New Castle County Police Department were conducting surveillance in the area of the Iron Hill Apartment complex, in Newark, Delaware. According to the officers, this is an area known for high drug activity and violent crime.[1] As Defendant's vehicle was exiting the parking lot of the complex, Officer Pinkett observed him fail to come to a complete stop at a stop sign and fail to use his turn signal.[2]

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[1] Docket Item ("D.I.") 10 at 1.

[2] *Id.*

Officer Pinkett radioed Officer Melvin, advised him of Defendant's traffic violations, and provided a description of Defendant (the sole occupant) and the make, model and color his vehicle.[3] With this information in hand, Officer Melvin stopped Defendant's vehicle to enforce the traffic violations.[4] In the course of the traffic stop, Officer Melvin observed marijuana seeds on the front passenger seat of Defendant's vehicle. Also on the floor of the vehicle he noticed remnants of steel wool, known to Officer Melvin as a material commonly used to facilitate smoking crack cocaine.[5] On the basis of the items he observed in plain view within the vehicle, Officer Melvin took Defendant into custody and began a full search of the vehicle's passenger compartment.[6] While conducting the search, Officer Melvin received a radio communication indicating that Defendant had recently been involved in a domestic altercation and might be armed.[7] Officer Melvin ultimately found a gun underneath the rear seat cushion of the vehicle.[8]

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[3] D.I. 14 at 2.

[4] *Id.*

[5] D.I. 10 at 2.

[6] *Id.*

[7] *Id.*

[8] *Id.*

2. On June 4, 2010, the Court convened a suppression hearing in the above-captioned case. The State's only witness was Officer Melvin; Officer Pinkett did not testify. At the conclusion of the hearing, the Court requested supplemental briefing on the following three issues:[9] (1) the applicable standard for determining the legality of the motor vehicle stop (the parties had disagreed as to the applicable standard during the hearing); (2) whether the State was required to present the direct testimony of Officer Pinkett regarding his observations of Defendant's traffic violations (as opposed to relying upon Officer Melvin's testimony regarding the report he received from Officer Pinkett) in order to meet its burden of proof; and (3) whether the State's reliance upon hearsay testimony as its proof of the traffic violation and to justify the vehicle stop violates Defendant's Sixth Amendment rights under *Crawford v. Washington*[10] and its progeny.[11]

3. Defendant argues that a police officer must have probable cause to

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[9] The Court determined at the conclusion of the hearing that Officer Melvin conducted a lawful search of Defendant's vehicle after observing contraband in plain view on the floor of the vehicle and after receiving a radio call regarding Defendant's alleged violent encounter with a family member earlier in the evening. The Court reserved decision on the three issues addressed in this opinion.

[10] 541 U.S. 36 (2004).

[11] *See generally* D.I. 14-16.

justify a stop of a motor vehicle, citing *Whren v. United States*[12] and its progeny in support of his position.[13] In contrast, the State argues that only reasonable suspicion is required to conduct a motor vehicle stop.[14] Defendant's reliance upon *Whren* is misplaced. The case law in Delaware is clear that while probable cause *will* serve as the basis for a traffic stop, only a reasonable articulable suspicion of criminal activity is required.[15] In this case, Officer Melvin had probable cause to believe that Defendant committed a traffic violation, namely failing to come to a complete stop at a stop sign, after Officer Pinkett notified him that he observed

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[12] 517 U.S. 806, 810 (1996) (noting that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred"). The Court's decision in the case *sub judice* is consistent with the holding in *Whren*, which noted that satisfaction of the probably cause threshold will provide a lawful basis to conduct a traffic stop. Contrary to Defendant's argument, however, *Whren* does not stand for the proposition that *only* probable cause will satisfy the Fourth Amendment's "reasonable[ness]" requirement.

[13] D.I. 16 at 2.

[14] D.I. 14 at 1-2.

[15] *See State v. Rickards*, 2010 WL 2802905, at *4 (Del. Super. July 13, 2010) ("Under the Fourth Amendment, a traffic stop is reasonable if it is supported by reasonable suspicion or probable cause to believe that a traffic violation has occurred."); *State v. Blank*, 2001 WL 755932, at *1 (Del. Super. June 26, 2001) ("Delaware Courts require that a peace officer develop, prior to stopping a motor vehicle, a 'reasonable and articulable suspicion that the person has committed or is about to commit a crime.'") (footnote omitted)); *Howard v. Voshell*, 621 A.2d 804, 806 (Del. Super. 1992) ("While Delaware does not require that an officer have probable cause to stop and detain a motorist, the officer must still have at least a 'reasonable and articulable suspicion.'"). *See also* 11 *Del. C.* § 1902 ("[A] peace officer may stop any person abroad . . . who the officer has reasonable grounds to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.").

Defendant commit the violation.[16] Thus, he was more than justified in stopping Defendant's vehicle.

4. Defendant next argues that the State lacked sufficient "competent evidence" to meet its burden of proof in response to his Motion to Suppress.[17] Defendant argues that even though hearsay generally is admissible in a suppression hearing, "competent evidence" requires "some first hand knowledge coupled with hearsay that forms the bases of guilty [sic]."[18] He draws this pronouncement from *Collins v. State*,[19] a case that deals with a violation of probation hearing.[20] In

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[16] According to Officer Melvin, Defendant failed to stop and use a turn signal as he exited a "private" apartment complex. D.I. 16 at 2. Because the Defendant was on a private roadway, Defendant has argued in his supplemental submission that the "rules of the road" codified in Title 21 of the Delaware Code do not apply to him, citing *McDonald v. State*, 947 A.2d 1073 (Del. 2008). In *McDonald*, the Court held that no motor vehicle violation occurred where the defendant failed to use a turn signal when turning from a private parking lot onto a public highway because the Motor Vehicle Code "refer[s] exclusively to the operation of vehicles upon highways." *McDonald*, 947 A.2d at 1077 (citing 21 *Del. C.* § 4101(a)). Section 4101(a)(3), however, specifically indicates that 21 *Del. C.* § 4164 (Stop signs and yield signs) applies "upon highways *and elsewhere throughout the State*." 21 *Del. C.* § 4101(a)(3) (emphasis added). This language clearly reflects an intent that motor vehicle operators must honor stop signs whether they are traveling on a public roadway or a private roadway. Defendant's reliance upon *McDonald* to support his argument that he did not commit a motor vehicle violation is, therefore, misplaced. Moreover, even if the Court found that Defendant *did not* actually commit a motor vehicle violation, the motor vehicle stop and resulting search and seizure would not be *per se* invalid. *See State v. Brohawn*, 2001 WL 1629086, at *3 (Del. Super. Mar. 6, 2001) ("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.").

[17] D.I. 16 at 3.

[18] *Id.*

[19] 897 A.2d 159 (Del. 2006).

[20] D.I. 16 at 3.

response, the State maintains that Officer Melvin's hearsay testimony was sufficient to establish the reasonable suspicion necessary to justify the initial traffic stop.[21]

5. There is no question that the Court may rely upon hearsay evidence in a suppression hearing, even when that evidence would not be admissible at trial.[22] Moreover, an officer need not make firsthand observations of illegal activity in order to form the reasonable suspicion necessary for a valid motor vehicle stop.[23] In this case, the Court is satisfied that the hearsay evidence of the underlying traffic violation (Officer Melvin's testimony regarding Officer Pinkett's report to him) was sufficient competent evidence from which the State could argue that the initial traffic stop was lawfully conducted.

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[21] D.I. 14 at 2-5.

[22] D.R.E.1101(b)(1) ("The rules [of evidence] other than those with respect to privileges do not apply in the following situations: (1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a)."). *See also State v. Cleveland*, 2006 WL 2441971, at *3 (Del. Super. Aug. 16, 2006) ("Hearsay evidence is admissible in a suppression hearing . . . .").

[23] *See State v. Brohawn*, 2001 WL 1629086, at *3 (Del. Super. Mar. 6, 2001) (rejecting defendant's contention that the officer who conducted the traffic stop did not have reasonable suspicion where the officer who witnessed the traffic violation radioed ahead to another officer and the second officer was the one who conducted the traffic stop). *See also Bloomingdale v. State*, 842 A.2d 1212, 1217 (Del. 2004) ("An officer's suspicion of criminal activity must be based on an adequate quantity of information of sufficient quality to create a reasonable and articulable suspicion that a crime has occurred, is occurring, or is about to occur."); *State v. Schneider*, 2009 WL 3327226, at *3 (Del. Super. Oct. 15, 2009) ("An officer is permitted to rely on the information provided by an informant, without independent police corroboration, to establish reasonable and articulable suspicion for stopping an automobile if the officer can show that the information provided by the informant is reliable.") (footnote omitted)).

6. Defendant's final argument is that the State's failure to make Officer Pinkett available for cross-examination at the suppression hearing violated his rights under *Crawford v. Washingtion*[24] and the Sixth Amendment Confrontation Clause.[25] Defendant argues that "the Court in *Crawford* does not explicitly or implicitly limit[] it [sic] holding to actual trial."[26] In response, the State argues that *Crawford* and the rights guaranteed under the Sixth Amendment are applicable only at trial, and neither *Crawford* nor the Sixth Amendment are applicable to a suppression hearing.[27]

7. The case law is clear that the confrontation rights addressed in *Crawford* apply only to criminal trials, and do not extend to suppression hearings.[28] Additionally, this Court has specifically held that the use of hearsay evidence in a suppression hearing does not violate the Confrontation Clause of the Sixth

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[24] 541 U.S. 36 (2004).

[25] D.I. 16 at 4-5.

[26] *Id.* at 5.

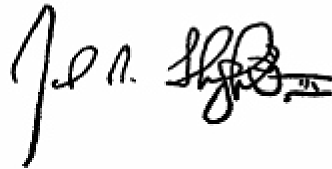
[27] D.I. 14 at 5.

[28] *See, e.g.*, *Cleveland*, 2006 WL 2441971, at *3 ("This Constitutional right provided to defendants to confront the witnesses against them does not extend to suppression hearings. It only applies to criminal trials.") (citing *Crawford*, 541 U.S. at 59)). *See also Shockley v. State*, 269 A.2d 778, 780-81 (Del. 1970) (distinguishing between trial and immunity hearing and ultimately denying claim for violation of Sixth Amendment right to confront witnesses at State witness's immunity hearing); *State v. Williams*, 2005 WL 1654350, at *1 (Del. Super. May 31, 2005) (drawing distinction between trial and suppression hearing and ultimately requiring the State to disclose confidential surveillance location to protect the defendant's Sixth Amendment rights *at trial*).

Amendment.[29] In light of the clear case law to the contrary, Defendant's argument that his Sixth Amendment rights were violated is without merit.

8. Based on the foregoing, Defendant's Motion to Suppress must be **DENIED**.

IT IS SO ORDERED.



Joseph R. Slights, III, Judge

cc: Prothonotary – Original
Matthew B. Frawley, Esquire
Raymond D. Armstrong, Esquire

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[29] *Cleveland*, 2006 WL 2441971, at *3 ("Hearsay evidence is admissible in a suppression hearing, and does not violate the Confrontation Clause of the Sixth Amendment to the United States Constitution under *Crawford* . . . . This Constitutional right provided to defendants to confront the witnesses against them does not extend to suppression hearings. It only applies to criminal trials.") (footnotes omitted)).