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RE: State v. Harmon,
Def. I.D. No. 0004015937
Date Submitted: June 11, 2001

Dear Counsel:

This matter is an appeal by the State of Delaware ("State") of a decision of the Court of Common Pleas granting Defendant Victoria Harmon's ("Harmon") Motion to Suppress evidence obtained after a traffic stop. The Court ruled that the state trooper who made the stop did not have reasonable articulable suspicion to make the stop, considering the totality of the circumstances. After the ruling, the State declared that the suppressed evidence was essential to its case and that it could not proceed without it. The State asserted its intention to appeal and the appeal was certified in open court in accordance with 10 *Del. C.* § 9902(b) and (c).[1] The trial

[1]These sections read:
(b) When any order is entered before a trial in any court suppressing or excluding substantial and material evidence, the court, upon certification by the Attorney General that the evidence is essential to the prosecution of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of

court dismissed the complaint. For the reasons set forth below, the trial court's ruling is reversed.

STATEMENT OF THE FACTS

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which the evidence suppressed or excluded is essential. Upon ordering the complaint, indictment or information or any count thereof dismissed pursuant to the Attorney General's certification, the reasons of the dismissal shall be set forth in the order entered upon the record.
(c) The State shall have an absolute right of appeal to an appellate court from an order entered pursuant to subsection (b) of this section and if the appellate court upon review of the order suppressing evidence shall reverse the dismissal, the defendant may be subjected to trial.

The traffic stop in question occurred on April 20, 2001, on State Road 23 in Sussex County. Trooper William Walker ("Walker") of the Delaware State Police, in a marked patrol car, began following a car driven by Harmon. Trooper Walker testified that he saw the tires of Harmon's car touch the white line on the right side of the road twice. Soon thereafter, Harmon activated her turn signal, moved into the opposing lane of travel, traveled for approximately seventy-five feet,[2] and then made a left turn.[3] After she made the turn, Trooper Walker followed her and soon activated his emergency lights to stop her, though he had to flash his high beams several times in order to alert her to his presence. The trooper testified that Harmon was not speeding, was not driving erratically, and used her turn signals properly. Harmon was charged with driving a vehicle under the influence of alcohol under 21 *Del. C.* 4177(a) and driving on the wrong side of the roadway under 21 *Del. C.* § 4114(a). The scope of the hearing was limited to the single question of whether the stop was proper, and no evidence beyond the circumstances leading up to the stop were considered.

The State argued that the touching of the white line twice, and the movement into the opposing lane of traffic provided Trooper Walker with reasonable articulable suspicion to stop

[2]Defendant points out in her brief that, according to the Trooper's testimony that Harmon traveled in the opposite lane of travel for seventy-five feet at fifty miles per hour, Harmon would have been in the opposite lane for only 1.02 seconds.

[3]Defendant argued that this type of maneuver was purposeful and was a tradition of courtesy unique to Sussex County. The Defendant contended that the practice of many drivers in this County is to pull in to the opposing lane of traffic (assuming there is no oncoming traffic) just before making a left hand turn so that the driver behind will not have to slow down. Of course, this assertion is an argument of an attorney and is therefore not evidence. The State countered that any such move, regardless of the driver's intention, is a moving violation and thereby provides reasonable articulable suspicion.

Harmon.[4] The judge disagreed, and found that there was no articulable suspicion after considering the totality of the circumstances:

> I do note that all the State needs to show at this stage is that the officer had a reasonable articulable suspicion to stop the defendant. I do acknowledge that that is a very, very slight burden at this stage.
>
> However, we have to gauge that reasonable articulable suspicion with the totality of the circumstances. I do not believe that touching the fog line, touching the fog line twice at 1:30 in the morning in and of itself gave the officer a reasonable articulable suspicion to pull over the vehicle. I also do not believe that entering the opposite lane of traffic, putting your turn signal on seventy-five feet before the turn with no on-coming in the other direction amounts to a reasonable articulable suspicion as well.
>
> I don't believe the two facts taken together come out to reasonable articulable suspicion given the totality of the circumstances of this event, on this occasion. Therefore I do find the officer did not have a reasonable articulable suspicion to stop the defendant at this point. And I will grant the motion to suppress.

The State also asserts in its brief that reasonable articulable suspicion is the proper standard.[5]

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[4]The State also claimed that the longer than usual time to stop once the emergency lights were activated provided additional reasonable articulable suspicion. However, this evidence is not pertinent since the Trooper had already decided to stop Harmon before she failed to stop for the lights.

[5]The State directed this Court to its decision in *State v. Cannon*, Del. Super., Def. I.D. No. 0008024436, Stokes, J. (Jan. 4, 2001). However, there was no written decision in this case and the State did not supply a transcript of the hearing where the decision was issued. Simply citing to a decision of a court – even if it is this court – without providing either a record of the judgment or a cite to an available decision is inappropriate and should not be done.

DISCUSSION

A. Standard of Review

The applicable standard for review for appeals from the Court of Common Pleas to the Superior Court is *de novo* for legal determinations, and "clearly erroneous" for findings of fact. *State v. High*, Del. Super., C.A. No. 90-09-0243, Toliver, J. (Mar. 7, 1995) (Mem. Op.). If the factual findings of the court below are "sufficiently supported by the record and are the product of an orderly and logical deductive process, they must be accepted notwithstanding the fact that the Superior Court may have reached opposite conclusions." *Id*.

B. Legal Standard for the Stop

The quantum of evidence required for reasonable articulable suspicion is less than that of probable cause. *Downs v. State*, Del. Supr., 570 A.2d 1142, 1145 (1990). The former requires that an objective standard be met: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief that the action taken was appropriate?" *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (internal quotations omitted). If Harmon had not actually violated any statutes, this reasonable suspicion standard would be the appropriate one to have used. However, Harmon was charged with violating 21 *Del. C.* § 4114(a), and this violation provided the officer with probable cause to make the stop. *See*, *State v. Walker*, Del. Super., Cr. A. No. IK90-08-0001, Steele, J. (Mar. 18, 1991) (Order) (holding that changing lanes without a signaling is a violation of 21 *Del. C.* § 4155 which created probable cause for the officer to stop the vehicle.); and *State v. Huss*, Del. Super., Cr. A. No. N93-04-0294AC, 0295AC, Gebelein, J. (Oct. 8, 1993) Order at 5. (stating, "[c]learly then, if probable cause exists to arrest, this provides more than the reasonable suspicion necessary to stop the vehicle."). *See*

also, Eskridge v. Voshell, Del. Supr., No. 307, 1990, Horsey, J. (Apr. 17, 1991) (ORDER); *Austin v. Division of Motor Vehicles*, Del. Super., C.A. No. 91A-08-2, Goldstein, J. (Jan. 9, 1992) (Op. and Order); *State v. Lahman*, Del. Super., Cr. I.D. No. 9410011118, Cooch, J. (Jan. 31, 1995) (Mem. Op.); *State v. Brickfield*, Del. CCP, Case No. 9609017975, Stokes, J. (May 8, 1997); *Webb v. State*, Del. Supr., No. 332, 1997, Berger, J. (Mar. 26, 1998) (ORDER).

Thus the trial court erred as a matter of law in holding that the appropriate burden was reasonable suspicion, and in considering the totality of the circumstances existing at the time of the stop. In a case with similar facts and procedural background, the Superior Court held:

> The Court of Common Pleas . . . focused on the fact that there was no traffic, appellee was driving in a safe manner, and a turn signal was not needed for safety reasons. It was error for the Court of Common Pleas to evaluate these factors when a statute exists which has not carved out such exceptions or limits upon the requirement for a signal being displayed. Appellee did violate Title 21 of the *Delaware Code*, she did so in an officer's presence, and thus the officer had the right to stop the vehicle.

Huss at 5. If there had been no actual violation by Harmon, then the judge would have been correct in considering the totality of the circumstances and the officer's testimony (defendant argued that the officer's lack of experience and confusion as to distances traveled by Harmon supported the trial court's decision). Or if the trial judge determined that the change of lanes was not a violation of Title 21, then there would be no probable cause and the judge would have to determine if there were reasonable articulable suspicion.

CONCLUSION

Because the trial court applied the incorrect legal standard, and because the violation of Title 21 gave the trooper probable cause to stop Harmon, the decision of the trial judge ruling the

stop was invalid and suppressing evidence from the stop is reversed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary
Court of Common Pleas