

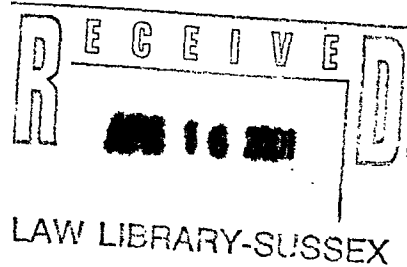
SUPERIOR COURT
OF THE
STATE OF DELAWARE

BRADLEY 01-06

E. SCOTT BRADLEY
JUDGE

P.O. Box 746
COURTHOUSE
GEORGETOWN, DE 19947

April 11, 2001



David Hume, IV, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

Edward C. Gill, Esquire
P.O. Box 824
Georgetown, DE 19947

RE: State of Delaware v. Scott A. Arnold, Def. ID# 0007004667

Dear Counsel:

Pending before the Court is an appeal which the State of Delaware (the "State") has filed in connection with a decision of the Court of Common Pleas ("CCP") suppressing evidence against Scott A. Arnold ("Arnold"). The purpose of this letter is to instruct the State to obtain, and file, a copy of the transcript of the proceedings in the matter which took place on September 27, 2000, before the court below. It is necessary for the Court to review that transcript because it is unclear from the record whether the requisites of 10 Del. C. § 9902(b) were met.¹ If not,

¹In 10 Del. C. § 9902(b), it is provided:

When any order is entered before 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

then the appeal is an interlocutory appeal and must be dismissed. State v. Cooley, Del. Supr., 430 A.2d 789 (1981).

On August 16, 2000, the State filed an information against Arnold in CCP charging him with possession of drug paraphernalia and possession of a nonnarcotic schedule I controlled substance. On September 20, 2000, a motion to suppress the evidence was heard by a CCP Judge. The court below reserved judgment. In a written decision issued October 2, 2000, the Court explained as follows:

The Court announced its decision in this matter on the record on September 27, 2000, the scheduled date of trial and briefly summarized its rationale. The State requested certification of the record for appeal. The Court issued this written decision on October 2, 2000 to memorialize the decision announced in open Court.

State v. Arnold, Del. CCP, Case No. 0007004667, Clark, J. (September 27, 2000) at 1, fn. 1.² The docket sheet reflects the following occurred on September 27, 2000:

Case dismissed by court - DAG/Tunnel put on the record that suppression ruling would be appealed to Superior Court.

The above-quoted statement in the decision and the docket entry do not clarify that the State certified that the evidence was essential to the prosecution of the case or that the court below dismissed the case based upon that certification as 10 Del. C. §

of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of 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.

²This decision was not contained in the record from CCP. Instead, it was provided to the Court by appellee Arnold.

9902(b) requires.

Because there is no written order setting forth the requisites of 10 Del. C. § 9902(b) and because the current record does not clarify that those requisites were met, the Court must review a transcript of the September 27, 2000 proceedings to determine if the requisites were met during that proceeding. If the appropriate steps were taken, then this Court will consider the appeal. If they were not, then it will dismiss the appeal. *State v. Cooley*, supra; *State v. Webb*, Del. Super., Cr. A. No. 93-07-0000A, Lee, J. (December 20, 1994).

The State should submit the requested transcript on or before **May 11, 2001**.

IT IS SO ORDERED.

Very truly yours,



E. Scott Bradley

cc: Prothonotary's Office
Court of Common Pleas