

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

JAMARR S. CANNON,

Defendant.

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ID No. 1610014430

In and For Kent County

*Submitted: March 29, 2017*

*Decided: March 30, 2017*

*Upon Consideration of Defendant's  
Motion to Suppress*  
DENIED

**ORDER**

Dennis Kelleher, Esquire, Deputy Attorney General, Department of Justice, Dover,  
Delaware for the State of Delaware.

Anthony J. W. Capone, Office of the Public Defender, Dover, Delaware for  
Defendant.

Young, J.

## **INTRODUCTION**

Jamarr S. Cannon (“Defendant”) was driving a motor vehicle in Dover, Kent County, Delaware when the police stopped his vehicle for a suspected window tint violation. Defendant moves to suppress evidence the police discovered after a search of the vehicle. For the reasons set forth below, Defendant’s Motion to Suppress is **DENIED**.

## **FACTS**

On October 22, 2016, at around 6:30 p.m., Dover Police Officer Cunningham was on patrol when he observed a vehicle with heavily tinted windows pass perpendicular to his direction of travel. He was unable to see inside the vehicle or determine how many occupants were in the vehicle due to the dark tint. Before stopping the vehicle for a suspected window tint violation, he checked DELJIS to see if the vehicle had a medical tint waiver. It did not. He, therefore, conducted a traffic stop. Upon Defendant’s lowering the window of his vehicle, Officer Cunningham noticed packaging. Given his awareness from experience that the packaging frequently was used to transfer illegal substances, and given the presence of the stop in a high crime, high drug area, Officer Cunningham determined to pursue further investigation. Accordingly, he told Defendant to exit the vehicle. Rather than following the police direction, Defendant raced forward in his vehicle, violating multiple legal requirements. As a result of Defendant’s actions, he has been charged with a variety of crimes, misdemeanors and violations. At the suppression hearing, Officer Cunningham conceded that his understanding of 21 *Del. C.* § 4313 at the time of the stop was incomplete.

### **PARTIES' CONTENTIONS**

Defendant argues that because Officer Cunningham mistakenly thought that any window tint, without a medical waiver, violated 21 *Del. C.* § 4313, he did not have a reasonable basis to conclude that Defendant violated the traffic code. Defendant asserts that the evidence located in the vehicle must be suppressed because the illegality of the stop taints any consent to search the vehicle.

The State argues that although Officer Cunningham's "subjective impression of 21 *Del. C.* § 4313" was inaccurate at the time of the stop, there were "objective facts available and known to" the officer that established a reasonable suspicion that Defendant's vehicle violated 21 *Del. C.* § 4313.

### **STANDARD OF REVIEW**

A police officer may detain an individual if he or she has reasonable articulable suspicion of criminal activity.<sup>1</sup> Reasonable articulable suspicion exists when a police officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion."<sup>2</sup> Reasonable articulable suspicion "must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's

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<sup>1</sup> *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). The holding in *Terry* is codified in Delaware law at 11 *Del. C.* § 1902(a). Pursuant to § 1902(a) a police officer "may stop any person abroad, or in a public place, who the officer has reasonable ground 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."

<sup>2</sup> *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (quoting *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989)).

subjective interpretation of those facts.”<sup>3</sup> Reasonable articulable suspicion “is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence . . . .”<sup>4</sup> Pursuant to 21 *Del. C.* § 2144(a), a police officer may “upon reasonable cause,” stop a vehicle to investigate a possible equipment defect.

### **DISCUSSION**

Because the circumstances and appropriate analysis of this case are essentially identical to a very recent case decided by President Judge Jurden in *State v. Moore*,<sup>5</sup> this court adopts, virtually verbatim, that analysis, as follows:

#### **A. Vehicle Window Tint**

The window tint law in Delaware is not straightforward and requires some hopscotch. Chapter 21, Section 4313(a) of the Delaware Code provides:

No person shall operate any motor vehicle on any public highway, road or street with the front windshield, the side windows to the immediate right and left of the driver and/or side wings forward of and to the left and right of the driver that do not meet the requirements of Federal Motor Vehicle Safety Standard 205 in effect at the time of its manufacture.

Federal Motor Vehicle Safety Standard 205 is set forth in 49 C.F.R. § 571.205. As stated in § 571.205, the purpose of Federal Motor Vehicle Safety Standard 205 is “to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree

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<sup>3</sup> *Id.*

<sup>4</sup> *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)).

<sup>5</sup> Superior Court, ID No. 1608006943 (March 16, 2017).

of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.” Section 571.205 requires glazing materials for use in motor vehicles to “conform to ANSI/SAE Z26.1–1996 . . . unless this standard provides otherwise.”<sup>1</sup> As noted by the Court in *State v. Wilson*, “[t]he federal regulation on which the state regulation is based is virtually incomprehensible,” and “it is almost impossible to identify the point at which after-market tinting becomes excessive.”<sup>2</sup>

Recognizing the unwieldiness of § 4313’s incorporation of Federal Motor Vehicle Safety Standard 205, the Delaware Department of Transportation (“DelDOT”) promulgated 2 *Del. Admin. C.* § 2277.<sup>3</sup> Section 2277 explains that the regulation is necessary to provide DelDOT “a more definitive method in which to determine which products or materials are acceptable at the time of the vehicle safety inspection” and “to assist police officers in enforcing the law.”<sup>4</sup> Section 2277 assists police officers in enforcing the law by clarifying that window tint “must provide [] light transmission of not less than 70 percent” (“the 70 percent light rule”).<sup>5</sup> Section 4313 provides an exception for those in possession of “a statement signed by a licensed practitioner of medicine and surgery or osteopathic medicine or optometry

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<sup>1</sup> 49 C.F.R. § 571.205 S5.1. Section 571.205 incorporates ANSI/SAE Z26.1–1996 by reference in 49 C.F.R. § 571.5. Section 571.5 defines ANSI/SAE Z26.1–1996 as the “American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways–Safety Standard” published by the American National Standards Institute.

<sup>2</sup> 2013 WL 2423093, at \*2 (Del. Super. Mar. 12, 2013).

<sup>3</sup> DelDOT adopted § 2277 pursuant to its authority under 21 *Del. C.* § 302.

<sup>4</sup> 2 *Del. Admin. C.* § 2277-2.0.

<sup>5</sup> *Id.* § 2277-3.1.2.

verifying that tinted windows are medically necessary for the owner or usual operator.”<sup>6</sup>

## **B. Reasonable Articulable Suspicion**

Defendant contends that because Officer Cunningham was mistaken about the degree of tint prohibited by Delaware law, his suspicion was not (and could not) be objectively reasonable. In support of this argument, Defendant relies on *State v. Coursey*.<sup>7</sup> In *Coursey*, a police officer observed a vehicle traveling parallel to his patrol car with dark tinted windows.<sup>8</sup> The vehicle made an abrupt turn into a parking lot, whereupon the officer followed the vehicle into the parking lot and activated his lights.<sup>9</sup> Coursey submitted to the stop by parking in a handicapped parking spot.<sup>10</sup> As a result of the stop, Coursey was charged with multiple offenses, including a window tint violation.<sup>11</sup> Coursey moved to suppress evidence seized as a result of the traffic stop, and at the suppression hearing, the officer testified the basis for the stop was his observation that the tinted windows concealed all the occupants in the vehicle.<sup>12</sup> When the Court asked the State to identify the standards that apply to the enforcement of § 4313(a), the Court found the State’s response incomplete and inaccurate, noting it raised “a question of candor.”<sup>13</sup> The Court was similarly unimpressed by the State’s assertion that parking in a handicapped parking space

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<sup>6</sup> 21 *Del. C.* § 4313(d).

<sup>7</sup> 906 A.2d 845 (Del. Super. 2006).

<sup>8</sup> *Id.* at 846.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 847 n.3.

constituted an additional basis for the stop because Coursey pulled into the handicapped parking spot in order to submit to a police vehicle with activated lights.<sup>14</sup> The Court specifically found as fact that Coursey pulled into the handicapped parking spot only *after* the officer activated his lights, “thereby eliminating the parking location as a basis for the stop.”<sup>15</sup> Further, the officer who stopped Coursey did not fare well under a withering cross examination by defense counsel, thus eroding his credibility with the Court.<sup>16</sup> The Court suppressed the evidence, concluding, “[f]ailure to understand the law by a person charged with enforcing it is not objectively reasonable. . . . I find that the officer did not have reasonable articulable suspicion based on fact and law.”<sup>17</sup>

Delaware courts have twice discussed the holding in *Coursey*, first in *State v. Trower*<sup>18</sup> and again in *Stevens v. State*.<sup>19</sup> In *Trower*, a police officer on patrol noticed a vehicle with dark tinted windows that prevented the officer from seeing the occupants inside.<sup>20</sup> He stopped the vehicle for a suspected window tint violation.<sup>21</sup> The defendant moved to suppress evidence seized as a result of the stop, arguing that reasonable articulable suspicion of a window tint violation must be based on an observation from inside the vehicle looking out.<sup>22</sup> The defendant argued that,

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<sup>14</sup> *Id.* at 847.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 848.

<sup>17</sup> *Id.*

<sup>18</sup> 931 A.2d 456 (Del. Super. 2007). The Court is unable to find any instance in which the holding of *Coursey* has been followed by this Court.

<sup>19</sup> 970 A.2d 257, 2009 WL 756513 (Del. 2009) (TABLE).

<sup>20</sup> 931 A.2d at 457.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 458.

depending on lighting conditions inside or outside the vehicle, there could be a very significant difference in one's ability to see into the vehicle versus one's ability to see out.<sup>23</sup> Therefore, according to the defendant in *Trower*, a window tint violation is unenforceable except as a secondary offense (whereby the officer could examine the windows from inside after a traffic stop based on a different offense) because inability to see through the windows from the outside does not provide a reasonable basis to believe the window tint statute is being violated.<sup>24</sup> The Court in *Trower* rejected all of the defendant's arguments, stating:

It is true that the defendant could see out of the windows, because he was able to operate the vehicle on the roadway without running off the road. The defendant's contentions, however, are based upon an undue emphasis on the purpose of the federal standard, as opposed to the standard itself. The fact that the driver can see out of tinted windows does not establish that they allow 70% or more of light transmission, or rule out a reasonable suspicion that they do not.

The contention that the officer must look at the windows from inside the vehicle before he can be reasonably suspicious that they violate the standard is unpersuasive. "Reasonable suspicion" is not a demanding standard. It is less than probable cause and considerably less than preponderance of the evidence. The State's contention, that a reasonable suspicion of a violation arises where an officer cannot see the occupants in the vehicle, is more persuasive.<sup>25</sup>

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<sup>23</sup> *Id.*

<sup>24</sup> In making these arguments, the defendant in *Trower* relied upon Federal Motor Vehicle Safety Standard 205, specifically the "Purpose" section, which provides that, *inter alia*, the Standard is intended to ensure a necessary degree of transparency in windows *for driver visibility*. *Id.* at 458–59; *see* 49 C.F.R. § 571.205 S2.

<sup>25</sup> *Trower*, 931 A.2d at 459.



The Court in *Trower* held that, “window tint which is so dark that one cannot see the occupants inside the vehicle creates a reasonable suspicion that it violates the standard.”<sup>26</sup>

In *Stevens v. State*,<sup>27</sup> the police stopped a vehicle for playing loud music.<sup>28</sup> At the suppression hearing, the police officer who stopped the vehicle could not explain precisely what was prohibited by the applicable ordinance.<sup>29</sup> The defendant relied upon *Coursey* to conclude—due to a “mistake of law”—the police stopped his vehicle without reasonable articulable suspicion.<sup>30</sup> The Delaware Supreme Court rejected the defendant’s argument, finding *Stevens* distinguishable from *Coursey* because the police officer “could objectively apply the Ordinance.”<sup>31</sup> However, the Delaware Supreme Court pointed out that the Superior Court, in *Trower*, questioned *Coursey*.<sup>32</sup>

In addition to *Coursey*, Defendant relies on *McDonald v. State* in support of his argument that Officer Cunningham’s misunderstanding of the requirements of § 4313 renders the traffic stop illegal.<sup>33</sup> In *McDonald*, police observed a vehicle lawfully parked in a private parking lot.<sup>34</sup> The police ran the vehicle’s registration number, but

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<sup>26</sup> *Id.*; *State v. Friend*, 2008 WL 9004456, at \*3 (Del. Super. Nov. 26, 2008) (“Window tint that prohibits an officer from seeing a vehicle’s occupants is enough to suspect the tint exceeds the limits.” (citing *Trower*, 931 A.2d at 459)).

<sup>27</sup> 970 A2d 257, 2009 WL 756513 (Del. 2009) (TABLE).

<sup>28</sup> *Id.* at \*1.

<sup>29</sup> *Id.* at \*2.

<sup>30</sup> *Id.* (“Moreover, another Superior Court judge has questioned *Coursey* in a more recent decision, *State v. Trower*.”).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 947 A.2d 1073 (Del. 2008).

<sup>34</sup> *Id.* at 1075.

the officer inadvertently transposed some of the digits.<sup>35</sup> Due to the officer's mistake, the system reported the vehicle as unregistered.<sup>36</sup> The police continued to observe the vehicle, and noticed when it exited the parking lot by turning onto the public roadway that the driver did not use a turn signal.<sup>37</sup> Believing the failure to use a turn signal constituted a traffic violation, the police stopped the vehicle.<sup>38</sup> The Delaware Supreme Court found that the alleged turn signal violation was the sole reason for the stop.<sup>39</sup> Because Delaware law does not require the use of a turn signal when entering a public roadway from private property, the Delaware Supreme Court held that the stop based upon the officer's mistaken understanding of 21 *Del. C.* § 4155 violated the defendant's Fourth Amendment rights.<sup>40</sup> Defendant concludes suppression is required in this case because Officer Cunningham was mistaken regarding the degree of tint permissible under Delaware law.

*McDonald* is distinguishable. In *McDonald*, the police did not have reasonable articulable suspicion that a turn signal violation occurred, because the facts known to the police unambiguously did not constitute a violation of § 4155. Stated differently, because the alleged turn signal violation was the sole reason for the stop, the police would not have stopped the vehicle had they known the correct standard.

Here, Officer Cunningham credibly testified that he stopped Defendant's vehicle because the window tint was so dark he could not see the occupants in the

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 1080. In dissent, Justice Berger and Vice Chancellor Noble disagreed that the turn signal violation was the *only* basis for the stop. *Id.* at 1080–86.

<sup>40</sup> *Id.* at 1079–80 (discussing 21 *Del. C.* § 4155).

*State v. Cannon*  
ID No. 1610014430  
March 30, 2017

vehicle, and that he verified the vehicle did not have a medical waiver before stopping the vehicle. Considering the totality of the circumstances, as viewed through the eyes of a reasonable, trained police officer, and combining objective facts with Officer Cunningham's subjective interpretation of those facts, the Court finds Officer Cunningham had reasonable articulable suspicion of a window tint violation. Under *Trower*, his inability to see the occupants of the vehicle due to the dark tint, coupled with the absence of a medical waiver, are sufficient to justify a stop to investigate a possible window tint violation.

**CONCLUSION**

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED**.  
**SO ORDERED** this 30<sup>th</sup> day of March, 2017.

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/s/ Robert B. Young  
J.

RBV/dsc  
oc: Prothonotary  
cc: Counsel  
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