

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

August 6, 2014

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RE: *State v. Daniel Saunders*  
ID # 1401012426

Dear Counsel:

According to the paperwork, including the motion to suppress, the State's response, and the affidavit of probable cause upon which the State's response heavily relies, Defendant was in the driver's seat of a car parked on a Wilmington street. The car's motor was running and its registration had expired. The police were first drawn to the car because Defendant and his passenger acted furtively when they saw the police. Then, the police saw the registration violation. Under the circumstances, the police were allowed to approach the car, as they did, and demand that Defendant produce a driver's license, the car's registration, and proof of insurance. Thus, the initial stop appears lawful.

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It is undisputed that when the police demanded Defendant's license, he asked to step outside to produce his license but he had none. He also had no valid registration and proof of insurance. It also is undisputed that while Defendant was getting out of the car and looking for his license, the police asked for permission to search the car. From the parties' submissions, it appears that the police did not extend the traffic stop when asking for consent, or if they did extend it, the delay was only long enough to ask the question. There is no claim that the police did anything to intimidate Defendant before asking for consent. The police were uniformed in a marked car, but it is not alleged that the police used emergency equipment, boxed Defendant in, handcuffed him or otherwise ordered him around. The papers say this started as a run-of-the-mill, minor traffic stop, and that is all it was until the police asked for consent. Thus, it appears the police searched the car with Defendant's non-coerced consent. And, the rest is history. The police uncovered drugs and they arrested Defendant.

The court also recognizes the State's alternative justification for the search – inevitable discovery. The State contends that once the police knew the car was unregistered and uninsured it would have been towed, but not before an inventory search. Defendant relies on *Reed v. State*<sup>1</sup> for the proposition that the police allow unlicensed drivers to leave their cars at roadside, so towing is not inevitable. As the State aptly observes, this is not the *Reed* situation. Here, the car, itself, was problematic. It could not be driven legally and it was parked in what the paperwork describes as a high crime area.

From the record presented, a hearing is unjustified concerning the consent search.<sup>2</sup> The police have sworn in an affidavit to their version of events. Defendant has not presented anything controverting the police affidavit. Defendant's

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<sup>1</sup> *Reed v. State*, 89 A.3d 477 (Del. 2014).

<sup>2</sup> *State v. Wilson*, 2008 WL 2192815 (Del. Super. 2008)(quoting 29 Am.Jur.2d *Evidence* § 648 (2008))("No suppression hearing is warranted where there is no dispute as to material facts.").

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argument is a legal one. The State's inevitable discovery argument is less well-established, as there is no sworn statement that the car would have been towed, even if that proposition seems logical. Accordingly, based on consent to search, Defendant's motion to suppress is **DENIED** without prejudice to his timely filing a first-person affidavit creating a factual dispute. Keep in mind that trial is set for August 14, 2014.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS: mes  
oc: Prothonotary (Criminal)