

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, DE 19801-3733
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March 12, 2013

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RE: *State v. Julius Wilson*
ID # 1209001715

Upon Defendant's Motion to Suppress Evidence – DENIED.

Dear Counsel:

This is about an inventory search following a motor vehicle stop for excessive window tint. At the evidentiary hearing on March 4, 2013, we learned that two Delaware State Police officers, on special assignment in the city of Wilmington on September 9, 2012, stopped the truck Defendant was driving on North Monroe Street at 5:40 p.m. According to the corporal who testified, his attention was drawn to the truck because of its heavily tinted rear window. The police could not see the truck's occupant(s) through the darkened window. When the truck made a left turn, the trooper was able to see that the driver's side window was as heavily tinted as the rear window. Accordingly, the police uneventfully made the stop.

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Defendant testified that the truck's rear window was heavily tinted and he tacitly agreed that so were the driver's and passenger's windows. Even so, Defendant was adamant that the windows were not raised as the trooper had testified, and the police could not have seen the side windows from their police cruiser. Defendant admitted, however, that the windows were not entirely down. So Defendant conceded it was possible for someone, up close, to see that the windows were tinted.

Immediately upon stopping the truck, the police learned Defendant was driving on a suspended license. Thus, he was ordered out of the truck. He was allowed to sit on the curb, unhandcuffed, but under the eye of an assisting Wilmington officer.

The police told Defendant that because he had no valid license, they could not let him drive the truck. Consequently, they would perform an inventory search and the truck would be towed by a commercial tow operator. Plaintiff had no passenger and there was no one else at the scene who could help. In any event, the police would not leave Defendant alone with the truck after they ticketed him, and they would not guard the truck until a licensed driver arrived at Defendant's behest.

Defendant introduced the Delaware State Police procedure manual concerning inventory searches. The manual gives a trooper authority to turn a vehicle over to a licensed driver if one is "immediately" available. Accordingly, the hearing testimony focused on whether Defendant had someone immediately available to remove the truck.

For purposes of the hearing, the State stipulated that Defendant's mother, the truck owner, was seven or eight blocks away and was available to retrieve the truck at the time of the stop. It is clear, however, Defendant's mother was not

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“immediately” available. She would have had to have been called, and she would have had to travel seven or eight blocks to the scene while the police waited. While the police might have decided all that was easier than calling a tow and doing an inventory, there was enough rigmarole associated with calling Defendant’s mother that the tow could have been seen as a better alternative. In any event, she was not immediately available. Hence, the inventory search.

The trooper conducting the inventory began with the truck’s cabin. When he looked behind the occupants’ seats, he saw two built-in stereo speakers and a loose amplifier on a shelf near the floor. The trooper saw that one speaker was affixed with screws, but the other was not. Accordingly, the trooper lifted the loose speaker and immediately observed a speaker wire hanging down. In order to see whether the speaker was completely loose or attached by the speaker wire, the trooper looked into the opening created by the speaker’s removal. There, the trooper saw the butt of a handgun with a protruding, extended magazine. The trooper called to his partner, “Gun!” The partner responded, “Are you joking?” or words to that effect. Only after observing the gun butt, did the first trooper produce a flashlight and examine the opening more closely. A thorough search revealed another weapon and drugs.

I.

Basically, Defendant challenges the search on three axes: First, Defendant claims that the traffic stop was invalid because all the police could have seen was a heavily tinted rear window, and there is no law against that. Second, Defendant contends that the police were not justified in conducting an inventory search when a licensed driver was nearby and could easily have been called to remove the truck. Finally, Defendant contends that even if the police were justified in stopping the truck and taking inventory, the troopers exceeded the scope of an inventory search by lifting the loose speaker and looking into the resulting opening.

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A.

The court finds that the initial stop, based on the truck's excessively tinted windows, was valid. The court continues to appreciate that it is almost impossible to identify the point at which after-market tinting becomes excessive. The federal regulation on which the state regulation is based is virtually incomprehensible.¹ Nevertheless, the court remains satisfied that the police have probable cause to make a stop based on excessive window tint if the vehicle's windows are so dark that the police cannot tell how many people are in the cabin or their gender.²

The question whom to believe as to whether the truck's windows were up or down is close. Both the trooper and Defendant seemed sincere. Based on Defendant's admission that the windows were not entirely rolled down and at least some window tinting was visible, albeit not the way the police explained, it is more likely that the police saw a tinted side window as the truck turned left, just before it was stopped.

Alternatively, the court is satisfied that having observed an excessively

¹ See 21 *Del. C.* § 4313(a) ("No person shall operate any motor vehicle on any public highway, road or street with the front windshield [or] side windows . . . that do not meet the requirements of Federal Motor Vehicle Safety Standard 205 . . ."); *State v. Coursey*, 906 A.2d 845, 847 (Del. Super. 2006) ("The State's effort to inform the Court as to the standard for the enforcement of 21 *Del. C.* § 4313 does not quote FMVSS 205 because it cannot. FMVSS 205 does not articulate a specific standard for enforcement.") (emphasis in original).

² *State v. Friend*, 2008 WL 9004456, *3 (Del. Super. Nov. 26, 2008) (Silverman, J.) (citing *State v. Trower*, 931 A.2d 456, 459 (Del. Super. 2007) (finding that "window tint which is so dark that one cannot see the occupants inside the vehicle creates reasonable suspicion that it violates" the statute.)).

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darkened, albeit legal, rear window, the police were entitled to stop the truck in the belief that if the truck had a tinted rear window, its side windows were probably likewise tinted. The court rejects Defendant's functional argument that if an excessively tinted window is rolled down, as Defendant swore they both were, the vehicle's operator cannot be cited or warned about the illegal equipment. The motor vehicle code prohibits illegal equipment generally, not just its illegal use.³

In closing argument at the hearing, Defendant implied that the stop was a pretext. When asked whether Defendant was actually making that claim, Defendant did not allow that he was. So, that claim is not before the court. In any event, the court's attention is not focused on whether the stop was pretextual.⁴ The focus is on whether the stop was justified by an actual violation, as was the case here, regardless of ulterior motive.⁵

B.

The court is satisfied that even if the police might have been willing to call Defendant's mother and wait for her arrival, neither the United State Constitution nor the Delaware State Police procedure manual required that. The procedure manual clearly speaks to the situation where a licensed driver, such as a passenger, is at hand. By definition, if a back-up driver has to be summoned by telephone and the police

³ 21 *Del. C.* § 2144(a) ("At any time . . . any police officer may, upon reasonable cause, require the owner or operator of a vehicle to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer shall give a written notice to the driver . . .").

⁴ See *Stafford v. State*, Cr. ID No. 0909006979, No. 289, 181, at 5 (Del. Dec. 4, 2012) (A traffic stop must initially be "justified by a reasonable suspicion of criminal activity.").

⁵ See *Whren v. U.S.*, 517 U.S. 806, 812-814 (1996).

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have to wait for her arrival, the back-up is not “immediately” available.

Under the circumstances, it was reasonable for the troopers to call a tow, and it was reasonable for the police to meanwhile undertake an inventory search. The fact that the police might have handled the problem differently does not make their following procedures unreasonable. The police are not required, as a matter of law, to decide correctly what is the most reasonable approach to a problem in the field. All that is required is the police take a reasonable approach, under the circumstances. Again, taking it all into account, the police acted reasonably when they decided to tow the truck.

C.

As to lifting the loose speaker and looking into the hole, again the trooper acted reasonably. The court accepts the trooper’s testimony that his inventory would reflect whether the truck’s stereo speakers were attached or loose and if they were loose, their condition. The trooper was justifiably concerned that a loose speaker might disappear or be damaged, and a claim might be made against the Delaware State Police. There is little reason to believe the trooper was using the inventory as a pretext for an evidentiary search. To the contrary, the trooper testified credibly that the stop was casual until he spotted the weapon. That is supported by the officers’ reaction after the gun’s discovery and the undisputed testimony that the officer did not grab the flashlight from his belt until after he spotted the weapon.

It was reasonable, therefore, for the trooper to lift the speaker, look at the wire hanging down from it, and check on whether the speaker was plugged-in. Again, the court appreciates that the trooper could have left the speaker untouched, but he was not required to take a chance. Of course, once the trooper saw the gun butt and the extended magazine, a full-blown evidentiary search was appropriate.

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II.

In summary, viewing the police conduct from the beginning, step-by-step, the court is satisfied that the police acted reasonably. If the truck windows had not been excessively tinted there probably would not have been a stop, or if Defendant had been driving with a valid license there probably would not have been a search. But, the truck did have improper equipment and Defendant did not have a proper license, and no one was available on the scene to protect or move the truck. Thus, a reasonably thorough inventory search was in order.

III.

For the foregoing reasons, Defendant's Motion to Suppress the fruits of the inventory search of the truck he was operating on September 9, 2012, is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS: mes
oc: Prothonotary (Criminal)