

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 10, 2015

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RE: *State v. Tyrone Brooks*  
*ID # 1504007548*

**Upon Defendant's Motion to Suppress Evidence –  
DENIED without prejudice.**

Dear Counsel:

Defendant challenges the seizure of drugs stemming from his being stopped for walking on a highway at night without a light.<sup>1</sup> As a result of the stop, the police immediately learned Defendant was wanted. Accordingly, he was arrested, and when searched incident to that arrest, contraband turned-up. Now, Defendant

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<sup>1</sup> 21 *Del. C.* § 4148(a): “No pedestrian shall walk upon any roadway or shoulders of any roadway of this State that is used for motor or vehicle traffic, beyond the corporate limits of any city or town, without carrying a lighted lantern, lighted flashlight or other similar light or reflector type device during the period of time from sunset to sunrise . . . .”

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claims the original detention was merely pretextual. Therefore, he is entitled to suppression of the contraband.

Defendant relies exclusively on *State v. Heath*.<sup>2</sup> This Superior Court decision has been followed once—by its author—and has been questioned by this court five times and the Supreme Court once.<sup>3</sup> To be clear, this decision also questions *Heath*. But even if *Heath* were correct, this case requires extending *Heath*'s holding. In any event, this court declines to follow *Heath*.

The court will assume for present purposes that the police actually saw Defendant walking by the road after dark, without a light, in violation of the law. That appears to be uncontested. The court will further assume that the violation is relatively trivial.<sup>4</sup> Finally, the court will also assume that the police used the violation as a pretext to stop Defendant and ask him to identify himself, as Defendant alleges.

Nevertheless, taking the observed violation into account and the minimally invasive intrusion on Defendant's liberty, the court sees no reason to suppress the evidence obtained when the police, after stopping Defendant, learned almost immediately that he was wanted. After the police stopped Defendant, they were entitled to cite him and, in the process, ask his name. Moreover, having seen Defendant break one law, albeit a minor one, the police were at least entitled to hold Defendant long enough to quickly determine if he was wanted for breaking any other law.

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<sup>2</sup> 929 A.2d 390 (Del. Super. 2006).

<sup>3</sup> See *Turner v. State*, Del., 25 A.3d 774, 777 (2011).

<sup>4</sup> 21 Del. C. § 4148(b): "Whoever violates subsection (a) of this section shall for the first offense be fined not less than \$2.30 nor more than \$28.25. For each subsequent like offense within 1 year, the person shall be fined not less than \$11.50 nor more than \$28.25."

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If either side sees a reason to revisit this decision, a timely submission may be filed. In any event, the court will not conduct an evidentiary hearing unless the specific reason for one is made clear.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS: mes  
oc: Prothonotary (Criminal)