

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	:	
	:	I.D. No. 0512007508
v.	:	
	:	
LENNY MCDANNELL,	:	
	:	
Defendant.	:	

Date submitted: May 1, 2006

Date decided: May 16, 2006

**MEMORANDUM OPINION**

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

John Barber, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

John S. Edinger, Jr., Esquire, Wilmington, Delaware, Attorney for the  
Defendant.

**SCOTT, J.**

## I. INTRODUCTION

Defendant Lenny McDannell (“Defendant”) moves to suppress evidence seized from his automobile, pursuant to an inventory search, on December 9, 2005. He argues that the evidence should be suppressed because he was the victim of entrapment and the police officers created a pretext to justify the stop of his vehicle. A suppression hearing was held before this Court on May 1, 2006.

Following the completion of the testimony and after reviewing Defendant’s Motion and Plaintiff’s response, the Court rejects the Defendant’s claim of entrapment since the evidence and testimony shows that the Defendant was predisposed to commit the crimes charged. In addition, Defendant’s claim that the stop was pretextual must fail because the Defendant was driving with an expired temporary tag and illegally tinted windows. Therefore, the officers had probable cause to execute a constitutionally permissible vehicle stop. Accordingly, the stop was not illegal and Defendant’s Motion to Suppress must be **DENIED**.

## II. FACTS

At approximately 8:00 p.m. on December 9, 2005, Delaware State Police Officer Garcia and Corporal Barnett were patrolling Route 9, near New Castle, Delaware, when they observed the Defendant in a white 1989

Acura parked against the fence-line in the rear parking lot of the Rodeway Motel. The area was considered an extremely high crime area noted for drug sales and prostitution. As the officers entered the lot the Defendant drove to a parking spot in the front of the motel and exited the vehicle. He spoke with a woman standing on a balcony. The officers approached the Defendant, checked for active warrants, and asked him why he was there. The Defendant stated that he was dropping off his nephew and picking up his sister. The officers advised him to leave the area unless he was there for official business. The officers, however, did not order him to drive away.

The police followed the Defendant out of the parking lot and stopped him shortly thereafter on Memorial Drive, New Castle, Delaware. They observed that the Defendant had left the lot without picking up his sister and that the automobile's temporary tag had expired. The officers ran the vehicle's license plate number on their onboard computer and learned that the Defendant's temporary registration plate had, in fact, expired. The officers then effectuated a traffic stop. Corporal Barnett approached the driver's side window of the vehicle and told the defendant that he had stopped him for an expired temporary registration plate and illegally tinted glass. He asked the Defendant to produce his registration and insurance card. The Defendant was unable to produce his registration, admitted that he

did not have insurance, and provided conflicting stories as to the ownership of the vehicle. Barnett asked the Defendant if there was anything illegal in the car and the Defendant responded that there was not. The Defendant, however, refused to allow the officers to search the vehicle. The Defendant was advised that his vehicle was going to be towed for failing to have proof of insurance. Consistent with standard police procedures regarding the towing of a vehicle, the officers conducted an inventory search of Defendant's car and discovered eighty-six bags of heroin and a loaded .38 caliber handgun in the center console.

### **III. DISCUSSION**

In a Motion to Suppress, the State bears the burden of proving that the search and seizure comported with federal and state constitutional rights and state statutory law.<sup>1</sup> The burden of proof on a Motion to Suppress is by a preponderance of the evidence standard.<sup>2</sup>

#### **A. Entrapment**

First, the defendant asserts that the evidence found in his car should be excluded on the basis that he was entrapped by the police officers.<sup>3</sup> The defense of entrapment becomes available only if there is evidence that the

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<sup>1</sup> *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

<sup>2</sup> *State v. Kang*, 2001 WL 1729126, at \*3 (Del. Super.).

<sup>3</sup> 11 *Del. C.* §432(a) provides:

law-enforcement official lured the defendant, otherwise innocent, into the commission of a crime.<sup>4</sup> It does not apply to situations in which it is clear that an agent of the government merely afforded an opportunity for the defendant to commit a crime.<sup>5</sup> In *State v. Reynolds*,<sup>6</sup> the court found that police officers, by instructing the bartender to return the defendant's car keys to him shortly before his arrest, did not entrap the defendant into committing the offenses for which he was convicted, driving under the influence, driving with suspended license, and operating a motor vehicle without liability insurance.<sup>7</sup> The court noted that there was a distinction between inducing a person to commit an unlawful act, and setting a trap to catch him or her in the execution of a criminal design of his or her own conception.<sup>8</sup>

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In any prosecution for an offense, it is an affirmative defense that the accused engaged in the proscribed conduct because the accused was induced by a law-enforcement official or the law-enforcement official's agent who is acting in the knowing cooperation with such an official to engage in the proscribed conduct constituting such conduct which is a crime when such person is not otherwise disposed to do so. The defense of entrapment as defined by this Criminal Code concedes the commission of the act charged but claims that it should not be punished because of the wrongdoing of the officer originates the idea of the crime and then induces the other person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so.

<sup>4</sup> *Sorrells v. United States*, 287 U.S. 435 (1932).

<sup>5</sup> *Granville v. State*, 287 A.2d 652 (Del. 1972).

<sup>6</sup> 104 P.3d 1056 (Mont. 2004).

<sup>7</sup> *Id.* at 1058.

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

The evidence and testimony clearly shows that the defendant was predisposed to commit the offense charged since he was already driving the vehicle when initially observed by the police officers. The officers also testified that they did not order the defendant to drive away. The Defendant has made no showing that, the officers originated the idea of the crime and then induced him to commit it. Like *Reynolds*, the defendant here was merely given the opportunity to violate the law and that is not entrapment.<sup>9</sup>

### **B. Pretext**

Second, the defendant alleges that the evidence found in his car during the inventory search should be excluded on the basis that the officers created the pretext to stop the vehicle. Generally, the stop of an automobile, although a “seizure” under the Fourth Amendment, is reasonable if it is supported by probable cause to believe that a traffic violation has occurred.<sup>10</sup> This standard remains the same regardless of the subjective intent of the officer at the time of the stop.<sup>11</sup> In *State v. Banther*,<sup>12</sup> the defendant was pulled over for changing lanes without signaling.<sup>13</sup> After investigating, the

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<sup>9</sup> See *Marvel v. State*, 312 A.2d 318 (Del. 1973).

<sup>10</sup> *Whren v. United States*, 517 U.S. 806, 810 (1996); *Delaware v. Prouse*, 440 U.S. 648, 659 (1979).

<sup>11</sup> *Whren*, 517 U.S. at 813.

<sup>12</sup> 1998 WL 961765 (Del. Super.).

<sup>13</sup> *Id.* at \*5.

defendant was arrested for driving with a suspended license.<sup>14</sup> The Court held that the seizure of the defendant and his vehicle was lawful and supported by probable cause because the officer had an objective rationale for the initial stop.<sup>15</sup> Likewise, in *State v. Minaya*,<sup>16</sup> Judge Terry found that “[t]he constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers involved. Subjective intentions play no role in ordinary, probable cause Fourth [sic] Amendment analysis.”<sup>17</sup> In that case, the defendant was stopped by the officer because the defendant’s vehicle had a loud muffler in violation of 21 *Del. C.* §4311(a).<sup>18</sup> Since the police had reasonable grounds to determine that the statute was being violated, the stop of the vehicle was considered justified by the court.<sup>19</sup> Both *Minaya* and *Banther* relied on *Whren v. United States* as authority for their decision.<sup>20</sup> In *Whren*, the United States Supreme Court held that “[s]ubjective intentions play no role in ordinary probable-cause Fourth Amendment analysis.”<sup>21</sup> The Court, per Justice Scalia, found that as long as the officer is making the traffic stop based on a violation of the traffic code

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

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

<sup>16</sup> 1997 WL 855705 (Del. Super.).

<sup>17</sup> *Id.* at \*2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Whren*, 517 U.S. 806.

<sup>21</sup> *Id.* at 812.

that he has seen, any pretextual reason or actual motivations that might also be involved in the officer's actions are irrelevant.

In the case *sub judice*, the officers observed the expired temporary registration plate and illegally tinted glass while the Defendant was driving his vehicle on Memorial Drive. After running the vehicle's license plate number on the onboard computer, the officers learned that the Defendant's temporary registration tag had, in fact, expired. The officers then proceeded to stop the Defendant's vehicle. Viewing the circumstances objectively and believing the officers' testimony, the Court finds that the officers justifiably stopped the defendant's vehicle for a violation of 21 *Del. C.* §2133. The Defendant does not contest that his temporary registration tags were expired or that his windows were illegally tinted. Thus, the validity of such a stop is not questionable even where the officer may believe the motorist has engaged in other illegal conduct.<sup>22</sup> After the legal stop, the officers further learned that the car was uninsured. Therefore, the car could not be driven.<sup>23</sup> The defendant does not raise the issue of the validity of the actual search itself. The Court can only assume that the State has adequately satisfied the defense that all of the necessary requirements needed to make the actual inventory search valid existed. Thus, while the officers may have had other

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<sup>22</sup> *See Whren*, 517 U.S. 806.

<sup>23</sup> *State v. Walker*, 1991 WL 53385, at \*2 (Del. Super.).

subjective reasons for effectuating this stop, those subjective reasons are irrelevant, because the officers had probable cause for the stop based on a violation of the traffic laws.

#### **IV. CONCLUSION**

The Defendant has failed to demonstrate by a preponderance of the evidence that the challenged search and seizure violated his Fourth Amendment rights. For all the foregoing reasons, Defendant's Motion to Suppress the eighty-six bags of heroin and .38 caliber handgun is **DENIED**.

**IT IS SO ORDERED.**

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Judge Calvin L. Scott, Jr.