

## Contents

|   |           |
|---|-----------|
| <b>1. Levels of Justification .....</b>   | <b>1</b>  |
| State v. Arterbridge, 1995 WL 790965 (Del. Super. Dec. 7, 1995) (Barron, J.) .....                          | 1         |
| <b>2. Reasonable Articulate Suspicion .....</b>   | <b>2</b>  |
| a. Generally: .....   | 2         |
| Delaware v. Prouse, 440 U.S. 648 (1979) (White, J.).....  | 2         |
| Rickards v. State, 2011 WL 153643 (Del. Jan. 12, 2011) (Jacobs, J.) .....                                   | 3         |
| Hall v. State, 981 A.2d 1106 (Del. 2009) (Holland, J.) .....  | 3         |
| Clinger v. State, Del. Super., ID No. 0905002015, Brady, J. (Feb 4, 2011) (ORDER) .....                     | 4         |
| State v. Stewart, 2011 WL 494734 (Del. Super. Jan. 31, 2011) (Johnston, J.).....                            | 5         |
| State v. Heath, 929 A.2d 390 (Del. Super. 2006) (Young, J.) (see also supra, under "Pretextual Stops")..... | 5         |
| State v. Clay, 2002 WL 1162300 (Del. Super. May 28, 2002) (Vaughn, J.).....                                 | 5         |
| State v. Hopper, C.A. No. 0903020900 (Del. Com. Pl. Oct. 1, 2010) (Davis, J.) .....                         | 6         |
| State v. Flonnory (I), Cr. A. No. 12909005937 (Del. Super. June 12, 2013) (Scott, J.) .....                 | 7         |
| State v. Lowry, Cr. A. No. 1209011186 (Del. Com. Pl. Nov. 7, 2013) (Welch, J.).....                         | 7         |
| State v. Fernandes, Cr. Id. No. 1112010628 (Del. Com. Pl. May 7, 2014) .....                                | 8         |
| State v. Lane, Cr. Id. No. 1307007770 (Del. Com. Pl. May 30, 2014).....                                     | 8         |
| b. Anonymous Tips:.....   | 9         |
| Bloomington v. State, 842 A.2d 1212 (Del. 2004) (Veasey, C.J.).....   | 9         |
| State v. Schnider, 2009 WL 3327226 (Del. Super. Oct. 15, 2009) (Cooch, J.).....                             | 10        |
| Tracy v. State, 2011 WL 4826108 (Del. Super. Oct. 10, 2011) (Jurden, J.).....                               | 10        |
| c. Community Caretaker Doctrine: .....  | 11        |
| Williams v. State, 962 A.2d 210 (Del. 2008) (Ridgley, J.).....  | 11        |
| Moore v. State, 997 A.2d 656 (Del. 2010) (Holland, J.) .....  | 11        |
| d. Pretext .....  | 13        |
| Whren v. United States, 517 U.S. 806 (1996) (Scalia, J.) .....  | 13        |
| Cohan v. Simmons, 2011 WL 379309 (Del. Super. Jan. 28, 2011) (Parkins, J.) .....                            | 14        |
| State v. Darling, 2007 WL 1784185 (Del. Super. Jun. 8, 2007) (Witham, R.J.).....                            | 14        |
| State v. Heath, 929 A.2d 390 (Del. Super. 2006) (Young, J.) .....   | 15        |
| Rickards v. State, 30 A.3d. 782 (Del. 2011) (TABLE) (ORDER) (Jacobs, J.) .....                              | 16        |
| Simmons v. Shahan, 2008 WL 5208573 (Del. Com. Pl. Dec. 18, 2008) (Smalls, C.J.).....                        | 16        |
| <b>3: Probable Cause .....</b>  | <b>18</b> |
| Lefebvre v. State, 19 A.3d 287 (Del. 2011) (Holland, J.).....   | 18        |

|  |               |
|--|---------------|
| Miller v. State, 4 A.3d 371 (Del. 2010) (Steele, C.J.).....                                | 19            |
| McDonald v. State, 947 A.2d 1073 (Del. 2008) (Holland, J.).....                            | 19            |
| Bease v. State, 884 A.2d 495 (Del. 2005) (Holland, J.).....                                | 20            |
| State v. Maxwell, 624 A.2d 926 (Del. 1993) (Holland, J.).....                              | 20            |
| State v. Cooley, 457 A.2d 352 (Del. 1983) (Moore, J.).....                                 | 21            |
| Cohan v. Simmons, 2011 WL 379309 (Del. Super. Jan. 28, 2011) (Parkins, J.).....            | 21            |
| State v. Jackson, Cr. A. No. 0912016092 (Del. Com. Pl. Aug. 31, 2010) (Rocanelli, J.)..... | 22            |
| Stafford v. State, 2012 WL 691402 (Del. Mar. 1, 2012) (Steele, C.J.).....                  | 23            |
| State v. Veney, Cr. A. No. 1208018377 (Del. Com. Pl. Apr. 30, 2013).....                   | 23            |
| <b>4. Sobriety Checkpoints.....</b>  | <b>25</b>     |
| Bradley v. State, 858 A.2d 960 (Del. 2004) (TABLE) (Steele, J.).....                       | 25            |
| Howard v. Voshell, 621 A.2d 804 (Del. Super. 1992) (Ridgely, J.).....                      | 25            |
| State v. Stroman, 1984 WL 547841 (Del. Super. May 18, 1984) (Stiftel, J.).....             | 26            |
| State v. Butler, 2011 WL 2552546 (Del. Super. April 11, 2011) (Scott, J.).....             | 26            |
| State v. Hollinger, C.A. No. 1012016310 (Del. Com. Pl. Oct. 10, 2012) (Davis, J.).....     | 24            |
| State v. Cook, Cr. ID No. 1204020357 (Del. Super. Feb. 4, 2013) (Parkins, J.).....         | 25            |
| State v. Terry, Cr. A. No. 1209012999 (Del. Super. July 18, 2013) (Davis, J.).....         | 26            |
| State v. Smith, Cr. A. No. 1209000032 (Del. Super. Feb. 28, 2014) (Davis, J.).....         | 26            |
| State v. Geary, Cr. A. No. 1209015544 (Del. Com. Pl. Aug. 1, 2013) (Danberg, J.).....      | 26            |
| <br><b>5. Actual Physical Control.....</b>   | <br><b>29</b> |
| Baker v. State, 2002 WL 1288728 (Del. Super. Aug. 28, 2006) (Del Pesco, J.).....           | 29            |
| Bodner v. State, 752 A.2d 1169 (Del. 2000) (Holland, J.).....                              | 30            |
| State v. Mealy, 2010 WL 175623 (Del. Com. Pl. Jan. 20, 2010) (Rocanelli, J.).....          | 30            |
| State v. Purcell, 336 A.2d 223 (Del. 1975) (Longobardi, J.).....                           | 31            |
| a. The “Driving” Element:.....   | 32            |
| State v. Smith, 2011 WL 6935626 (Del. Com. Pl. Dec. 29, 2011) (Smalls, C.J.).....          | 32            |
| Thoroughgood v. State, 2010 WL 2355316 (Del. Super. June 1, 2010) (Ableman, J.).....       | 32            |
| <br><b>6. Field Tests.....</b>   | <br><b>34</b> |
| a. Alphabet, Counting, Finger Count Tests:.....  | 34            |
| State v. Ministero, Jr., 2006 WL 3844201 (Del. Super. Dec. 21, 2006) (Carpenter, J.).....  | 34            |
| b. HGN Admissibility:.....   | 35            |
| Zimmerman v. State, 683 A.2d 311 (Del. 1997) (Veasey, C.J.).....                           | 35            |

|   |           |
|---|-----------|
| State v. Ruthardt, 680 A.2d 349 (Del. Super. 1996) (Carpenter, J.).....                   | 35        |
| c. Voluntariness: .....   | 36        |
| State v. Laphen, Cr. No. 96-05-007101 (Del. Com. Pl. Dec. 23, 1996) (DiSabatino, J.)..... | 36        |
| <b>7. Intoxilyzer Procedures and Admissibility of Results.....</b>                        | <b>37</b> |
| a. Intoxilyzer Calibration: .....   | 37        |
| DiSabatino v. State, 808 A.2d 1216 (Del. Super. 2002) (Jurden, J.).....                   | 37        |
| Anderson v. State, 675 A.2d 943 (Del. 1996) (per curiam).....                             | 38        |
| Clinger v. State, ID No. 0905002015 (Del. Super. Feb 4, 2011) (Brady, J.).....            | 38        |
| Best v. State, 328 A.2d 141 (Del. 1974) (Marvel, J.).....                                 | 35        |
| McCConnell v. State, 639 A.2d. 74 (Del. 1994) (TABLE) (Holland, J).....                   | 39        |
| State v. Vickers, 2010 WL 2299001 (Del. Com. Pl. June 9, 2010) (Smalls, C.J.).            | 36        |
| State v. Hinkson, Cr. Id. No. 1202012709 (Del. Com. Pl. Feb. 12, 2014) (Danberg, J.)..... | 36        |
| b. Qualified Witnesses to Testify about Intoxilyzer Results: .....                        | 40        |
| Morris v. Shanahan, 1993 WL 141861 (Del. Super. Apr. 8, 1993) (Del Pesco, J.).....        | 40        |
| Saturno v. State, ID # 0905016263 (Del. Super. Aug. 25, 2011) (Silverman, J.).....        | 40        |
| c. Qualified Witnesses to Testify about Calibration .....                                 | 41        |
| Tarwick v. State, 845 A.2d 505 (Del. 2004) (Holland, J.).....                             | 41        |
| Palomino v. State, 2011 WL 2552603 (Del. Super. Apr. 4, 2011) (Scott, J.).....            | 42        |
| State v. Hopper, C.A. No. 0903020900 (Del. Com. Pl. Oct. 1, 2010) (Davis, J.).            | 42        |
| State v. Boyer, 2006 WL 2666207 (Del. Com. Pl. Sept. 18, 2006) (Smalls, C.J.).            | 42        |
| State v. Arnold, 2003 WL 23112735 (Del. Com. Pl. July 2, 2003) (Smalls, C.J.).....        | 39        |
| State v. Greene, Case No. 1012002257 (Del. Super. Feb. 7, 2012).....                      | 40        |
| State v. McCoy, Case No. 0909009694 CLS (Del. Super. Feb. 21, 2012) (Scott, J.).          | 40        |
| Taylor v. Cohan, Case No. CPU4-11-004627 (Del. Com. Pl. Apr. 5, 2012) (Davis J.).         | 41        |
| d. 20-Minute Observation Period:.....   | 46        |
| Clawson v. State, 867 A.2d 187 (Del. 2005) (Ridgely, J.).                                 | 46        |
| <b>8. PBT Procedure and Admisibility of Results</b>                                       |           |
| State v. Sharp, Cr. Id. No. 1305022458 (Del. Com. Pl. May 5, 2014).....                   | 47        |
| <b>9. Blood Testing Procedures and Admissibility of Results.....</b>                      | <b>47</b> |
| a. Procedures:  |           |
| Schleifer v. State, ID No. 0203006830 (Del. Super. Dec. 13, 2010) (Toliver, J.).....      | 47        |
| State v. Crespo, 2009 WL 1037732 (Del. Super. Apr. 17, 2009) (Slight, J.).....            | 48        |
| State v. Baker, ID # 0803038600 (Del. Super. Apr. 8, 2009) (Silverman, J.).....           | 48        |

|  |           |
|--|-----------|
| Martin v. State, No. 149, 2012 (Del. Feb. 4, 2013) (Steele, C.J.).....                 | 44        |
| Missouri v. McNeely, 569 U.S. ____ (2013) (slip op.). .....                            | 45        |
| State v. Ford, ID No. 1212014544 (Del. Com. Pl. May 22, 2013) (Danberg, J.).....       | 45        |
| State v. Flonnory, Cr. A. No. 12909005937 (Del. Super. July 17, 2013) (Scott, J.)..... | 46        |
| b. Admissibility:  |           |
| State v. Jones, Cr. ID. No. 1210016662 (Del. Super. Sept. 9, 2013) (Brady, J.) .....   | 45        |
| <b>10. Chain of Custody.....</b>   | <b>50</b> |
| State v. Munden, 891 A.2d 193 (Del. Super. 2005) (Herlihy, J.). .....                  | 51        |
| State v. McDowell, 2000 WL 33114375 (Del. Super. Dec. 11, 2000) (Bradley, J.). .....   | 52        |
| State v. Watkins, 2006 WL 2666227 (Del. Com. Pl. Sept. 14, 2006) (Smalls, C.J.).....   | 52        |
| <b>11. Confrontation .....</b>   | <b>54</b> |
| Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011) (Ginsburg, J.). .....                 | 54        |
| Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) (Scalia, J.). .....                | 54        |
| State v. Martin, 2011 WL 7062499 (Del. Super. Dec. 20, 2011) (Slight, J.).....         | 49        |
| *Subsequently decided by the Delaware Supreme Court in Martin v. State                 |           |
| Martin v. State, No. 149, 2012 (Del. Feb. 4, 2013) (Steele, C.J.).....                 | 49        |
| <b>12. Discovery.....</b>  | <b>56</b> |
| Fuller v. State, 922 A.2d 415 (Del. 2007) (TABLE) (Jacobs, J.). .....                  | 56        |
| Johnson v. State, 550 A.2d 903 (Del. 1988) (Christie, C.J.).....                       | 56        |
| Dejesus v. State, 655 A.2d 1180 (Del. 1995) (Walsh, J.). .....                         | 51        |
| Doran v. State, 606 A.2d 743 (Del. 1992) (Holland, J.). .....                          | 58        |
| State v. Varrasse, C.A. No. 1007024223 (Del. Com. Pl. June 6, 2011) (Welch, J.).....   | 59        |
| State v. Walker, 2005 WL 1898928 (Del. Com. Pl. Aug. 5, 2005) (Clark, J.). .....       | 59        |
| Oliver v. State, ___ A.3d ___, Cr. Id. No. 10007013509A (Del. Feb. 4, 2013).....       |           |
| <b>13. Standard of Proof.....</b>  | <b>60</b> |
| McRae v. State, 782 A.2d 265 (Del. 2001) (TABLE) (Veasey, J.). .....                   | 60        |
| State v. Burgos, Case No. 1103004911 (Del. Com. Pl. Jan. 29, 2013) (Rocanelli, J.)     |           |
| *Note – appeal pending* .....  | 54        |
| <b>14. State’s Loss of Evidence .....</b>  | <b>61</b> |
| Deberry v. State, 457 A.2d 744 (Del. 1983) (Moore, J.). .....                          | 61        |
| Hunter v. State, 55 A.3d 360 (Del. 2012) (Holland, J.) .....                           | 55        |

|  |           |
|--|-----------|
| <b>15. Repeat Offender Sentencing .....</b>  | <b>62</b> |
| Stewart v. State, 930 A.2d 923 (Del. 2007) (Holland, J.).....                          | 62        |
| Baldwin v. State, 746 A.2d 275 (Del. 2000).....  | 62        |
| Lyon v. State, 805 A.2d 902 (Del. 2002) (TABLE) (Walsh, J.).....                       | 62        |
| State v. Rebarchak, 2002 WL 1587855 (Del. Super. Jun. 20, 2002) (Witham, J.).....      | 63        |
| Morris v. State, 798 A.2d 1042 (Del. 2002) (TABLE) (Veasey, J.).....                   | 63        |
| <b>16. Due Process.....</b>  | <b>65</b> |
| State v. Pruitt, 805 A.2d 177 (Del. 2002) (Steele, J.).....                            | 65        |
| <b>17. Constitutionality.....</b>  | <b>66</b> |
| DiSabatino v. State, 808 A.2d 1216 (Del. Super. 2002) (Jurden, J.).....                | 66        |
| State v. Kang, 2001 WL 1729126 (Del. Super. Nov. 30, 2001) (Slight, J.).....           | 66        |
| State v. Levan, ID No. 1204016933 (Del. Super. Jan. 22, 2013) (Bradley, J.).....       | 61        |
| a. Miranda .....   | 68        |
| J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011) (Sotomayor, J.).....                   | 68        |
| Taylor v. State, 23 A.3d 851 (Del. 2011) (Berger, J.).....                             | 68        |
| State v. Dickens, Cr. Id. No. 1303004741 (Del. Super. Oct. 8, 2013) (Scott, J.).....   | 64        |
| <b>18. Impairment Theory .....</b>   | <b>69</b> |
| Church v. State, 11 A.3d 226 (Del. 2010) (TABLE) (Holland, J.).....                    | 69        |
| Lewis v. State, 626 A.2d 1350 (Del. 1993) (Veasy, C.J.).....                           | 69        |
| Bennefield v. State, 2006 WL 258306 (Del. Super. Jan. 4, 2006) (Jurden, J.).....       | 70        |
| State v. Blood, 2009 WL 2859047 (Del. Com. Pl. May 13, 2009) (Welch, J.).....          | 70        |
| State v. Mealy, 2010 WL 175623 (Del. Com. Pl. Jan. 20, 2010) (Rocanelli, J.).....      | 71        |
| State v. Francisco, 2010 WL 2889567 (Del. Com. Pl. July 23, 2010) (Smalls, C.J.).....  | 71        |
| <b>19. Legislation.....</b>  | <b>72</b> |
| <b>20. Confession of Defendant/Corpus Delicti .....</b>                                | <b>67</b> |
| Wright v. State, 953 A.2d 188 (Del. 2008) (Steele, C.J.).....                          | 67        |
| Nelson v. State, 123 A.2d 859 (Del. 1956) (Southerland, C.J.) .....                    | 67        |
| State v. Wells, 2004 WL 1551515 (Del. Super. June 16, 2004) (Slight, J.).....          | 68        |
| <b>21. Jurisdiction .....</b>  | <b>69</b> |
| State v. Pyle, Cr. A. No. 1209012999 (Del. Com. Pl. July 18, 2013) (Smalls, C.J.)..... | 69        |

# 1. Levels of Justification

## Three levels of police-citizen Encounters

1. The least intrusive – an officer simply approaches a citizen to ask him or her to answer questions. *State v. Arterbridge*, 1995 WL 790965 (Del. Super.). This does **not** constitute a seizure. *Id.*
2. Limited intrusion – An officer restrains an individual for a short period of time. *Id.*
  - a. Requires articulable suspicion. *Id.*
3. Most intrusion: An officer actually arrests a person for the commission of a crime. *Id.*
  - a. Requires probable cause. *Id.*

*State v. Arterbridge*, 1995 WL 790965 (Del. Super. Dec. 7, 1995) (Barron, J.).

**Facts:** Officer was driving when he observed a vehicle suddenly shift to the right and hit a curb. Officer pulled his car near the stopped vehicle and approached on foot. He observed Arterbridge vomiting into a small trash can, and noticed several other indications that she was intoxicated. After conducting several field sobriety tests, the officer arrested Arterbridge for DUI.

**Holding:** There are three categories of police-citizen encounters. First, the least intrusive encounter occurs when a police officer simply approaches an individual and asks him or her to answer questions. This type of police-citizen confrontation does not constitute a seizure. Second, a limited intrusion occurs when a police officer restrains an individual for a short period of time. This *Terry*-stop encounter constitutes a seizure and requires that the officer have an “articulable suspicion” that the person has committed or is about to commit a crime. Third, the most intrusive encounter occurs when a police officer actually arrests a person for the commission of a crime. Only “probable cause” justifies a full-scale arrest. Stopping an automobile falls under the second category and therefore requires that the officer have a reasonable articulable suspicion to do so. (*Applying this, the court found that the officer did not “seize” the defendant until he ordered her out of the car, therefore he did not need reasonable suspicion until that point.*)

## 2. Reasonable Articulable Suspicion

### a. Generally:

- Before the court can decide if an investigatory stop was supported by reasonable articulable suspicion or otherwise justified, it must first make the threshold inquiry of whether a stop actually occurred. U.S. Const. Amend. IV; Del Const/ Art 1, § 6; 11 *Del. C.* § 1902; *Moore v. State*, 997 A.2d 656 (Del. 2010).
  - Determining if a seizure has occurred requires focusing on the actions of the police officer to determine when a reasonable person believes that he or she is not free to ignore the police presence. *Jones v. State*, 745 A.2d 856, 869 (Del. 1999).
- Under *Terry v. Ohio*, an officer is justified in stopping an individual when the officer possesses a reasonable, articulable suspicion the individual was committing, had committed, or was about to commit a crime. *Thomas v. State*, 8 A.3d 1195 (Del. 2010).
- Reasonable articulable suspicion depends on the officer's ability to point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant the stop. *Hall v. State*, 981 A.2d 1106, 1111 (Del. 2009).
- In determining if reasonable suspicion existed, the court looks at 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 subjective interpretation of those facts." *Id.* (quoting *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001)).
- Evidence that officers were located in a high-crime, high-drug area, alone, is insufficient to constitute reasonable suspicion but is a relevant contextual consideration. *Delaware v. Roy*, Del. Super., ID No. 1009013260, Johnston, J. (March 17, 2011).

*Delaware v. Prouse*, 440 U.S. 648 (1979) (White, J.).

**Facts:** An officer stopped defendant's vehicle. The officer smelled marijuana smoke as he was walking towards defendant's vehicle, and he seized marijuana in plain view on the car floor. At trial, the officer testified that he had observed neither traffic or equipment violations, nor any suspicious activity, and that he made the stop only in order to check the driver's license and registration.

**Holding:** Except in those situations in which there is at least reasonable and articulable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

*Rickards v. State*, 2011 WL 153643 (Del. Jan. 12, 2011) (Jacobs, J.).

**Facts:** An officer observed the Appellant stopped in a vehicle blocking the entrance to his private driveway. The officer suspected the Appellant of littering due to excessive dumping and littering that had been occurring on and around his property. Appellant moved the vehicle and the officer followed him. The officer stopped the Appellant and detected an alcoholic odor emanating from Appellant during a brief conversation. Appellant failed several field sobriety tests. Appellant argued that the evidence of the DUI should be suppressed because it was the product of an unlawful search and seizure in violation of the 4th Amendment of the U.S. Constitution and Article I, § 6 of the Delaware Constitution. Appellant argued that: (1) the traffic stop was a pretext for conducting an unconstitutional search and seizure; (2) the police lacked a reasonable and articulable suspicion to stop and detain him for dumping or littering; and (3) the police lacked authority to stop and detain him for parking and blocking the officer's driveway because 21 *Del. C.* § 4179 does not authorize a police-conducted traffic stop for civil traffic violations.

**Holding:** The Court did not address the "pretext" or "illegal detainment for dumping/littering" arguments because the Court concluded that the police were authorized to stop and detain Appellant based upon a suspected traffic violation. In addition, 21 *Del. C.* § 802 authorizes a police officer "to make an administrative stop for purposes of enforcing a civil traffic statute, upon a reasonable and articulable suspicion that a violation of such statute has occurred." Further, § 801 extends an officer's authority to make administrative stops to any traffic offense punishable by a civil penalty, including a violation of § 4179.

The officer had a reasonable and articulable suspicion that a violation of § 4179 was occurring. Thus, the officer was authorized to conduct a traffic stop. The officer smelled alcohol coming from Appellant during the stop which gave the officer a reasonable and articulable suspicion that Appellant was intoxicated. Therefore, the Appellant's subsequent detainment and investigation for Driving Under the Influence was lawful.

*Hall v. State*, 981 A.2d 1106 (Del. 2009) (Holland, J.).

**Facts:** Officer observed defendant and his girlfriend sitting in a car parked in a 7-Eleven convenience store. Five minutes later, officer noticed another vehicle enter the parking lot and park off to the side of the store, even though there were a number of open parking spaces in front of the store. Officer watched defendant get out of his car and get in the back seat of the other car. Officer approached the other car and saw defendant reach behind his back with his right hand. Officer ordered defendant to remove his hand from behind his back several times, but he did not comply.

A second officer responded to the scene. He detected an overwhelming odor of PCP emanating from the vehicle. After defendant was removed from the vehicle, officers searched the vehicle and found two cigarettes that had been dipped in PCP. Defendant was arrested and taken back to the police station, where he was strip-searched and a vial of PCP was recovered

from between his buttocks. Because defendant was on probation at the time of his arrest, the police contacted his probation officer. The probation officer conducted an administrative search of defendant's residence and found four more vials with PCP residue. Defendant was charged with Possession of a Schedule II Controlled Substance with Intent to Deliver, Possession of Drug Paraphernalia, Possession of a Controlled Counterfeit Substance, Conspiracy in the Second Degree and Maintaining a Vehicle for Keeping Controlled Substances.

Defendant asserted that the trial judge committed reversible error when he denied his motion to suppress the evidence seized by police. He stated that the evidence seized was "fruit of the poisonous tree" because the police lacked a reasonable and articulable suspicion to detain him.

**Holding:** The trial judge properly relied on the *Lofland v. State* decision when he held that that the police had reasonable and articulable suspicion to detain defendant. On the evening of defendant's arrest officer was conducting surveillance in targeted areas known for drug activity. Officer's training and experience made him highly knowledgeable of drug transactions and the conduct of drug dealers. Based on the facts above, officer's conclusion was reasonable, based on both the objective facts and officer's subjective interpretation of those facts, in light of his extensive experience in investigating drug transactions. Thus, the trial judge did not err when he denied defendant's motion to suppress the evidence obtained as a result of the lawful detention of defendant.

In addition, officers were justified in searching defendant's car. If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross* authorizes a search of any area of the vehicle in which the evidence might be found. Here, the strong odor of PCP established probable cause to believe the vehicle occupied by defendant contained evidence of criminal activity. Thus, the warrantless search of the vehicle was proper.

*Clinger v. State, Del. Super.*, ID No. 0905002015, Brady, J. (Feb 4, 2011) (ORDER).

**Facts:** Officer directing traffic was almost hit by a motorist when motorist failed to slow down at approximately 6:00 p.m. Motorist then stopped his vehicle and officer approached. Officer detected an odor of alcohol and noticed motorist had bloodshot eyes. Motorist admitted to another officer at the scene that he consumed five beers between 1:00 and 5:00 p.m. that day. Motorist failed field sobriety tests. Motorist was arrested and it was determined that his BAC was .152. It was proven that the intoxilyzer was working properly at the time of the test. Motorist moved the trial court to suppress evidence. The motion was denied and trial court found motorist guilty of Driving Under the Influence.

**Holding:** The initial stop, and subsequent detention, of the motorist were justified by reasonable suspicion of criminal activity. The totality of the circumstances supported reasonable and articulable suspicion for the stop. The Court of Common Pleas did not abuse its discretion in admitting the Troop calibration logbook into evidence. Because the officer in this case received training on administering intoxilyzer tests and witnessed a calibration test performed by the

former state chemist, he was a qualified witness under the business records exception. In order for the court to consider results from an intoxilyzer test, the State must first establish that the machine was functioning properly both before and after the individual's breath was tested.

*State v. Stewart*, 2011 WL 494734 (Del. Super. Jan. 31, 2011) (Johnston, J.).

**Facts:** Officer approached a parked vehicle with its engine running after receiving a tip. Officer testified that there were two males in the vehicle, and defendant, the driver, was "slumped over and he was kind of like nodding off to sleep and you could see he was trying to open his eyes and then he would kind of fade off." Officer observed a passenger drinking a beer, and then attempt to conceal it. Defendant's eyes were bloodshot and glassy. Officer testified that defendant's speech was slurred and sleepy. Officer noticed an odor of alcohol emanating from the vehicle and saw several empty beer cans behind the driver and passenger seats. After defendant stepped out of the vehicle, defendant was arrested and charged with Driving Under the Influence of Alcohol. Defendant moved to suppress. Defendant asserted that officer lacked reasonable articulable suspicion to detain him.

**Holding:** Officer possessed a reasonable articulable suspicion that defendant was driving under the influence of alcohol. The Court of Common Pleas erred as a matter of law by discounting the probative value of the totality of the circumstances by focusing on a possible innocent explanation for each fact. The Court of Common Pleas also erred as a matter of law by considering whether Officer actually observed a violation of a criminal statute.

*State v. Heath*, 929 A.2d 390 (Del. Super. 2006) (Young, J.) (see also *supra*, under "Pretextual Stops").

**Facts:** Defendant was arrested for marijuana possession. In response to the Defendant's motion to suppress, the State argued that reasonable suspicion was established by: (1) the Defendant's presence in a "high drug area" of Harrington; (2) the Defendant's bloodshot eyes; (3) the Defendant's illogical and contradictory answers to Shyres questioning; and (4) the presence of several air fresheners in the vehicle.

**Holding:** The defendant's bloodshot eyes alone are not enough to arouse reasonable suspicion. "This is not to say that bloodshot eyes can never be probative of criminal activity. For example, if the Defendant's bloodshot eyes were combined with an odor of drugs or alcohol, a more persuasive argument might exist. However, bloodshot eyes can result from a variety of non-criminal circumstances, such as tiredness, allergies, or just rubbing of the eyes. When this stop occurred, it was night, and there was no evidence that the Defendant was under the influence of drugs or alcohol.

*State v. Clay*, 2002 WL 1162300 (Del. Super. May 28, 2002) (Vaughn, J.).

**Facts:** Defendant, charged with DUI, filed a motion to suppress the result of the blood alcohol test contending that his initial detention was not a valid traffic or investigatory stop, and if it was, no probable cause existed to arrest him for DUI. A phone call had been made to the police in

regards to a domestic violence and offensive touching incident by the defendant's wife. Later in the evening, the defendant called the police inquiring as to whether the police knew where his wife was, as she was missing. He further indicated that he was driving around looking for her, his approximate location, and mentioned that he had been drinking. An officer was dispatched, and came up behind the defendant's vehicle, ran a check on the tag, and learned that the vehicle was registered to the wife of the defendant. He followed the vehicle for about two minutes until the defendant pulled into his driveway. The officer activated his overhead lights, but had not observed any irregular driving from the defendant. The defendant proceeded to exit his vehicle in the driveway, and the officer noticed he was swaying, had bloodshot eyes, and that an odor of alcohol emanated from his person. The defendant admitted to drinking that evening, but refused all field sobriety tests except for the HGN as he claimed a disability. He failed the HGN test, and was taken to the police station for a blood sample, which is the subject of the motion to suppress.

**Holding:** Reasonable articulable suspicion as to criminal activity suffices as the basis for a traffic stop which subsequently results in a driving under the influence charge regardless of whether or not a reasonable articulable suspicion as to the defendant driving under the influence existed prior to the stop. *(Applying this, when the officer pulled in behind the defendant and activated his overhead lights, the defendant was clearly detained. Under a totality of the circumstances, at that point, the officer did not have a reasonable articulable suspicion that the defendant was driving under the influence of alcohol. Regardless, a reasonable articulable suspicion to stop the defendant on the suspicion that some criminal activity had occurred did exist, due to the domestic incident that had been reported earlier in the evening, and the facts known to the officer. Thus, the basis for the stop is justified, and probable cause to arrest is the only issue that remains – which is satisfied in this case through the admission of drinking, swaying, odor of alcohol, bloodshot eyes, and failure of the HGN test).*

*State v. Hopper*, C.A. No. 0903020900 (Del. Com. Pl. Oct. 1, 2010) (Davis, J.).

**Facts:** Officers observed a vehicle drive by them in a shopping center parking lot. Officer observed that the windows were overly tinted and partially rolled down. Officer recognized the smell of marijuana emanating from the vehicle. Officer followed the vehicle and pulled it over. Officer noticed a “bong” in the vehicle.

A second officer smelled an odor of marijuana and alcohol on the defendant. Defendant's eyes appeared to be watery, glazed and glassy. Defendant performed poorly on field sobriety tests. In addition, a video introduced into evidence showed defendant rambling about various issues and noticeably slurring his speech. Defendant's BAC was .164%. Defendant was charged with DUI. Defendant moved to suppress the results of the field sobriety tests and the intoxilyzer test.

**Holding:** Defendant argued that Officer lacked reasonable suspicion to stop his vehicle. Furthermore, he argued that Officers lacked probable cause to arrest him and, eventually, administer the intoxilyzer test.