

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

October 7, 2008

Lynn Jones, Esquire
Department of Justice
114 E. Market Street
Georgetown, DE 19947

John P. Daniello, Esquire
Office of the Public Defender
14 The Circle, 2nd Floor
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RE: State v. Lancer Perry – Case No. 0805041047
Motion to Suppress

Dear Counsel:

On May 29, 2008, the defendant was stopped at midnight by a Delaware State Police Officer on Route 1 in Sussex County. A subsequent investigation resulted in the defendant's arrest for driving under the influence and driving while suspended.

This decision addresses the defendant's legal argument that the officer did not have a reasonable, articulable suspicion to stop the defendant's motor vehicle.
Delaware v. Prouse, 440 US 648 (1979)

The police officer conducted a registration check of the automobile the defendant was driving. No problems were discovered. Then the officer checked to see if the registered owner had a valid driver's license and learned it was suspended. Based on that information the stop was made.

The defendant argues that the mere knowledge that the registered owner's license had been suspended does not rise to a reasonable, articulable suspicion that the owner is operating the vehicle. The defense cites to *State v. Johnson*, 2000 WL 33275015 *4 (Del. Com. Pl.), which, for purposes of this ruling, had identical facts. In *Johnson*, the Court determined that even though the officer knew the owner's license was suspended, the decision to stop the vehicle without additional information amounted to a random stop, which is not permitted. I respectfully disagree.

The underlying basis of preventing police from making random stops under *Prouse* was to prevent the police from arbitrarily deciding which vehicles they would stop on the public highway.

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I am satisfied that a police officer's knowledge that a motor vehicle's owner has a suspended license is a reasonable, articulable basis for stopping the vehicle to determine if the owner is the operator. This is especially true in circumstances that it is improbable a police officer could make any type of identification due to darkness or tinted windows.

The knowledge of an owner's suspended license sufficiently limits a police officer's discretion to remove that decision from being random. A stop under these circumstances is not an unreasonable intrusion into privacy rights of citizens.

There is no specific presumption in the Delaware statutes as to this issue, but other statutes do recognize a common sense inference of the probability that the owner is the driver. In 21 *Del.C.* § 4104(d)(9), § 4166(g), and § 7003(b), the owner may be convicted unless the owner can furnish evidence the vehicle was being driven by someone else. If it is reasonable to base a conviction on the rebuttable presumption, then it is reasonable to base articulable suspicion on the same presumption or inference.

Finally, as noted by the State, the vast majority of the states considering this issue have decided "Absent additional facts suggesting otherwise, on grounds to arrest the registered owner of a specific vehicle, there exists a reasonable suspicion the present driver is the registered owner to justify a stop and inquiry." Wayne LaFave, *4 Search and Seizure: A Treatise on the Fourth Amendment* §9.5 (4th ed. 2007), which may be found at Westlaw 4 Searchszr Section 9.5, Footnote 138.2.

In summary, I find that a police officer who knows the registered owner of a vehicle has a suspended license has a reasonable, articulable suspicion to make a traffic stop of that vehicle, unless other facts exist which may rebut the inference or presumption.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

THG/jfg
cc: Prothonotary