

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

February 9, 2009

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Wilmington, DE 19801

RE: *State v. Orville Smullen*  
*ID # 0803022425B*

**Upon Defendant's Motion to Suppress – DENIED**

Dear Counsel:

This finalizes the decision on Defendant's motion to suppress, which the court preliminarily announced during the extensive oral argument on August 20, 2008. As you recall, the police were looking for a handgun allegedly used in the indicted offenses, so they got a search warrant for Defendant's residence. The crimes occurred elsewhere, and the warrant came approximately two months later. Accordingly, based on the timing and the fact that there was no direct link between the crimes and the place searched, the motion questions whether the warrant was stale.

As you further recall, the court tentatively concluded that, taking a handgun's nature into account, it was reasonable to believe that the handgun's owner would still have it on his person, in his residence or his car even two months after using it in a crime. The conclusion was bolstered by Defendant being a prohibited

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person, which would have made it harder for him to replace the weapon had he discarded it after the crime. The court discussed its thinking, at length, during the hearing.

Now, after reviewing the case law more carefully, the court stands by its preliminary findings. In *Jensen v. State*,<sup>1</sup> the police searched Jensen's home and vehicle 27 days after he committed a rape while armed. The police sought a revolver, clothing, a nylon stocking, a road map, and other things.<sup>2</sup> Upholding the search, *Jensen* says that such items "are not incriminating in themselves" and are "normally found on one's person or in one's home or automobile."<sup>3</sup> Further, "[g]iven the nature of the property, the delay between the offense and the issuance of the warrants did not render the information therein stale or otherwise insufficient."<sup>4</sup> Therefore, *Jensen* found it reasonable to believe "that the specified items were presently in the places to be searched."<sup>5</sup>

The court continues to appreciate that there are reasons why the weapon might not have been found in Defendant's residence. For example, Defendant could have discarded it, fearing it would be found and used to incriminate him. Even if he had kept the weapon, he could have stashed it someplace else, and so on. Nevertheless, as presented above, it also was reasonable to believe that the weapon would still be in Defendant's home, close at hand, even two months after he allegedly used it in a crime. Accordingly, based on the "four corners" review of the search warrant, the court is satisfied that ordering the police to search Defendant's home, under the circumstances, was appropriate.

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<sup>1</sup> 482 A.2d 105 (Del. 1984); *see also* *Sisson v. State*, 903 A.2d 288, 298 (Del. 2006).

<sup>2</sup> *Id.* at 112.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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For the foregoing reasons, Defendant's motion to suppress evidence is  
**DENIED.**

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS: mes  
oc: Prothonotary (Criminal)