



**I. Facts and Procedural Posture.**

**A. Facts.**

As is delineated in this Court's September 13, 2018 Order, this matter finds its genesis in an allegedly illegal traffic stop of Defendant's vehicle.<sup>1</sup>

On January 28, 2017, at approximately 11:56 p.m., Pennsylvania State Troopers Daniel Spath ("Trooper Spath") and Jonathan Bailey performed a routine patrol in full uniform and in a marked patrol car along Pennsylvania State Route 903 and South Lake Drive in Kidder Township, Carbon County. Trooper Bailey operated the marked patrol car.

Trooper Spath observed a 2005 Honda Accord (the "Accord") turn from Route 903 onto South Lake Drive; the front driver's side and passenger side windows of the Accord possessed sun screening window tint which prohibited the troopers from seeing into the Accord.

The troopers subsequently observed the Accord crossing over the white fog line four times and weaving within its lane of travel multiple times as it traveled over a distance of a few miles along South Lake Drive. The troopers initiated a traffic stop of the

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<sup>1</sup>This factual recitation derives from the "Findings of Fact" set forth in the September 13, 2018 Order. See September 13, 2018 Order at ¶¶A-S, a copy of which is attached hereto for convenience.

Accord whereupon Trooper Spath made contact with the operator of the Accord who sat behind the vehicle's steering wheel.

Trooper Spath identified the operator and owner of the Accord as Defendant. A front seat passenger in the Accord was identified as Terrell Wisler Garcia ("Mr. Garcia").

Upon approach, Trooper Spath immediately detected a strong odor of marijuana emanating from the interior of the Accord. Trooper Spath simultaneously detected a marked reddening of Defendant's eyes and extreme dilation of Defendant's pupils.

Trooper Spath requested that Defendant step from the Accord and informed him that the Accord smelled of marijuana and that he had initiated the traffic stop because the Accord had failed to maintain its lane.

Defendant confirmed Trooper Spath's assessment that the Accord smelled of marijuana and related that two females had smoked marijuana in the Accord a few hours before the subject vehicle stop.

Trooper Spath conducted a Modified Romberg Balance Test and observed that Defendant had a distorted sense of time. Trooper Spath further observed that Defendant had leg tremors, eyelid tremors, and a lack of convergence. Trooper Spath observed Defendant's mouth to be dry and Defendant's tongue to be green in color.

Based upon his observations as heretofore detailed, Trooper Spath believed that he had probable cause to suspect that the Accord contained illegal drugs. Trooper Spath conducted a search of the Accord and located a marijuana cigarette between the center console and the driver's seat.

Trooper Spath took Defendant into custody and both Defendant and Mr. Garcia were read *Miranda* rights. Mr. Garcia stated that the seized marijuana belonged to him. The troopers arranged the transport of Defendant to the Monroe County DUI Center where Defendant submitted to a chemical test of his blood. On January 29, 2017 at 12:50 a.m., phlebotomist Christine Miller drew two vials of whole blood from Defendant's right arm. Results from the chemical test of Defendant's blood showed the presence of marijuana.

**B. Procedural Posture.**

On June 21, 2017, the Commonwealth filed an information charging Defendant with multiple counts emanating from the above-described factual narrative. These charges consisted of the following:

- Count 1: DUI: Controlled Substance - Schedule 1 - 2nd Offense  
75 Pa.C.S.A. §3802(d)(1)(i) M1
- Count 2: DUI: Controlled Substance - Metabolite - 2nd Offense  
75 Pa.C.S.A. §3802(d)(1)(ii) M1
- Count 3: DUI: Controlled Substance - Impaired Ability - 2nd Offense  
75 Pa.C.S.A. §3802(d)(2) M1
- Count 4: Disregard Traffic Lane (Single)  
75 Pa.C.S.A. §3309(1) S

See Information.

On January 10, 2018, Defendant filed Defendant's Motion to Suppress.

This Court denied Defendant's Motion to Suppress by virtue of its September 13, 2018 Order.

The September 13, 2018 Order found that (a) the troopers in the instant matter had probable cause to initiate the subject vehicle stop due to the window tint that prevented them from seeing the interior of the Accord, and (b) the troopers in the instant matter also had probable cause to initiate the subject vehicle stop due to Defendant's manner of driving, which constituted a risk of harm and safety hazard to both himself, to the troopers, and to other drivers.<sup>2</sup>

On October 11, 2018, Defendant filed his Notice of Appeal with this Court.

## **II. Issues.**

This opinion addresses, and suggests a negative answer, with respect to the following issues: (1) whether the facts attendant to this matter support appellate jurisdiction pursuant to Rules 311, 312, or 341 of the Pennsylvania Rules of Appellate Procedure,

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<sup>2</sup>See, generally, September 13, 2018 Order.

(2) whether the facts of record establish appellate jurisdiction under the collateral order doctrine of Rule 313 of the Pennsylvania Rules of Appellate Procedure, and (3) whether the Superior Court should stay the proceedings before this Court pending its review of whether it may exercise jurisdiction in this matter.

### **III. Discussion.**

#### **A. Overview.**

Pennsylvania jurisprudence emphasizes the fundamental importance of confirming a lawful basis for exercising jurisdiction prior to undertaking appellate review of any court order. The Superior Court repeatedly and consistently has stated that an appeal from an order "directly implicates the jurisdiction of the court asked to review the order[,]" hence the order must be "properly appealable" before the Court will undertake review of such order.<sup>3 4</sup> The jurisdiction of the Court stands fundamentally as a constitutional matter, insofar as the Pennsylvania Constitution created the Superior Court and vested the

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<sup>3</sup>See *Commonwealth v. Brister*, 16 A.3d 530, 533 (Pa.Super. 2011) (internal citations omitted). See also *Commonwealth v. Mitchell*, 72 A.3d 715, 717 (Pa.Super. 2013) (quoting *Commonwealth v. Brister* and stating "In order for this Court to have jurisdiction, an appeal must be from an appealable order.").

<sup>4</sup>See, *inter alia*, *Commonwealth v. Borrero*, 692 A.2d 158, 159 (Pa.Super. 1997) ("As a preliminary matter, we must first ascertain whether the judgment of sentence is properly appealable, because the question of appealability implicates the jurisdiction of this court."). See also *Id.* (delineating authority to emphasize the paramount importance of determining whether a lawful basis for jurisdiction exists.).

legislature, as opposed to the judiciary, with the authority to establish the scope of the Court's jurisdiction.<sup>5</sup>

The General Assembly has given litigants a procedural right to take an immediate appeal to the Superior Court from a **final order** of the Court of Common Pleas, including orders defined as "final" by court ruling, as well as such interlocutory orders that are "specified by law." <sup>6 7 8</sup>

**B. Rules 311, 312, and 341 of the Pennsylvania Rules of Appellate Procedure do not Support Appellate Jurisdiction in this Matter.**

The jurisdiction of the Superior Court, generally stands confined to final orders of the Court of Common Pleas.<sup>9</sup> An order

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<sup>5</sup> See PA. CONST. ART. 5 §3 (creating Superior Court and vesting it with such jurisdiction "as shall be provided by this Constitution or by the General Assembly."). See also *Toll v. Toll*, 439 A.2d 712 (Pa.Super. 1981) (acknowledging that Superior Court lacks authority to enlarge the Court's jurisdiction).

<sup>6</sup> See 42 Pa.C.S.A. §5105(a). See also 42 Pa.C.S.A. §742 ("The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas... except such classes of appeals as are by any provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court.").

<sup>7</sup> See Pa.R.A.P. 341 (defining and establishing final orders from which a party may take an immediate appeal).

<sup>8</sup> See 42 Pa.C.S.A. §5105(c). See also *Commonwealth ex. rel. Wright v. Lacy*, 435 A.2d 630, 631 (Pa.Super. 1981) ("The jurisdiction of the Superior Court is limited to appeals from common pleas court final orders, excepting where a statute provides otherwise."). See also Pa.R.A.P. 311 and Explanatory Note (listing, under authority of 42 Pa.C.S.A. §5101(c), those interlocutory orders from which a party may immediately appeal as of right; 42 Pa.C.S.A. §702(b) (establishing conditions under which a party may appeal by permission of court; Pa.R.A.P. 312 and 1311 (establishing, under authority of 42 Pa.C.S.A. §702, conditions under which a party may immediately appeal an interlocutory appeal by permission.)).

<sup>9</sup> See, generally, Pa.R.A.P. 341(a) ("(a) **General Rule.** -- Except as prescribed in paragraph (d) and (e) of this rule, an appeal may be



may not be properly characterized as a final order unless it puts the litigant out of court either by ending the litigation or disposing of the case entirely.<sup>10</sup> Generally, **a criminal defendant may appeal only from the judgment of sentence.** This prevents undue delay and avoids the disruption of criminal cases by piecemeal appellate review. See generally, *Commonwealth v. Swartz*, 579 A.2d 978, 980 (Pa.Super. 1990) (citations omitted).

A trial court's order denying a criminal defendant's pre-trial claims is not a "final order" as defined at Rule 341(b) of the Pennsylvania Rules of Appellate Procedure. Such an order does not "dispose of all claims and of all parties" insofar as it does not, at a minimum, dispose of the criminal charges filed against a defendant. Additionally, such orders do not constitute orders "expressly defined as a final order by statute." See Pa.R.A.P. 341(b) (2).

Finally, a defendant has no right to appeal the interlocutory order as of right under Rule 311 of the Pennsylvania Rules of Civil Procedure.<sup>11</sup> An order disposing of a motion to suppress evidence may only be appealed as of right when the Commonwealth serves as the moving party, and then only if the order substantially impairs

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taken as of right from any final order of a government unit or trial court.").

<sup>10</sup> See Pa.R.A.P. 341(b) ("**(b) Definition of Final Order.** -- A final order is any order that: (1) disposes of all claims and of all parties; or (2) RESCINDED (3) is entered as a final order pursuant to paragraph (c) of this rule.").

<sup>11</sup> See Pa.R.A.P. 311 ("Interlocutory Appeals as of Right").



the Commonwealth's ability to prosecute the accused.<sup>12</sup> The Pennsylvania Supreme Court thusly described the rationale that undergirds this framework:

A defendant has the ability to challenge an adverse suppression ruling on direct appeal **if he loses at trial**; the Commonwealth, however, if forced to proceed to trial without certain evidence, has no recourse if the suppression court's ruling was erroneous, as double jeopardy principles prevent retrial of the defendant with the additional evidence once he has been acquitted."<sup>13</sup>

C. **The Facts of Record do not Support Appellate Jurisdiction Under the Collateral Order Doctrine of Rule 313 of the Pennsylvania Rules of Appellate Procedure.**

The "collateral order" doctrine delineated at Rule 313 of the Pennsylvania Rules of Civil Procedure does not avail Defendant in this matter.<sup>14</sup> That rule permits a "narrow exception to the general rule that only final orders are appealable." See *Commonwealth v. Wells*, 714 A.2d 729, 730 (Pa. 1998). That rule necessarily must be construed and applied "narrowly" to avoid "piecemeal determinations and the consequent protraction of litigation." See

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<sup>12</sup> See Pa.R.A.P. 311(d) ("**Commonwealth appeals in criminal cases.** -- In a criminal case, under the right circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution.").

<sup>13</sup> See *Commonwealth v. James*, 69 A.3d 180, 185 (Pa. 2013) (emphasis added).

<sup>14</sup> See Pa.R.A.P. 313 ("**(a) General rule.** An appeal may be taken as of right from a collateral order of an administrative agency or lower court. **(b) Definition.** A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.").

*Commonwealth v. Sabula*, 46 A.3d 1287, 1929 (Pa.Super. 2012) quoting *Rae v. Funeral Directors Ass'n*, 977 A.2d 1121, 1129 (Pa. 2009).

Under the collateral order doctrine, as the text of Rule 313 of the Pennsylvania Rules of Appellate Procedure indicates, an immediate appeal of an otherwise unappealable interlocutory order may be permissible if it meets the following three requirements:

"(1) the order must be separable from, and collateral to, the main cause of action; (2) the right involved must be too important to be denied review; and (3) the question presented must be such that if review is postponed until after final judgment, the claim will be irreparably lost."

See *Commonwealth v. Harris*, 32 A.3d 243, 248 (Pa. 2011) (citations omitted). "All three prongs of Rule 313(b) must be met before an order may be subject to a collateral appeal, otherwise, the appellate court lacks jurisdiction over the appeal." See *Id* at 248.

Importantly, the third prong "requires that the matter must effectively be unreviewable on appeal from final judgment." See *Commonwealth v. Wells*, 714 A.2d 729, 730 (Pa. 1998). A collateral order may be appealed only if denial of immediate review would render impossible any review whatsoever of the individual's claim." See *Commonwealth v. Myers*, 322 A.2d 131, 133 (Pa. 1974) quoting *United States v. Ryan*, 402 U.S. 530, 533 (1971).

Even assuming *arguendo* that Defendant's claims could meet the first two prongs of the collateral order doctrine; he cannot satisfy the third prong. His claims would be rendered moot by an acquittal or if he is convicted, reviewed by this Court in an appeal following final judgment. He cannot procedurally satisfy the "now or never" context required by the third prong of the collateral order doctrine.

**D. The Superior Court Should not Stay the Proceedings before this Court Pending its Review of Whether it May Exercise Jurisdiction in this Matter.**

Defendant cannot successfully move this Court or the Superior Court to stay proceedings currently pending in the Court of Common Pleas. Indeed, Defendant has not sought directly such a stay. Although an appeal normally divests a lower court of jurisdiction, exceptions exist when a party appeals from an interlocutory order.<sup>15 16</sup> When an appellant, such as Defendant in this instant matter, fails to seek permission to appeal however, such an appellant may not avail himself or herself of the statutes and rules governing appellate procedure that might otherwise have provided the power to file a motion, either with this Court or the Superior Court, to stay proceedings before this Court pending

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<sup>15</sup> See Pa.R.A.P. 1701(a) ("General rule. - Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasi-judicial order is sought, the trial court or other government unit may no longer proceed further in the matter.").

<sup>16</sup> See *Melani v. Northwest Engineering, Inc.*, 909 A.2d 404, 406 (Pa.Super. 2006) (Enunciating that "we conclude the appeal did not divest the trial court of jurisdiction since the appeal is from an interlocutory order.").

disposition of the instant appeal.<sup>17</sup> Under the circumstances extant in the instant matter - i.e., the subject order does not constitute a final order immediately reviewable pursuant to Pa.R.A.P. 341, does not constitute an interlocutory order immediately reviewable as of right pursuant to Pa.R.A.P. 311, does not constitute a collateral order immediately reviewable pursuant to Pa.R.A.P. 313, and Defendant has failed to request permission for an immediate review pursuant to Pa.R.A.P. 312 - this Court retains uninterrupted jurisdiction of the matter.<sup>18</sup>

#### **IV. Conclusion.**

Defendant cannot establish a lawful basis for the exercise of Superior Court jurisdiction, even to any limited extent such as any filing of an order to stay proceedings in this Court. Should Defendant ultimately be convicted, none of the issues which he challenges upon appeal would have been irreparably lost.

In sum, Defendant has yet to be tried, convicted, and sentenced. His premature appeal should be quashed to "avoid

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<sup>17</sup> See 42 Pa.C.S.A. §702(c) (Petition for permission to appeal an interlocutory order shall not stay lower court proceedings except as prescribed by rules); Pa.R.A.P. 1313 (Petition for permission to appeal shall not stay proceedings before lower court unless a lower court judge or appellate court so orders). See also Pa.R.A.P. 1532 (a) (giving appellate court power to "Grant other interim or special relief required in the interest of justice and consistent with the usages and principles of law."). The facts of record do not confer upon appellant the power to file a motion for a stay pursuant to Pa.R.A.P. 1761 (pertaining to capital cases), Pa.R.A.P. 1762 (pertaining to release on bail), or Pa.R.A.P. 1764 (pertaining to orders for the payment of money).

<sup>18</sup> See *Melani v. Northwest Engineering, Inc.*, 909 A.2d at 406, n.5.

piecemeal determinations and consequent protraction of litigation." See *Commonwealth v. Sabula*, 46 A.3d 1287, 1291 (Pa.Super. 2012) quoting *Rae v. Pennsylvania Funeral Directors Ass'n* 977 A.2d 1121, 1129 (Pa. 2003).

For all of the reasons herein set forth, the undersigned respectfully submits that Defendant's attempt to obtain interlocutory review of the September 13, 2018 Order should not be entertained and that the instant appeal should be quashed while the proceedings in this matter continue unabated before this Court.

BY THE COURT:



Joseph J. Matika, J.

2018 DEC - 6 A 12:56  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

PAIMAI A. BENOIT,  
Defendant

No. CR 613-2017

Brian B. Gazo, Esquire

Counsel for Commonwealth  
Assistant District Attorney

Lawrence J. Kansky, Esquire

Counsel for Defendant

ORDER OF COURT

AND NOW, this 13<sup>TH</sup> day of September, 2018, upon consideration of "Defendant's Motion to Suppress All Evidence Obtained Through an Illegal Traffic Stop of Defendant's Vehicle", Defendant's Memorandum of Law in Support thereof, the Commonwealth's Proposed Findings of Fact and Conclusions of Law, and after hearing thereon, it is hereby **ORDERED and DECREED** that Defendant's Motion to Suppress, premised upon an alleged illegal traffic stop of his vehicle, is **DENIED**.

In furtherance of this Order, the Court makes the following:

1. Findings of Fact

A. On January 28, 2017, at approximately 11:56 p.m., Pennsylvania State Troopers Daniel Spath and Jonathan Bailey performed a routine patrol in full uniform and in a marked patrol

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car along Pennsylvania State Route 903 and South Lake Drive in Kidder Township, Carbon County. Trooper Bailey operated the marked patrol car.

B. Trooper Spath observed a 2005 Honda Accord (the "Accord") turn from Route 903 onto South Lake Drive; the front driver's side and passenger side windows of the Accord possessed sun screening window tint which prohibited the troopers from seeing into the Accord.

C. The troopers subsequently observed the Accord crossing over the white fog line four times and weaving within its lane of travel multiple times as it traveled over a distance of a few miles along South Lake Drive.

D. The troopers initiated a traffic stop of the Accord whereupon Trooper Spath made contact with the operator of the Accord who sat behind the vehicle's steering wheel.

E. Trooper Spath identified the operator and owner of the Accord as Defendant Paimai Benoit ("Defendant" or "Mr. Benoit"). A front seat passenger in the Accord was identified as Terrell Wisler Garcia ("Mr. Garcia").

F. Upon approach, Trooper Spath immediately detected a strong odor of marijuana emanating from the interior of the Accord.

G. Trooper Spath simultaneously detected a marked reddening of Defendant's eyes and extreme dilation of Defendant's pupils.



H. Trooper Spath requested that Defendant step from the Accord and informed him that the Accord smelled of marijuana and that he had initiated the traffic stop because the Accord had failed to maintain its lane.

I. Defendant confirmed Trooper Spath's assessment that the Accord smelled of marijuana and related that two females had smoked marijuana in the Accord a few hours before the subject vehicle stop.

J. Trooper Spath conducted a Modified Romberg Balance Test and observed that Defendant had a distorted sense of time.

K. Trooper Spath further observed that Defendant had leg tremors, eyelid tremors, and a lack of convergence.

L. Trooper Spath observed Defendant's mouth to be dry and Defendant's tongue to be green in color.

M. Based upon his observations as heretofore detailed, Trooper Spath believed that he had probable cause to suspect that the Accord contained illegal drugs.

N. Trooper Spath conducted a search of the Accord and located a marijuana cigarette between the center console and the driver's seat.

O. Trooper Spath took Defendant into custody and both Defendant and Mr. Garcia were read *Miranda* rights.

P. Mr. Garcia stated that the seized marijuana belonged to him.

Q. The troopers arranged the transport of Defendant to the Monroe County DUI Center where Defendant submitted to a chemical test of his blood.

R. On January 29, 2017 at 12:50 a.m., phlebotomist Christine Miller drew two vials of whole blood from Defendant's right arm.

S. Results from the chemical test of Defendant's blood showed the presence of marijuana.

## 2. Conclusions of Law.

A. The troopers in the instant matter had probable cause to initiate the subject vehicle stop due to the window tint that prevented them from seeing the interior of the Accord.<sup>1</sup>

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<sup>1</sup> The Pennsylvania Supreme Court has defined probable cause as follow:

Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the stop, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather, we require only a **probability**, and not a prima facie showing, of criminal activity. In determining whether probable cause exists, we apply a totality of circumstances test.

See *Commonwealth v. Calabrese*, 184 A.3d at 166-167 citing *Commonwealth v. Martin*, 101 A.3d 706, 721 (Pa. 2014) (internal citation omitted) (emphasis in original).

**"For a stop based on the observed violation of the Vehicle Code or otherwise non-investigable offense, an officer must have probable cause**

B. The troopers in the instant matter also had probable cause to initiate the subject vehicle stop due to Defendant's manner of driving, which constituted a risk of harm and safety hazard to both himself, to the troopers, and to other drivers. See *Commonwealth v. Chernosky*, 874 A.2d 123 (Pa. 2005). See also *Commonwealth v. Sniscak*, No. CR-1646-2016 at 5-14 (C.P. Carbon 2016) (Acknowledging that, based upon prevailing Pennsylvania caselaw, "the risk of harm / safety hazard test is the simplest and most logical approach when determining the existence of probable cause for §3301 and §3309 violations.").

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**to make a constitutional vehicle stop."** See *Commonwealth v. Calabrese*, 184 A.3d 164, 166 (Pa. 2018) (emphasis added) citing *Commonwealth v. Harris*, 176 A.3d 1009, 1019 (Pa.Super. 2017). In such situations, "[i]f the alleged basis of a vehicular stop is to permit a determination whether there has been compliance with the Motor Vehicle Code of this Commonwealth, it is incumbent (sic) upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, **which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.**" See *Commonwealth v. Gleason*, 785 A.2d 983, 989 (Pa. 2001) (citations omitted) (emphasis in original).

With respect to "[s]unscreening and other materials prohibited, the Pennsylvania Motor Vehicle Code provides that "[n]o person shall drive any motor vehicle with any suncreening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle." See 75 Pa.C.S.A. §4524(e)(1).

In the instant matter, the Commonwealth's credible testimony that the Accord possessed tinted windows that prevented the troopers from seeing its interior provides probable cause to support the vehicle stop. See *U.S. v. Leal*, 235 Fed.Appx. 937 (3d Cir. 2007).

C. Having found no violation of Defendant's rights, Defendant's Motion to Suppress All Evidence Obtained through an Illegal Traffic Stop of Defendant's Vehicle is **DENIED**.

BY THE COURT:

  
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Joseph J. Matika, J.

FILED  
2013 SEP 13 P 1:54  
CLERK OF COURT  
OF CALIFORNIA  
COUNTY OF LOS ANGELES