

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

SABRINA LYNN HUFNAGLE,	:	
Plaintiff	:	
	:	
v.	:	No. 06-01,467
	:	
COMMONWEALTH OF PA	:	
DEPARTMENT OF TRANSPORTATION,	:	LICENSE SUSPENSION
Defendant	:	

OPINION and ORDER

The petitioner has appealed her one-year license suspension imposed by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (hereinafter “Department”). The main issue before the court is whether the arresting officer was a “police officer” for purposes of the implied consent law.

The officer in question, William MacInnis, is employed part-time by Penn College and part-time by the Borough of Montoursville. On the night in question, he was in Hepburn Township, participating in a roving patrol looking for individuals driving under the influence of alcohol in connection with a sobriety checkpoint that had been established under the supervision of Old Lycoming Township police officers.¹

The petitioner argues that Officer MacInnis lacked jurisdiction to stop and arrest her outside of his jurisdiction, and therefore was not a “police officer” for purposes of the Implied Consent Law 75 Pa.C.S. §1547(a)(1), which states a driver is deemed to have given consent to testing “if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual control of the movement of a

¹ Hepburn Township and Old Lycoming Township executed a Joint Municipal Agreement for Law Enforcement Services. DUI patrols and checkpoints utilize officers from various municipalities who have been appointed Special County Detectives by order of court.

vehicle” while under the influence of alcohol. The Vehicle Code defines “police officer” as a “natural person authorized by law to make arrests for violations of law.” 75 Pa.C.S. §102.

Where a licensee challenges the legal authority of the arresting officer, as opposed to some aspect of the manner of the arrest, the Department bears the burden of proving the officer had such authority. Martin v. Bureau, 870 A.2d 985, (Pa. Commw. 2005). The court does not believe the Department has met its burden.

The Municipal Police Jurisdiction Act (MPJA), grants broad authority to municipal police officers to enforce the law within their primary jurisdiction. 42 Pa.C.S. §§ 8951-8954. Primary jurisdiction is defined as “The geographical area within the territorial limits of a municipality or any lawful combination of municipalities which employs a municipal police officer.” 42 Pa.C.S. §8951. The statute also provides police officers with authority to make arrests outside their primary jurisdictions in limited situations, listed in §8953(a).

The Bureau argues that the “official business” exception, §8953(a)(5), applies to this case. That paragraph gives officers the authority to enforce laws outside their primary jurisdictions:

Where the officer is on official business and views an offense, or has probable cause to believe that an offense has been committed, and makes a reasonable effort to identify himself as a police officer and which offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger to persons or property.

The court does not find this provision applicable, as it appears to apply to cases when an officer on duty in his primary jurisdiction leaves that jurisdiction for some official business reason connected with that primary jurisdiction. In Commonwealth v. Lehman, 870 A.2d 818, 821 (Pa. 2005), the Pennsylvania Supreme Court stated:

[W]e are led to the following rule: Section 8953(a)(5) of the MPJA authorizes an extrajurisdictional detention where the detaining officer is on-duty, outside his or her jurisdiction for a routine or customary reason including responding to an exigent circumstance, develops probable cause to believe an offense has been committed, and limits out-of-jurisdiction activities to maintaining the *status quo*, including detaining the suspect, until officers from the appropriate jurisdiction arrive.

See also Martin v. Bureau, 905 A.2d 438 (Pa. 2006). The instant arrest does not fall within the enunciated rule.

The cases this court has reviewed on §8953(a)(5) all involve officers on duty in their primary jurisdiction. Martin v. Bureau, 905 A.2d 438 (Pa. 2006); Commonwealth v. McCandless, 648 A.2d 309 (Pa. 1994); Commonwealth v. Pratti, 608 A.2d 488 (Pa. 1992); Commonwealth v. Merchant, 595 A.2d 1135 (Pa. 1991). In the case before this court, Officer MacInnis was not on official business for Penn College or Montoursville.

Furthermore, Officer MacInnis was not on official business in any other jurisdiction, as there was no evidence he was officially employed by Old Lycoming Township, Hepburn Township, or Lycoming County. The Department argues he was a Special County Detective, but there was no evidence to that effect. Although a list of officers had been approved as “Special County Detectives” by the Hon. Kenneth D. Brown on February 27, 2003, Officer MacInnis is not on that list. We also note that under 16 P.S. §1440, the district attorney may appoint “such other county detectives as the salary board may authorize.” The Department has presented no evidence that Officer MacInnis was authorized by the salary board or even appointed by the district attorney. Also, under 16 P.S. §1441, titled “Appointment of special detective with approval of court,” the district attorney may,

with the approval of the salary board, whenever the court of quarter sessions and district attorney may deem it necessary for a particular and temporary assignment, appoint a special detective

The department has presented no evidence that Officer MacInnis was ever approved by the court.

We acknowledge that §8953 should be liberally construed to effectuate its purposes, one of which is to provide officers with authority to make arrests outside of their primary jurisdictions in limited situations. Commonwealth v. Merchant, 595 Pa. 1135, 1138 (Pa. 1991). We also note that the predecessor Act [42 Pa.C.S. §8901] authorized police action outside primary jurisdiction only in cases of hot pursuit. The inclusion of additional instances of authorization indicates the General Assembly “intended to expand the powers of local police to protect the public, where such expansion would not adversely affect the ultimate goal of maintaining police accountability to local authority.” Id. In the case before this court, there is no evidence Officer MacInnis was officially accountable to any local authority on the night he arrested the petitioner. Therefore, the purpose of the MPJA would not be promoted by upholding the license suspension. Had our General Assembly contemplated DUI checkpoints as special exceptions, they certainly would have done so by using clear language.

Moreover, §8953(b) states,

Nothing contained in subsection (a) shall be deemed to extend or otherwise enlarge a municipal police officer’s power and authority to arrest any person for an offense unless specifically authorized by law.

As Officer MacInnis was without statutory authority to implement the Implied Consent Law, the petitioner’s suspension must be set aside.

ORDER

AND NOW, this _____ day of December, 2006, for the reasons stated in the foregoing opinion, the Petition to Appeal Suspension of Operating Privilege is granted and the suspension of the petitioner's operating privilege is hereby set aside.

Date: _____ BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
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