

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-232-2012**
 v. :
 :
 :
 SONYA SMITH, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On December 3, 2014, the Defendant filed an omnibus pre-trial motion. Hearings on the motion were held on January 9, 2015 and April 6, 2015.

I. Background

On November 24, 2011, the Defendant was stopped and arrested in Williamsport by an Old Lycoming Township police officer, who was on a DUI roving patrol. The police officer was a special county detective, who, through this Court's Order of August 4, 2011, was appointed to conduct DUI roving patrols in the various municipalities of Lycoming County.¹ The Commonwealth charged the Defendant with a second DUI.

In her motion, the Defendant argued that the police officer did not have probable cause to stop her vehicle. However, during the January 9, 2015 hearing, the Defendant withdrew the

¹ On August 4, 2011, Eric R. Linhardt, the District Attorney of Lycoming County, moved for the appointment of special county detectives under 16 P.S. § 1441. That same day, this Court appointed the following individuals as special county detectives:

- (1) Any and all members of the Old Lycoming Township Police Department;
- (2) Any and all members of the Williamsport Bureau of Police;
- (3) Any and all members of the South Williamsport Borough Police Department;
- (4) Any and all members of the Montoursville Borough Police Department;
- (5) Any and all members of the Tiadaghton Valley Regional Police Department;
- (6) Any and all members of the Muncy Borough Police Department;
- (7) Any and all members of the Montgomery Borough Police Department;
- (8) Any and all members of the Hughesville Borough Police Department;
- (9) Any and all members of the Muncy Township Police Department;
- (10) Any and all members of the Penn College Police Department;
- (11) Any and all members of the Duboistown Borough Police Department.

The above individuals were appointed as special county detectives for the purpose of working sobriety checkpoints and DUI roving patrols in the various municipalities of Lycoming County.

probable cause challenge. She argues that the stop was unlawful because the police officer was outside of the territorial limits of his jurisdiction. The Defendant also argues that “since [her] prior [DUI] conviction resulted from an uncounseled consent decree, the Commonwealth should be precluded from utilizing it to enhance” the present offense from an ungraded misdemeanor first DUI to a first-degree misdemeanor second DUI. The Defendant contends that the prior conviction must be proven beyond a reasonable doubt because it is an element of the offense.

II. Discussion

A. The Stop of the Defendant did not Violate the Municipal Police Jurisdiction Act.

“Any duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases: (1) Where the officer is acting pursuant to an order issued by a court of record” 42 Pa.C.S. § 8953(a)(1).

Here, the police officer was acting pursuant to this Court’s order of August 4, 2011, which appointed any and all members of the Old Lycoming Township Police Department as special county detectives for the purpose of working DUI roving patrols. Therefore, the stop did not violate the Municipal Police Jurisdiction Act.

B. The Fact of the Defendant’s Prior DUI Conviction does not Need to be Submitted to the Jury and Found Beyond a Reasonable Doubt.

“The Supreme Court’s decision in Almendarez-Torres v. United States, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998) held that the fact of a prior conviction does not need

to be submitted to the jury and found beyond a reasonable doubt. [Alleyne v. United States, 133 S. Ct. 2151 (2013)] explicitly noted that Almendarez-Torres remains good law.”

Commonwealth v. Miller, 102 A.3d 988, 995, n.5 (Pa. Super. 2014) (citations omitted).

III. Conclusion

The stop of the Defendant did not violate the Municipal Police Jurisdiction Act because the officer was acting pursuant to this Court’s Order. The fact of the Defendant’s prior DUI conviction does not need to be submitted to the jury and found beyond a reasonable doubt.

ORDER

AND NOW, this _____ day of April, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Omnibus Pre-trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge