

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1029-2015
 :
 SHAWN-ALICIA COLES, :
 :
 Defendant : Motion to Suppress

OPINION AND ORDER

Defendant is charged by Information filed on July 16, 2015 with two counts of Driving Under the Influence of Alcohol (DUI) and a related traffic summary.

The Commonwealth alleges that on April 23, 2015, Defendant was operating a motor vehicle in the Borough of Montoursville while illegally under the influence of an alcoholic beverage.

On August 18, 2015, Defendant filed a motion to suppress alleging that the stop of her car was unconstitutional and accordingly that all of the evidence seized after the stop should be suppressed.

A hearing on the motion was held before the court on September 23, 2015. The parties stipulated to the following facts: Officer Douglas Litwhiler of the Montoursville Borough Police Department was on duty on April 23, 2015. At approximately 2:44 a.m., he was on patrol on Broad Street in Montoursville when he spotted Defendant's vehicle. He ran her registration through Penn DOT and it showed that it was under suspension due to an insurance cancellation. He subsequently stopped Defendant's vehicle. Based on the stop and the evidence obtained as a result thereof, he charged Defendant.

Contrary to the information Officer Litwhiler was provided by Penn DOT,

Defendant's registration to her vehicle was not suspended at the time. Defendant had valid automobile insurance and the registration was in effect at the time of the stop.

Defendant alleges that the stop of her vehicle was without probable cause, because she was driving a registered vehicle. Contrary to Officer Litwhiler's assertions, her registration was not suspended due to an insurance cancellation.

Probable cause exists where the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a prudent individual into believing that an offense was committed and that the defendant has committed it. *Commonwealth v. Martin*, 101 A.3d 706, 721 (Pa. 2014). In determining whether probable cause exists, the court must consider the totality of the circumstances. *Id.*

However, while it certainly appears that Officer Litwhiler had sufficient facts to warrant a prudent individual in believing that Defendant was operating an unregistered vehicle, it is conceded that Defendant was not driving an unregistered vehicle. The information provided to Officer Litwhiler from Penn DOT was clearly erroneous.

The fact that Officer Litwhiler relied in good faith on the information from Penn DOT is of no moment. In *Commonwealth v. Johnson*, 86 A.3d 182 (Pa. 2014), the Pennsylvania Supreme Court rejected the argument that an officer's good faith belief that he was arresting a defendant on a valid warrant, when in fact the warrant was not valid, defeated the application of the exclusionary rule under the Pennsylvania Constitution.

Similar to this case, in *Johnson*, a trooper placed the defendant under arrest after receiving a "hit" advising him that there was an active arrest warrant for the defendant.

It was subsequently determined, however, that the warrant notification that the trooper received and relied upon was not accurate. The warrant in fact was no longer valid, as it had been previously served on the defendant.

The Commonwealth argued that the suppression of the evidence obtained as a result of the defendant's arrest was inappropriate given the trooper's reasonable and proper reliance on the warrant. The Commonwealth argued that where police act on a warrant they believe to be valid, the physical evidence obtained as a result of such arrest should not be suppressed.

The Pennsylvania Supreme Court rejected the Commonwealth's argument, finding that the trial court properly suppressed the physical evidence seized by the police incident to an invalid and expired arrest warrant. Consistent with prior authority, the Court rejected a good faith exception to the exclusionary rule.

The Court noted that under Pennsylvania Constitutional law, and in particular Article I, Section 8, "[f]rom the perspective of the citizen whose rights are at stake, an invasion of privacy, in good faith or bad, is equally as intrusive. This is true whether it occurs through the actions of the legislative, executive or the judicial branch of government." *Johnson*, 886 A.3d at 189 (quoting *Commonwealth v. Edmunds*, 586 A.2d 887, 901 (Pa. 1991)).

While in this case, the Commonwealth argues that a good faith exception should apply, this court is bound by the decision in *Johnson*. As well, and utilizing the language of *Johnson*, the Commonwealth concedes that there is no "principled reason

consonant with the *Edmunds* Court's existing articulation of the purpose of the exclusionary rule under Article I, Section 8" as to why this court should not apply the exclusionary remedy.

In the alternative, the Commonwealth argues that Officer Litwhiler was conducting an investigation into whether Defendant or another person was actually driving an unregistered vehicle. The Commonwealth argues that reasonable suspicion should be the applicable standard. This is a distinction without a difference. There is no good faith exception whether the standard is reasonable suspicion or probable cause. Furthermore, just as exclusion in *Johnson* would encourage the executive to purge executed arrest warrants, exclusion in this case should encourage Penn DOT to keep more accurate records.

In order to protect the constitutional rights of Defendant consistent with Pennsylvania law, the court will GRANT the Defendant's motion to suppress. A copy of this Opinion, however, should be forwarded to Chief Counsel for Penn DOT. It is the court's understanding that these types of mistakes are more common than the court was aware. Penn DOT should be placed on notice and make reasonable efforts to correct these errors, because they not only infringe on the constitutional rights of the citizens of Pennsylvania, but they also waste precious law enforcement resources.

ORDER

AND NOW, this ___ day of September 2015 following a hearing and argument, Defendant's motion to suppress is **GRANTED**. Any and all evidence obtained from the Defendant is suppressed, including any and all observations the arresting officer

made after the stop of the vehicle.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
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Work file