

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2177-2015
:
vs. :
:
STACY L. SAAR, :
Defendant : Motion to Withdraw Guilty Plea

OPINION AND ORDER

On June 3, 2016, Defendant pled guilty to Count 2 of the Information, driving under the influence of a controlled substance (controlled substance in blood), an ungraded misdemeanor. Defendant was driving her vehicle in Nesbit, Lycoming County, on October 20, 2015 and was involved in a one-vehicle accident. The police responded, took her into custody, and tested her blood. THC was found in her blood. At the time Defendant pled guilty she was represented by George Lepley, Jr., Esquire. On September 21, 2016, Mr. Lepley was granted to leave to withdraw as counsel. Brian Manchester, Esquire entered his appearance on Defendant's behalf.

On September 21, 2016, Defendant filed a motion to withdraw her guilty plea. A brief hearing was held on September 27, 2016. Following said hearing, the Court directed defense counsel to file a supplemental motion including all of the factual and legal bases upon which Defendant claimed that there was a just reason to withdraw her plea. The hearing was continued to October 11, 2016.

On October 5, 2016, Defendant filed a supplemental motion to withdraw her guilty plea. Defendant asserts two reasons in support of her motion. First, Defendant argues that her plea was entered into prior to the United States Supreme Court decision in *Birchfield*

v. North Dakota, 136 S. Ct. 2160 (U.S. June 23, 2016). Because of such, Defendant asserts that the blood test results should be suppressed and that her plea was unknowing.

Defendant also argues that her plea was unknowing as she was not made aware that Trooper Adam Kirk's drug recognition evaluation and opinion as to Defendant's impairment was "scientifically and factually flawed."

Argument on Defendant's motion was held on October 11, 2016. Defendant briefly testified. When she pled guilty to Count 2, she was not aware of any issues that might have given her an opportunity to argue that her blood test results were inadmissible or could be suppressed pursuant to the reasoning in *Birchfield*.

Defendant argued that because *Birchfield* was decided between the time she pled guilty and was to be sentenced and because *Birchfield* holds that under the circumstances that existed in this case, the blood test results could not be utilized against Defendant and would be suppressed, it constitutes a fair and just reason to withdraw.

The Commonwealth argued that Defendant did not have a fair and just reason to withdraw her plea for several reasons. First, the Commonwealth argued that although *Birchfield* was not in fact decided at the time, Defendant could have filed a motion raising a *Birchfield* issue before Defendant pled guilty; since she did not, the issue was waived. The Court finds no merit in this assertion. Despite the fact that the Supreme Court had granted certiorari in *Birchfield*, the case law at the time Defendant was required to file an omnibus pretrial motion was such that she would not have been entitled to suppression of her blood test results. Additionally, the Commonwealth has not provided the Court with any legal

authority whatsoever which holds that in order for a defendant to raise a fair and just reason based on a legal premise, said legal premise or issue must have been preserved through the filing of a pre-plea motion.

Secondly, the Commonwealth argued that the change in the law is not a sufficient reason to permit Defendant to withdraw her plea. The Commonwealth argued that there was no “showing at this point” that the blood test result was the “primary motivation for the plea as opposed to the plea agreement.” In conjunction with this argument, the Commonwealth argued that the test is whether “at the time of the plea”, it was knowing, intelligent and voluntary.

The Court cannot accept the Commonwealth’s argument.

Pursuant to Rule 591 of the Pennsylvania Rules of Criminal Procedure, at any time before the imposition of sentence, the court may, in its discretion, permit the withdrawal of a plea of guilty.

A presentence motion to withdraw a guilty plea should be granted if supported by a fair and just reason. *Commonwealth v. Carrasquillo*, 115 A.3d 1284 (Pa. 2015).

While a defendant does not have an absolute right to withdraw his or her plea prior to sentencing, in exercising its discretion, the court should do so liberally in defendant’s favor. *Carrasquillo*, 155 A.3d at 1292 (citing *Commonwealth v. Forbes*, 450 Pa. 185, 190, 299 A.2d 268, 271 (1973)). “The trial courts in exercising their discretion must recognize that before judgment, the court should show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial -- perhaps the most

devastating waiver possible under our Constitution.” *Carrasquillo*, 155 A.3d at 1287 (citing *Commonwealth v. Santos*, 301 A.2d 829, 830 (Pa. 1973), indirectly quoting *Dukes v. Warden, Connecticut State Prison*, 406 U.S. 250, 258, 92, S. Ct. 1551, 1555 (1972) (Stewart, J. concurring)). In this particular case, the Court concludes that there is a fair and just reason. At the time Defendant entered her guilty plea, the law permitted the blood test results to be utilized against her. Prior to her sentencing, the law changed. The blood test results under the circumstances must be suppressed. Accordingly, the entire dynamic of Defendant’s case has changed. Under the circumstances, she could not be found guilty of the count to which she pled guilty. Moreover, this Court cannot ignore the fact that since the *Birchfield* decision the policy of the Lycoming County District Attorney’s office has been to allow individuals who previously pled guilty to a blood alcohol offense pre-*Birchfield* but prior to sentencing, to plead guilty to the incapable offense. This represents an acknowledgement by the Commonwealth that sentencing an individual on a count for which the seizure of the blood was unconstitutional is not fair or just.

ORDER

AND NOW, this ___ day of November 2016, following a hearing and argument, the Court **GRANTS** Defendant’s motion to withdraw her guilty plea. Defendant’s plea of guilty is VACATED. This case is set for a pretrial date of December 6, 2016 with Call of the List scheduled for **January 24, 2017 at 8:30 a.m. in Courtroom No. 1** of the Lycoming County Courthouse.

Defendant must be present at that time or a bench warrant will be issued for

her arrest.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Brian Manchester, Esquire
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Gary Weber, Esquire (Lycoming Reporter)
Work file