

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FREDERICK BLOOMINGDALE,)
)
 Defendant,)
)
 v.)
)
STATE OF DELAWARE,)
)
 Plaintiff.)

I.D. No. 9906013775

Submitted: January 22, 2002
Decided: January 24, 2002

ORDER

COMES NOW, in consideration of defendant's motion for reconsideration and dismissal filed January 4, 2002, the Court finds as follows:

1. The defendant was charged by Information on October 25, 1999 with the offense of Operating a Motor Vehicle Under the Influence of Alcohol, in violation of 21 Del. C. § 4177 on May 28, 1999.
2. A bench trial was held on March 7, 2000. At the conclusion of all the evidence, I entered a finding of guilty to the offense charged. The defendant was immediately sentenced as a second offender and committed at Level V for a period of sixty (60) days, followed by a period of probation at Level I. The sentence was to commence on March 23, 2000.

3. On March 15, 2000, the defendant filed a motion for a new trial pursuant to CCP Civil Rule 33 and for a stay of sentence. The State opposed the motion. Defendant's motion challenged the basis of the original stop for lack of reasonable articulable suspicion.

4. On March 21, 2000, the defendant filed an appeal to the Superior Court.

5. On March 23, 2000, this Court entered an order staying the sentence and ordered briefing on defendant's motion for a new trial.

6. On July 7, 2000, this Court entered an order after briefing granting defendant's motion, vacated the finding of guilty and concluded the officer lacked reasonable articulable suspicion for the traffic stop. The charges were dismissed.

7. On July 19, 2000, the State appealed this Court's July 7, 2000 decision to the Superior Court pursuant to 10 Del. C. § 9902(c) and § 9902(d).

8. In an opinion decided July 17, 2001, the Superior Court entered an order reversing this Court on the basis it did not have the authority to decide the motion for a new trial because, when the defendant filed his appeal to the Superior Court, it divested this Court of jurisdiction.

9. In reversing this Court, the Superior Court left open the question whether defendant's motion to challenge the stop could properly be considered under CCP Criminal Rule 12(f), good faith exception, since no motion to suppress was filed prior to trial.

10. On March December 28, 2001, defendant was resentenced where the original sentence was imposed. January 4, 2002, defendant filed a motion to stay sentence, which was granted January 9, 2002.

11. On January 4, 2002, defendant also filed this motion for “reconsideration and dismissal.” An office conference was held January 22, 2002.

12. This motion moves the Court to determine whether the motion to suppress should be considered within the Rule 12(f) exception. In my original consideration of this issue, I concluded that Rule 12(f) provided a basis for this Court to consider the motion because the narrative in the police report could not have put a reasonable person on notice of a suppression issue or Fourth Amendment violation. The Superior Court in reviewing this issue reasoned that the defendant was put on notice that a suppression question was present at the end of the State’s Case-in-Chief. State v. Bloomingdale, J. Silverman (2001) WL 845 758 (Del. Super.). While it is not expressly stated, it is clear that the opinion concludes that failure to raise the issue at that stage of the proceedings forecloses any consideration at a future time.

13. Because of my conclusion regarding the Criminal Rule 12(f) issues, I do not reach defendant’s argument in State v. Boyea, Ut. Supr., 765 A.2d 862 (2000) (holding there was reasonable articulable suspicion to justify a stop based upon an anonymous tip that a vehicle was operating erratically where the caller provided a description of the vehicle, with the make, model and color; as well as additional information that it had New York plates; identified the vehicle’s

current location; and reported the direction in which it was traveling. There was no need for the officer to observe any other erratic driving where he went to the predicted location and within minutes confirmed the accuracy of the reported location, description . . . supporting the informant's credibility and the reasonable inference that the caller had personally observed the vehicle).

Accordingly, the motion is Denied. The Defendant will report for sentencing February 22, 2002 at 8:30 a.m.

SO ORDERED this 24th day of January, 2002

Alex J. Smalls
Chief Judge

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