

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Clair Ireland O'Malley	:
	:
v.	:
	:
Commonwealth of Pennsylvania,	:
Department of Transportation,	:
Bureau of Driver Licensing,	: No. 872 C.D. 2008
Appellant	: Submitted: September 26, 2008

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY  
JUDGE BUTLER**

**FILED: October 23, 2008**

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (PennDOT) appeals from an order of the Court of Common Pleas of Delaware County (trial court) sustaining the appeal of Claire Ireland O'Malley (Operator) of her one year license suspension for chemical testing refusal. The issue before the Court is whether Officer Colleen Joyce (Officer Joyce), an Aston Township police officer, had jurisdiction to stop Operator's vehicle in Middletown Township. For reasons that follow, we affirm the trial court.

On April 27, 2007, Officer Joyce was on patrol on Pennell Road, in Aston Township, when she observed a blue Saturn straddling the fog line, driving

in the opposite direction. Officer Joyce made a U-turn and caught up behind the vehicle. The operator of the Saturn then had trouble making a right turn on to Glen Riddle Road and in fact made three minor turns to navigate the intersection. Officer Joyce, however, acknowledged that the intersection was complicated with construction. Operator proceeded to drive on the wrong side of Glen Riddle Road and almost hit a guard rail, at which point Officer Joyce stopped the operator in Middletown Township. After the stop, Officer Joyce believed Operator to be under the influence of alcohol and advised her of her rights pursuant to Section 1547 of the Vehicle Code, *as amended*, 75 Pa.C.S. §1547.<sup>1</sup> Operator refused to provide a sample for chemical testing.

On May 25, 2007, PennDOT sent Operator official notice imposing a one year driving suspension pursuant to Section 1547(b)(1) of the Vehicle Code, *as amended*, 75 Pa.C.S. §1547(b)(1) (relating to refusal to submit to chemical testing). Operator timely appealed to the trial court and the trial court sustained Operator's appeal. PennDOT timely appealed to this Court.<sup>2</sup>

PennDOT argues the trial court erred as a matter of law in ruling that Officer Joyce did not have the authority under Section 8953(a)(2) of the Municipal Police Jurisdiction Act (MPJA), 42 Pa.C.S. §8953(a)(2), to effect an extraterritorial arrest of Operator in Middletown Township. Specifically, PennDOT argues Officer Joyce's testimony established that she had observed at least one traffic violation committed by Operator in Aston Township, and that Officer Joyce had

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<sup>1</sup> This statute is commonly known as the Implied Consent Law.

<sup>2</sup> This Court's scope of review of a decision in a license suspension case is limited to determining whether the trial court's findings of facts are supported by competent evidence and whether the trial court committed an error of law or an abuse of discretion in reaching its decision. *Orloff v. DOT, Bureau of Driver Licensing*, 912 A.2d 918 (Pa. Cmwlth. 2006).

been in “hot” or “fresh” pursuit of Operator’s vehicle until she effected the traffic stop.

Section 8953(a)(2) of the MPJA provides:

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 ... as if enforcing those laws ... within the territorial limits of his primary jurisdiction in the following [case]: [w]here the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

Officer Joyce testified that when she made her U-turn and decided to follow the Saturn, she only wanted to observe the vehicle to see how the operator was travelling on the roadway. At that point she had not decided whether Operator had violated the Vehicle Code. It was not until after Operator turned at Glen Riddle Road that the officer saw the vehicle do anything that warranted a stop, in her opinion. At that time, however, the vehicle was already in Middletown Township. The trial court found that this testimony did not establish that Officer Joyce was in “hot pursuit,” or “fresh pursuit” of Operator when she followed her into Middletown Township. Further, the trial court specifically rejected Officer Joyce’s testimony on re-direct examination that she could have stopped the vehicle for drunk driving or careless driving while she was in Aston Township.

As an appellate court, it is not our function to make findings of fact. *Reinhart v. Dep’t of Transp., Bureau of Driver Licensing*, 954 A.2d 761 (Pa. Cmwlth. 2008). It is the trial court’s function to determine credibility and the weight assigned to the evidence. *Id.* “[T]he trial court may accept or reject the

testimony of any witness in whole or in part.” *Id.* at 765. Based on the facts as found by the trial court, the court did not err in concluding that Officer Joyce did not have authority under Section 8932(a)(2) of the MPJA to effect an extraterritorial arrest of Operator in Middletown Township.

The trial court’s finding that Officer Joyce was not in “hot pursuit” or “fresh pursuit” of Operator at the time she entered Middletown Township is supported by the Pennsylvania Supreme Court case *Martin v. Dep’t of Transp., Bureau of Driver Licensing*, 588 Pa. 429, 905 A.2d 438 (2006), wherein the court concluded that the police officer did not have statutory authority to act outside his primary jurisdiction on the facts presented because it was undisputed that the officer did not have probable cause to stop the operator in his own jurisdiction. In the instant case Officer Joyce specifically testified that she had “reasonable suspicion that something could be wrong, but at that time [in Aston Township] [she] was not – [she] wasn’t satisfied with what [she] had.” Notes of Testimony, April 1, 2008, at 27. Clearly, based on this testimony, Officer Joyce did not have probable cause to stop Operator in Aston Township, nor was she in “hot” or “fresh” pursuit when she entered Middletown Township.

PennDOT argues that police officers should not have to stop pursuit and let an intoxicated person continue merely because they crossed the jurisdictional border. The *Martin* case addresses this argument as well. The Court in *Martin*, quoting *McKinley v. Dep’t of Transp., Bureau of Driver Licensing*, 576 Pa. 85, 94-95, 838 A.2d 700, 706 (2003), held:

Limited jurisdiction police personnel are not entirely without recourse outside of their territorial boundaries. Nothing in our decisions prevents them from summoning the appropriate law enforcement officials, and exercising any lawful means to assist in the

identification of law violators. Nevertheless, as the Legislature has circumscribed their police authority, we hold that they lack the ability to act as police officers in implementation of the Implied Consent Law outside territorial boundaries, in the absence of an express, legislative grant of extraterritorial authority.

*Martin*, 588 Pa. at 446-447, 905 A.2d at 448. As Officer Joyce did not summon the appropriate law enforcement authority, and did not have authority to make the arrest herself, the implied consent warnings are void. *See Martin*.

For these reasons, the order of the trial court is affirmed.

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JOHNNY J. BUTLER, Judge

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**ORDER**

AND NOW, this 23rd day of October, 2008, the order of the Court of  
Common Pleas of Delaware County dated April 1, 2008, is hereby affirmed.

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JOHNNY J. BUTLER, Judge