

2013 PA Super 26

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
EDWIN BURGOS,	:	
	:	
Appellee	:	No. 718 MDA 2012

Appeal from the Order Entered April 3, 2012,
In the Court of Common Pleas of Berks County,
Criminal Division at No. CP-06-CR-0002484-2011.

BEFORE: SHOGAN, LAZARUS and OTT, JJ.

CONCURRING OPINION BY SHOGAN, J.: Filed: February 20, 2013

I concur with the well-reasoned Majority Opinion in all respects, save for the statement in *dicta* where the Majority posits that the good faith exception to the exclusionary rule does not exist in Pennsylvania. Because I believe that the circumstances in the instant case are distinct from prior cases striking down the good faith exception, I respectfully offer this Concurring Opinion.

The Majority cites to ***Commonwealth v. Antoszyk***, ___ Pa. ___, 38 A.3d 816 (2012), which cites ***Commonwealth v. Edmunds***, 526 Pa. 374, 399, 586 A.2d 887, 899 (1991), for the proposition that Pennsylvania does not recognize the good faith exception. Maj. Slip Op. at fn.22. In ***Edmunds***, the Pennsylvania Supreme Court rejected the good faith

exception announced in *United States v. Leon*, 468 U.S. 897 (1984). *Edmunds*, 526 Pa. at 399, 586 A.2d at 899.

In *Leon*, the United States Supreme Court held that when law enforcement act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted in objectively reasonable reliance on the subsequently invalidated search warrant. *Leon*, 468 U.S. at 922. Here, however, we are not faced with a search warrant that was subsequently determined to be invalid due to errant facts or missing information. Rather, the officers in the instant case relied on the law as it existed at the time of the search and the law itself was subsequently altered.

Because information in a search warrant is always based on statements, credibility determinations, and subject to human error, proceeding pursuant to information underlying a warrant is distinct from proceeding under the law as it exists at the time of the search. Thus, I believe that the good faith exception may have application where the officers proceeded in good faith under the law as it existed at the time of the search, but where the law subsequently was altered. Accordingly, I concur in the result.