

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

No. SCR92651

vs.

CASSONDRA MARIE MORTENSEN,

CERTIFIED COPY

Defendant.

Oroville, Butte County, CA, THURSDAY, SEPTEMBER 12, 2013

Before the Honorable MICHAEL R. DEEMS

Court called to order at approximately 1:30 p.m.

JENNIFER L. HUNT, CSR 10735, Official Reporter

1538.5 RULING

APPEARANCES

For the People:

MICHAEL RAMSEY
District Attorney
25 County Center Dr.
Oroville, CA

BY: LEAH PAYNE
DEPUTY DISTRICT ATTORNEY

For the Defendant:

CASSONDRA MORTENSEN
BY: IN PROPRIA PERSONA

COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

1 THURSDAY, SEPTEMBER 12, 2013

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3 THE COURT: Call the matter of People versus
4 Cassondra Mortensen, case number SCR92651. This case is
5 on presently for a motion to suppress any evidence seized
6 as a result of the vehicle stop, pat down, and search of
7 the defendant and the defendant's clothing and property
8 on December 10th, 2012.

9 The record will reflect that the People are
10 represented by Deputy District Attorney Leah Payne. The
11 defendant is not present. Defendant was ordered to be
12 present at 1:15.

13 We heard and argued this case on September 10th
14 and continued it to today's date for receipt of the
15 People's opposing papers and ruling on the motion.

16 The Court has had the opportunity to read and
17 review all of the papers submitted, including the
18 People's opposition papers; also reviewed the case and
19 statutory authority that has been offered by both sides.

20 The Court is going to grant the motion to
21 suppress as to the contraband that had been seized, as to
22 the blood draw, and as to the paraphernalia that was
23 found in the defendant's purse. Any other evidence
24 discovered as a result of this seizure of this evidence
25 is also suppressed. And this evidence is ordered
26 suppressed and is excluded from the trial of this matter.

1 The reason for the Court's ruling, briefly
2 summarized, is as follows. And this was, as stated
3 initially, on September 10th. The Court does find that
4 the stop of the vehicle was reasonable considering the
5 fact that the officer testified that he observed the
6 defendant's vehicle swerving. He made a stop, and at
7 that time went up to the window of the defendant's
8 vehicle. He testified that he smelled the odor of
9 marijuana. His concern, however, at the stop was for his
10 safety. And the officer asked the defendant, because of
11 her demeanor, while she was in the vehicle to get out of
12 her vehicle. And when the officer was asked what was the
13 purpose of asking the defendant to get out of her
14 vehicle, he stated that he wanted to separate her from
15 her vehicle in case there were weapons inside the
16 vehicle. There were no other references in any respect
17 to the presence of marijuana, the location of marijuana.
18 There were no charges of possession of marijuana. There
19 was no reference in the officer's testimony to a field
20 sobriety test that she was, in fact, under the influence
21 of any medication or alcohol. And his primary concern
22 for asking or ordering the defendant out of her vehicle
23 was to search her for weapons. That the Court finds was
24 appropriate. There was reasonable suspicion at that
25 point and a Terry search was proper.

26 During the Terry search for weapons, the

1 officer testified that he did not find any weapons. He
2 did, however, observe a clear plastic baggie in her right
3 front coin pocket. The officer did not state that he
4 observed any contraband. He stated that he pulled the
5 baggie out of the pocket, and that was when he discovered
6 the contraband.

7 The Court finds that the plain view doctrine
8 does not apply. For the plain view doctrine to apply,
9 the officer must have immediately identified the object
10 as contraband or stolen property or evidence of a crime.
11 There is no evidence that the officer identified
12 immediately the clear plastic baggie in the right front
13 coin pocket of the defendant as contraband, stolen
14 property, or evidence of a crime.

15 The Court will cite to the case of Coolidge,
16 C-O-O-L-I-D-G-E, versus New Hampshire, 403 US 443.

17 This case is presently scheduled for trial
18 assignment conference today at 3:30.

19 Ms. Payne, how do the People want to proceed?

20 MS. PAYNE: Well, Your Honor, I would request
21 that the Court comment on the plain smell doctrine that
22 the People cited to, because the smell, the immediate
23 detection of marijuana, provided with the case law that
24 the People provided states that at that point the officer
25 did have reasonable suspicion, he had probable cause to
26 search for that contraband because it was immediately

1 recognizable as the smell of marijuana. Because he
2 smelled the marijuana, it's the same thing as seeing an
3 illegal substance. At that point, he had probable cause
4 to search anything that he thought could be contraband.

5 So can -- has the Court made a ruling on the
6 plain smell doctrine that the People cited to?

7 THE COURT: The police officer testified that
8 he asked the defendant to get out of her vehicle not
9 because he smelled marijuana but because he was concerned
10 about weapons inside the vehicle. The smell --

11 MS. PAYNE: Right.

12 THE COURT: The plain smell doctrine does not
13 apply.

14 MS. PAYNE: Your Honor, in People V Collier
15 that the People cited to, that case was almost identical.
16 It was a pat down search for weapons, but contraband,
17 marijuana, was smelled upon first contact. Then they did
18 a pat down, before they searched the vehicle for the
19 marijuana.

20 In this instance, it was the exact same thing;
21 marijuana was smelled, he did a pat down because of
22 protection. And before he was even able to do the pat
23 down, saw right there that there was a plastic bag that
24 would very likely have contraband in it. When he had
25 already smelled that there was marijuana, he already knew
26 that there was marijuana going to be present.

1 THE COURT: There's no evidence that there was
2 any marijuana present or that he was searching for
3 marijuana. He did not have probable cause to search for
4 marijuana, and he did not have -- certainly with respect
5 to the baggie -- he did not have an immediate belief that
6 that contained any contraband. There's no evidence of
7 that in the record that was before the Court.

8 MS. PAYNE: Your Honor, is the Court ruling
9 that the smell, the strong odor of marijuana, does not
10 provide probable cause to search for a contraband?

11 THE COURT: There's no evidence that there was
12 a strong odor of marijuana.

13 MS. PAYNE: May I direct the Court to the
14 transcript?

15 THE COURT: I can actually point to it fairly
16 quickly. I believe it is at page 8.

17 MS. PAYNE: Yes.

18 THE COURT: Lines 19 through 26.

19 MS. PAYNE: Yes.

20 THE COURT: And he said that he walked up to
21 the window and could smell the odor of marijuana.

22 MS. PAYNE: Strong odor.

23 THE COURT: Those words are not used.

24 MS. PAYNE: Okay. So he smelled the odor of
25 marijuana. At that point are you saying that the odor of
26 marijuana does not provide probable cause to search for

1 that contraband?

2 THE COURT: It has nothing to do with this
3 officer's asking the defendant to remove herself from her
4 vehicle and has nothing to do with his search of the
5 vehicle, which was quite clear in the officer's
6 testimony. And --

7 MS. PAYNE: Your Honor --

8 THE COURT: So this Court -- again, this Court
9 rules that the plain smell doctrine does not apply.

10 MS. PAYNE: Okay. But does -- just for
11 clarification, for the record, the odor of marijuana
12 you're saying did not provide probable cause to search?

13 THE COURT: The odor of marijuana in this case
14 the Court finds was not the -- did not provide probable
15 cause for search of the defendant.

16 MS. PAYNE: Okay. Thank you. I just want that
17 on the record.

18 THE COURT: And so, Ms. Payne, how do the
19 People wish to proceed? It's on for TAC this afternoon.

20 MS. PAYNE: Right.

21 THE COURT: We can either go forward with the
22 TAC at 3:30, that would -- if nothing else is done, then
23 counsel and the defendant will be ordered to be present
24 at 3:30 at the trial assignment calendar.

25 MS. PAYNE: The People are ready to confirm for
26 TAC, that way I have an opportunity to go back to the

1 office and figure it out.

2 THE COURT: All right. That's fine. So you'll
3 be ordered, along with the defendant, to appear for the
4 TAC calendar at 3:30 this afternoon.

5 Anything else, counsel?

6 MS. PAYNE: Thank you. Nothing further from
7 the People, Your Honor.

8 THE COURT: All right. Thank you.

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COURT REPORTER'S CERTIFICATE

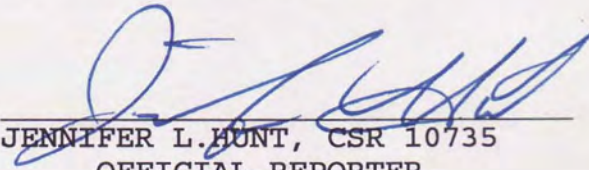
This is to certify that I, JENNIFER L. HUNT, CSR, a Certified Shorthand Reporter of the State of California, was present at the time and place the foregoing proceedings were had and taken in the within matter; that as such shorthand reporter I did take down in shorthand writing the aforementioned proceedings and afterwards caused my said shorthand writing to be transcribed into typewriting. Further, pursuant to CCP237 all reference to jurors by name has been redacted.

The foregoing pages beginning at:

1 through 7

are certified to be a complete transcription of said stenographic shorthand notes.

DATED: THIS 25th day of SEPTEMBER 2013



JENNIFER L. HUNT, CSR 10735
OFFICIAL REPORTER