

1 IN THE DISTRICT COURT OF TULSA COUNTY

2 STATE OF OKLAHOMA

3 THE STATE OF OKLAHOMA,)

4 Plaintiff,)

) CASE NO. CF-2009-244
) Judge Carlos Chappelle

6 -V-)

7 PATRICK LONDON.,)

8 Defendant.)

DISTRICT COURT
FILED

APR 08 2010

10 TRANSCRIPT OF MOTION HEARING

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

11 HAD MARCH 19th, 2010,

12 BEFORE THE HONORABLE CARLOS CHAPPELLE,

13 JUDGE OF THE DISTRICT COURT,

14 TULSA, OKLAHOMA.

15 APPEARANCES:

17 For the State:

Ms. Kristin Fulton
Assistant District Attorney
500 S. Denver
Tulsa, Oklahoma 74103

20 For the Defendant:

Ms. Jill Webb
Assistant Public Defender
423 S. Boulder, Suite 300
Tulsa, Oklahoma 74103

23 REPORTED BY:

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P R O C E E D I N G S

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2 THE COURT: This is CF-2009-244; In The Matter of
3 the State of Oklahoma, Plaintiff, versus Patrick Neil
4 London, Defendant. This matter comes on today on
5 Defendant's Motion to Quash, Suppress and Dismiss Based on
6 Illegal Search filed February 23rd, 2010, and also the
7 State's Response to Motion to Quash, Suppress and Dismiss
8 Based on an Illegal Search filed March the 5th, 2010. The
9 plaintiff is present, represented by Ms. Kristin Fulton
10 and the defendant is present, represented by Ms. Jill
11 Webb.

12 And let the record reflect the Court has had an
13 opportunity to review those pleadings, also the transcript
14 of the preliminary hearing -- actually the first hearing
15 on the 15th day of June, 2009. And then there was also a
16 subsequent hearing before Judge Mcallister on the 5th day
17 of June, 2009.

18 All right. Ms. Webb, it's your motion. You
19 proceed first.

20 MS. WEBB: Your Honor, it's clear and it appears
21 that the State concedes actually that the reason given for
22 the search in this case was false and that that testimony
23 given by Officer Hill was perjury. He testified
24 explicitly both at preliminary hearing and in his TRACIS
25 and in a motion hearing later that the reason that

1 Mr. London was arrested and searched incident to that
2 arrest was because he found out about a warrant. That
3 warrant, in fact, was not found out about until booking.
4 So he lied.

5 And the reason that we have the exclusionary
6 rule, Your Honor, is to prevent officers from lying.
7 Because even though if the law were applied equitably,
8 what would happen is he would be charged by the District
9 Attorney's Office with perjury. That's not going to
10 happen. Probably the only consequence of this is that the
11 case should legally and lawfully and properly be dismissed
12 in order to teach officers not to lie and not to do
13 unconstitutional searches. That's why we have the
14 exclusionary rule.

15 Under the laws of Oklahoma, exclusionary -- the
16 exclusion of evidence is not just a procedural matter;
17 it's a fundamental right under Oklahoma law. And that is
18 according to Oklahoma Supreme Court case, *Turner V. Lawton*
19 in 733 P2d 275. The reason in the State's response that's
20 given for the arrest is new. For the first time the State
21 asserts he wasn't searched or arrested incident to finding
22 out about a warrant; he was searched and arrested incident
23 for being arrested for failure to stop at a stop sign and
24 for a defective vehicle having a non-working headlight.
25 Those are not arrestable offenses.

1 According to Oklahoma Statute 22, Sections
2 1115.1(A), it states that anyone who is arrested by a law
3 enforcement officer solely for a misdemeanor violation of
4 a state traffic law or a municipal traffic ordinance shall
5 be released by that arresting officer.

6 There is no option for an officer to arrest
7 someone for failure to stop at a stop sign or a defective
8 vehicle for a non-working headlight under a statute.

9 So what should have happened, he should have been
10 issued ticket and arrested, instead he was searched
11 illegally. The police lied about it. And then when they
12 got caught, they continued to lie about it. And then the
13 State, when they realized that they couldn't get out of a
14 lie, changed the reason for the arrest to something that's
15 not even arrestable by statute.

16 Legally, Your Honor, I don't think that there's
17 any other option other than to exclude the evidence from
18 the results of this search, the illegal search, the
19 clearly illegal search and dismiss the case against
20 Mr. London.

21 THE COURT: Ms. Fulton?

22 MS. FULTON: Your Honor, if you could show me
23 standing in for Assistant District Attorney Kyle Felty.

24 Concerning the arguments and the issue of the
25 exclusion rule, the arrest of the defendant in this case

1 was proper. And as the Court is aware in *Jacobs versus*
2 *State*, Court of Criminal Appeals 2006 OK CR, No. 4;
3 regardless of the reason for the stop, the defendant's
4 subsequent discovery or awareness of failure to pay
5 warrants in it appears three separate felony cases would
6 cure any defect, even if there is one in this case and the
7 search that led to trafficking amount of drugs that is the
8 subject of this case.

9 And the fact that the defendant did have valid
10 arrest warrants at the time of the stop and search on
11 January 12th, 2009, would cure any problems with the
12 search and stop that defense counsel argues about in this
13 case.

14 And with that, the State would stand on the
15 record and the law.

16 THE COURT: The defendant's authority and
17 arguments are absolutely correct. In this case he was
18 stopped for a traffic violation. He apparently had a
19 valid license or whatever. And then subsequent to that
20 time the officers arrested him for what they stated at
21 preliminary hearing were outstanding warrants. At the
22 time they arrested him, they didn't even know he had
23 outstanding warrants.

24 Another interesting thing about this case is if
25 you look at the defendant's motion and you look at the log

1 that was going on between the officers and dispatch, there
2 is nothing to indicate that there were any warrants out.
3 And then the defendant in this case filed a motion with
4 this Court ordering them to turn over phone records. And
5 if I remember correctly, I had a couple hearings on the
6 phone records, and they never did disclose to the
7 defendant or the Court the phone records.

8 The logs are attached to the motion. The phone
9 records were never provided, which makes it clear in this
10 case the officer did in fact lie about when they
11 discovered that warrants -- outstanding warrants were in
12 effect. And they didn't arrest him -- they couldn't
13 arrest him pursuant to the statutes cited -- she is
14 absolutely correct -- for the defective vehicle, tail
15 lights. So the only thing they could arrest him for were
16 outstanding warrants. And that's what they arrested him
17 for. It was clear from the preliminary hearing transcript
18 and actually -- well, actually the preliminary hearing
19 transcript and then the subsequent hearing that was held.

20 I'm going to sustain the defendant's motions at
21 this time. Order the case be dismissed.

22 What is the pleasure of the State?

23 MS. FULTON: Your Honor, at this time the State
24 would announce it's intent to appeal.

25 THE COURT: Okay. Give me date in about ten

1 days.

2 THE BAILIFF: April 5th.

3 THE COURT: April 5th at nine o'clock.

4 Is he being held on anything else?

5 MS. WEBB: No, Your Honor.

6 THE COURT: Mr. London, make sure you return here
7 April 5th at nine o'clock so the State can advise the
8 Court what it's done.

9 MR. LONDON: Yes, sir

10 (End of proceedings.)

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