

**IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,104
	:	
HEATHER LYNN NUDD,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant’s Motion to Suppress filed on February 13, 2003. In her motion, Defendant alleges that her rights under both the Pennsylvania and United States Constitutions were violated when a police officer stopped her vehicle and made contact with her when he had no probable cause to make a vehicle stop and no reasonable suspicion that criminal activity was afoot.

The facts of this case show that on November 21, 2002, Officer Christopher Kriner of the Old Lycoming Township Police Department was dispatched to Lowmiller Road on a report made by residents of a neighboring property that a suspicious, occupied vehicle had parked on undeveloped, privately owned land. The residents had previously been instructed by the police to call if they observed any vehicles on that property.

Officer Kriner testified at the suppression hearing that prior to the call he received that night, he was aware from conversations with other officers that the Lowmiller Road area was known for drug activity and underage drinking parties. He also knew that during the year prior to this incident officers had discovered and removed marijuana that was growing in that same area. Upon arriving in the area,

Officer Kriner first made contact with the callers and then proceeded to make contact with the occupants of the vehicle. He did this by pulling in behind the vehicle and activating his overhead emergency lights and then shining a spotlight onto the vehicle. Kriner then ordered the occupants to place their hands where he could see them prior to approaching the vehicle. He smelled the odor of burning marijuana, which he was familiar with from his police training, almost immediately. He then questioned the Defendant, who was sitting on the driver's side of the vehicle. The Defendant made various incriminating statements and voluntarily turned over marijuana and drug paraphernalia to the officer. Since the car was parked in the darkness and on private, undeveloped land in an area known to Kriner to be an area where drug activity has occurred and marijuana had been found growing, the Commonwealth argues that Kriner was justified in making contact with the Defendant and the other occupants of the vehicle. The Commonwealth also contends that Kriner saw at least one occupant of the car making furtive movements once he was aware that the police had pulled in behind them.

Defendant initially contends that the Officer had no reasonable and articulable grounds to believe that any violation of the Motor Vehicle Code had occurred to justify Kriner's approach. It is clear under Pennsylvania law that a police officer may stop a motor vehicle if he or she reasonably believes that a provision of the Motor Vehicle Code is being or has been violated. 75 Pa.C.S.A. Section 6308, Commonwealth v. DeWitt, 530 Pa. 299, 608 A.2d 1030 (Pa. 1992). See also Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed. 2d 331 (1977). The Commonwealth has not argued that grounds exist for a valid stop of the

Defendant's vehicle on the basis of a vehicle code violation. However, it is equally clear that an officer may conduct an investigatory stop of a vehicle when there are sufficient facts which, when taken together, reasonably warrant suspicion of criminal conduct on the part of the occupants of the vehicle. DeWitt, supra. See also U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). In doing so, the officer "must be able to point to specific and articulable facts which give rise to a reasonable suspicion of criminal activity." DeWitt, supra., quoting Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In this case, Officer Kriner is unable to satisfy the requirements of DeWitt and Terry, supra. The Court finds that the stop and investigative detention of the Defendant began when Officer Kriner activated his overhead emergency lights and the spotlight of his vehicle. The Court is satisfied that a reasonable person would not have felt free to leave the presence of the officer. Kriner then required all of the occupants of the vehicle to place their hands in the air where he could see them before he had any direct contact with the occupants. It was only after detaining the Defendant and the other occupants of the vehicle that the officer discovered the odor of marijuana.

It should be noted that Kriner testified at the suppression hearing that he had no idea what the occupants were doing when he first encountered them. He was unable to articulate any fact which led him to believe that the occupants of this particular vehicle were engaged in illegal drug activity, despite his knowledge of prior use in the area. Indeed, he also testified that when he saw that the car was occupied by one female and two males, he thought it was equally possible that he

had interrupted a sexual assault, even though there was no indication at all that such an assault might have been in progress.

In summary, it is clear from the testimony offered at the suppression hearing that Officer Kriner is unable to point to a single articulable fact arising prior to his detention of the Defendant and her companions to support his suspicion that the occupants of this particular car were engaged in any criminal activity. The Commonwealth has therefore failed to show that the officer possessed the requisite reasonable suspicion that criminal activity was afoot so that an investigatory detention of the vehicle's occupants was justified. Accordingly, the statements of the Defendant which were made during her detention as well as the physical evidence obtained by the officer during the stop must be suppressed.

ORDER

AND NOW, this ____ day of May, 2003, based upon the foregoing, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is GRANTED. The statements made by the Defendant at the time of her stop by the officer on November 21, 2002 as well as the physical evidence obtained by the officer on that same date, are SUPPRESSED.

By the Court,

Nancy L. Butts, Judge J.