

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**KIMBERLY RIGDON,
Defendant**

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**CR-1862-2010
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress on March 15, 2011. A hearing on the Motion was held April 5, 2011, followed by oral argument on May 6, 2011.

Background

On October 29–30, 2010, Sergeant Brett Williams (Williams) of the Williamsport Bureau of Police (WBP) was assigned to a DUI rove patrol with Chief Louis Staccone (Staccone) from the Duboistown Police Department. At approximately 1:00 a.m., Williams and Staccone observed a black Grand Am traveling west on East 3rd Street. The vehicle was traveling at 20 miles per hour. The speed limit on East 3rd Street is 35 miles per hour. Williams and Staccone observed a second vehicle pass the Grand Am via the right hand lane. As the vehicle passed the Grand Am, the Grand Am drifted over to the center yellow line. The operator of the Grand Am then activated the left hand turn signal just west of the intersection with Clayton Avenue. The Grand Am then turned into Denny’s, which is about 700 feet from where the turn signal was activated. The Grand Am crossed the yellow line approximately 50 feet before turning into Denny’s. The vehicle then pulled into a parking spot in Denny’s parking lot. Williams then made contact with the operator of the vehicle, who was identified as Kimberly Ridgon

(Defendant). Williams noticed an odor of alcohol while speaking with the Defendant, and observed that the Defendant's eyes were glassy and bloodshot. When asked if she had been drinking, the Defendant relayed that she had in fact had a few drinks. The Defendant was asked to perform field sobriety tests, which she did not successfully perform. The Defendant was then placed under arrest and transported to the DUI processing center. The Defendant submitted to a blood test, the results of which showed her blood alcohol content to be 0.202%.

Discussion

The Defendant contends that any evidence seized from her by the police after her vehicle was stopped should be suppressed as said evidence was seized in violation of the Municipal Police Jurisdiction Act, as Williams was outside the territorial limitations of his jurisdiction at the time he stopped and arrested the Defendant. The stop and arrest of the Defendant occurred in Loyalsock Township. 16 P.S. §1441 allows for the appointment of a special detective with court approval. On January 10, 2007, now Senior Judge Kenneth D. Brown signed an Order in compliance with 16 P.S. §1441, which provides for the appointment of Special County Detectives to engage in the investigation of criminal activities, including but not limited to the operation of Sobriety Checkpoints and DUI Roving Patrols. The Order specifically provides for the appointment of any and all members of the Williamsport Bureau of Police to serve as the Special County Detectives. On the date in question, Williams, of the Williamsport Bureau of Police, was asked by Chief William Solomon of Old Lycoming Township to work a DUI roving patrol. This Court finds that Judge Brown's Order of January 10, 2007, is still an active Order and that Williams' assignment to the DUI roving patrol was in compliance with said Order. The Court also finds that Williams was acting within the Municipal Police Jurisdiction Act pursuant

to 42 Pa.C.S. §8953, which allows police officers to perform duties outside of their jurisdiction, provided they are acting pursuant to a court order and with the consent of the law enforcement agency in the jurisdiction in which they are acting.

The Defendant also contends that the police did not have probable cause to stop the Defendant's vehicle as they did not have probable cause to believe the vehicle was being operated in violation of the Vehicle Code. In this case, Williams was assigned to a DUI roving patrol on October 29-30, 2010. Therefore, Williams was paying particular attention to any suspect DUIs. Williams observed several indicators that the Defendant was operating her vehicle while under the influence of alcohol. Williams observed the Defendant travel 15 miles under the speed limit, drift over to the center yellow line, and turn on the vehicle's turn signal about 700 feet before making a turn. Williams testified at the hearing on the Motion to Suppress that normally only a distance of about 100 feet is needed to turn on a blinker before making a turn. Williams surmised that these occurrences were consistent with the presumption that the Defendant was driving under the influence of alcohol. 75 Pa.C.S. §3802 Driving Under Influence of Alcohol is a violation of the Motor Vehicle Code. The Court finds that Williams was able to "[a]rticulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code." Commonwealth v. Freczko, 10 A.3d 1285 (Pa.Super.2010). (Citing Commonwealth v. Gleason, 785 A.2d 983 (Pa.2001). Furthermore, the Court notes that Williams' belief that the Defendant was driving while under the influence of alcohol was correct, as the Defendant was found to have a blood alcohol content of 0.202%. Therefore, the Court finds the Defendant's contention that the stop of her vehicle was done absent probable cause to be without merit.

Finally, the Defendant contends that statements she made at the DUI processing center should be suppressed as the statements were the result of a custodial interrogation which was not preceded by a knowing, voluntary, and intelligent waiver of the Defendant's right to counsel and to remain silent. At the hearing on the Motion to Suppress, Jeffrey Gyurina (Gyurina) of the Montoursville Borough Police testified. On the night the Defendant was arrested, Gyurina was working at the Lycoming County DUI Processing Center. Gyurina testified that the Defendant was read her Miranda rights before she was questioned. Furthermore, the Commonwealth submitted into evidence the Miranda form that the Defendant signed, indicating that she understood her Miranda rights, and that she wished to waive these rights. Based on these facts, the Court finds that the Defendant was in fact advised of her Miranda rights before she was questioned and can therefore find no reason to suppress any statements she may have made.

ORDER

AND NOW, this ____day of May, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Aaron Biichle, Esq.
Peter T. Campana, Esq.