

STATE OF MAINE
CUMBERLAND, ss.

10/13/07
10/13/07 P 3:11

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-07-2026 ✓
WSB-CUM-11/29/2007

STATE OF MAINE,

v.

DECISION

PETER E. ROBBINS,

Defendant.

DONALD L. GARBRECH
LAW LIBRARY

FINDINGS

JAN 15 2008

1. On May 14, 2007, in Falmouth, Officer Kevin Conger stopped Peter Robbins for operating a motor vehicle with one headlight out.
 2. In the short time Officer Conger observed Mr. Robbins operate his motor vehicle, Officer Conger observed no erratic operation.
 3. When Officer Conger turned on his blue lights, Mr. Robbins pulled over and parked appropriately.
 4. Officer Conger asked Mr. Robbins to produce his license, registration and insurance. Mr. Robbins did so without difficulty.
 5. Officer Conger smelled alcohol and asked Mr. Robbins if he had been drinking. Mr. Robbins said he had a couple glasses of wine.
 6. Officer Conger asked Mr. Robbins to say the alphabet from G to W. Mr. Robbins said the alphabet without hesitation from G to Y.
 7. Officer Conger asked Mr. Robbins to do a finger dexterity test. Mr. Robbins did so without difficulty.
 8. Officer Conger asked Mr. Robbins to step out of his car and walk to the rear of his car. Mr. Robbins did so without difficulty.
-

9. Officer Conger asked Mr. Robbins to perform the horizontal gaze nystagmus test. He instructed Mr. Robbins not to move his head during the test. The test produced no clues indicating Mr. Robbins was under the influence but Mr. Robbins moved his head at first and had to be reinstructed.
10. Officer Conger asked Mr. Robbins to do the one-legged stand. On direct, Officer Conger said that Mr. Robbins did this test reasonably well. On cross, Officer Conger said Mr. Robbins put his foot down three times, but otherwise did the test well.
11. Officer Conger asked Mr. Robbins to do the heel to toe test. As instructed, Mr. Robbins placed his toe to his heel on every step out and every step back. However, instead of making an incremental turn as instructed, Mr. Robbins made an about-face type turn. He did this type of turn well, but it was not an incremental turn.
12. Mr. Robbins never slurred his speech from beginning to end. Nor was there any evidence of bloodshot or glassy eyes. Nor was there any evidence of swaying, except possibly during the one-legged stand.

DISCUSSION

The testimony produced considerable evidence that Mr. Robbins was not under the influence and very little evidence that he was. On two or three occasions, Mr. Robbins did not immediately follow Officer Conger's instructions. That may be because Officer Conger has such a quiet voice that it is very difficult to hear him. The quantity of evidence indicating impairment in this case is slight. The quality of evidence indicating impairment is not good either because of Officer Conger's speech difficulties. It is possible that Officer Conger spoke more clearly at the scene of the stop

but there is no evidence of that. The burden is on the State. I conclude that the State has not met its burden of proving probable cause to arrest for operating under the influence.

The clerk will make the following entry on the docket:

Defendant Peter Robbins' motion to suppress is granted. All evidence secured by the State subsequent to Mr. Robbins' arrest is suppressed.

DATED: November 19, 2007

W. S. Brodrick
William S. Brodrick
Active Retired Justice, Superior Court

A True Copy
Attest: Jessy A. Bennett
Clerk of Courts

STATE OF MAINE
vs
PETER E ROBBINS
179 FORESIDE ROAD
CUMBERLAND ME 04021

SUPERIOR COURT
CUMBERLAND, ss.
Docket No PORSC-CR-2007-02026

DOCKET RECORD

DOB: 02/21/1957

Attorney: PETER RODWAY
RODWAY & HORODYSKI
30 CITY CENTER, 2ND FLOOR
PO BOX 874
PORTLAND ME 04104
RETAINED 05/21/2007

State's Attorney: STEPHANIE ANDERSON

Filing Document: CRIMINAL COMPLAINT
Filing Date: 07/02/2007

Major Case Type: MISDEMEANOR (CLASS D,E)

Charge(s)

1 OPERATING UNDER THE INFLUENCE 05/14/2007 FALMOUTH
Seq 9878 29-A 2411(1-A)(A) Class D
CONGER / FAL

Docket Events:

07/25/2007 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 07/25/2007 @ 18:01

TRANSFERRED CASE: SENDING COURT CASEID PORDCCR200705303
FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 07/02/2007

JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 07/17/2007 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

847

Charge(s): 1

HEARING - ARRAIGNMENT WAIVED ON 07/17/2007

409

Party(s): PETER E ROBBINS

ATTORNEY - RETAINED ENTERED ON 05/21/2007

Attorney: PETER RODWAY

Charge(s): 1

PLEA - NOT GUILTY ENTERED BY COUNSEL ON 07/17/2007 @ 8:30 in Room No. 1

409

Charge(s): 1

TRIAL - BENCH SCHEDULED FOR 08/13/2007 @ 10:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

409

Charge(s): 1

TRIAL - BENCH NOT HELD ON 07/24/2007

Charge(s): 1
TRIAL - BENCH NOTICE SENT ON 07/18/2007

409
Charge(s): 1
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 07/18/2007

409
OTHER FILING - REQUEST FOR CHEMIST AT TRIAL FILED ON 07/18/2007

409
Charge(s): 1
TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 07/18/2007

409
Charge(s): 1
FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 07/25/2007
DEBRA SOUBBLE , ADMINISTRATIVE CLERK
PORSC

07/31/2007 Charge(s): 1
TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 07/25/2007
BETHANY RODRIGUE , ASSISTANT CLERK-E
DOCKET ENTRIES RECEIVED FROM 9TH DISTRICT COURT (CR07-5303)
NO APPEARANCE BOND FILED

08/01/2007 Charge(s): 1
HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/04/2007 @ 11:00 in Room No. 7
WILLIAM BRODRICK , JUSTICE
NOTICE TO PARTIES/COUNSEL

08/01/2007 Charge(s): 1
HEARING - MOTION TO SUPPRESS NOTICE SENT ON 08/01/2007

10/09/2007 Charge(s): 1
HEARING - MOTION TO SUPPRESS HELD ON 10/04/2007
WILLIAM BRODRICK , JUSTICE
Attorney: PETER RODWAY
DA: MICHAEL MADIGAN
TAPE #2764

10/09/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/25/2007 @ 1:00 in Room No. 7
NOTICE TO PARTIES/COUNSEL

10/09/2007 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 10/09/2007

JOANN HEBERT
10/26/2007 HEARING - MOTION TO SUPPRESS HELD ON 10/25/2007
WILLIAM BRODRICK , JUSTICE
Attorney: PETER RODWAY
DA: TRACY BARDWELL Reporter: PENNY PHILBRICK-CARVER
Defendant Present in Court

10/26/2007 Charge(s): 1
TRIAL - JURY TRIAL SCHEDULED FOR 12/10/2007 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

10/26/2007 Charge(s): 1
TRIAL - JURY TRIAL NOTICE SENT ON 10/26/2007

JOANN HEBERT

10/26/2007 Charge(s): 1
MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 10/25/2007
WILLIAM BRODRICK , JUSTICE


JOANN HEBERT

11/30/2007 Charge(s): 1
MOTION - MOTION TO SUPPRESS GRANTED ON 11/19/2007
WILLIAM BRODRICK , JUSTICE
COPY TO PARTIES/COUNSEL

TSK

A TRUE COPY

ATTEST:



Clerk