

STATE OF MAINE  
CUMBERLAND, ss.

2007 NOV 29 P 3:17

SUPERIOR COURT  
CRIMINAL ACTION  
Docket No. CR-07-912 ✓  
WSB-CUM-11/29/2007

STATE OF MAINE,

v.

DECISION

FREDERICK L. STUART JR.,

DONALD L. GARBRECHT  
LAW LIBRARY

Defendant.

JAN 15 2008

### FINDINGS

1. On February 13, 2007 at 7:30 p.m., Officer Robert Ryder received a dispatch that a concerned citizen was following a possible drunk driver on Stroudwater Street in Portland.
2. The concerned citizen, who identified himself as William Briggs, reported to dispatch that the possible OUI was swerving over the centerline.
3. Mr. Briggs reported that the vehicle he was following was a pickup and he reported the license plate number.
4. Mr. Briggs reported the suspect as turning on to Forest Street and then on to Rochester Street.
5. Mr. Briggs reported that he himself was operating a small Volkswagen type car.
6. Dispatch forwarded Mr. Briggs' reports to Officer Ryder as they were received and Officer Ryder adjusted his route accordingly.
7. Officer Ryder turned onto Rochester Street. He saw a car fitting the description of Mr. Briggs' car slowing down by a stopped pickup that fit the description forwarded to Officer Ryder shortly before.
8. The suspect pickup still had its brake lights on and they flashed off as Officer Ryder approached.

9. The suspect pickup was parked in a parking area but on the wrong side of the street facing in the opposite direction of the travel lane.
10. Officer Ryder activated his blue lights.

## DISCUSSION

Mr. Stuart argues that Officer Ryder did not have reasonable, articulable suspicion to stop his truck. Mr. Stuart cites *State v. LaFond*, 2002 ME 124, 802 A.2d 425; *Alabama v. White*, 496 U.S. 325 (1990); and *Florida v. J.L.*, 529 U.S. 266 (2000). Mr. Stuart argues that stopping the opposite way in a parking space, which was the only evidence personally observed by Officer Ryder, did not sufficiently corroborate the tip from Mr. Briggs.

All of the cases cited by Mr. Stuart are inapplicable. They all deal with anonymous tips. In this case the tip was not anonymous. The concerned citizen gave his name as William Briggs. He reported the type of vehicle Mr. Stuart was driving and the plate number. Mr. Briggs described his own car. We know how Mr. Briggs gained his information concerning erratic operation because he reported that he was following Mr. Stuart. Mr. Briggs reported the route Mr. Stuart was taking and that was corroborated. Mr. Stuart was taking his foot off the brake as Officer Ryder observed Mr. Briggs slowing down by Mr. Stuart's truck. By giving his name, Mr. Briggs indicated his willingness to take responsibility for the information he was providing to the police. Mr. Briggs' information alone would be sufficiently reliable to justify a stop. Officer Ryder's observation that Mr. Stuart had parked opposite to the flow of traffic adds to the indicia of impairment.

Mr. Stuart next argues that Mr. Briggs' reports to the dispatch are hearsay. He further argues that the rules of evidence apply to motions to suppress.

The second point may well be true. The first point does not fare so well and not only because all federal and state courts have for decades authorized the use of second-hand reports in determining articulable suspicion and probable cause.

Second-hand information is not hearsay unless it is being offered to prove the truth of the matter asserted. In Fourth Amendment cases the issue is not whether the second-hand information is true. The issue is whether it was reasonable for the officer to rely on the facts he relied on. Truth will come later.

For the above-stated reasons, the clerk will make the following entry on the docket by reference:

Defendant Frederick Stuart Jr.'s motion to suppress is denied in all respects.

DATED: November 19, 2007

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

A True Copy  
Judy A. Romack  
Clerk of Courts

STATE OF MAINE  
vs  
FREDERICK L STUART, JR  
76 LAND OF NOD ROAD  
WINDHAM ME 04062

SUPERIOR COURT  
CUMBERLAND, ss.  
Docket No PORSC-CR-2007-00912

**DOCKET RECORD**

DOB: 06/26/1948

Attorney: MICHAEL WHIPPLE  
THOMAS F HALLETT LAW OFFICES PA  
36 UNION WHARF  
PO BOX 7508  
PORTLAND ME 04112  
RETAINED 02/22/2007

State's Attorney: STEPHANIE ANDERSON

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 03/20/2007

Major Case Type: MISDEMEANOR (CLASS D,E)

**Charge(s)**

1 OPERATING UNDER THE INFLUENCE 02/13/2007 WESTBROOK  
Seq 9878 29-A 2411(1-A)(A) Class D  
RYDER / WES

**Docket Events:**

04/10/2007 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 04/10/2007 @ 18:01

TRANSFERRED CASE: SENDING COURT CASEID PORDCCR200702319  
FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 03/20/2007  
JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 04/09/2007 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

847

04/10/2007 Charge(s): 1

HEARING - ARRAIGNMENT WAIVED ON 04/09/2007

409

Party(s): FREDERICK L STUART JR

ATTORNEY - RETAINED ENTERED ON 02/22/2007

Attorney: MICHAEL WHIPPLE

Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 02/22/2007

JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 02/22/2007

JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 02/22/2007

JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

PLEA - NOT GUILTY ENTERED BY COUNSEL ON 04/09/2007

409

Charge(s): 1

TRIAL - BENCH SCHEDULED FOR 06/12/2007 @ 10:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

409

Charge(s): 1

TRIAL - BENCH NOT HELD ON 04/09/2007

Charge(s): 1

FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 04/10/2007

DEBRA SOUBBLE , ADMINISTRATIVE CLERK

PORSC

04/13/2007 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 04/10/2007

BETHANY RODERIGUE , ASSISTANT CLERK-E

DOCKET ENTRIES RECEIVED FROM 9TH DISTRICT COURT (07-2319)

NO APPEARANCE BOND FILED

06/13/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 07/05/2007 @ 11:00

DARCEY EMERY , ASSISTANT CLERK

NOTICE TO PARTIES/COUNSEL

06/29/2007 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 06/27/2007

MRP

06/29/2007 MOTION - MOTION TO CONTINUE GRANTED ON 06/29/2007

THOMAS E DELAHANTY II, JUSTICE

COPY TO PARTIES/COUNSEL

RESCHEDULE FOR

FIRST AVAILABLE DATE AFTER 30 DAYS

AKL

06/29/2007 HEARING - MOTION TO SUPPRESS CONTINUED ON 06/29/2007

THOMAS E DELAHANTY II, JUSTICE

AKL

07/24/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/10/2007 @ 10:00 in Room No. 7

WILLIAM BRODRICK , JUSTICE

NOTICE TO PARTIES/COUNSEL

SR

07/24/2007 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 07/24/2007

07/24/2007 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 08/10/2007 @ 10:00 in Room No. 7

WILLIAM BRODRICK , JUSTICE

NOTICE TO PARTIES/COUNSEL

SR

07/24/2007 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 07/24/2007

08/13/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/16/2007 @ 11:00 in Room No. 7

WILLIAM BRODRICK , JUSTICE

NOTICE TO PARTIES/COUNSEL

AKL

08/13/2007 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 08/13/2007

AKL

08/22/2007 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

08/22/2007 Charge(s): 1

HEARING - MOTION TO SUPPRESS NOTICE SENT ON 08/22/2007

08/24/2007 HEARING - MOTION TO SUPPRESS NOT HELD ON 08/24/2007

08/24/2007 HEARING - MOTION FOR DISCOVERY NOT HELD ON 08/24/2007

10/09/2007 Charge(s): 1

HEARING - MOTION TO SUPPRESS HELD ON 10/04/2007

WILLIAM BRODRICK , JUSTICE

10/09/2007 HEARING - MOTION TO SUPPRESS NOT HELD ON 10/09/2007

10/09/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/25/2007 @ 8:30 in Room No. 7

NOTICE TO PARTIES/COUNSEL

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

JOANN HEBERT

10/09/2007 HEARING - MOTION TO DISMISS SCHEDULED FOR 10/25/2007 @ 8:30 in Room No. 7

NOTICE TO PARTIES/COUNSEL

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

JOANN HEBERT

10/26/2007 HEARING - MOTION TO DISMISS HELD ON 10/25/2007

WILLIAM BRODRICK , JUSTICE

Attorney: MICHAEL WHIPPLE

DA: MICHAEL MADIGAN

Reporter: PENNY PHILBRICK-CARVER

Defendant Present in Court

10/26/2007 Charge(s): 1

MOTION - MOTION TO SUPPRESS EVIDENCE UNDER ADVISEMENT ON 10/25/2007

WILLIAM BRODRICK , JUSTICE

11/30/2007 Charge(s): 1

MOTION - MOTION TO SUPPRESS EVIDENCE DENIED ON 11/19/2007

WILLIAM BRODRICK , JUSTICE

COPY TO PARTIES/COUNSEL

TSK

A TRUE COPY

ATTEST:

*Jessy A. Bangert*  
Clerk TSK

True Copy  
Jessy A. Bangert  
Clerk of Courts