

STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET

STATE OF MAINE
CUMBERLAND, SS
CLERK'S OFFICE

Docket No. 09-2908

RAC-CUM-1/11/2010

STATE OF MAINE,

v.

MELISSA HARTERY,

Defendant.

2010 JAN 11 P 3:00
ORDER

On April 13, 2009 in Windham there was a fire scene on the roadway and the defendant's vehicle was observed sliding off the road. The occupants were observed moving items from the interior of the vehicle to the trunk and Officer Cox was informed of that observation. By the time Officer Cox arrived at the scene the vehicle was back on the roadway. He ran a license and warrant check on the defendant operator and an identification check on the passenger.

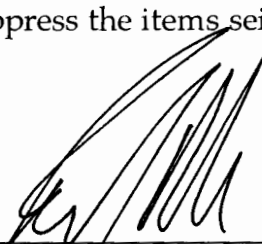
Officer Cox requested that a canine officer be dispatched and that request was denied so he told defendant she was free to go. He then asked if he could do a search of the vehicle and the passenger told him they had nothing to hide and that they could look in the vehicle. At the same time the police noticed a Portland Police Department canine officer waiting in traffic and at the police's request a "sniff" search was conducted by the Portland officer's dog. The dog indicated on a handbag and further search revealed the lack of any illegal drugs in the interior. The police opened the trunk searching for drugs and found none.

Officer Williams observed a checkbook in the trunk, opened the same and acquired information that lead to the seizure of stolen items and the pending charges. The officer was not searching for drugs when he took possession of the checkbook and opened the same.

The court has found that the use of the canine to detect presence of drugs was permissible and the passenger consented to a search of the vehicle although not expressly the trunk of the vehicle. Once the canine hit upon the interior of the car then the police had probable cause to check the trunk for illegal drugs. However once they concluded there were no drugs in the trunk then they could not seize and search the checkbook without permission of the defendant or her passenger. *See, State v. Sargent*, 2009 ME 125 and *Arizona v. Hicks*, 480 U.S. 321 (1987).

Therefore, the defendant's motion to suppress the items seized from the trunk of the defendant's automobile is granted.

DATED: January 11, 2010



Roland A. Cole
Justice, Superior Court

STATE OF MAINE
vs
MELISSA HARTERY
9 BIRCHWOOD DRIVE
PORTLAND ME 04102

Docket No CUMCD-CR-2009-02908

DOCKET RECORD

DOB: 08/20/1983

Attorney: ROBERT RUFFNER
ROBERT J RUFFNER ATTORNY AT LAW
80 EXCHANGE ST., SUITE 32
PORTLAND ME 04101
RETAINED 06/16/2009

State's Attorney: STEPHANIE ANDERSON

Filing Document: CRIMINAL COMPLAINT
Filing Date: 04/15/2009

Major Case Type: FELONY (CLASS A,B,C)

Charge (s)

1	BURGLARY		04/13/2009 WINDHAM
Seq 8484	17-A 401(1)(B)(4)	Class B	
	BOUDREAU / WND		
2	THEFT BY RECEIVING STOLEN PROPERTY		04/13/2009 WINDHAM
Seq 8477	17-A 359(1)(B)(4)	Class C	
	BOUDREAU / WND		
3	THEFT BY RECEIVING STOLEN PROPERTY		04/13/2009 WINDHAM
Seq 8477	17-A 359(1)(B)(4)	Class C	Charged with INDICTMENT on Supplem

Docket Events:

04/15/2009 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 04/15/2009

04/15/2009 Charge(s): 1,2

HEARING - INITIAL APPEARANCE SCHEDULED FOR 04/15/2009 @ 1:00 in Room No. 1

NOTICE TO PARTIES/COUNSEL

04/15/2009 OTHER FILING - NOTICE OF JOINDER FILED BY STATE ON 04/15/2009

04/16/2009 Charge(s): 1,2

HEARING - INITIAL APPEARANCE HELD ON 04/15/2009 @ 1:00 in Room No. 1

ROLAND BEAUDOIN , JUDGE

TAPE 3204

04/16/2009 Charge(s): 1,2

PLEA - NO ANSWER ENTERED BY DEFENDANT ON 04/15/2009 @ 1:00 in Room No. 1

ROLAND BEAUDOIN , JUDGE

04/16/2009 Charge(s): 1,2

HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 06/11/2009 @ 9:30 in Room No. 7

04/16/2009 Charge(s): 1,2

TRIAL - JURY TRIAL SCHEDULED FOR 07/06/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

04/16/2009 BAIL BOND - \$500.00 CASH BAIL BOND SET BY COURT ON 04/15/2009 @ 1:00 in Room No. 1

ROLAND BEAUDOIN , JUDGE
\$500 CASH BAIL W/CONDS

04/21/2009 BAIL BOND - \$500.00 CASH BAIL BOND FILED ON 04/17/2009

Bail Receipt Type: CR
Bail Amt: \$500

Receipt Type: CK
Prvdr Name: LAURA KELLY HARTERY
Rtrn Name: LAURA KELLY HARTERY

Date Bailed: 04/15/2009

988

11-19-09 ASSIGNED TO ATTY RUFFNER

05/01/2009 Party(s): MELISSA HARTERY
ATTORNEY - RETAINED ENTERED ON 04/22/2009

Attorney: JAMES BOULOS

05/12/2009 Charge(s): 1,2,3
SUPPLEMENTAL FILING - INDICTMENT FILED ON 05/08/2009

05/12/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT SCHEDULED FOR 06/11/2009 @ 9:30 in Room No. 7

05/12/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT NOTICE SENT ON 05/12/2009

05/21/2009 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 05/21/2009

06/05/2009 Charge(s): 1,2,3
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 06/05/2009

06/05/2009 Charge(s): 1,2
TRIAL - JURY TRIAL NOT HELD ON 06/05/2009

06/05/2009 TRIAL - JURY TRIAL SCHEDULED FOR 07/13/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

06/08/2009 Charge(s): 1,2,3
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 06/08/2009
ROBERT E CROWLEY , JUSTICE
COPY TO PARTIES/COUNSEL

06/08/2009 Party(s): MELISSA HARTERY
ATTORNEY - WITHDRAWN ORDERED ON 06/08/2009

Attorney: JAMES BOULOS

06/11/2009 Charge(s): 1,2,3
HEARING - ARRAIGNMENT CONTINUED ON 06/11/2009
PAUL E EGGERT , JUDGE
DEF NEEDS TO RETAIN COUNSEL

06/11/2009 TRIAL - JURY TRIAL NOT HELD ON 06/11/2009

DISP CONF DATE MOVED

06/11/2009 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOT HELD ON 06/11/2009

DEF NEEDS TO RETAIN COUNSEL

06/11/2009 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 07/23/2009 @ 1:00 in Room No. 7

06/11/2009 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 06/30/2009

06/11/2009 Charge(s): 1,2,3

HEARING - ARRAIGNMENT SCHEDULED FOR 07/23/2009 @ 1:00 in Room No. 7

06/11/2009 TRIAL - JURY TRIAL SCHEDULED FOR 09/08/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

06/18/2009 Party(s): MELISSA HARTERY

ATTORNEY - RETAINED ENTERED ON 06/16/2009

Attorney: ROBERT RUFFNER

07/06/2009 TRIAL - JURY TRIAL CONTINUED ON 07/06/2009

9-8-09 IS A STATE SHUTDOWN DAY. CASE RESCHEDULED FOR TRIAL EXP 9-14-09

07/23/2009 HEARING - DISPOSITIONAL CONFERENCE HELD ON 07/23/2009

Attorney: ROBERT RUFFNER

DA: MICHAEL MADIGAN

07/23/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/11/2009 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

07/23/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 07/23/2009

07/24/2009 Charge(s): 1,2,3

HEARING - ARRAIGNMENT HELD ON 07/23/2009

DONALD G ALEXANDER , ASSOCIATE JUSTICE

Attorney: ROBERT RUFFNER

DA: MICHAEL MADIGAN

DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS

TAPE 3360

07/24/2009 Charge(s): 1,2,3

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 07/23/2009

07/24/2009 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 07/23/2009

07/24/2009 MOTION - MOTION FOR DISCOVERY GRANTED ON 07/23/2009

DONALD G ALEXANDER , ASSOCIATE JUSTICE

COPY TO PARTIES/COUNSEL

GRANTED IN PART IN CHAMBERS.

SEE ORDER

07/24/2009 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 07/23/2009

08/07/2009 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 08/07/2009

Attorney: ROBERT RUFFNER

JH

08/07/2009 MOTION - MOTION TO CONTINUE GRANTED ON 08/07/2009

ROLAND BEAUDOIN , JUDGE

COPY TO PARTIES/COUNSEL

08/10/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/25/2009 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

08/10/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 08/10/2009

JH

08/10/2009 Charge(s): 1,2,3

TRIAL - JURY TRIAL SCHEDULED FOR 09/14/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

08/10/2009 Charge(s): 1,2,3

TRIAL - JURY TRIAL NOTICE SENT ON 08/10/2009

JH

08/10/2009 HEARING - MOTION TO SUPPRESS CONTINUED ON 08/07/2009

08/25/2009 HEARING - MOTION TO SUPPRESS HELD ON 08/25/2009

ROLAND A COLE , JUSTICE

Attorney: ROBERT RUFFNER

DA: JENNIFER NORBERT

TAPE 3366, SA FOR THE STATE

STATE'S WITNESS

CALLED. AFTER HEARING MOTION TO SUPPRESS UNDER ADVISEMENT BRIEFS TO BE FILED BY 9-3-09

08/25/2009 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 08/25/2009

ROLAND A COLE , JUSTICE

09/04/2009 OTHER FILING - MEMORANDUM OF LAW FILED ON 09/03/2009

IN RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

09/14/2009 OTHER FILING - MEMORANDUM OF LAW FILED ON 09/14/2009

Attorney: ROBERT RUFFNER

09/17/2009 OTHER FILING - MEMORANDUM OF LAW FILED ON 09/16/2009

Attorney: ROBERT RUFFNER

DEF'S RESPNSE IN SUPPOR OF SUPPRSSION TO STATE'S MEMORANDUM OF LAW

11/19/2009 BAIL BOND - CASH BAIL BOND ASSIGNMENT FILED ON 11/19/2009

Date Bailed: 04/15/2009

988

11-19-09 ASSIGNED TO ATTY RUFFNER

12/22/2009 Charge(s): 1,2,3

TRIAL - JURY TRIAL NOT HELD ON 12/22/2009

12/22/2009 TRIAL - JURY TRIAL SCHEDULED FOR 01/25/2010 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

12/22/2009 TRIAL - JURY TRIAL NOTICE SENT ON 12/22/2009

01/13/2010 MOTION - MOTION TO SUPPRESS GRANTED ON 01/11/2010

ROLAND A COLE , JUSTICE

COPY TO PARTIES/COUNSEL

A TRUE COPY

ATTEST: _____

Clerk