

A hearing on defendant's motion to suppress was held on October 29, 2009. At the hearing counsel for defendant stated that his challenge was limited to whether there was reasonable articulable suspicion for the vehicle stop and reasonable articulable suspicion to justify requesting the defendant to perform field sobriety tests.<sup>1</sup>

The court makes the following findings:

In the early morning of April 12, 2009 Officer Stailing of the South Portland Police Department was traveling eastward on Westbrook Street when his attention was drawn to a vehicle (driven by defendant Won Choi) traveling ahead of him on Westbrook Street. Although the officer testified that he saw the vehicle swerve almost off the road after it had passed the intersection of Broadway and Westbrook Street, the court did not observe any discernable swerve on a video taken from the cruiser. On this record, the court does not find that there was any erratic operation or other basis for an articulable suspicion that would have justified a stop at that point or that would contribute to the existence of reasonable articulable suspicion at a later point. However, the court infers that something about the vehicle drew the officer's attention because the officer, who was originally delayed by a red light at the Broadway intersection, accelerated to over 60 miles per hour in order to catch up to Choi's vehicle.

Choi's vehicle was briefly lost to the officer's view as it crested a hill but when the officer was able to see it again, the vehicle was on the right side of the road partially over the fog line in the breakdown lane.<sup>2</sup> After a few seconds Choi's vehicle returned to the travel lane but then traveled back partially into the breakdown lane, straddling the fog line, where it remained for more than five seconds before the officer turned on his blue lights. Choi's vehicle did not swerve and was not being operated in a dangerous manner. There were no pedestrians or parked vehicles in the breakdown lane.

The question before the court therefore is whether the officer's observation of Choi's vehicle twice traveling partially over the fog line after it had crested the hill is sufficient to constitute a reasonable articulable suspicion sufficient to justify an OUI stop. This is a close question. While crossing a solid centerline potentially constitutes a traffic violation, see 29-A M.R.S. § 2970(5)(D), crossing a fog line does not. Moreover, Choi's vehicle was not drifting back and forth from center line to fog line as in State v. Porter, 2008 ME 175, 960 A.2d 175. Compare State v. Caron, 534 A.2d 978, 979 (Me. 1987)(one straddle of centerline does not alone lead to reasonable articulable suspicion). Because the State bears the burden of proof in demonstrating a reasonable articulable

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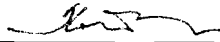
<sup>1</sup> On the latter issue – assuming without deciding that the officer needed additional reasonable articulable suspicion to proceed to field sobriety tests – the court finds that after the officer stopped defendant's vehicle, the officer detected the odor of alcohol, the defendant stated that he had consumed one drink, and the defendant also stated that he would place himself as a 3 on a 1 to 10 scale with respect to whether he was affected by alcohol. This was more than sufficient to generate a reasonable articulable suspicion to proceed to field sobriety tests.

<sup>2</sup> At that location the breakdown lane consisted of a space the width of a car between the fog line and the curb.

suspicion and the court finds the evidence is evenly divided here, it will grant the motion to suppress.

The motion to suppress the vehicle stop is granted.

Dated: October 30, 2009

  
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Thomas D. Warren  
Justice, Superior Court

STATE OF MAINE

vs

WON W CHOI  
143R WASHINGTON AVENUE  
PORTLAND ME 04103

Docket No CUMCD-CR-2009-02912

**DOCKET RECORD**

DOB: 01/07/1978

Attorney: MICHAEL WHIPPLE  
THOMAS F HALLETT LAW OFFICES PA  
75 MARKET STREET SUITE 502  
PO BOX 7508  
PORTLAND ME 04112  
RETAINED 04/21/2009

State's Attorney: STEPHANIE ANDERSON

**Charge (s)**

**1 OPERATING UNDER THE INFLUENCE**  
**Seq 9878 29-A 2411(1-A) (A)**

**04/12/2009 SOUTH PORTLAND**

**Class D**

**Docket Events:**

04/15/2009 FILING DOCUMENT - NON CASH BAIL BOND FILED ON 04/13/2009

04/15/2009 Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 07/08/2009 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

04/15/2009 BAIL BOND - \$1,000.00 UNSECURED BAIL BOND FILED ON 04/13/2009

Bail Amt: \$1,000

Date Bailed: 04/12/2009

988

04/23/2009 Party(s): WON W CHOI

ATTORNEY - RETAINED ENTERED ON 04/21/2009

Attorney: MICHAEL WHIPPLE

06/25/2009 Charge(s): 1

SUPPLEMENTAL FILING - COMPLAINT FILED ON 06/24/2009

08/24/2009 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 08/19/2009

Attorney: MICHAEL WHIPPLE

JH

08/25/2009 MOTION - MOTION TO CONTINUE GRANTED ON 08/25/2009

JEFF MOSKOWITZ , JUDGE

COPY TO PARTIES/COUNSEL

JH

08/25/2009 Charge(s): 1

HEARING - ARRAIGNMENT CONTINUED ON 08/25/2009

08/25/2009 Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 10/06/2009 in Room No. 7

08/25/2009 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 10/06/2009 @ 1:00 in Room No. 7

08/25/2009 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 09/15/2009

08/25/2009 Charge(s): 1  
TRIAL - JURY TRIAL SCHEDULED FOR 11/09/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

08/25/2009 Charge(s): 1  
TRIAL - JURY TRIAL NOTICE SENT ON 08/25/2009

JH

10/06/2009 HEARING - DISPOSITIONAL CONFERENCE HELD ON 10/06/2009  
PAUL E EGGERT , JUDGE  
Attorney: MICHAEL WHIPPLE  
DA: ANGELA CANNON  
Defendant Present in Court

SET FOR MOTION HEARING

10/06/2009 Charge(s): 1  
MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 10/06/2009

10/06/2009 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 10/29/2009 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

10/06/2009 HEARING - MOTION TO SUPPRESS EVIDENCE NOTICE SENT ON 10/13/2009

AMENDED

10/28/2009 Charge(s): 1  
HEARING - ARRAIGNMENT HELD ON 10/06/2009

DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS

10/30/2009 HEARING - MOTION TO SUPPRESS EVIDENCE HELD ON 10/29/2009  
THOMAS D WARREN , JUSTICE  
Attorney: ROBERT ELLIS  
DA: MICHAEL WHIPPLE

10/30/2009 Charge(s): 1  
MOTION - MOTION TO SUPPRESS EVIDENCE UNDER ADVISEMENT ON 10/29/2009  
THOMAS D WARREN , JUSTICE

11/02/2009 Charge(s): 1  
MOTION - MOTION TO SUPPRESS EVIDENCE GRANTED ON 10/30/2009  
THOMAS D WARREN , JUSTICE  
COPY TO PARTIES/COUNSEL  
SENT TO ALL PARTIES

COPY OF ORDER

A TRUE COPY  
ATTEST:

  
Clerk