

STATE OF MAINE

UNIFIED CRIMINAL DOCKET

LOCATION: PORTLAND

DOCKET NO. CUMCD-CR-09-4792

175-6111-1000

STATE

VS.

ZACHARIAH WILKINSON,

DECISION AND ORDER

STATE OF MAINE
SUPERIOR COURT
CLERK'S OFFICE
2009 DEC -4 A 11:34

Based on the evidence presented at the motion to suppress hearing on December 3, 2009, the court finds¹ that the defendant was not under arrest until the officer began placing him in handcuffs behind the defendant's vehicle;² even if defendant was in custody when the officer ordered defendant to throw his keys out of the car, the officer had probable cause to believe that the defendant committed the crime of criminal speeding; the results of the HGN test are not testimonial statements and smelling alcohol on the defendant's breath is not a testimonial statement; the officer did not arrest the defendant for operating under the influence until the defendant was handcuffed, at which

¹ If further factual findings are necessary for appeal, the defendant may file a motion for findings of fact and conclusions of law.

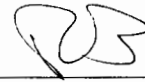
² See, e.g., *State v. Langlois*, 2005 ME 3, ¶9-10 (defendant was subjected to an investigatory detention, not an arrest, when the officer ordered him at gunpoint to lie down).

time the officer had probable cause to arrest for OUI; and the defendant did not make any incriminating testimonial statements that the state intends to use at trial.³

Therefore, defendant's motion to suppress is denied.

Dated:

12/4/09



Judge, Unified Criminal Docket

³ The State asserted at the motion hearing that it would not offer at trial any statements about speed that the defendant may have made after his arrest, handcuffing, and placement in the police cruiser.

STATE OF MAINE
vs
ZACHARIAH WILKINSON
359 FOSTER RD
AUBURN ME 04210

Docket No CUMCD-CR-2009-04792

DOCKET RECORD

DOB: 03/20/1982
Attorney: ROBERT ANDREWS
ROBERT ANDREWS ESQ
PO BOX 17621
PORTLAND ME 04112
RETAINED 09/29/2009

State's Attorney: STEPHANIE ANDERSON

Charge (s)

1 OPERATING UNDER THE INFLUENCE 06/20/2009 NEW GLOUCESTER
Seq 9878 29-A 2411 (1-A) (A) Class D
TUFTS / CUM

2 MOTOR VEHICLE SPEEDING: 30+ MPH OVER SPEED 06/20/2009 NEW GLOUCESTER
LIMIT
Seq 1147 29-A 2074 (3) Class E
TUFTS / CUM

Docket Events:

06/23/2009 FILING DOCUMENT - CASH BAIL BOND FILED ON 06/23/2009

07/07/2009 Charge(s): 1,2
HEARING - ARRAIGNMENT SCHEDULED FOR 07/15/2009 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/07/2009 BAIL BOND - \$200.00 CASH BAIL BOND FILED ON 06/23/2009

Bail Receipt Type: CR
Bail Amt: \$200

Date Bailed: 06/20/2009 Receipt Type: CK
Prvdr Name: SARAH YOUNG
Rtrn Name: SARAH YOUNG

988

07/09/2009 Charge(s): 1,2
SUPPLEMENTAL FILING - COMPLAINT FILED ON 07/09/2009
JAMES TURCOTTE , ASSISTANT CLERK

07/15/2009 Charge(s): 1,2
HEARING - ARRAIGNMENT HELD ON 07/15/2009 @ 8:30 in Room No. 1
MARYGAY KENNEDY , JUDGE
DA: WILLIAM BARRY

07/15/2009 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 07/15/2009 @ 8:30 in Room No. 1
MARYGAY KENNEDY , JUDGE
DA: WILLIAM BARRY

07/15/2009 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 10/06/2009 @ 10:30 in Room No. 7

07/15/2009 Charge(s): 1,2

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

NOTICE TO PARTIES/COUNSEL

09/15/2009 Charge(s): 1,2

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

09/29/2009 Party(s): ZACHARIAH WILKINSON

ATTORNEY - RETAINED ENTERED ON 09/29/2009

Attorney: ROBERT ANDREWS

10/06/2009 Charge(s): 1,2

HEARING - DISPOSITIONAL CONFERENCE HELD ON 10/06/2009

THOMAS D WARREN , JUSTICE

Attorney: ROBERT ANDREWS

DA: ANGELA CANNON

Defendant Present in Court

SET FOR MOTION

10/06/2009 Charge(s): 1,2

MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 10/06/2009

10/06/2009 Charge(s): 1,2

HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/29/2009 @ 1:00 in Room No. 7

NOTICE TO PARTIES/COUNSEL

10/06/2009 Charge(s): 1,2

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

10/20/2009 MOTION - MOTION TO CONTINUE FILED BY STATE ON 10/20/2009

10/22/2009 MOTION - MOTION TO CONTINUE GRANTED ON 10/22/2009

THOMAS D WARREN , JUSTICE

COPY TO PARTIES/COUNSEL

JH

10/22/2009 Charge(s): 1,2

HEARING - MOTION TO SUPPRESS CONTINUED ON 10/22/2009

10/22/2009 Charge(s): 1,2

TRIAL - JURY TRIAL CONTINUED ON 10/22/2009

10/22/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 11/12/2009 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

10/22/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 10/22/2009

10/22/2009 Charge(s): 1,2

TRIAL - JURY TRIAL SCHEDULED FOR 12/07/2009 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

10/22/2009 Charge(s): 1,2

TRIAL - JURY TRIAL NOTICE SENT ON 10/22/2009

JH

11/09/2009 HEARING - MOTION TO SUPPRESS CONTINUED ON 11/09/2009

11/09/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/03/2009 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

11/09/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 11/09/2009

JH

12/04/2009 HEARING - MOTION TO SUPPRESS HELD ON 12/03/2009

ROLAND BEAUDOIN , JUDGE

12/04/2009 Charge(s): 1,2

MOTION - MOTION TO SUPPRESS DENIED ON 12/04/2009

ROLAND BEAUDOIN , JUDGE

COPY TO PARTIES/COUNSEL

12/04/2009 ORDER - COURT ORDER FILED ON 12/04/2009

ROLAND BEAUDOIN , JUDGE

MOTION TO SUPPRESS IS DENIED

COPIES TO PARTIES MAILED 12-4-

09

A TRUE COPY

ATTEST: _____

Clerk