

STATE OF MAINE  
CUMBERLAND

2010 OCT 13 P 2:52

SUPERIOR COURT  
UNIFIED CRIMINAL COURT  
Docket No. CR-10-2636  
WSB - cum - 10/13/2010

STATE OF MAINE,

v.

DECISION

WARSAME M. TAHLIL,

Defendant.

### FINDINGS

1. On April 22, 2010 at 2:30 a.m. South Portland police officer Seth Page observed a motor vehicle with its left taillight not functioning.
2. Officer Page signaled the vehicle to stop with his blue lights. The vehicle pulled over without problems.
3. Officer Page approached the vehicle and found defendant Warsame Tahlil in the driver's seat. Mr. Tahlil was very sweaty and had bloodshot eyes. Officer Page did not at first smell any alcohol.
4. Officer Page asked Mr. Tahlil to produce his documentation and Mr. Tahlil did so without incident. Everything checked out.
5. When Officer Page returned to Mr. Tahlil's vehicle, Mr. Tahlil was smoking. This time Officer Page could smell alcohol. Mr. Tahlil admitted to drinking one shot of alcohol. Mr. Tahlil's eyes were bloodshot and glossy.
6. Officer Page asked Mr. Tahlil to perform field sobriety tests. Mr. Tahlil agreed to do so. Mr. Tahlil exited his vehicle without incident and stood between the rear of his vehicle and the front of Officer Page's cruiser.

7. The road was level and well paved with a clear white line. Officer Page's rear strobe lights remained on during the tests but the front strobe lights were turned off.
8. Officer Page had Mr. Tahlil perform the HGN test. Out of six possible clues, Officer Page observed all six. However, the DVD, State's Exhibit 1, shows that Officer Page did not observe the four-second guidelines. There was no evidence as to what a two or three second arm movement meant as opposed to the four second recommended time.
9. Officer Page told Mr. Tahlil that in his experience, if a person, especially a large person such as Mr. Tahlil, had had only one drink, then his eyes would not be jumping around as Mr. Tahlil's were. Mr. Tahlil then amended his story to acknowledge having a shot plus a beer one hour ago.
10. Officer Page next had Mr. Tahlil perform the walk and turn sobriety test. Officer Page testified that Mr. Tahlil did poorly and State's Exhibit 1 confirms this. In fact, Mr. Tahlil did very poorly. Mr. Tahlil's attorney tried to suggest that the strobe light influenced Mr. Tahlil's performance but State's Exhibit 1 does not support this assertion.
11. Officer Page then had Mr. Tahlil do the one-legged-stand sobriety test. Mr. Tahlil did badly on this as well. He could not keep his foot up for more than a second or two and as in the walk and turn test, he kept losing his balance and waving his arms. There was testimony that overweight people sometimes have difficulty with the one-legged-stand test. It strikes me that being overweight would not make someone perform as badly as Mr. Tahlil did.
12. Mr. Tahlil then performed the alphabet test well.

13. Mr. Tahlil failed miserably on the counting backwards test. Mr. Tahlil speaks English with an accent but he is a college man and his command of English is reasonably good. Even with English as a second language, it does not make sense that someone would count backwards as badly as Mr. Tahlil did without being under the influence.
14. Officer Page then asked Mr. Tahlil to assess his own sobriety using the one to ten scale, ten being very drunk. Mr. Tahlil responded that he was a six, "about halfway."
15. Officer Page then asked Mr. Tahlil if he would drive in his condition if he had a loved one in the car. Mr. Tahlil said he would.
16. Officer Page never read Mr. Tahlil his Miranda rights because he never intended to interrogate him after he had made a decision to arrest him.
17. Officer Page never did interrogate Mr. Tahlil. Officer Page did talk with Mr. Tahlil continually, mainly to explain the blood alcohol testing procedure. Mr. Tahlil also kept asking Officer Page to help him out and Officer Page kept telling Mr. Tahlil that given his observations he couldn't help him out. He said it was too late. He told Mr. Tahlil that his only hope now was to blow a low test. Mr. Tahlil, at one point, again modified upward the amount of alcohol he had consumed. This was a voluntary remark.

#### DISCUSSION

Because of the equipment malfunction, Officer Page had grounds to stop Mr. Tahlil. Because of the smell of alcohol, the admission of drinking and the bloodshot, glossy eyes, Officer Page had grounds to ask Mr. Tahlil to perform the field sobriety tests. Because of Mr. Tahlil's very poor performance on most of the sobriety tests and because of Mr. Tahlil's own assessments of his degree of sobriety, Officer Page had

probable cause to arrest Mr. Tahlil. Because Officer Page did not interrogate Mr. Tahlil and because Officer Page made no remarks designed to elicit an incriminating statement, the lack of Miranda warnings is irrelevant.

The clerk will make the following entry on the docket by reference:

Defendant Warsame Tahlil's motion to suppress is denied in all respects. This case is ready for jury selection.

DATED: October 13, 2010

*W. S. Brodrick*

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William S. Brodrick  
Justice, Superior Court  
Active Retired

STATE OF MAINE

AME M TAHLIL  
44 ANDERSON STREET  
PORTLAND ME 04101

Docket No CUMCD-CR-2010-02636

**DOCKET RECORD**

DOB: 07/15/1985

Attorney: DAVID WEYRENS  
THOMAS F HALLETT LAW OFFICES PA  
75 MARKET STREET SUITE 502  
PO BOX 7508  
PORTLAND ME 04112  
RETAINED 05/20/2010

State's Attorney: STEPHANIE ANDERSON

**Charge (s)**

**1 OPERATING UNDER THE INFLUENCE** 04/22/2010 SOUTH PORTLAND  
**Seq 11493 29-A 2411(1-A) (A)** **Class D**  
**PAGE / SPO**

**Docket Events:**

04/26/2010 FILING DOCUMENT - NON CASH BAIL BOND FILED ON 04/23/2010

04/26/2010 Charge(s): 1  
HEARING - ARRAIGNMENT SCHEDULED FOR 06/23/2010 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

04/26/2010 BAIL BOND - \$2,500.00 UNSECURED BAIL BOND FILED ON 04/23/2010

Bail Amt: \$2,500  
Date Bailed: 04/22/2010  
#636

05/20/2010 Party(s): WARSAME M TAHLIL  
ATTORNEY - RETAINED ENTERED ON 05/20/2010

Attorney: DAVID WEYRENS

06/14/2010 Charge(s): 1  
SUPPLEMENTAL FILING - COMPLAINT FILED ON 06/14/2010

06/14/2010 Charge(s): 1  
SUPPLEMENTAL FILING - COMPLAINT FILED ON 06/14/2010

06/24/2010 Charge(s): 1  
HEARING - ARRAIGNMENT WAIVED ON 06/23/2010 @ 8:30 in Room No. 1

06/24/2010 Charge(s): 1  
PLEA - NOT GUILTY ENTERED BY COUNSEL ON 06/23/2010 @ 8:30 in Room No. 1

06/24/2010 Charge(s): 1  
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 09/14/2010 @ 9:30 in Room No. 7

TIME CHANGED DUE TO A CONFLICT 9/13/10

06/24/2010 Charge(s): 1  
TRIAL - JURY TRIAL SCHEDULED FOR 10/25/2010 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

09/03/2010 Charge(s): 1  
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 09/03/2010  
TERRY VALCOURT , ASSISTANT CLERK-E

09/14/2010 Charge(s): 1  
HEARING - DISPOSITIONAL CONFERENCE HELD ON 09/14/2010  
JEFF MOSKOWITZ , JUDGE  
Attorney: MOLLY BUTLER BAILEY  
DA: ROBERT ELLIS  
Defendant Not Present in Court

HELD, NO AGREEMENT - MOTIONS TO BE FILED WITHIN 24 HOURS, SET FOR HEARING 9-23-10 AT 1:00 PM.

09/16/2010 MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 09/15/2010

09/16/2010 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 09/23/2010 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

09/16/2010 HEARING - MOTION TO SUPPRESS EVIDENCE NOTICE SENT ON 09/16/2010

09/21/2010 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 09/20/2010

09/22/2010 MOTION - MOTION TO CONTINUE GRANTED ON 09/21/2010  
JOYCE A WHEELER , JUSTICE  
COPY TO PARTIES/COUNSEL

09/22/2010 HEARING - MOTION TO SUPPRESS EVIDENCE CONTINUED ON 09/21/2010

09/23/2010 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/07/2010 @ 1:00 in Room No. 8

NOTICE TO PARTIES/COUNSEL

09/23/2010 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 09/23/2010

10/18/2010 HEARING - MOTION TO SUPPRESS HELD ON 10/07/2010

WILLIAM BRODRICK , JUSTICE

Attorney: DAVID WEYRENS

DA: ROBERT ELLIS

EXHIBITS 1 FOR STATE AND 1 FOR DEFENSE ENTERED. AFTER HEARING MOTION TO SUPPRESS UNDER ADVISEMENT.

10/18/2010 MOTION - MOTION TO SUPPRESS EVIDENCE UNDER ADVISEMENT ON 10/07/2010

WILLIAM BRODRICK , JUSTICE

10/18/2010 ORDER - COURT ORDER FILED ON 10/13/2010

WILLIAM BRODRICK , JUSTICE

DECISION

DEFENDANT

WARSAME TAHLIL'S MOTION TO SUPPRESS IS DENIED IN ALL RESPECTS. THIS CASE IS READY FOR JURY SELECTION

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk