

STATE OF MAINE
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET
Docket No. CR-11-5400
WSB - CUM - 5/29/2012

STATE OF MAINE,

v.

ORDER

TIANA CLARK,

Defendant.

FINDINGS

1. On August 15, 2011 Karyn Kundishora was the occupant of an apartment located on the third floor of a three-decker at 546 Ocean Avenue in Portland. The apartment had three bedrooms.
2. Defendant Tiana Clark was renting one of the three bedrooms within Ms. Kundishora's apartment on August 15, 2011.
3. Ms. Clark paid Ms. Kundishora approximately \$100 every other week for the use of the bedroom and the apartment.
4. For the five weeks preceding August 15, 2011, Ms. Clark had been sleeping at the apartment the majority of the time.
5. Ms. Clark had a key to the apartment.
6. The bedroom had a bed that Ms. Clark used.
7. Ms. Clark kept her clothes, shoes, jacket and pocketbook in the bedroom.
8. Ms. Clark had the right to invite guests of her choosing to the apartment. Ms. Clark would watch TV at the apartment and play games.
9. When arrested on August 15, 2011 Ms. Clark gave a Medford, Massachusetts residence as her address. That is her grandmother's home. Ms. Clark gets her mail at her grandmother's.

10. On August 15, 2011 at 8:30 a.m. Portland Police Officer Andjelko Napijalo received a call from dispatch concerning a fight in progress at 546 Ocean Avenue.
11. When Officer Napijalo arrived at the scene he saw an African American with blood on his head walking away from 546 Ocean Avenue. The bloodied man was approximately 50 to 60 feet from 546 Ocean Avenue.
12. When Officer Napijalo exited his cruiser, several persons told him that he should go to the third floor of 546 Ocean Avenue because "something terrible" was happening there.
13. Officer Napijalo went to the third floor where there was a door to only one apartment.
14. Officer Napijalo pounded on the third floor apartment door and identified himself as an officer.
15. Nobody answered at first. Officer Napijalo kept pounding on the door.
16. Officer Napijalo noticed a small opening in the door and looked through it. He saw two persons moving to the front door or another room. He radioed that two men might be coming out the front door.
17. Officer Napijalo believed that somebody might be in danger. He kept knocking.
18. The back door of the third floor apartment finally opened revealing Karyn Kundishora, Ashley Dahlgren and Ms. Clark. Ms. Kundishora had blood all over her face. Ms. Dahlgren was also bleeding and Ms. Clark was bleeding and limping.
19. Officer Napijalo patted the three females down and asked if there was anyone else inside the third floor apartment. He received three different answers: "yes," "no," and "not sure."

20. Officer Napijalo sent the ladies to the bottom of the stairs and when his backup arrived, searched the apartment's rooms and closets for victims or suspects.
21. After learning that no one else was in the apartment, the officers returned outside and secured the apartment until a warrant could be obtained.
22. The officers never searched for items other than victims or suspects. They opened no bureau doors. They did not collect any evidence. They did observe two bloodied shirts on the floor and observed a broken mirror and other indications of a fight.
23. Officer Napijalo secured the apartment until a warrant could be obtained.
24. The police searched the apartment after obtaining a warrant.

DISCUSSION


I am satisfied that Ms. Clark established standing to pursue her motion to suppress.

Ms. Clark claims that the initial search of the apartment for victims and suspects was unlawful. I am satisfied that the initial entry into the apartment was justified on security grounds. Under the circumstances, the police would have been derelict in their duty if they had not executed a minimalist search for victims and suspects.

The clerk will make the following entry by reference:

Defendant Tiana Clark's motion to suppress is denied in all respects.

DATED: May 29, 2012



William S. Brodrick
Justice Superior Court, Active Retired

STATE OF MAINE

vs

TIANA CLARK
17A BRADBURY AVE
MEDFORD MA 02155

Docket No CUMCD-CR-2011-05400

DOCKET RECORD

DOB: 07/23/1983

Attorney: ANTHONY SINENI
OFFICE OF ANTHONY SINENI III
701 CONGRESS STREET
PORTLAND ME 04102
APPOINTED 08/17/2011

State's Attorney: STEPHANIE ANDERSON

Filing Document: CRIMINAL COMPLAINT
Filing Date: 08/17/2011

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

Charge(s)

1	AGGRAVATED ASSAULT	08/15/2011	PORTLAND
Seq 630	17-A 208(1)(B)	Class B	
DUNHAM	/	POR	
2	ASSAULT	08/15/2011	PORTLAND
Seq 8382	17-A 207(1)(A)	Class D	
DUNHAM	/	POR	
3	TAMPERING WITH WITNESS, INFORMANT, JUROR OR VICTIM	08/15/2011	PORTLAND
Seq 9318	17-A 454(1)(A)(1)	Class C	
DUNHAM	/	POR	
4	FALSE PUBLIC ALARM OR REPORT	08/15/2011	PORTLAND
Seq 723	17-A 509(1)(A)	Class D	Charged with INDICTMENT on Supplemental Filing.
DUNHAM	/	POR	
5	AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS	08/13/2011	PORTLAND
Seq 9050	17-A 1105-A(1)(D)	Class A	Charged with SUPERSEDING INDICTMENT on Supplemental Filing.
DUNHAM	/	MDE	
6	PROMOTION OF PROSTITUTION	08/13/2011	PORTLAND
Seq 783	17-A 853(1)	Class D	Charged with SUPERSEDING INDICTMENT on Supplemental Filing.
DUNHAM	/	MDE	

Docket Events:

08/17/2011 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 08/17/2011

08/17/2011 Charge(s): 1,2,3
HEARING - INITIAL APPEARANCE SCHEDULED FOR 08/17/2011 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

08/18/2011 Charge(s): 1,2,3
HEARING - INITIAL APPEARANCE HELD ON 08/17/2011 at 01:00 p.m. in Room No. 1

JOYCE A WHEELER , JUSTICE

DA: MEGIN ELAM

TAPE 3081

08/18/2011 Charge(s): 1,2,3
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 08/17/2011

08/18/2011 Charge(s): 1,2,3
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 11/09/2011 in Room No. 7

08/18/2011 Charge(s): 1,2,3
TRIAL - JURY TRIAL SCHEDULED FOR 12/12/2011 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

08/18/2011 BAIL BOND - \$25,000.00 CASH BAIL BOND SET BY COURT ON 08/17/2011

JOYCE A WHEELER , JUSTICE
OR \$50,000 S/S W/COND *NO THIRD PARTY BAIL

08/18/2011 Charge(s): 1,2,3
MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 08/17/2011

08/18/2011 Charge(s): 1,2,3
MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 08/17/2011
JOYCE A WHEELER , JUSTICE
Attorney: ANTHONY SINENI
COPY TO PARTIES/COUNSEL

08/18/2011 Party(s): TIANA CLARK
ATTORNEY - APPOINTED ORDERED ON 08/17/2011

Attorney: ANTHONY SINENI

10/17/2011 Charge(s): 1,2,3
MOTION - MOTION TO CONTINUE FILED BY STATE ON 10/17/2011

NO OBJ BY DEF ATTY

10/17/2011 Charge(s): 1,2,3
MOTION - MOTION TO CONTINUE GRANTED ON 10/17/2011
ROLAND A COLE , JUSTICE
COPY TO PARTIES/COUNSEL

10/17/2011 Charge(s): 1,2,3
HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 10/17/2011
ROLAND A COLE , JUSTICE

10/17/2011 Charge(s): 1,2,3
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 11/30/2011 at 08:30 a.m. in Room No. 7

11/14/2011 Charge(s): 1,2,3,4
SUPPLEMENTAL FILING - INDICTMENT FILED ON 11/10/2011
JAMES TURCOTTE , ASSISTANT CLERK

11/14/2011 Charge(s): 1,2,3,4
HEARING - ARRAIGNMENT SCHEDULED FOR 11/30/2011 in Room No. 7

11/14/2011 OTHER FILING - NOTICE OF JOINDER FILED BY STATE ON 11/10/2011
JAMES TURCOTTE , ASSISTANT CLERK
JOINED WITH FROST 11-5397 AND C. CLARK 11-5404

11/30/2011 Charge(s): 1,2,3
HEARING - DISPOSITIONAL CONFERENCE HELD ON 11/30/2011
PAUL E EGGERT , JUDGE
Attorney: ANTHONY SINENI
DA: MEGIN ELAM

11/30/2011 Charge(s): 1,2,3
TRIAL - JURY TRIAL NOT HELD ON 11/30/2011

11/30/2011 TRIAL - JURY TRIAL SCHEDULED FOR 02/13/2012 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

11/30/2011 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 01/11/2012 at 08:30 a.m. in Room No. 7

12/01/2011 Charge(s): 1,2,3,4
HEARING - ARRAIGNMENT NOT HELD ON 11/30/2011

DEFENDANT IN ANDROSCOGGIN CTY JAIL

- 12/01/2011 Charge(s): 1,2,3,4
HEARING - ARRAIGNMENT SCHEDULED FOR 12/07/2011 at 01:00 p.m. in Room No. 1
- 12/01/2011 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 12/07/2011 at 01:00 p.m. in Room No. 1
- CERTIFIED COPY TO SHERIFF DEPT.
- 12/05/2011 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 12/05/2011
THOMAS D WARREN , JUSTICE
- 12/08/2011 WRIT - HABEAS CORPUS TO PROSECUTE REMANDED ON 12/07/2011
PAUL E EGGERT , JUDGE
- 12/08/2011 Charge(s): 1,2,3,4
HEARING - ARRAIGNMENT HELD ON 12/07/2011
RICHARD MULHERN , JUDGE
DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS
- 12/08/2011 Charge(s): 1,2,3,4
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 12/07/2011
- 12/08/2011 BAIL BOND - CASH BAIL BOND CONTINUED AS SET ON 12/07/2011
RICHARD MULHERN , JUDGE
- 01/10/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 01/10/2012
JUSTIN WESLEY , ASSISTANT CLERK-E
CERTIFIED COPY TO SHERIFF DEPT.
- 01/10/2012 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 01/10/2012
THOMAS D WARREN , JUSTICE
- 01/11/2012 HEARING - DISPOSITIONAL CONFERENCE HELD ON 01/11/2012
RICHARD MULHERN , JUDGE
Attorney: ANTHONY SINENI
DA: MEGIN ELAM
CONF HELD MOTION TO BE FILED BY 1-20-12
- 01/13/2012 CASE STATUS - CASE FILE LOCATION ON 01/13/2012
- CASE ON DEB COOK'S DESK WAITING FOR MOTION
- 01/23/2012 CASE STATUS - CASE FILE RETURNED ON 01/23/2012
- 02/02/2012 TRIAL - JURY TRIAL NOT HELD ON 02/02/2012
- 02/02/2012 TRIAL - JURY TRIAL SCHEDULED FOR 03/26/2012 at 08:30 a.m. in Room No. 11
- NOTICE TO PARTIES/COUNSEL
- 02/02/2012 TRIAL - JURY TRIAL NOTICE SENT ON 02/02/2012
- 02/02/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 03/26/2012 at 08:30 a.m. in Room No. 11
- CERTIFIED COPY TO SHERIFF DEPT.
- 02/07/2012 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 02/03/2012
ROLAND A COLE , JUSTICE
- 02/10/2012 Charge(s): 1,2,3,4,5,6
SUPPLEMENTAL FILING - SUPERSEDING INDICTMENT FILED ON 02/09/2012
JAMES TURCOTTE , ASSISTANT CLERK
- 02/10/2012 Charge(s): 1,2,3,4,5,6

HEARING - ARRAIGNMENT SCHEDULED FOR 02/21/2012 at 01:00 p.m. in Room No. 1

02/10/2012 Charge(s): 1,2,3,4,5,6

HEARING - ARRAIGNMENT NOTICE SENT ON 02/10/2012

JAMES TURCOTTE , ASSISTANT CLERK

02/13/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 02/13/2012

CERTIFIED COPY TO SHERIFF DEPT.

02/27/2012 Charge(s): 1,2,3,4,5,6

HEARING - ARRAIGNMENT HELD ON 02/21/2012

ROLAND A COLE , JUSTICE

Attorney: ANTHONY SINENI

DA: DEBORAH CHMIELEWSKI

DEFENDANT INFORMED OF CHARGES.

SAME BAIL CONTINUED

TAPE 3638

02/27/2012 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 03/21/2012 at 08:30 a.m. in Room No. 7

02/27/2012 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 02/27/2012

02/27/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 02/27/2012

CERTIFIED COPY TO SHERIFF DEPT.

02/28/2012 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 02/27/2012

ROLAND A COLE , JUSTICE

02/28/2012 LETTER - FROM NON-PARTY FILED ON 02/28/2012

LETTER FROM DEFENDANT REQUESTING A NEW ATTORNEY. COPY SENT TO ATTY. SINENI 2/28/12

03/15/2012 LETTER - FROM PARTY FILED ON 03/07/2012

REGARDING NEW COURT APPOINTED COUNSEL. FORWARDED TO PRESENT COUNSEL ON 3/15/2012

03/22/2012 TRIAL - JURY TRIAL NOT HELD ON 03/21/2012

03/22/2012 HEARING - DISPOSITIONAL CONFERENCE HELD ON 03/21/2012

THOMAS D WARREN , JUSTICE

Attorney: ANTHONY SINENI

DA: MEGIN ELAM

ALSO PRESENT, ATTYS R LEBRASSEUR AND J GALE AND AAG L SUTTON. POSSIBLE MOTIONS TO BE FILED.

RESET JURY SELECTION FOR 6/25/2012

03/22/2012 Charge(s): 1,2,3,4,5,6

TRIAL - JURY TRIAL SCHEDULED FOR 06/25/2012 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

03/23/2012 MOTION - MOTION TO SEVER PARTIES FILED BY DEFENDANT ON 03/22/2012

03/27/2012 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 05/08/2012 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/27/2012 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 03/23/2012

03/27/2012 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 03/27/2012

04/12/2012 LETTER - FROM PARTY FILED ON 04/11/2012

LETTER REGARDING COUNSEL FILED COPY SENT TO COUNSEL 4-12-12
04/19/2012 MOTION - MOTION TO CONTINUE FILED BY STATE ON 04/17/2012

04/23/2012 MOTION - MOTION TO CONTINUE GRANTED ON 04/20/2012
THOMAS D WARREN , JUSTICE
COPY TO PARTIES/COUNSEL

04/23/2012 HEARING - MOTION TO SUPPRESS NOT HELD ON 04/20/2012

CONTINUED

04/23/2012 Charge(s): 1,2,3,4,5,6
HEARING - MOTION TO SUPPRESS SCHEDULED FOR 05/22/2012 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

04/23/2012 Charge(s): 1,2,3,4,5,6
HEARING - MOTION TO SUPPRESS NOTICE SENT ON 04/23/2012

04/23/2012 Charge(s): 1,2,3,4,5,6
HEARING - MOTION TO SEVER PARTIES SCHEDULED FOR 05/22/2012 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

04/23/2012 Charge(s): 1,2,3,4,5,6
HEARING - MOTION TO SEVER PARTIES NOTICE SENT ON 04/23/2012

04/23/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 04/23/2012

CERTIFIED COPY TO SHERIFF DEPT.

04/24/2012 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 04/24/2012
PAUL E EGGERT , JUDGE

05/02/2012 LETTER - FROM PARTY FILED ON 05/02/2012

REQUESTING A NEW ATTORNEY. COPY SENT TO ATTORNEY

05/15/2012 HEARING - MOTION FOR WITHDRAWAL OF CNSL SCHEDULED FOR 05/18/2012 at 01:15 p.m.
THOMAS D WARREN , JUSTICE
NOTICE TO PARTIES/COUNSEL

05/15/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 05/15/2012

CERTIFIED COPY TO SHERIFF DEPT. DEF IS IN ANDROSCOGGIN COUNTY JAIL

05/15/2012 HEARING - MOTION FOR WITHDRAWAL OF CNSL NOTICE SENT ON 05/15/2012

05/18/2012 HEARING - MOTION FOR WITHDRAWAL OF CNSL HELD ON 05/18/2012
THOMAS D WARREN , JUSTICE
Attorney: ANTHONY SINENI
DA: MEGIN ELAM
TAPE 3838

05/18/2012 Charge(s): 1,2,3,4,5,6
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY DEFENDANT ON 04/11/2012

05/18/2012 Charge(s): 1,2,3,4,5,6
MOTION - MOTION FOR WITHDRAWAL OF CNSL MOOT ON 05/18/2012

DEF HAS DECIDED TO KEEP ATTORNEY SINENI AS COUNSEL

05/23/2012 Charge(s): 1,2,3,4,5,6

HEARING - MOTION TO SUPPRESS HELD ON 05/22/2012

WILLIAM BRODRICK , JUSTICE

Attorney: ANTHONY SINENI

DA: MEGIN ELAM

05/23/2012 CASE STATUS - CASE FILE LOCATION ON 05/22/2012

JUSTICE BRODRICK HAS THE FILE - MOTION TO SUPPRESS TAKEN UNDER ADVISEMENT

06/05/2012 CASE STATUS - CASE FILE RETURNED ON 06/04/2012

06/05/2012 ORDER - COURT ORDER FILED ON 06/04/2012

WILLIAM BRODRICK , JUSTICE

DEFENDANT TIANA CLARKS MOTION TO SUPPRESS IS DENIED IN ALL RESPECTS

06/05/2012 MOTION - MOTION TO SUPPRESS DENIED ON 06/04/2012

WILLIAM BRODRICK , JUSTICE

COPY TO PARTIES/COUNSEL

06/05/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 06/25/2012 at 08:30 a.m. in Room No. 11

CERTIFIED COPY TO SHERIFF DEPT.

A TRUE COPY

ATTEST: _____

Clerk