

STATE OF MAINE

JON-CUM-4/11/2012

CUMBERLAND COUNTY
UNIFIED CRIMINAL COURT
Docket No. CR-11-5955

State of Maine

ORDER ON MOTION

V.

TYLER TRUE

The State was represented by: ADA Matthew Tice

The Defendant was represented by; Neil Weinstein, Esq.

The court has carefully considered the following motions:

1. The Defendant's Motion to Suppress which was heard on April 10, 2012.

2. **The court concludes :**

The initial turn over the line along with weaving within the lane observed over four miles coupled with the entry into the wrong lane at the rotary constituted adequate reasonable articulable suspicion of criminality to justify the stop. *See e.g. State v. Burnham 610 A.2d 733 (Me. 1992) (weaving within center line and breakdown lane factor justifying stop).*

The court also concludes Officer Swann to be credible in his testimony regarding this event and his observations of Mr. True after the stop constituted probable cause for BAC testing and subsequent arrest.

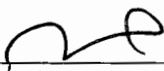
Contrary to the claims made at hearing, requiring a person to submit to roadside field sobriety testing does not rise to the functional level of arrest and is therefore not considered custody for either Miranda purposes or requiring probable cause to conduct field sobriety testing. *See e.g. State v. Little 468 A.2d 615 (Me. 1983), State v. Griffin 459 A.2d 1086 (Me. 1983).*

3. **THEREFORE, it is hereby ORDERED as follows:**

Motion to Suppress is denied.

The Clerk is directed to incorporate this order by reference on the docket.

Date: 4/11/12



Justice Maine Superior Court

DOCKET RECORD

DOB: 09/10/1982

Attorney: NEAL WEINSTEIN
LAW OFFICES NEAL WEINSTEIN
32 SACO AVENUE
PO BOX 660
OLD ORCHARD BEACH ME 04064-0660
RETAINED 09/01/2011

State's Attorney: STEPHANIE ANDERSON

Charge(s)

1 OPERATING UNDER THE INFLUENCE 08/28/2011 GORHAM
Seq 11493 29-A 2411(I-A)(A) Class D
SWANN / USM

Docket Events:

09/12/2011 FILING DOCUMENT - CASH BAIL BOND FILED ON 09/02/2011

09/12/2011 Charge(s): 1
HEARING - ARRAIGNMENT SCHEDULED FOR 10/11/2011 at 08:30 a.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

09/12/2011 BAIL BOND - \$350.00 CASH BAIL BOND FILED ON 09/02/2011

Bail Receipt Type: CR

Bail Amt: \$350

Receipt Type: CK

Date Bailed: 08/28/2011 Prvdr Name: BRIAN TRUE

Rtrn Name: BRIAN TRUE

11/19/54 682

09/26/2011 Party(s): TYLER D TRUE
ATTORNEY - RETAINED ENTERED ON 09/01/2011

Attorney: NEAL WEINSTEIN

09/27/2011 Charge(s): 1
SUPPLEMENTAL FILING - COMPLAINT FILED ON 09/27/2011
JAMES TURCOTTE , ASSISTANT CLERK

10/11/2011 Charge(s): 1
HEARING - ARRAIGNMENT WAIVED ON 10/11/2011 at 08:30 a.m. in Room No. 1

10/11/2011 Charge(s): 1
PLEA - NOT GUILTY ENTERED BY COUNSEL ON 10/11/2011 at 08:30 a.m. in Room No. 1

10/11/2011 Charge(s): 1
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 12/08/2011 at 01:00 p.m. in Room No. 7

10/11/2011 Charge(s): 1
TRIAL - JURY TRIAL SCHEDULED FOR 01/23/2012 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

11/08/2011 NOTE - OTHER CASE NOTE ENTERED ON 11/07/2011

LETTER RECEIVED FROM DEF ATTORNEY REQUESTING PM CONF TIME.

11/28/2011 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 11/28/2011

12/08/2011 Charge(s): 1

HEARING - DISPOSITIONAL CONFERENCE HELD ON 12/08/2011

PAUL E EGGERT , JUDGE

Attorney: NEAL WEINSTEIN

DA: MATTHEW TICE

HELD

12/08/2011 Charge(s): 1

MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 12/08/2011

12/08/2011 Charge(s): 1

HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/13/2011 at 01:00 p.m. in Room No. 8

NOTICE TO PARTIES/COUNSEL

12/08/2011 Charge(s): 1

HEARING - MOTION TO SUPPRESS NOTICE SENT ON 12/08/2011

12/12/2011 Charge(s): 1

MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 12/12/2011

12/13/2011 Charge(s): 1

MOTION - MOTION TO CONTINUE GRANTED ON 12/13/2011

MARY KELLY , JUDGE

COPY TO PARTIES/COUNSEL

12/13/2011 Charge(s): 1

HEARING - MOTION TO SUPPRESS CONTINUED ON 12/13/2011

MARY KELLY , JUDGE

12/13/2011 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/10/2012 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

12/13/2011 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 12/13/2011

01/11/2012 HEARING - MOTION TO SUPPRESS CONTINUED ON 01/10/2012

ROLAND A COLE , JUSTICE

01/11/2012 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 01/03/2012

Attorney: NEAL WEINSTEIN

01/11/2012 MOTION - MOTION TO CONTINUE GRANTED ON 01/10/2012

ROLAND A COLE , JUSTICE

COPY TO PARTIES/COUNSEL

01/11/2012 Charge(s): 1

TRIAL - JURY TRIAL NOT HELD ON 01/10/2012

01/11/2012 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 04/10/2012 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL

01/11/2012 Charge(s): 1

TRIAL - JURY TRIAL SCHEDULED FOR 04/23/2012 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

04/11/2012 HEARING - MOTION TO SUPPRESS HELD ON 04/10/2012

JOHN H ONEIL JR, JUDGE
Attorney: NEAL WEINSTEIN

DA: MATTHEW TICE

TAPE 3771 & 3788

MOTION TO SUPPRESS IS UNDER ADVISEMENT

AFTER HEARING

04/11/2012 Charge(s): 1

MOTION - MOTION TO SUPPRESS DENIED ON 04/10/2012

JOHN H ONEIL JR, JUDGE

COPY TO PARTIES/COUNSEL

A TRUE COPY

ATTEST: _____
Clerk

WARRANT OF ARREST

List of charges:

CHARGE #001 SEQ: 9878 OPERATING UNDER THE INFLUENCE DOV: 07/14/2007

Location: PORTLAND

Class D, Title 29-A M.R.S.A. §2411(1-A)(A)

Dept : POR Officer Name : JESSICA L GOOGINS

CHARGE #002 SEQ: 9867 OPERATE VEHICLE WITHOUT LICENSE DOV: 07/14/2007

Location: PORTLAND

Class E, Title 29-A M.R.S.A. §1251(1)(A)

Dept : POR Officer Name : JESSICA L GOOGINS

CHARGE #003 SEQ: 4845 FAILING TO GIVE MOTOR VEHICLE ACCIDENT INFORMATION DOV: 07/14/2007

Location: PORTLAND

Class E, Title 29-A M.R.S.A. §2255(2)

Dept : POR Officer Name : JESSICA L GOOGINS

CHARGE #004 SEQ: 4845 FAILING TO GIVE MOTOR VEHICLE ACCIDENT INFORMATION DOV: 07/14/2007

Location: PORTLAND

Class E, Title 29-A M.R.S.A. §2255(2)

Dept : POR Officer Name : JESSICA L GOOGINS

CHARGE #005 SEQ: 684 THEFT BY UNAUTHORIZED USE OF PROPERTY DOV: 07/14/2007

Location: PORTLAND

Class D, Title 17-A M.R.S.A. §360(1)(A)

Dept : POR Officer Name : JESSICA L GOOGINS