

STATE OF MAINE  
CUMBERLAND, ss.

UNIFIED CRIMINAL DOCKET  
No. CR-15-2251

6 AUG 15 AM 7:59

STATE OF MAINE

v.

ORDER

LEE McALENEY,

Defendant

A hearing was held on defendant Lee McAleney's motion to suppress the results of a blood test on July 30, 2015. The parties were given until August 3 to submit any further authority if they chose, and none has been submitted.

The court finds as follows:

Just before midnight on March 6, 2015, Sgt. Marc Marion of the Cumberland County Sheriff's office stopped McAleney's vehicle. He undertook field sobriety tests, on which she performed poorly, and arrested her for OUI. McAleney does not challenge the legality of the stop or the existence of probable cause for arrest.

Marion then drove McAleney to the Cumberland County Jail for an intoxilyzer test. Before Marion could administer the test, when McAleney was about to begin the observation period, she vomited on the floor. Considering the circumstances, Marion decided to administer a blood test.

McAleney agreed to have a blood sample taken. Marion then called for a person licensed to draw blood.

Gorham Officer Dean Hannon, who is licensed as an advanced emergency medicine technician and in that capacity is authorized to draw blood samples, arrived at the Jail when

McAleney had been waiting about 20 minutes. By this time it was approximately 1:41 am on March 7.

Before he broke the seals on his blood test kit, Hannon asked McAleney if she would consent to the taking of a blood sample, and she said yes. Hannon then broke the seals and McAleney signed the consent form that accompanies the blood test kit. The consent form was admitted into evidence at the hearing, and the text over McAleney's signature states, ""Let my signature state that I have given consent for these blood samples to be taken. McAleney was very cooperative through her interactions with both Sgt. Marion and Officer Hannon.

No search warrant was sought or obtained for the blood draw. Because McAleney consented to the blood draw, neither Sgt. Marion nor Officer Hannon found it necessary to read her the implied consent form.

Counsel for McAleney argues that based on *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), no blood draw could be taken without a search warrant. The *McNeely* case, however, is distinguishable because the defendant in *McNeely* had refused to consent to a blood draw and the issue in *McNeely* was whether the natural metabolization of alcohol in the blood constitutes a *per se* exigent circumstance that excused the need to obtain a warrant. The court held that whether exigent circumstances exist must be evaluated on a case-by-case basis depending on the totality of the specific circumstances in each case.

In this case McAleney consented a blood draw. It is the State's burden to demonstrate by a preponderance of the evidence that consent was given voluntarily. *State v. Bailey*, 2010 ME 15 ¶ 19, 969 A.2d 716. The State has met that burden in this case. On this record there is no evidence that McAleney did not voluntarily consent. Although the defense argues that her consent was involuntary because she was in custody, the court finds that the officers' testimony

establishes that McAleney was cooperative throughout and that she freely manifested her consent to the blood sample orally to the officers and in writing on the consent form.

Defendant's motion to suppress is denied.

Dated: August 5, 2015



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Thomas D. Warren  
Justice, Superior Court

STATE OF MAINE  
vs  
LEE S MCALENEY  
62 JIM SMALL RD  
CASCO ME 04015

CRIMINAL DOCKET  
CUMBERLAND, ss.  
Docket No CUMCD-CR-2015-02251

**DOCKET RECORD**

DOB: 07/09/1963

Attorney: CHRISTOPHER LEDWICK  
THE LEDWICK LAW FIRM  
PO BOX 884  
BRUNSWICK ME 04011  
RETAINED 04/21/2015

State's Attorney: CHRISTINE THIBEAULT

**Charge(s)**

1 OUI (ALCOHOL) 03/07/2015 NAPLES  
Seq 12942 29-A 2411(1-A)(A) Class D  
MARION / CUM

**Docket Events:**

04/23/2015 Charge(s): 1  
TRANSFER - PERMANENT TRANSFER EDI ON 04/23/2015 at 04:34 p.m.

TRANSFERRED CASE: SENDING COURT CASEID BRIDCCR201500147  
FILING DOCUMENT - NON CASH BAIL BOND FILED ON 03/11/2015

Charge(s): 1  
HEARING - ARRAIGNMENT SCHEDULED FOR 04/21/2015 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL  
Charge(s): 1  
HEARING - ARRAIGNMENT NOT HELD ON 04/21/2015

BAIL BOND - \$2,500.00 UNSECURED BAIL BOND FILED ON 03/11/2015

Bail Amt: \$2,500  
Date Bailed: 03/07/2015  
BAIL BOND - UNSECURED BAIL BOND CONTINUED AS SET ON 04/21/2015

Date Bailed: 03/07/2015  
Charge(s): 1  
SUPPLEMENTAL FILING - COMPLAINT FILED ON 04/13/2015

Party(s): LEE S MCALENEY  
ATTORNEY - RETAINED ENTERED ON 04/21/2015

Attorney: CHRISTOPHER LEDWICK  
Charge(s): 1  
PLEA - NOT GUILTY ENTERED BY COUNSEL ON 04/21/2015

Charge(s): 1  
FINDING - PERMANENT TRANSFER TRANSFERRED ON 04/22/2015

CUMCD

04/29/2015 Charge(s): 1  
TRANSFER - PERMANENT TRANSFER RECVD BY COURT ON 04/29/2015  
TERESA SAWYER-BLACK , ASSISTANT CLERK  
BRIDC CR-2015-147

04/29/2015 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 07/07/2015 at 10:00 a.m. in Room No. 7

04/29/2015 Charge(s): 1  
TRIAL - JURY TRIAL SCHEDULED FOR 08/10/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

07/07/2015 HEARING - DISPOSITIONAL CONFERENCE HELD ON 07/07/2015

JEFF MOSKOWITZ , JUDGE

Attorney: CHRISTOPHER LEDWICK

DA: ANGELA CANNON

MOTION TO BE FILED AND HEARD 7-23-15.

07/09/2015 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 07/09/2015

07/09/2015 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 07/23/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/22/2015 MOTION - MOTION TO CONTINUE FILED BY STATE ON 07/22/2015

MOTION HEARING 7-23-15.

07/23/2015 MOTION - MOTION TO CONTINUE GRANTED ON 07/23/2015

ROLAND A COLE , JUSTICE

COPY TO PARTIES/COUNSEL

07/23/2015 HEARING - MOTION TO SUPPRESS CONTINUED ON 07/23/2015

ROLAND A COLE , JUSTICE

07/23/2015 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 07/30/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/23/2015 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 07/23/2015

ROLAND A COLE , JUSTICE

07/30/2015 HEARING - MOTION TO SUPPRESS HELD ON 07/30/2015

THOMAS D WARREN , JUSTICE

Attorney: CHRISTOPHER LEDWICK

DA: STUDENT ATTORNEY

Defendant Not Present in Court

STATE'S WITNESSES CALLED AND SWORN. INTERN SHEA PRESENT FOR THE STATE. EXHIBIT A MARKED BY STATE, O, A, NO OBJECTION. STATE RESTS. DEFENSE ARGUMENTS MADE. STATE ARGUMENTS MADE. MEMO'S TO BE FILED BY MONDAY. MOTION UNDER ADVISEMENT.  
PRESENT. FTR 1 ADA CANNON

08/03/2015 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 07/30/2015

THOMAS D WARREN , JUSTICE

08/06/2015 ORDER - COURT ORDER FILED ON 08/06/2015

THOMAS D WARREN , JUSTICE

DEFENDANT'S MOTION TO SUPPRESS IS DENIED.

08/06/2015 MOTION - MOTION TO SUPPRESS DENIED ON 08/06/2015

THOMAS D WARREN , JUSTICE

COPY TO PARTIES/COUNSEL

A TRUE COPY

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

Clerk