

STATE OF MAINE
KENNEBEC, SS.

RECEIVED AND FILED SUPERIOR COURT
KENNEBEC SUPERIOR COURT
Docket No. CR-02-220
12 2004 APR 25 A-957JM - KEV - 4/26/2004

STATE OF MAINE)
)
)
)

v.)

DECISION

DAN WILLIAMS)

Defendant.)

DONALD L. BOURGET
LAW OFFICES

JUN 4 2004

Pending before this court is the Defendant's Motion for A New Trial. Ronald Bourget for the Defendant and Alan Kelley for the State.

A Motion to Suppress was denied by the court prior to the jury trial held in this case. The search of a motor vehicle was upheld based upon information that the police officer obtained from a reliable confidential informant. The CI told the police officer that he saw heroin or cocaine in a clear plastic bag that the driver of the motor vehicle obtained from the side of a building. The Motion To Suppress was denied based on the police officer's testimony at the hearing on the motion. The CI never testified at the hearing.

The CI was called as witness by the State during the jury trial. This courts finds that the CI could not have seen the drugs in the plastic bag because the bag was too small and his observation came from a fourth floor window. It was impossible for him to observe what was in the bag from that distance. A police officer who was present at the arrest of the driver indicated he couldn't tell what was in the bag, and he was standing right next to him. He was not able to determine the contents of the bag until he opened the bag. This court finds that the CI was either lying or guessing what was contained in the bag that the driver was holding. If these facts were presented to any justice, it would not have constituted probable cause to stop the vehicle.

However, the law in this area focuses on the conduct of the police

officer and not the accuracy of the information given to the officer by the CI. If the officer acts in good faith upon the information given by the CI and had no reason that the information was false or inaccurate, then the courts have upheld the search. In other words if a CI who has been reliable in the past guesses correctly there are no consequences.

This court must follow the law set out in the case of McCray v Illinois 383 US 300, 18 L.Ed .2d 62 (1967). For the reasons stated above and the reasons stated on the record, the defendant's Motion For New Trial is hereby denied.

Dated: April 20, 2004



Joseph Jabar
JUSTICE, SUPERIOR COURT

STATE OF MAINE
vs
DANIEL WILLIAMS
95 LENOX AVENUE
NEW YORK NY 10026

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2002-00220

DOCKET RECORD

DOB: 08/31/1980

Attorney: RONALD BOURGET
BOURGET & BOURGET PA
64 STATE STREET
AUGUSTA ME 04330-5194
APPOINTED 07/09/2002

State's Attorney: DAVID CROOK

Filing Document: INDICTMENT
Filing Date: 06/21/2002

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

Charge(s)

- | | | |
|---|--|--------------------|
| 1 | CONSPIRACY TO COMMIT A CLASS B CRIME
17-A 151(1) Class C
STUBBERT / FAI | 05/04/2002 OAKLAND |
| 2 | UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS
17-A 1103(1) Class B
STUBBERT / FAI | 05/04/2002 OAKLAND |
| 3 | UNLAWFUL POSSESSION OF SCHEDULED DRUGS
17-A 1107 Class D
STUBBERT / FAI | 05/04/2002 OAKLAND |
| 4 | UNLAWFULLY FURNISHING SCHEDULED DRUGS
17-A 1106(1)(A) Class C
STUBBERT / FAI | 05/04/2002 OAKLAND |

Docket Events:

06/24/2002 FILING DOCUMENT - INDICTMENT FILED ON 06/21/2002

TRANSFER - BAIL AND PLEADING GRANTED ON 06/21/2002

TRANSFER - BAIL AND PLEADING REQUESTED ON 06/21/2002

07/02/2002 BAIL BOND - \$5,000.00 CASH BAIL BOND FILED ON 07/02/2002

Bail Receipt Type: CR
Bail Amt: \$5,000

Date Bailed: 05/05/2002

Receipt Type: CK
Prvdr Name: DESIREE WILLIAMS
Rtrn Name: DESIREE WILLIAMS

Conditions of Bail:

07/02/2002 TRANSFER - BAIL AND PLEADING RECVD BY COURT ON 07/02/2002

07/09/2002 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 07/05/2002

07/09/2002 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 07/09/2002
DONALD H MARDEN , JUSTICE
COPY TO PARTIES/COUNSEL. RONALD BOURGET ACCEPTED APPT.

07/09/2002 Party(s): DANIEL WILLIAMS
ATTORNEY - APPOINTED ORDERED ON 07/09/2002

Attorney: RONALD BOURGET

07/15/2002 Charge(s): 1,2,3,4
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 07/09/2002

07/15/2002 Charge(s): 1,2,3,4
PLEA - NOT GUILTY ACCEPTED BY COURT ON 07/09/2002

07/15/2002 MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 07/15/2002

07/15/2002 MOTION - MOTION TO SUPPRESS STATEMENT FILED BY DEFENDANT ON 07/15/2002

07/25/2002 BAIL BOND - CASH BAIL BOND SET BY COURT ON 07/09/2002
DONALD H MARDEN , JUSTICE
Attorney: DAVID CROOK
DA: ALAN KELLEY
Defendant Present in Court

AMENDED BAIL BOND. CASH IN THE AMOUNT OF \$5,000 ALREADY POSTED. ADDITIONAL COND ARE NO CONTACT W/ MICHAEL HIGGINS, NO USE/POSSESSION ALCOHOL, DRUGS, WEAPONS; RANDOM SEARCH & TESTING, WEEKLY CONTACT W/ ATTORNEY; RESIDE W/ MOTHER AT 95 LENNOX AVE, APT 2L, NY NY 10026.

08/30/2002 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 08/30/2002

Attorney: RONALD BOURGET
ATTORNEY FOR DEFENDANT MUST BE IN DISTRICT COURT. REQUESTS A CONTINUANCE FROM THE SEPTEMBER 3RD MOTION LIST.

09/12/2002 HEARING - MOTION TO SUPPRESS STATEMENT SCHEDULED FOR 09/03/2002

NOTICE TO PARTIES/COUNSEL

09/12/2002 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/03/2002

NOTICE TO PARTIES/COUNSEL

09/12/2002 HEARING - MOTION TO SUPPRESS STATEMENT HELD ON 09/03/2002 @ 1:00
DONALD H MARDEN , JUSTICE
Attorney: RONALD BOURGET
DA: ALAN KELLEY Reporter: KIMBERLY MCCULLOCH
Defendant Present in Court

MOTION TO SUPPRESS STATEMENT WAS DENIED AFTER HEARING, THE STATE CALLED RICK STUBBERT AND GARY BOWMAN FROM OAKLAND P.D., THE DEFENSE DID NOT CALL ANY WITNESSES.

09/12/2002 HEARING - MOTION TO SUPPRESS HELD ON 09/03/2002 @ 1:00
DONALD H MARDEN , JUSTICE
Attorney: RONALD BOURGET
DA: ALAN KELLEY Reporter: KIMBERLY MCCULLOCH
Defendant Present in Court

AFTER HEARING MOTION TO SUPPRESS DENIED. WITNESSES THAT WERE CALLED FOR THE STATE WERE RICK STUBBERT FROM OAKLAND P.D. AND GARY BOWMAN FROM OAKLAND P.D., THE DEFENSE DID NOT CALL ANY WITNESSES.

09/12/2002 MOTION - MOTION TO CONTINUE MOOT ON 09/03/2002

09/12/2002 MOTION - MOTION TO SUPPRESS EVIDENCE DENIED ON 09/03/2002

COPY TO PARTIES/COUNSEL

09/12/2002 MOTION - MOTION TO SUPPRESS STATEMENT DENIED ON 09/03/2002

COPY TO PARTIES/COUNSEL

02/19/2003 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 02/14/2003

EX PARTE MOTION FOR FUNDS FOR PRIVATE INVESTIGATOR

02/21/2003 MOTION - MOTION FOR FUNDS GRANTED ON 02/21/2003

S KIRK STUDSTRUP , JUSTICE

COPY TO PARTIES/COUNSEL

04/09/2003 TRIAL - DOCKET CALL SCHEDULED FOR 05/08/2003 @ 9:30

05/16/2003 TRIAL - DOCKET CALL HELD ON 05/08/2003

DONALD H MARDEN , JUSTICE

Attorney: RONALD BOURGET

DA: ALAN KELLEY

Reporter: LAURIE GOULD

Defendant Present in Court

TO BE SET FOR TRIAL JUNE 23RD.

09/02/2003 Charge(s): 1,2,3,4

MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 08/27/2003

Attorney: RONALD BOURGET

EX PARTE MOTION FOR APPOINTMENT OF P.I. WITH AFFIDAVIT.

09/02/2003 Charge(s): 1,2,3,4

MOTION - MOTION FOR FUNDS GRANTED ON 08/29/2003

S KIRK STUDSTRUP , JUSTICE

COPY TO PARTIES/COUNSEL

09/05/2003 TRIAL - DOCKET CALL SCHEDULED FOR 10/06/2003 @ 9:00

09/24/2003 MOTION - MOTION FOR ADDITIONAL FUNDS FILED BY DEFENDANT ON 09/24/2003

09/29/2003 MOTION - MOTION FOR ADDITIONAL FUNDS GRANTED ON 09/24/2003

S KIRK STUDSTRUP , JUSTICE

COPY TO PARTIES/COUNSEL

10/06/2003 TRIAL - DOCKET CALL HELD ON 10/06/2003

DONALD H MARDEN , JUSTICE

Attorney: RONALD BOURGET

DA: PAUL RUCHA

Reporter: KIMBERLY MCCULLOCH

Defendant Present in Court

10/29/2003 TRIAL - JURY TRIAL SCHEDULED FOR 12/09/2003 @ 9:00

S KIRK STUDSTRUP , JUSTICE

NOTICE TO PARTIES/COUNSEL

12/16/2003 TRIAL - JURY TRIAL NOT HELD ON 12/09/2003 @ 9:00

12/16/2003 TRIAL - JURY TRIAL SCHEDULED FOR 01/07/2004 @ 9:00

DONALD H MARDEN , JUSTICE
NOTICE TO PARTIES/COUNSEL

12/24/2003 ORDER - TRANSCRIPT ORDER FILED ON 12/24/2003

COPY SENT TO KIM MCCULLOCH

01/05/2004 OTHER FILING - TRANSCRIPT FILED ON 01/05/2004

TRANSCRIPT OF MOTION TO SUPPRESS, TESTIMONY OF RICK STUBBERT

02/03/2004 TRIAL - JURY TRIAL NOT REACHED ON 01/23/2004

02/03/2004 TRIAL - JURY TRIAL SCHEDULED FOR 03/03/2004 @ 9:00

JOSEPH M JABAR , JUSTICE
NOTICE TO PARTIES/COUNSEL

03/17/2004 MOTION - MOTION TO JOIN FILED BY STATE ON 03/16/2004

TO JOIN CR02-215 NICK WILLIAMS

03/29/2004 TRIAL - JURY TRIAL NOT HELD ON 03/03/2004

03/29/2004 Charge(s): 1,2,3,4

TRIAL - JURY TRIAL SCHEDULED FOR 04/05/2004 @ 1:00

JOSEPH M JABAR , JUSTICE
NOTICE TO PARTIES/COUNSEL

04/09/2004 Charge(s): 3

RULING - ORIGINAL ORDERED ON 04/09/2004

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 3 UNLAWFUL POSSESSION OF SCHEDULED DRUGS 17-A
1107 Class D as charged and convicted.

The defendant is sentenced to the KENNEBEC COUNTY JAIL for a term of 6 month(s).

This sentence to be served concurrently with: AUGSCCR200200220 Charge: 4

Execution stayed to on or before: 04/23/2004 at 09:00.

The defendant shall serve the initial portion of the foregoing sentence at the county jail in
KENNEBEC.

\$ 10 VICTIMS COMPENSATION FUND

TOTAL DUE:\$ 10.00.

04/12/2004 MOTION - MOTION TO JOIN GRANTED ON 04/05/2004

JOSEPH M JABAR , JUSTICE

04/12/2004 Charge(s): 1,2,3,4

TRIAL - JURY TRIAL SELECTED ON 04/05/2004

JURY SELECTED

04/12/2004 Charge(s): 1,2,3,4

TRIAL - JURY TRIAL HELD ON 04/06/2004

JOSEPH M JABAR , JUSTICE

Attorney: RONALD BOURGET

DA: ALAN KELLEY

Reporter: PHILIP GALUCKI

Defendant Present in Court

04/12/2004 Charge(s): 1,2,3,4

MOTION - MOTION FOR JDMGT OF ACQUITTAL FILED BY DEFENDANT ON 04/08/2004

04/12/2004 Charge(s): 1,2,3,4

MOTION - MOTION FOR JDMGT OF ACQUITTAL GRANTED ON 04/08/2004

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL ACQUITTED AS TO COUNTS 1 & 2

04/12/2004 Charge(s): 1,2

FINDING - JUDGMENT OF ACQUITTAL ENTERED BY COURT ON 04/08/2004

JOSEPH M JABAR , JUSTICE

04/12/2004 Charge(s): 3,4

VERDICT - GUILTY RETURNED ON 04/08/2004

04/12/2004 Charge(s): 3,4

FINDING - GUILTY ENTERED BY COURT ON 04/08/2004

04/12/2004 Charge(s): 3,4

FINDING - GUILTY CONT FOR SENTENCING ON 04/08/2004

04/12/2004 HEARING - SENTENCE HEARING SCHEDULED FOR 04/09/2004

04/12/2004 HEARING - SENTENCE HEARING HELD ON 04/09/2004

JOSEPH M JABAR , JUSTICE

Attorney: RONALD BOURGET

DA: ALAN KELLEY Reporter: PHILIP GALUCKI

Defendant Present in Court

04/12/2004 Charge(s): 4

RULING - ORIGINAL ORDERED ON 04/09/2004

It is adjudged that the defendant is guilty of 4 UNLAWFULLY FURNISHING SCHEDULED DRUGS 17-A 1106(1) (A) Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 2 year(s).

Execution stayed to on or before: 04/23/2004 at 09:00.

It is ordered that all but 6 month(s) of the sentence as it relates to confinement be suspended.

It is ordered that the defendant be placed on a period of probation for a term of 2 year(s) upon conditions attached hereto and incorporated by reference herein.

Said Probation to commence after completion of the unsuspended term of imprisonment.

It is ordered that the defendant forfeit and pay the sum of \$221.00 as restitution through Probation.

\$ 25 VICTIMS COMPENSATION FUND

TOTAL DUE:\$ 25.00.

Special Conditions of Probation:

1. refrain from all criminal conduct and violation of federal, state and local laws.
2. report to the probation officer immediately and thereafter as directed and within 48 hours

- of your release from jail.
3. answer all questions by your probation officer and permit the officer to visit you at your home or elsewhere.
 4. obtain permission from your probation officer before changing your address or employment.
 5. not leave the State of Maine without written permission of your probation officer.
 6. maintain employment and devote yourself to an approved employment or education program.
 7. not possess or use any unlawful drugs and not possess or use alcohol.
 8. identify yourself as a probationer to any law enforcement officer if you are arrested, detained or questioned for any reason and notify your probation officer of that contact within 24 hours.
 9. waive extradition back to the State of Maine from any other place.
 10. not own, possess or use any firearm or dangerous weapon if you have ever been convicted of a crime in any jurisdiction with a potential penalty of one year or more or any crime involving domestic violence or the use of a firearm or dangerous weapon.

pay to the Department of Corrections a supervision fee of \$ 10.00 per month.

submit to random search and testing for alcohol at the direction of a probation or law enforcement officer.

submit to random search and testing for drugs at the direction of a probation or law enforcement officer.

pay restitution as stated earlier.

Have no contact of any kind with JOSEPH BRADLEY and the family of said person.

04/12/2004 Charge(s): 3

RULING - AUDIT REPORT FINE UPDATED ON 04/12/2004

Charge: 3 Previous value(s) => Base Fine: 0 Current value(s) => Base Fine: 10

04/12/2004 Charge(s): 3

RULING - AUDIT REPORT FINE UPDATED ON 04/12/2004

Charge: 3 Previous value(s) => Base Fine: 10 Current value(s) => Base Fine: 0

04/12/2004 Charge(s): 1

ABSTRACT - SBI EDI ON 04/12/2004

LAST EDI SENT: 04/12/2004 21:37:56

04/12/2004 Charge(s): 2

ABSTRACT - SBI EDI ON 04/12/2004

LAST EDI SENT: 04/12/2004 21:37:57

04/16/2004 Charge(s): 3,4

MOTION - MOTION FOR JDGMT OF ACQUITTAL FILED BY DEFENDANT ON 04/08/2004

04/16/2004 MOTION - MOTION FOR NEW TRIAL FILED BY DEFENDANT ON 04/08/2004

04/16/2004 MOTION - MOTION FOR NEW TRIAL DENIED ON 04/09/2004

JOSEPH M JABAR , JUSTICE
COPIES TO PARTIES/COUNSEL

04/16/2004 Charge(s): 3,4

MOTION - MOTION FOR JDGMT OF ACQUITTAL UNDER ADVISEMENT ON 04/09/2004

04/23/2004 APPEAL - NOTICE OF APPEAL FILED ON 04/21/2004

04/23/2004 APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 04/23/2004

04/23/2004 ORDER - TRANSCRIPT ORDER ENTERED ON 04/21/2004

TRANSCRIPT ORDER FOR TRIAL, MOTIONS FOR ACQUITTAL AND SENTENCING, COPY HANDED TO PHIL IN THE COURTROOM ON 4/26/04

04/23/2004 MOTION - OTHER MOTION FILED BY DEFENDANT ON 04/21/2004

MOTION FOR BAIL PENDING APPEAL

04/26/2004 MOTION - OTHER MOTION GRANTED ON 04/23/2004

JOSEPH M JABAR , JUSTICE

MOTION FOR BAIL PENDING APPEAL

04/26/2004 Charge(s) : 3,4

MOTION - MOTION FOR JDGMT OF ACQUITTAL DENIED ON 04/26/2004

JOSEPH M JABAR , JUSTICE

COPIES TO PARTIES/COUNSEL

04/26/2004 ORDER - COURT ORDER ENTERED ON 04/26/2004

DECISION FOR DEFENDANT'S MOTION FOR NEW TRIAL

Receipts

04/12/2004 Case Payment \$35.00 paid.

Exhibits

04/06/2004 DEFENDANT, Exhibit#1, STATEMENT FROM WITNESS, JOSEPH BRADLEY, Marked on 04/06/2004.

04/06/2004 DEFENDANT, Exhibit#2, SUMMONS, Marked on 04/06/2004.

04/06/2004 DEFENDANT, Exhibit#2A, PHOTO OF BOILER ROOM, LOOKING FROM HALLWAY, Adm w/o obj on 04/06/2004.

04/06/2004 DEFENDANT, Exhibit#3, PHOTO OF BOILER ROOM AND DRIVEWAY AREA, Adm w/o obj on 04/06/2004.

A TRUE COPY

ATTEST: _____

Clerk