

STATE OF MAINE

KENNEBEC, ss.

**REC'D & FILED**  
Nancy A. Desjardin

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-02-441

DHM-KEN-3-89-2003

STATE OF MAINE

MAY 29 2003

v.

Clerk of Courts  
Kennebec County

**ORDER ON MOTION  
TO SUPPRESS**

KIM TRAN,

DONALD L. GARBRECHT  
LAW LIBRARY

Defendant

**AUG 6 2003**

This matter is before the court upon defendant's motion to suppress due to extraterritorial stop.

On May 24, 2002, Officer Harwood of the Gardiner Police Department, then of the Hallowell Police Department, noted a motor vehicle traveling 31 m.p.h. in a 25 m.p.h. zone at approximately 1:00 a.m. on Winthrop Street. The officer proceeded to follow the vehicle to the intersection of Winthrop Street and the Whitten Road. He observed the vehicle making a wide sweeping right-hand turn onto the Whitten Road, so wide that the vehicle entered the Whitten Road in the left lane. He then noted the vehicle travel onto the shoulder, then cross over the middle yellow line, then cross onto the shoulder at a location approximately at the boundary line between the City of Hallowell and the City of Augusta. Immediately upon crossing the boundary line, the officer activated his blue lights but the vehicle did not stop. Consequently, the officer activated his siren. The pursued vehicle went off the road onto the shoulder and further on stopped. Officer Harwood then radioed the Augusta Dispatch of his activities.

Title 30-A M.R.S.A. § 2671(2) provides, among other things:

The police officer has any authority in criminal or traffic infraction matters beyond the limits of a municipality in which the officer is appointed, except:

E. Arrest a person who travels beyond the limits of a municipality in which the officer is appointed when in fresh pursuit of that person . . .

As used in this paragraph:

(2) With respect to class D and class E crimes and traffic infractions, 'fresh pursuit' means instant pursuit of a person with intent to apprehend;

The court has examined a line of cases in this regard including *State v. Harding*, 508 A.2d 471 (Me. 1986); *State v. Monteith*, 519 A.2d 187 (Me. 1986); *State v. Hatch*, 614 A.2d 1299 (Me. 1992); *State v. Jolin*, 639 A.2d 1062 (Me. 1994); *State v. Pike*, 642 A.2d 145 (Me. 1994); *State v. Rideout*, 761 A.2d 288 (Me. 2000); and finally, and most recently, *State v. Menard*, 2003 ME 69. In *Menard*, a Brunswick police officer observed a motor vehicle stopped at a stop sign for an "inordinate amount of time." The officer then observed the vehicle turn left in a very wide radius. As the officer was observing the vehicle cross the dividing line between the towns of Brunswick and Topsham, he clocked the vehicle at 55 to 60 m.p.h. in a 45 m.p.h. zone. The officer advised his dispatcher and requested a call to the Topsham Police Department because he believed the driver was operating under the influence. However, concerned that the level of traffic in the area and operation of the driver represented a hazard, he chose not to wait for the Topsham police but stopped the vehicle on his own.

The court noted that the Constitutions of the United States and Maine require only the presence of a reasonable and articulable suspicion in order for an officer to make a valid investigatory stop of a vehicle. *State v. Rideout*, 761 A.2d 288, 290 (Me. 2000). It further noted that reasonable and articulable suspicion is an easier standard to meet than probable cause. *Id.* The court then noted that it had previously decided that speeding is an articulable fact that warrants an investigatory stop (citing *State v. Bolduc*, 722 A.2d 44, 45). The court also noted that it had previously concluded that an unusual

turn may warrant an investigatory stop (citing *State v. Dulac*, 600 A.2d 1121 (Me. 1992)) (finding that it was objectively reasonable for the trooper to suspect that the defendant was operating under the influence when the trooper saw the defendant make a very wide turn that caused part of the vehicle to leave the paved surface of the road). The court refers us to *State v. Harding* for the proposition that an officer's authority is measured at the moment of the arrest and by the nature of the offense. In doing so, it quotes the language from *State v. Hatch*, 614 A.2d 1299. In that case, a Bangor officer observed a vehicle undertaking suspicious activity in Bangor and followed it to Brewer. Contrary to the argument of defendant in the present case, the intent to apprehend must exist at the time of crossing of the municipal boundary line, and the court looked to the facts existent at the time of the arrest saying, "These observations gave rise to a reasonable suspicion that the defendant was operating under the influence in Bangor. The fact that the most incriminating observations took place in Brewer, instead of Bangor, is not relevant to the issues before us." *Hatch*, 614 A.2d at 1303. Accordingly, in the instant case, at the time of the officer's stop in Augusta, he had articulable and reasonable suspicion to believe, indeed, probable cause to believe, that the defendant was operating under the influence in Hallowell even though some of the suspicious activity may have taken place in Augusta.

The entry will be:

Defendant's motion to suppress due to extraterritorial stop is DENIED.

Dated: May 28, 2003



Donald H. Marden  
Justice, Superior Court

STATE OF MAINE  
vs  
KIM M TRAN  
92 A WESTERN AVE  
AUGUSTA ME 04330

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2002-00441

**DOCKET RECORD**

DOB: 08/23/1977  
Attorney: WALTER MCKEE  
LIPMAN & KATZ PA  
227 WATER STREET  
PO BOX 1051  
AUGUSTA ME 04332-1051

State's Attorney: BRIAN MAHANY

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 08/13/2002

Major Case Type: MISDEMEANOR (CLASS D,E)

**Charge(s)**

1 OPERATING UNDER THE INFLUENCE  
29-A 2411(1) Class D  
HARWOOD / HAL

05/24/2002 HALLOWELL

**Docket Events:**

11/15/2002 Charge(s): 1  
TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 11/15/2002 @ 22:00

FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 08/13/2002

Charge(s): 1  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/14/2002

Charge(s): 1  
MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 06/14/2002

Charge(s): 1  
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 09/20/2002

MOTION TO SUPPRESS DUE TO EXTRATERRITORIAL STOP  
Charge(s): 1  
HEARING - MOTION TO SUPPRESS SCHEDULED FOR 11/15/2002 @ 8:30

NOTICE TO PARTIES/COUNSEL

11/19/2002 Charge(s): 1  
TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 11/18/2002

TRANSFER FROM AUGDC CR02-2044.

12/23/2002 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/06/2003 @ 9:00

NOTICE TO PARTIES/COUNSEL

01/24/2003 HEARING - MOTION TO SUPPRESS NOT HELD ON 01/07/2003

01/24/2003 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/27/2003

NOTICE TO PARTIES/COUNSEL

01/24/2003 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 01/24/2003

01/29/2003 Charge(s): 1

HEARING - MOTION TO SUPPRESS NOT HELD ON 11/15/2002

01/29/2003 Charge(s): 1

MOTION - MOTION FOR DISCOVERY GRANTED ON 11/01/2002

COPY TO PARTIES/COUNSEL MOTION WAS GRANTED IN DISTRICT COURT.

01/29/2003 MOTION - MOTION TO CONTINUE GRANTED ON 01/27/2003

DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL

01/29/2003 HEARING - MOTION TO SUPPRESS CONTINUED ON 01/27/2003

04/11/2003 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 05/05/2003 @ 9:00

NOTICE TO PARTIES/COUNSEL

04/11/2003 TRIAL - DOCKET CALL SCHEDULED FOR 05/08/2003 @ 9:30

05/29/2003 HEARING - MOTION TO SUPPRESS HELD ON 05/05/2003

DONALD H MARDEN , JUSTICE

Attorney: WALTER MCKEE

DA: JAMES MITCHELL

Reporter: LAURIE GOULD

Defendant Present in Court

05/29/2003 Charge(s): 1

MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 05/05/2003

DONALD H MARDEN , JUSTICE

05/29/2003 Charge(s): 1

MOTION - MOTION TO SUPPRESS DENIED ON 05/28/2003

DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL

05/29/2003 TRIAL - DOCKET CALL HELD ON 05/08/2003

DONALD H MARDEN , JUSTICE

Attorney: WALTER MCKEE

DA: JAMES MITCHELL

Reporter: LAURIE GOULD

Defendant Present in Court

MOTION TO SUPPRESS PENDING AND TO SCHEDULED FOR HEARING

A TRUE COPY

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