

STATE OF MAINE
KENNEBEC, ss

RECEIVED AND FILED
KENNEBEC COUNTY CLERK OF COURT
2009 JAN 15 A 11:20
MONMOUTH COUNTY
CLERK OF COURTS

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-08-407
NM - KEN - 1/15/09

STATE OF MAINE

v.

ORDER ON MOTION TO SUPPRESS

DOUGLAS HARRIMAN,

Defendant

The defendant seeks to suppress evidence obtained as a result of the stop of the vehicle he was operating. The defendant argues that the stop was unlawful. For the following reasons, the motion is denied.

FINDINGS

Monmouth Police Officer Evan Franklin has been a law enforcement officer for approximately 1.5 years. He met James Phillips, a former Monmouth officer and current Auburn Police Officer, who had arrested the defendant for OUI several years previously, at the Monmouth Rescue parking lot on 5/22/08 at approximately 11:40 a.m. (State's Exs. 1, 2.) Officer Phillips reported that he had been in the Monmouth Credit Union and noticed a strong odor of intoxicating beverage on the defendant's breath. Officer Phillips gave to Officer Franklin the license plate number and a physical description of the vehicle, a green truck, operated by the defendant. Officer Phillips also stated that the defendant had a conditional Q license, which means that the defendant could consume no alcohol prior to operation. Officer Franklin did not know what that license status meant at the time, although he knew there was some

significance. Officer Phillips stated that he believed the defendant was operating under the influence.

Officer Franklin proceeded toward Route 202 in Monmouth, looked for the vehicle described by Mr. Phillips, and located the vehicle as described and with the license plate noted by Officer Phillips. Officer Franklin called Chief Robert Annese of the Monmouth Police Department and reported to Chief Annese the information Officer Phillips had given to Officer Franklin. Officer Franklin asked if he could stop the vehicle; because he was "so new," he wanted to check to determine whether he was allowed to make the stop. Officer Franklin watched the truck proceed into a Kwik Stop parking lot and saw the defendant reenter the vehicle and eventually leave the parking lot, just as Officer Franklin was concluding his phone conversation with Chief Annese. Chief Annese told Officer Franklin to stop the vehicle. Officer Franklin followed the truck for a very short distance but did not note any problems with operation. Officer Franklin stopped the truck, based primarily on the information provided by Officer Phillips.

CONCLUSIONS

The information from Officer Phillips provided a sufficient basis for the stop. See State v. Sampson, 669 A.2d 1326, 1328 (Me. 1996). In Sampson, the police received an anonymous tip that a "possible drunk driver had just been through the drive-in window at Dunkin' Donuts" along with a description of the car, its location, its direction, and license plate. Id. at 1327. The information was corroborated when the officer located the car in close proximity to the area where the car had been reported within two minutes of receiving the information. Id. at 1328. At the time of the stop, the tip had been sufficiently corroborated to provide a reasonable articulable suspicion that the defendant was engaged in criminal activity and justified the stop. Id.; see State v.

Burgess, 2001 ME 117, ¶ 8, 776 A.2d 1223, 1227 (“investigatory stop based on a tip need not be corroborated by an officer's observation of suspicious conduct”); State v. Carr, 1997 ME 221, ¶ 7, 704 A.2d 353, 356 (“Reasonable and articulable suspicion to conduct an investigatory stop can rest on the collective knowledge of the police.” (citing State v. Gervais, 394 A.2d 1183, 1189 (Me. 1978))).

The entry is

The Defendant's Motion to Suppress is DENIED.

Date: January 15, 2009


Nancy Mills
Justice, Superior Court

STATE OF MAINE
vs
DOUGLAS K HARRIMAN
PO BOX 185
MONMOUTH ME 04259

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2008-00407

DOCKET RECORD

DOB: 01/07/1965

Attorney: SHERRY TASH
HAINKE & TASH
PO BOX 192
WHITEFIELD ME 04353
APPOINTED 05/29/2008

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT
Filing Date: 05/23/2008

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

Charge(s)

1 OPERATING UNDER THE INFLUENCE-2 PRIORS 05/22/2008 MONMOUTH
Seq 11170 29-A 2411(1-A)(B)(2) Class C

Docket Events:

05/23/2008 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 05/23/2008

05/28/2008 Charge(s): 1
HEARING - INITIAL APPEARANCE SCHEDULED FOR 07/29/2008 @ 10:00

NOTICE TO PARTIES/COUNSEL

05/29/2008 Charge(s): 1
HEARING - INITIAL APPEARANCE HELD ON 05/23/2008
ROBERT E MULLEN , JUDGE

05/29/2008 Charge(s): 1
HEARING - STATUS CONFERENCE SCHEDULED FOR 07/29/2008 @ 10:00

05/29/2008 Charge(s): 1
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 05/23/2008

05/29/2008 BAIL BOND - \$1,000.00 CASH BAIL BOND SET BY COURT ON 05/23/2008
ROBERT E MULLEN , JUDGE
NO USE OR POSSESSION OF ALCOHOL/DRUGS, NOT POSSESS SAME; SEARCH AT ANY TIME; NOT OPERATE A
MV UNLESS LICENSED TO DO SO

05/29/2008 BAIL BOND - CASH BAIL BOND COMMITMENT ISSUED ON 05/23/2008

05/29/2008 Charge(s): 1
MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 05/28/2008

05/30/2008 Charge(s): 1
MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 05/29/2008

COPY TO PARTIES/COUNSEL

05/30/2008 Party(s): DOUGLAS K HARRIMAN
ATTORNEY - APPOINTED ORDERED ON 05/29/2008

Attorney: SHERRY TASH

05/30/2008 Charge(s): 1

HEARING - STATUS CONFERENCE NOTICE SENT ON 05/29/2008

06/02/2008 BAIL BOND - \$1,000.00 CASH BAIL BOND FILED ON 06/02/2008

06/02/2008 BAIL BOND - \$1,000.00 CASH BAIL BOND FILED ON 06/02/2008

Bail Receipt Type: CR

Bail Amt: \$1,000

Receipt Type: CK

Date Bailed: 06/01/2008

Prvdr Name: DOUGLAS K HARRIMAN

Rtrn Name: DOUGLAS K HARRIMAN

07/30/2008 Charge(s): 1

HEARING - STATUS CONFERENCE HELD ON 07/29/2008

NANCY MILLS , JUSTICE

07/30/2008 Charge(s): 1

HEARING - STATUS CONFERENCE SCHEDULED FOR 09/23/2008 @ 10:00

07/30/2008 Charge(s): 1

HEARING - STATUS CONFERENCE NOTICE SENT ON 07/30/2008

08/28/2008 Charge(s): 1

HEARING - STATUS CONFERENCE NOT HELD ON 08/28/2008

08/28/2008 Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 09/09/2008 @ 10:00

08/28/2008 Charge(s): 1

HEARING - ARRAIGNMENT NOTICE SENT ON 08/28/2008

08/28/2008 Charge(s): 1

SUPPLEMENTAL FILING - INDICTMENT FILED ON 08/28/2008

09/03/2008 LETTER - REQUEST FOR PROTECTION FILED ON 09/03/2008

Attorney: SHERRY TASH

WANTS THE ARRAIGNMENT TO BE AT 10:00 AM ON 9/9/08 INSTEAD OF 8:30 AM.

09/08/2008 ORDER - TRANSCRIPT ORDER FILED ON 09/08/2008

09/09/2008 Charge(s): 1

HEARING - ARRAIGNMENT HELD ON 09/09/2008

JOHN NIVISON , JUSTICE

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO DEFENDANT. 21 DAYS TO FILE MOTIONS

09/09/2008 Charge(s): 1

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 09/09/2008

09/18/2008 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 09/08/2008

09/18/2008 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 08/18/2008

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

10/20/2008 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 10/17/2008

10/20/2008 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 10/20/2008

10/20/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/05/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

10/20/2008 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 10/20/2008

10/21/2008 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 10/20/2008
NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

12/06/2008 HEARING - MOTION TO SUPPRESS CONTINUED ON 12/05/2008

12/06/2008 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 12/23/2008 @ 8:15

NOTICE TO PARTIES/COUNSEL

12/06/2008 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 12/05/2008

12/06/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/23/2008 @ 8:15

NOTICE TO PARTIES/COUNSEL

12/06/2008 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 12/05/2008

12/16/2008 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 12/16/2008

12/16/2008 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 12/16/2008

TO DISMISS INDICTMENT

12/16/2008 ORDER - TRANSCRIPT ORDER FILED ON 12/16/2008

BY DEFENDANT OF ARRAIGNMENT AND COURT'S ADVISEMENT OF RIGHTS IN AUGSC-CR-2002-1170

12/16/2008 MOTION - MOTION TO PREPARE TRANSCRIPT FILED BY DEFENDANT ON 12/16/2008

12/24/2008 HEARING - MOTION TO SUPPRESS HELD ON 12/23/2008

NANCY MILLS , JUSTICE

Attorney: SHERRY TASH

DA: JAMES MITCHELL

Reporter: JANETTE COOK

Defendant Present in Court

12/24/2008 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 12/23/2008

NANCY MILLS , JUSTICE

12/26/2008 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 12/26/2008

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

01/15/2009 MOTION - MOTION TO SUPPRESS DENIED ON 01/14/2009

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

01/15/2009 MOTION - MOTION TO PREPARE TRANSCRIPT GRANTED ON 12/17/2008

JOHN NIVISON , JUSTICE

COPY TO PARTIES/COUNSEL

01/15/2009 HEARING - MOTION FOR DISCOVERY HELD ON 12/23/2008

NANCY MILLS , JUSTICE

Defendant Present in Court

A TRUE COPY

ATTEST:

Clerk