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STATE OF MAINE
CUMBERLAND, ss.

STATE OF MAINE
CUMBERLAND, SS
CLERK'S OFFICE

UNIFIED CRIMINAL COURT
PORTLAND
Docket No. CR-14-5127

EMK-CUM-01-21-15

STATE OF MAINE)

2015 JAN 21

PM 1 38

ORDER ON MOTION TO SUPPRESS

v.)

HANNAH BURTON)

A hearing was held on Defendant's Motion to Suppress on December 16, 2014. The State was represented by ADA Matthew Tice. Defendant was represented by Attorney James Boulos.

Defendant seeks to suppress all of the evidence resulting from the stop of her vehicle. She alleges that the stop violated her Fourth Amendment rights because it was effected without the requisite "reasonable articulable suspicion." She also argues that the officer did not have authority to order her to participate in field sobriety tests.

The court heard testimony from Officer Lee Maher, the officer who conducted the stop. He testified that he was on patrol in North Windham shortly after midnight on August 2, 2014 when he got a call about a fight in progress at the Big Apple on Route 302 in North Windham. The information he received was that there were four people involved in the fight and that three of them had left the store in a white Ford SUV. Officer Maher spotted a vehicle matching that description about a mile or less from the store, headed in the opposite direction from him. He turned around and with his high beams observed that there were three people inside. He then conducted a traffic stop. Officer Maher smelled alcohol coming from the vehicle and observed that the driver, Defendant, had glassy and bloodshot eyes. Officer Maher asked if she had been drinking and she responded that she had had about a drink every hour. Officer Maher then ordered Defendant out of the vehicle so that he could conduct field sobriety tests.

The standard governing automotive stops is well-established: "In order to support a brief investigatory stop of a motor vehicle, such as the stop in this case, a police officer must have an objectively reasonable, articulable suspicion that either criminal conduct, a civil violation, or a threat to public safety has occurred, is occurring, or is about to occur. The officer's suspicion that any of these circumstances exist must be objectively reasonable in the totality of the circumstances." See, e.g., *State v. Porter*, 2008 ME 175, ¶ 8, 960 A.2d 321, 323 (citing *State v. Sylvain*, 2003 ME 5, ¶ 11, 814 A.2d 984, 987).

Applying this standard, the court finds that the information as to the fight gave rise to reasonable articulable suspicion justifying the stop of Defendant's vehicle. Officer Maher need not have personally observed the fight in progress in order to have had reasonable articulable suspicion for the stop. See, e.g., *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) (holding that collective knowledge of the police transmitted by radio dispatch justified stopping a vehicle)). Furthermore, on observing Defendant’s glassy, bloodshot eyes and on learning that she had been drinking, Officer Maher acted appropriately in requiring her to participate in field sobriety tests. See, e.g., *State v. King*, 2009 ME 14, ¶ 9, 965 A.2d 52, 54 (officer had objectively reasonable suspicion that driver might have been impaired when smelled odor of alcohol, observed beer bottles or cans in vehicle, and driver admitted to being a “three” where “one” meant total sobriety). As the Law Court stated in *State v. Sylvain*, 2003 ME 5, 814 A.2d 984:

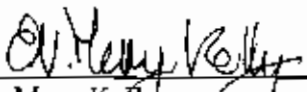
When, as here, an officer has observed bloodshot eyes and has heard an admission from a driver that the driver has had two beers, it is objectively reasonable for that officer to entertain a suspicion that the driver may be impaired by the alcohol. Subjecting the driver to field sobriety tests following that admission does not offend the Fourth Amendment.

Id. ¶ 18, 814 A.2d at 989.

Accordingly, it is hereby ORDERED that Defendant’s Motion to Suppress is DENIED.

DATED: _____

12/18/14



E. Mary Kelly
Unified Criminal Court Judge

STATE OF MAINE
vs
HANNAH L BURTON
351 LAWRENCE RD
POWELL ME 04069

CRIMINAL DOCKET
CUMBERLAND, ss.
Docket No CUMCD-CR-2014-05127

DOCKET RECORD

DOB: 05/08/1986

Attorney: JAMES BOULOS
THE BOULOS LAW FIRM
PO BOX 856
75 NORTH ST
SACO ME 04072-0856
RETAINED 08/11/2014

State's Attorney: STEPHANIE ANDERSON

Charge(s)

1 OUI (ALCOHOL) 08/02/2014 WINDHAM
Seq 12942 29-A 2411(1-A) (A) Class D
MAHER / WND

2 OUI (ALCOHOL) 08/02/2014 WINDHAM
Seq 12942 29-A 2411(1-A) (A) Class D
MAHER / WND

Docket Events:

08/06/2014 FILING DOCUMENT - NON CASH BAIL BOND FILED ON 08/04/2014

08/06/2014 BAIL BOND - \$2,500.00 UNSECURED BAIL BOND FILED ON 08/04/2014

Bail Amt: \$2,500

Date Mailed: 08/02/2014

08/12/2014 Party(s): HANNAH L BURTON
ATTORNEY - RETAINED ENTERED ON 08/11/2014

Attorney: JAMES BOULOS

08/20/2014 Charge(s): 1,2
HEARING - ARRAIGNMENT SCHEDULED FOR 09/09/2014 at 08:30 a.m. in Room No. 1

08/20/2014 Charge(s): 1,2
SUPPLEMENTAL FILING - COMPLAINT FILED ON 08/20/2014

08/13/2014 Charge(s): 1,2
HEARING - ARRAIGNMENT WAIVED ON 08/09/2014

Attorney: JAMES BOULOS

08/10/2014 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY COUNSEL ON 08/11/2014

Attorney: JAMES BOULOS

08/10/2014 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 11/20/2014 at 10:00 a.m. in Room No. 7

08/10/2014 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 11/20/2014 at 10:00 a.m. in Room No. 7
CR 200

09/10/2014 Charge(s): 1,2
TRIAL - JURY TRIAL SCHEDULED FOR 01/12/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

09/22/2014 LETTER - FROM PARTY FILED ON 09/22/2014

LETTER FROM ATTY UPDATING DEP'S PHONE NUMBER

11/01/2014 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 11/01/2014

11/20/2014 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE HELD ON 11/20/2014
ROLAND A COLE , JUSTICE
Attorney: JAMES HUGLOS
DA: JENNIFER ACKERMAN
CONTINUE TO MOTION HEARING.

11/21/2014 OTHER FILING - REQUEST FOR CHEMIST AT TRIAL FILED ON 11/20/2014

11/21/2014 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 11/20/2014

TO SUPPRESS ALPHABET AND NUMBERS TEST

11/21/2014 MOTION - MOTION TO SUPPRESS STATEMENT FILED BY DEFENDANT ON 11/20/2014

11/21/2014 HEARING - MOTION TO SUPPRESS STATEMENT SCHEDULED FOR 12/09/2014 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

11/21/2014 HEARING - MOTION TO SUPPRESS STATEMENT NOTICE SENT ON 11/21/2014

11/21/2014 MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 11/20/2014

11/21/2014 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 11/20/2014

TO SUPPRESS SOBRIETY TESTS

11/21/2014 MOTION - MOTION EXPERT WITNESS REPORT FILED BY DEFENDANT ON 11/20/2014

12/09/2014 HEARING - MOTION TO SUPPRESS STATEMENT CONTINUED ON 12/09/2014
ROLAND A COLE , JUSTICE
DA: JENNIFER ACKERMAN
CONTINUED BY AGREEMENT OF PARTIES TO 12.16.14 AT 1PM

12/16/2014 HEARING - MOTION TO SUPPRESS STATEMENT SCHEDULED FOR 12/16/2014 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

12/16/2014 HEARING - MOTION TO SUPPRESS STATEMENT NOTICE SENT ON 12/09/2014
KRISTINA JOYCE , ASSISTANT CLERK

12/17/2014 HEARING - MOTION TO SUPPRESS STATEMENT HELD ON 12/16/2014
MARY KELLY , JUDGE
Attorney: JAMES HUGLOS
DA: MATTHEW TICE
Defendant Present in Court

MOTION TAKEN UNDER ADVISEMENT. JUSTICE KELLY HAS FILED.

TESTIMONY OFFICER MAHER (INDEX 923):

12/17/2014 CASE STATUS - CASE FILE LOCATION ON 12/17/2014

JUDGE KELLY HAS THE FILE

12/19/2014 MOTION - MOTION EXPERT WITNESS REPORT DENIED ON 12/19/2014

MARY KELLY , JUDGE

Attorney: JAMES BOULDS

DA: MATTHEW TICE

MOTION ENDED

PAGE 6493 INDEX

994

12/19/2014 MOTION MOTION TO SUPPRESS DENIED ON 12/19/2014

MARY KELLY , JUDGE

Attorney: JAMES BOULDS

DA: MATTHEW TICE

COPY TO PARTIES/COUNSEL

874-1349; TESTIMONY OFFICER MAHER (INDEX 923):

ORDER ADVISEMENT

PAGE 6493 INDEX

01/21/2015 Charge(s): 1,2

TRIAL - JURY TRIAL NOT HELD ON 01/21/2015

MOTION TO SUPPRESS IS UNDER ADVISEMENT, RESET WHEN DECISION IS FILED.

01/21/2015 TRIAL JURY TRIAL SCHEDULED FOR 02/23/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

01/21/2015 TRIAL - JURY TRIAL NOTICE SENT ON 01/21/2015

01/21/2015 CASE STATUS - CASE FILE RETURNED ON 01/22/2015

01/21/2015 MOTION - MOTION TO SUPPRESS STATEMENT DENIED ON 12/18/2014

MARY KELLY , JUDGE

COPY TO PARTIES/COUNSEL

01/21/2015 MOTION - MOTION TO SUPPRESS DENIED ON 12/18/2014

MARY KELLY , JUDGE

COPY TO PARTIES/COUNSEL

01/21/2015 ORDER - COURT ORDER FILED ON 12/18/2014

ORDER ON MOTION TO SUPPRESS

01/21/2015 ORDER COURT ORDER ENTERED ON 12/18/2014

MARY KELLY , JUDGE

ACCORDINGLY, IT IS HEREBY ORDERED THAT DEFENDANT'S MOTION TO SUPPRESS IS DENIED

COPY SENT TO ATTY, ADA, AND MARLAH

A TRUE COPY

ACROSS:

CLERA