

STATE OF MAINE
CUMBERLAND, ss.

NOV 29 10 31 AM '07

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-07-1698 ✓
WSB-CUM-11/29/007

STATE OF MAINE,

v.

DECISION

TIMOTHY J. GILLIS,

DONALD L. GARBRECHT
JANUARY

Defendant.

JAN 15 2008

FINDINGS

1. On April 26, 2007 in South Portland Officer Matthew Cyr received a dispatch assigning him to a suspected operating under the influence case.
2. An off-duty officer had called dispatch to say he was following a car that was "all over the road."
3. The off-duty officer called in the route of the erratic operator as it progressed and Officer Cyr changed route accordingly.
4. Finally on Eisenhower Road Officer Cyr caught up with the off-duty officer.
5. The off-duty officer was in his personal vehicle but had somehow stopped a vehicle on the side of the road, directly in front of the officer's car.
6. Officer Cyr approached the stopped car. Mr. Gillis was the lone occupant of the car. There were no other civilians in the area. Mr. Gillis was sitting in the driver's seat.
7. Mr. Gillis, by stipulation, was impaired.
8. Officer Cyr believes he spoke with the off-duty officer at the scene, but can't remember what was said.
9. Officer Cyr eventually arrested Mr. Gillis for OUI.

DISCUSSION

Mr. Gillis doesn't dispute that Officer Cyr had probable cause to believe he was under the influence. Mr. Gillis disputes that Officer Cyr had probable cause to believe he was driving and therefore should not have arrested him.

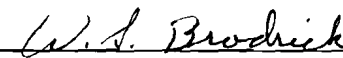
Proof of operation in this case is circumstantial. Mr. Gillis was the only civilian in the area. There were no other occupants in the car. He was sitting in the driver's seat. His car was located directly in front of the off-duty officer's car and the off-duty officer had just provided a running account of following an erratic operator. Although Officer Cyr has forgotten the information passed along to him at the scene by the off-duty officer, it would be ludicrous to infer that the off-duty officer would allow Officer Cyr to go ahead and arrest Mr. Gillis if Mr. Gillis were not the driver who had been operating erratically. The State has produced circumstantial evidence sufficient to provide probable cause that Mr. Gillis was operating.

Mr. Gillis argues that no inference can be based on the off-duty officer's words or conduct because he did not testify at trial. Mr. Gillis argues that the reports to dispatch were hearsay. They are not hearsay because they were not introduced to prove the truth. They were introduced to prove that Officer Cyr had sufficient reliable information to conclude that Mr. Gillis was operating the vehicle. An off-duty officer is per se reliable and there is no doubt he had a solid basis to report what he reported.

The clerk will make the following entry on the docket by reference:

Defendant Timothy Gillis' motion to suppress is denied in all respects.

DATED: November 19, 2007


William S. Brodrick
Active Retired Justice, Superior Court

A True Copy
Attest: 
Clerk of Court

TKK

STATE OF MAINE
vs
TIMOTHY J GILLIS
25 GROVE HILL RD
BUXTON ME 04093

SUPERIOR COURT
CUMBERLAND, ss.
Docket No PORSC-CR-2007-01698

DOCKET RECORD

DOB: 05/01/1968

Attorney: WILLIAM CHILDS
CHILDS RUNDLETT FIFIELD SHUMWAY LLC
257 DEERING AVENUE
PORTLAND ME 04103
RETAINED 05/23/2007

State's Attorney: STEPHANIE ANDERSON

Charge(s)

1 OPERATING UNDER THE INFLUENCE 04/26/2007 SOUTH PORTLAND
Seq 9878 29-A 2411(1-A)(A) Class D
CYR / SPO

Docket Events:

06/22/2007 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 06/22/2007 @ 18:00

TRANSFERRED CASE: SENDING COURT CASEID PORDCCR200703524

FILING DOCUMENT - NON CASH BAIL BOND FILED ON 04/30/2007

Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 06/05/2007 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

Charge(s): 1

HEARING - ARRAIGNMENT WAIVED ON 06/04/2007 @ 8:30 in Room No. 1

847

BAIL BOND - \$2,500.00 UNSECURED BAIL BOND FILED ON 04/30/2007

Bail Amt: \$2,500

Date Bailed: 04/27/2007

BAILED FOR 6/5/2007 @ 0830

965

06/22/2007 Party(s): TIMOTHY J GILLIS

ATTORNEY - RETAINED ENTERED ON 05/23/2007

Attorney: WILLIAM CHILDS

Charge(s): 1

SUPPLEMENTAL FILING - COMPLAINT FILED ON 06/01/2007

JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1

PLEA - NOT GUILTY ENTERED BY COUNSEL ON 06/05/2007 @ 8:30 in Room No. 1

847

Charge(s): 1

TRIAL - BENCH SCHEDULED FOR 07/31/2007 @ 10:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

847

Charge(s): 1
TRIAL - BENCH NOT HELD ON 06/21/2007

Charge(s): 1
TRIAL - BENCH NOTICE SENT ON 06/05/2007
JAMES TURCOTTE , ASSISTANT CLERK

Charge(s): 1
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/20/2007
DEBBIE COOK , ASSISTANT CLERK

Charge(s): 1
MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/20/2007
DEBBIE COOK , ASSISTANT CLERK
SUPPRESS THE STOP

Charge(s): 1
TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 06/20/2007
DEBBIE COOK , ASSISTANT CLERK

Charge(s): 1
FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 06/22/2007
DEBRA SOUBBLE , ADMINISTRATIVE CLERK
PORSC

06/25/2007 Charge(s): 1
TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 06/22/2007
BETHANY RODERIGUE , ASSISTANT CLERK-E
DOCKET ENTRIES RECEIVED FROM 9TH DISTRICT COURT (CR07-3524)

07/26/2007 HEARING - \$7.00 MOTION TO SUPPRESS SCHEDULED FOR 09/06/2007 @ 11:00 in Room No. 7
ANDREW M HORTON , JUDGE

NOTICE TO PARTIES/COUNSEL SUPPRESS X2

09/07/2007 HEARING - MOTION TO SUPPRESS HELD ON 09/06/2007
ANDREW M HORTON , JUDGE

Attorney: WILLIAM CHILDS
DA: TRACY BARDWELL Reporter: TAMMY DROUIN

09/07/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/27/2007 @ 9:00 in Room No. 7
ANDREW M HORTON , JUDGE

NOTICE TO PARTIES/COUNSEL

09/07/2007 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 09/07/2007

JOANN HEBERT

09/21/2007 MOTION - MOTION TO CONTINUE FILED BY STATE ON 09/21/2007

DA: WILLIAM BARRY

09/26/2007 MOTION - MOTION TO CONTINUE GRANTED ON 09/26/2007
ROLAND A COLE , JUSTICE

COPY TO PARTIES/COUNSEL

JOANN HEBERT

09/26/2007 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/25/2007 @ 9:00 in Room No. 7

NOTICE TO PARTIES/COUNSEL

09/26/2007 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 09/26/2007

JOANN HEBERT

10/26/2007 HEARING - MOTION TO SUPPRESS HELD ON 10/25/2007

WILLIAM BRODRICK , JUSTICE

Attorney: WILLIAM CHILDS
DA: MICHAEL MADIGAN
Defendant Present in Court

Reporter: PENNY PHILBRICK-CARVER

STATE'S WITNESSES: 1) MATTHEW CYR.

10/26/2007 Charge(s): 1

MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 10/25/2007

10/26/2007 Charge(s): 1

TRIAL - JURY TRIAL SCHEDULED FOR 12/10/2007 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

10/26/2007 Charge(s): 1

TRIAL - JURY TRIAL NOTICE SENT ON 10/26/2007

JOANN HEBERT

11/30/2007 Charge(s): 1

MOTION - MOTION TO SUPPRESS DENIED ON 11/19/2007

WILLIAM BRODRICK, JUSTICE

COPIES TO PARTIES/COUNSEL

TSK

A TRUE COPY

ATTEST: _____

Clerk

A True Copy

Attest: *Jessy A. Broughton*
Clerk of Courts