

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO. PEN-24-401

STATE OF MAINE

APPELLEE

v.

AUSTIN DAVIS

APPELLANT

ON APPEAL FROM THE PENOBSBOT COUNTY UNIFIED CRIMINAL
DOCKET, BANGOR, ME

BRIEF OF APPELLEE

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STATEMENT OF FACTS

On May 26, 2023, Officer Chase Haass was on patrol as a Sergeant with the Orono Police Department. (Tr. 5) While on patrol, Officer Haass came into contact with and arrested Austin Davis (hereinafter “Davis”) for Operating Under the Influence¹. (Tr. 5)

Officer Haass brought Davis back to the Orono Police Department to conduct an intoxilyzer breath test. (Tr. 6.) Davis was brought into the intoxilyzer room at the police station and seated next to the machine. Officer Haass checked Davis’s mouth and began the 15-minute observation period to make sure Davis did not do anything that would interfere with the results of the anticipated breath test. (Tr. 6-7)

Officer Haass and Davis engaged in some discussion while the observation period was underway. (Tr. 7) Davis told Officer Haass that all he wanted to do was get back to his apartment and sleep. Davis stated he had worked a 60-hour week. Officer Haass informed Davis they would do the test, review the results, and the “worse that will happen is you’ll get a summons.” (Tr. 15) Officer Haass told Davis that he had “no intent in bringing [Davis] to jail.” (Order on Mot. to Suppress)

Davis then stated he did not consent to a breath test because it was “against what I believe in.” *Id.* Officer Haass asked, “So you don’t plan on taking a test

¹ Appellant conceded, for purposes of the motion to suppress hearing, Officer Haass had probable cause to arrest defendant for OUI.

today?” *Id.* Officer Haass informed Davis that before he would mark him as a “refusal” he wanted to make sure he understood the potential consequences. *Id.* Officer Haass then read Davis the “implied consent” form in full. *Id.* Officer Haass asked Davis if he understood the implied consent, and Davis replied, “Yeah.” *Id.*

Officer Haass told Davis he had “three options”: if he took the test and was less than a .08, then he would go home; if he took the test and blew .08 or more, then he would get a summons; if he chose not to take the test, then he would go to jail. (Tr. 8) Davis stated he didn’t “want any more debt,” and Officer Haass said, “you not doing a test just makes things worse.” (Order on Mot. to Suppress) After some further discussion, Officer Haass clarified that Davis would not be charged with anything else for refusing the test. *Id.* Officer Haass said, “I think you should blow, but I’m not going to force you to do anything.” *Id.* Finally, Davis said, “I’ll blow in the instrument, I guess.” *Id.* Davis then performed the breath test.

STATEMENT OF THE ISSUES PRESENTED

- I. Whether the trial court erred when it considered a breath test as a search incident to arrest and an exception to the warrant requirement and did not consider voluntariness of the breath test?**

ARGUMENT

I. The trial court did not err when it considered a breath test as a search incident to arrest and an exception to the warrant requirement and did not err when it did not consider the voluntariness of the breath test.

A breath test does not require a warrant or consent as long as there is probable cause for the charge of operating under the influence; therefore, the voluntariness of the breath test does not need to be examined.

Appellant argues Officer Haass's threat of jail upon failure to complete a breath test renders the test "involuntary" and thus the test results should be suppressed. However, a breath test does not require a warrant or consent as long as there is probable cause for OUI, and thus "voluntariness" does not need to be examined.

Administering a breath test is a search governed by the Fourth Amendment. *Birchfield v. North Dakota*, 579 U.S. 438. In *Birchfield*, the United States Supreme Court held that warrantless breath tests are permissible under the search incident to arrest exception to the Fourth Amendment's warrant requirement because they do not implicate significant privacy concerns. *Id.* Breath tests involve minimal physical intrusion to capture something that is routinely exposed to the public, reveal a limited amount of information, and do not enhance any embarrassment beyond what the arrest itself causes. *Id.* The Court also determined that criminalizing refusal to submit

to a breath test is designed to serve the government's interest in preventing drunk driving, which is greater than merely keeping drunk drivers off the roads and does so better than other alternatives. *Id.* Because “[t]he impact of breath tests on privacy is slight, and the need for BAC testing is great,” the “Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving.” *Id.* At 474. The Supreme Court’s analysis of breath testing in *Birchfield* was that breath tests were permissible under the Fourth Amendment without the need for a warrant because they fall within the exception for searches conducted incident to a lawful arrest. *Id.*

The Law Court relied on the Supreme Court’s decision in *Birchfield* to hold, under the Fourth Amendment, that blood draws require a warrant or some exception to the warrant requirement and that Maine’s “duty to submit” statute does not render a defendant’s consent to a blood draw “involuntary.” *State v. LeMeunier-Fitzgerald*, 2018 ME 85, ¶¶ 14, 31. In addressing breath tests, which were ancillary to the issues presented in *LeMeunier-Fitzgerald*, the Law Court described the *Birchfield* holding favorably: “a *breath test* measuring blood-alcohol content is a search that does not require a warrant, consent, or other exceptions, as long as there is probable cause to believe that the driver was operating, or attempting to operate, a vehicle while under the influence...[A] breath test is less intrusive than a blood test, and when balanced against the law enforcement needs of keeping impaired drivers off the roads, it is reasonable, even without a warrant, for a law enforcement officer to require a driver

to submit to a breath test if probable cause exists.” (Order on Mot. to Suppress) *See also LeMeunier-Fitzgerald* at ¶ 13.

The holding of the Law Court in *Birchfield* stands. The reasoning for breath tests has continuously been deemed credible and valid. There also has not been a different analysis of breath tests since they have been considered an exception to the warrant requirement under the search incident to arrest exception. The Law Court has created a broader reading of the search incident to arrest exception. *See State v. Parkinson*, 389 A.2d 1, 12 (Me. 1978) (“...[W]e extended the doctrine of searches incident to a valid arrest to cover the full search of the arrestee’s person at the jail or place of detention as distinguished from the search of his person made contemporaneously with the arrest at another location.”).

Great care is due when there is question as to the voluntariness of consent; however, the Court does not reach the issue of voluntariness of consent if no consent is required. In *Birchfield*, the Law Court concluded breath tests fall within the search incident to arrest exception. The Court cannot conclude this breath test was improper.² *See also State v. Ullring*, 1999 ME 183, n.7 (“We have refused to adopt a different or more stringent standard for searches under the Maine Constitution than is provided under the Fourth Amendment to the United States Constitution.”).

² It is worth noting, the Law Court used the fact that a “refusal to submit [does not] expose the driver to any additional threats of immediate incarceration” to evaluate the voluntariness of consent to blood draws. *LeMeunier-Fitzgerald*, 2018 ME 85, ¶25.

CONCLUSION

Consent is not required for a breath test to be administered. A breath test is a search incident to arrest and falls under an exception to the warrant requirement. As long as there is probable cause to believe a person was operating a motor vehicle under the influence, a breath test can be administered without a warrant, consent, or other exceptions. The breath test administered in this case was permissible as a search incident to arrest, and voluntariness does not need to be analyzed. The decision of the trial judge should be affirmed.

Dated: May 30, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

As required by M.R. App. P. 7(c)(1), I have this 30th day of May, 2025 sent a native .pdf version of this brief to the Clerk of the Law Court and attorney Christopher Northrop at the email address of record. Upon acceptance by the Clerk of the Law Court, I will deliver ten hard copies to the Law Court and two copies to opposing counsel Christopher Northrop at University of Maine School of Law, 23 University Drive, Fort Kent, ME 04743.

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