

**STATE OF MAINE
ANDROSCOGGIN, ss**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO.: AND-24-518**

STATE OF MAINE
APPELLEE

VS.

JENNILEE MCNEIL
APPELLANT

**On appeal from the Unified Criminal
Docket**

(Brief of Appellee)

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I: CASE SUMMARY:

On September 14, 2023, the defendant was charged with Operating Under the Influence, Class D and summonsed for arraignment on November 8, 2023. Attorney Loboizzo entered an appearance and plea of Not Guilty by mail. The State's Motion for Imposition of Conditions of Release was granted, and a Dispositional Conference was scheduled. That conference was held on February 20, 2024, with the defense filing a Motion to Suppress. Hearing initially set for May 6, 2024, and continued by defense and rescheduled for hearing on July 2, 2024.

Hearing on the Motion to Suppress was held before Justice Woodman on that date and was denied. The Court stated on the record the findings and reasons for the decision. The case next appeared on the docket for entry of a conditional plea of guilty on October 4, 2024. The conditional plea process was finalized on November 4, 2024, with the sentence stayed pending the appeal.

II: STATEMENT OF FACTS:

Viewing the evidence and all reasonable inferences therefrom, in the light most favorable to the State, the record establishes the following facts, all of which were testified to during the Suppression Hearing:

Trooper Joseph Bourdelais, a law enforcement officer for a total of six years, was patrolling the Maine Turnpike from mile marker 75 to mile marker 109; Auburn to Augusta. He is a graduate of the Basic Maine Criminal Justice Academy in 2019; the ten-week State Police Academy; furthermore, he completed the Advanced Roadside Impairment Detection (ARIDE) training and is certified in field sobriety and administering breath tests using the Intoxilyzer. (T.5-6). Additionally, he holds a bachelor's degree in business administration from Worcester State College in Massachusetts. (T.5). During, his six years in law enforcement, he has stopped "...dozens..." of impaired drivers. (T.7)

The Maine Turnpike is a 109-mile roadway from Kittery to Augusta, with a minimum posted speed of 55 MPH and a maximum posted speed of 70 MPH in his assigned patrol area that evening. (T.7-8). His shift began at 7 PM on September 14, 2023, and would

continue to 7 AM the following day. (T.8,18). The weather was cool, cloudy, and clear. (T.8). He was in uniform, and driving a marked State Police cruiser that was equipped with a dash camera. (T.8-9).¹ During his shift, Trooper Bourdelais pays particular attention to motor vehicle violations, including, "...mark lane violations, inconsistent speeds, braking, swerving, crossing solid lines, anything that's kind of not really common driving practice that we typically see while we're patrolling." (T.7).

As the Trooper was patrolling, his attention was drawn to A motor vehicle, in front of him and travelling in the same direction that was approximately four car lengths in front of him. (T.22). The Trooper was in lane 1, the left-hand lane with the other vehicle in lane 2, the right-hand lane. (T.11). He observed the vehicle, a white SUV "...bouncing, kind of swerving in between the lanes." (T.11). The video captured two or three of these driving actions, with another observed prior to hitting the record button. (T.12). He was concerned the operator of the white SUV would not be able to maintain their lane "...and end up swerving outside of it." (T.12). He closed the

¹ The relevant portion of the video recorded by the dash camera, the first two minutes and twenty-five seconds, was played during the hearing and admitted as State's Exhibit #1.

distance between his cruiser and the white SUV to approximately two and a half car lengths to continue observing. (T.22). Additionally, he testified that the observed operation was “...not a common behavior...unless the operator is either distracted...” (T.12). Trooper Bourdelais decided to continue to follow the white SUV to see if the observed operation continued. “Was it kind of just a one-off and they kind of just jerked the wheel a bit and then kind of recorred.” (T.12). The Trooper narrated the recording of the observed operation of the white SUV, prior to activating the blue lights as:

So there would be one. And coming back over the skip line a little bit.² Heading back over to the fog line, back over towards the skip line, back to the fog line, skip line, fog line again. And, it kind of straddles the fog line there for a moment and then accelerates a little bit back to the skip, accelerating to the fog line. I get behind it, and then it goes to pass the tractor trailer unit. On the fog line, fog line.

(T.13). The operation of the shite SUV did not improve, and the decision was made to stop the vehicle to determine if the driver was safe to continue driving. The Trooper was looking for a safe location to stop the white SUV, explaining he did not want to be right up to

² The skip line is the dashed lane dividers between lane 1 and lane 2.

and against a guardrail, but was looking for more roadside space. (T.13).

Once the white SUV was clear of the guardrail, the Trooper activated the blue lights, and the white SUV immediately pulled over. (T.14). The white SUV would have been stopped sooner if a tractor trailer was not in lane 1. (T.29). The Trooper testified that he has encountered impaired drivers at all times of the day and that he had not, during this shift, noticed any other vehicles operating in a manner similar to the white SUV. (T.32,33). The defendant was identified as the operator and only occupant of the white SUV. (T.11).

STATEMENT OF THE ISSUES

1. On the facts testified to at the Suppression Hearing is a violation of Title 29-A § 2051 a required prerequisite to a stop?
2. Did the Trooper have a reasonable articulable suspicion to stop the white SUV operated by the defendant?

SUMMARY OF ARGUMENT

1. A violation of a specific provision of Title 29-A is not a required prerequisite to stopping a motor vehicle. A stop may be based on safety concerns alone.
2. Reasonable articulable suspicion is the requisite standard to stop a motor vehicle.

STANDARD OF REVIEW

The standard of review by this Court is whether the record on appeal established that the findings of the motion justice is clearly erroneous. *State v. Thurlow*, 485 A.2d 960 (Me. 1984). This Court “review[s] the legal conclusions of the court on a motion to suppress *de novo*, although [the Law Court] review[s] historical facts found by the court deferentially.” *State v. Ullring*, 199 ME 183, ¶ 8, 741 A.2d 1065, *cert. denied*, 530 U.S. 1232 (2000); *See also*, *State v. Chase*, 2001 ME 168, ¶ 5, 785 A.2d 702, 704.

ARGUMENT

1. THE SUPPRESSION JUSTICE FOUND FACTS SUFFICIENT TO CONCLUDE THE TROOPER HAD REASONABLE ARTICULABLE SUSPICION TO STOP THE WHITE SUV

"In order to support a brief investigatory stop of a motor vehicle . . . 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." *State v. Porter*, 2008 ME 175, ¶ 8, 960 A.2d 321. "The suspicion need only be more than speculation or an unsubstantiated hunch." *Id.* at ¶9. This Court has held "the threshold for demonstrating an objectively reasonable suspicion necessary to justify a vehicle stop is low and does not rise to the level of probable cause, in that 'reasonable articulable suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.'" *Id.* (quotation marks omitted). This Court has held that this test appropriately "balances the driver's right to be free from excessive restraint by the State against the public's right not to be placed at risk by an impaired driver." *State v. Sylvain*, 2003 ME 5, ¶17, 814 A.2d 984. Additionally, this Court has held the officer's reason for stopping a vehicle must not be a mere pretext or

ruse, or otherwise constitute a form of subterfuge. *State v. Pinkham*, 565 A.2d 318, 320 (Me. 1989).

The Fourth Amendment to the United States Constitution states that people have a right to be “...secure in their persons, papers, and effects against unreasonable searches and seizures.”

The Maine Constitution’s analogous provision to the federal Fourth Amendment is found in Article 1, subsection 5. Article 1, subsection 5 and states:

[t]he people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause--supported by oath or affirmation.

Since 1991, and as recently as April 22nd, 2014, the Maine Supreme Court has stated no fewer than eight times³ that Article 1 Section 5 of the Maine Constitution “contains language nearly identical to that of the Fourth Amendment, [and] is interpreted coextensively with its federal counterpart.” *Clifford v. Maine General Med. Ctr.*, 2014 ME 60, ¶ 50, 91 A.3d 567. *See also*, *State v. Patterson*, 2005

³ *Royer v. Shea*, 2006 U.S. Dist. LEXIS 33270, 53, 2006 WL 1361220 (D. Me. May 17, 2006) that “Article I § 5 of the Maine Constitution prohibits unreasonable searches and seizures, but not to a greater extent than does the federal Fourth Amendment.”

ME 26, ¶10, 868 A.2d 188 (“[Article I § 5] offer[s] identical protection against unreasonable searches and seizures” (citing *State v. Guilick*, 2000 ME 170, ¶ 9 n. 3, 759 A.2d 1085); *State v. Tarantino*, 587 A.2d 1095, 1098 (Me. 1991); *State v. Ireland*, 1998 ME 35, ¶6 n.2, 706 A.2d 597; *State v. Glover*, 2014 ME 49, ¶ 10 n. 2, 89 A.3d 1077; *State v. Hutchinson*, 2009 ME 44, ¶18 n.9, 969 A.2d 923; *State v. Johnson*, 2009 ME 6, ¶ 40 n. 5, 962 A.2d 97.

This Court went on to explain in *State v. Laforge* that there were “no precise number of line touching or crossings by a vehicle operator that delineates a constitutionally justified stop from an unjustified one.” 2012 ME 65, ¶ 10, 43 A.3d 961; *see also*, *State v. Sylvain*, 2003 ME at ¶ 17, 814 A.2d 984 (the threshold does not even rise to the level of probable cause.). This Court has held that this test appropriately “balances the driver's right to be free from excessive restraint by the State against the public's right not to be placed at risk by an impaired driver.” *Sylvain*, 2003 ME at ¶ 17, 814 A.2d 984. Additionally, this Court has held the officer's reason for stopping a vehicle must not be a mere pretext or ruse, or otherwise constitute a form of subterfuge. *Pinkham*, 565 A.2d at 320.

In *State v. Caron*, 534 A.2d 978, 978-979 (Me. 1987), a driver was stopped by a Maine State Trooper after the Trooper observed him straddle the center line of the road for 25 to 50 yards and then steer back into the appropriate lane of traffic. There was no oncoming traffic at the time Caron's car straddled the center line. Id. As a result of this stop and subsequent testing Caron was arrested for operating under the influence. *Id.* This Court held that a one-time straddling of center line "...did not give rise to an objectively reasonable suspicion that criminal activity was involved, because it was a common occurrence." *Id.* at 979. Since the decision this Court has gone on to distinguish *Caron* several times.

In *State v. Dulac*, 600 A.2d 1121, 1122 (Me. 1992) Trooper Armstrong of the Maine State Police observed Dulac make an "extremely wide" turn where half the car went off the paved portion of the road and into the snow. This Court held that the focus of Dulac's argument, that on the one kind of deviant operation is insufficient justification for a stop, was misplaced. *Id.* at 1123. This Court explained that "[a]n 'extremely wide' turn where a portion of the vehicle leaves the paved surface of the road and passes onto the

snow, however, is not such a common occurrence. Operation of a vehicle in such a manner can be considered erratic.” *Id.*

In *State v. Lafond*, officers received an anonymous tip that the driver of a green Ford explorer headed to Bath on the Old Bath Road was possibly intoxicated. 2002 ME 124, ¶ 2, 802 A.2d 425. Officer Bruce was able to locate the vehicle described and observed it swerve to the right and cross the white fog line with two tires and then almost immediately pull back onto the road relatively smoothly. *Id.* at ¶ 4. This part of the road was flat and there were no oncoming vehicles. *Id.* Officer Bruce stopped the car and after testing, Lafond was arrested for operating under the influence. *Id.* at ¶ 5. This Court held that the anonymous tip and the observation of the single straddling of the fog line were sufficient basis to justify the stop of the green Ford Explorer. *Id.* at ¶ 13.

In *State v. Carnevale*, Officer Short observed a car traveling toward him in the opposite lane of travel that appeared to be coming into his lane, however, it was too dark to tell whether the car actually crossed the center line or not. 598 A.2d 746, 747 (Me. 1991). The officer turned around and followed the vehicle noting that although it did not cross either the center line or the white fog

line, the car drifted towards each line in a slow weave while its speed fluctuated between 35 and 40 miles an hour, and it drifted onto the shoulder once. *Id.* This Court held that there is not “...any mechanical standard by which to review a court's finding of reasonableness. We defer to the factfinder's determination unless it is clearly erroneous in all of the circumstances. The court's determination in the case at bar survives that deferential test.” *Id.* at 749.

Finally, in *State v. Pinkham*, an Officer observed a vehicle approach an intersection on a one-way street with three lanes and yield signs but no traffic lights. 565 A.2d at 318. There was no other traffic on the road. *Id.* The car in the intersection was in a right turn only lane, but instead of making the turn, it slowed slightly and without signaling quickly proceeded straight down the same one-way street. *Id.* at 319. The officer testified that he stopped the car for safety concerns; and in order to advise the operator of how to correctly navigate the intersection in the future and to be sure to use signals to advise other drivers of their intentions. *Id.* This Court found “...the officer's observation of the defendant's misuse of the marked lanes could furnish ‘specific and articulable facts’ to justify

pulling him over for safety purposes to advise him of his improper use of the intersection.” *Id.* at 320. This Court clarified the law stating “...a civil or criminal violation is not always prerequisite to a stop...” and a stop can be based on safety concerns. *Id.* This Court did not ultimately decide whether the observations of the officers met the reasonable articulable suspicion standard under the new safety concerns element but instead vacated the District Court suppression of the evidence and remanded the case for reconsideration based on the new clarification of the law. *Id.*

In this case, the motion justice found the following facts: “...what you see is the operator of the vehicle weaving within the line, almost crossing the fog line, not crossing the fog line, going into the center strip, ...anyway going up, not over, but just on it for approximately a minute and a half...” (T.40-41). From these facts, she concluded the Trooper, “had a reasonable, articulable suspicion based on his training and experience that either criminal conduct, a civil violation or threat to public safety has occurred, It’s a low standard. It’s a standard that needs to be met, however. And I think the trooper has met it, given all of the circumstances and viewing the video.” (T.41). The justice added, “...it doesn’t have to

be he had a reasonable articulable suspicion that ---that she was impaired but that a traffic violation---it could have been that she was a distracted driver. But clearly we see for---not for 15 seconds, for a period of a minute and 30 seconds, that she was weaving in and out of the same lane.”⁴ (T.41).

The facts found by the suppression justice and her articulated interpretation thereof meet the very low threshold standard of reasonable articulable suspicion. There is no reason on the record for this court to conclude otherwise. Furthermore, since the suppression court did not rely on a violation of Title 29-A § 2015, it is unnecessary for the Appellee to parse that statute.

⁴ See, Title 29-A § 2118 Failure to Maintain Control of a Motor Vehicle.

CONCLUSION

For the above stated reasons, there is no basis in the law or the facts in the record of this case to grant this appeal. The Appellee, therefore, respectfully requests this Court deny the appeal.

Date: May 2, 2025

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Patricia A. Mador, certify that I served two copies of this Brief on Appellee upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the address below:

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