

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2009-267

The State of New Hampshire

v.

Richard Boumil

**MEMORANDUM OF LAW IN LIEU OF BRIEF PURSUANT TO
SUPREME COURT RULE 16(4)(b)**

STATEMENT OF THE CASE AND FACTS

The defendant was charged by complaint with driving while intoxicated. SMA 10.¹ See RSA 265-A:2, I (Supp. 2009). Following a bench trial, he was convicted and sentenced to pay a \$750 fine. NOA 9. In addition, his license was suspended for eighteen months. NOA 9. This appeal followed.

On August 12, 2007, just after 8:00 p.m., Michael Robillard, an eighteen-year-old resident of Hudson, was traveling on Route 102 in Hudson. T 10-11. He was driving toward Londonderry. T 12. Suddenly, a dark SUV, bearing Massachusetts license plate number 6626RL, appeared and began to tailgate him. T 12, 30. It flashed its lights, passed Robillard on the left side (despite a double yellow line), got in front of him, and slammed its brakes such that its tires

¹ References to the transcript of the suppression hearing will be made as T__.

References to the defendant's brief will be made as DB__.

References to the notice of appeal will be made as NOA__.

References to the appendix to the State's memorandum of law will be made as SMA__.

screached. T 12. The SUV then paused for a moment, jerked backward in reverse, and sped away. T 12.

Robillard pulled into a nearby Mobil station, a few hundred yards from the Londonderry town line, and called the Hudson police. T 13, 45. He told the Hudson police dispatcher what had happened, what kind of car had been involved, and which direction it was traveling on Route 102. T 13. He also reported the SUV's license plate and said that it was from Massachusetts. T 13, 22. The Hudson police dispatcher asked Robillard if he wanted to remain anonymous, but Robillard said that he would identify himself, which he did, and gave the dispatcher his address. T 13-14.

Within minutes, the Hudson dispatcher relayed Robillard's information to the Londonderry Police Department. T 24-26. The Londonderry dispatcher, in turn, ordered officers Christopher Olson and Joseph Bellino, who were together on routine patrol in southern Londonderry, to be on the lookout for a dark SUV, traveling eastbound on Route 102 and bearing Massachusetts license plate number 6626RL. T 27-28, 48. The dispatcher informed Olson and Bellino that the Hudson police were investigating a road rage incident and that the operator of the SUV was possibly impaired. T 28, 56. The dispatcher did not, however, provide Olson and Bellino with Robillard's name or describe the details of the road rage incident. T 38, 54-56.

Shortly thereafter, Olson and Bellino saw the SUV at the intersection of Mammoth Road and Route 102, which was approximately 2½ miles from where

Robillard had his encounter with it. T 28, 46, 50. The SUV turned from Mammoth Road onto Route 102 and began traveling eastbound. T 29, 50. Olson and Bellino got behind the SUV and followed it for approximately one mile. T 30, 50.

Olson testified that the SUV was “excessively changing speeds and applying the brakes, closing the gap on vehicles in front of him rapidly, then creating a larger gap with his brakes, then closing it again at a rapid speed.” T 31. He characterized the way that the SUV was traveling as abnormal and said that based upon his observations alone—without regard to the information about Robillard’s incident—he would have stopped the SUV to investigate. T 31.

Bellino offered a similar assessment. He said that the SUV was unable to maintain control, drifting over to the center line several times and then back over toward the fog line. T 51. The SUV also accelerated swiftly and then decelerated, getting very close to the car in front of it, applying the brakes hard, and then pulling back. T 51. The SUV repeated this pattern “several times.” T 51. Bellino characterized the way the SUV was traveling as abnormal and said that based upon his observations alone—without regard to the information about Robillard’s incident—he would have stopped the SUV to investigate. T 51.

After making these observations, Olson activated the blue lights on the cruiser and stopped the SUV. T 31. The defendant was its driver. T 31. Based upon the investigation that followed, the defendant was arrested and charged with

driving while intoxicated. The officers did not charge the defendant with reckless driving. T 64.

Before trial, the defendant filed a motion to suppress. SMA 1-6. Therein, he argued that Olson and Bellino “did not have reasonable articulable suspicion to stop and detain [him] based upon [their] personal observations or the anonymous tip received by the Hudson Police Department which was passed on to [them] by the Londonderry Police Department.” SMA 4. The State objected, arguing that Robillard’s tip was not anonymous because he gave his name and address to the dispatcher. SMA 7-8. The State also argued that the police made independent observations of erratic driving sufficient to justify an investigatory stop. SMA 8.

The district court (Coughlin, J.) held a hearing on the motion during which Robillard, Olson, and Bellino testified. Following the hearing, the court denied the defendant’s motion. SMA 10. It ruled, “The Court finds that the basis for the stop of the Defendant’s vehicle was the police officers[’] own independent observations of the vehicle’s erratic operation and that the police officers had specific and articulable facts to warrant the stop of the Defendant’s vehicle.” SMA 10.

ARGUMENT

THE TRIAL COURT CORRECTLY CONCLUDED THAT THE POLICE HAD REASONABLE, ARTICULABLE SUSPICION TO STOP THE DEFENDANT'S SUV ALONG THE SIDE OF THE ROAD BECAUSE THE OFFICERS OBSERVED HIM FOLLOWING TOO CLOSELY TO THE CAR IN FRONT OF HIM, REPEATEDLY WEAVING WITHIN HIS OWN LANE, AND RAPIDLY ACCELERATING AND DECELERATING WITHOUT REASON.

On appeal, the defendant resurrects the same claim that he advanced in the trial court: that the police did not have reasonable, articulable suspicion to justify stopping his SUV along the side of the road. DB 5-6. This argument must be rejected.

When reviewing a trial court's ruling on a motion to suppress, this Court will accept the trial court's factual findings unless they lack support in the record or are clearly erroneous. State v. Hight, 146 N.H. 746, 748 (2001). It will consider the trial court's legal conclusions de novo. Id.

In deciding whether an investigatory stop was lawful under the state and federal constitutions, this Court makes two inquiries: first, it determines when the defendant was seized; second, it determines whether, at that time, the officer possessed a reasonable suspicion that the defendant was, had been, or was about to be engaged in criminal activity. State v. Pepin, 155 N.H. 364, 365 (2007); see State v. McKinnon-Andrews, 151 N.H. 19, 22-27 (2004) (explaining that the federal constitution is no more protective than the state constitution in this regard).

A seizure takes place when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she]

was not free to leave.” State v. Cote, 129 N.H. 358, 365 (1987) (quotation omitted). However, “not all personal intercourse between policemen and citizens involves ‘seizures’ of persons.” Id. at 364 (quotation omitted). Instead, it is “[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen . . . that a ‘seizure’ has occurred.” Id. (quotation omitted). “Circumstances indicating a ‘show of authority’ might include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” State v. Licks, 154 N.H. 491, 493 (2006) (quotation omitted).

Here, the State does not contest that the defendant was seized when Olson and Bellino activated the blue lights on their cruiser and stopped him along the side of Route 102. SMA 10. See State v. Steeves, 158 N.H. 672, 676 (2009) (noting that when an officer activates the blue lights and pulls in behind an automobile parked along the roadside, his actions “often constitute[] a seizure” because “drivers simply are not free to disregard blue lights”).

So, the question becomes whether the officers possessed “reasonable suspicion—based on specific, articulable facts taken together with rational inferences from those facts—that the [defendant] ha[d] been, [wa]s, or [wa]s about to be, engaged in criminal activity.” Hight, 146 N.H. at 748 (quotation omitted). “[T]he articulated facts must lead to somewhere specific, not just to a general sense that this is probably a bad person who may have committed some kind of

crime.” State v. Giddens, 155 N.H. 175, 182 (2007). “To determine the sufficiency of the officer’s suspicion, [the court] must consider the facts he articulated in light of all of the surrounding circumstances,” id., “keeping in mind that a trained officer may make inferences and draw conclusions from conduct that may seem unremarkable to an untrained observer,” Pepin, 155 N.H. at 366. “The facts that create a sufficient basis to support an investigative stop need not reach the level of those required to support either an arrest or a finding of probable cause.” Giddens, 155 N.H. at 182. Further, “reasonable suspicion may be based upon activity that is consistent with both guilty and innocent behavior.”

McKinnon-Andrews, 151 N.H. at 26-27.

Here, Bellino specifically testified that he and Olson saw the defendant committing the motor vehicle violation of following too closely. See RSA 265:25, I (Supp. 2009) (statutory provision entitled, “Following Too Closely,” and prohibiting a driver from following too closely to the car in front of him). T 63. An officer’s observation of a traffic or motor vehicle violation is sufficient to justify a Terry stop. See Hight, 146 N.H. at 748; State v. McBreairty, 142 N.H. 12, 14-15 (1997); State v. Brodeur, 126 N.H. 411, 416 (1985) (“The defendant committed a traffic violation when he drove his vehicle over the center line, and that act alone justified Officer Coro’s decision to stop the defendant.”). The trial court’s decision should be upheld on that basis.

Although Olson did not testify that he was concerned about a violation of RSA 265:25, I, in particular, that fact does not matter. For one thing, Bellino

articulated the specific statutory violation. For another, this Court has plainly held that an officer does not need to “testify to a specific charge he had in mind when he pursued and stopped [a] particular vehicle.” State v. Landry, 116 N.H. 288, 290 (1976). Rather, he need only testify to facts sufficient to justify a belief that the defendant may have violated a statute in order to stop the defendant to further investigate whether the defendant has in fact done so. State v. Richter, 145 N.H. 640, 641-42 (2000). Olson’s testimony, as set forth above, provided sufficient facts to justify a belief that the defendant may have committed a motor vehicle violation. State v. Wallace, 146 N.H. 146, 150 (2001) (the standard for reasonable suspicion is objective, so even if an officer “d[id] not have the state of mind which is hypothecated by the reasons which provide the legal justification for [his] action,” that would “not invalidate the action taken as long as the circumstances, viewed objectively, justif[ied] that action” (quotation and citation omitted)).

Although this Court can affirm the trial court’s decision on the basis that the officers’ observation of the motor vehicle violation, alone, was sufficient to justify the stop, there is another basis as well. As the trial court ruled, the defendant’s generally erratic driving provided an adequate basis for the officers to stop the defendant’s SUV along the side of Route 102. SMA 10.

The trial court specifically found that the officers saw the defendant driving erratically. SMA 10. That finding enjoys record support. Bellino said that the SUV was unable to maintain control, drifting over to the center line several times and then back over toward the fog line. T 31, 51. The officers saw the SUV

accelerate swiftly and then decelerate, getting very close to the car in front of it, applying the brakes hard, and then pulling back. T 31, 51. The SUV repeated this pattern “several times.” T 31, 51. Both officers characterized the way the SUV was traveling as abnormal and said that based upon their observations alone—without regard to the information about Robillard’s incident—they would have stopped the SUV to investigate. T 31, 51. Because the trial court’s finding of erratic driving enjoys support in the record, it must be accepted for purposes of appeal. Hight, 146 N.H. at 748 (factual findings will not be set aside unless they lack support in the record).

Based upon its finding that the officers independently observed the defendant driving erratically, the trial court determined that Bellino and Olson possessed reasonable suspicion to stop him. SMA 10. The court’s conclusion was correct. Erratic driving can provide reasonable suspicion sufficient to justify a roadside stop. See State v. Galgay, 145 N.H. 100, 104 (2000) (erratic driving supported reasonable suspicion to stop a car with a suspected drunk driver); State v. Melanson, 140 N.H. 199, 203 (1995) (recognizing the dangers posed by an erratic driver); State v. Oxley, 127 N.H. 407, 411-12 (1985) (“The driver’s behavior may be relevant, as erratic driving . . . can [also] support a reasonable suspicion.” (Quotation omitted.)); Landry, 116 N.H. at 291 (an officer’s observation of erratic driving gave rise to reasonable suspicion that justified a roadside stop).

Indeed, courts in other jurisdictions have upheld stops based upon observations of behavior similar to what Olson and Bellino saw here. See, e.g., State v. Carnevale, 598 A.2d 746, 748-49 (Me. 1991) (weaving, when combined with other signs of erratic driving, provided sufficient reasonable suspicion of impairment to justify a roadside stop); Roberts v. State, 732 So. 2d 1127, 1128 (Fla. Dist. Ct. App. 1999) (Roberts’s “continuous weaving” within her lane provided “an objective basis for suspecting that she was under the influence”); State v. Tarvin, 972 S.W.2d 910, 911-12 (Tex. App. 1998) (concluding that an officer lacked reasonable suspicion to effectuate a roadside stop but noting that “mere weaving in one’s own lane of traffic can justify an investigatory stop when that weaving is erratic, unsafe, or tends to indicate intoxication or other criminal activity”); Fox v. State, 900 S.W.2d 345, 347 (Tex. App. 1995) (“Officer Flores testified that Fox’s speed was fluctuating between 55-40 mph on an interstate highway, that he was weaving back and forth within his lane, and that these actions created ‘suspicion for me to stop it.’ This testimony alone provided sufficient specific facts to support the trial court’s finding that Fox’s temporary detention was lawful. Although none of the acts in which Fox engaged prior to the initiation of the stop were inherently illegal, each was sufficient to create a reasonable suspicion that some activity out of the ordinary was or had occurred.”); Raffaelli v. State, 881 S.W.2d 714, 716 (Tex. App. 1994) (reasonable suspicion existed when an officer observed a defendant weaving within his own lane and driving at a “high” rate of speed). One court specifically observed,

The vast majority of drivers do not weave when they drive. They are taught to stay in the center of their lane. Consequently, after a certain point, as in this case, weaving is an indication that something is amiss. One could logically assume that the driver is inattentive, tired, incompetent, intoxicated, or even joking. None of these alternatives is desirable and they each present hazards for the weaving driver as well as for his fellow drivers on the road.

State v. Cook, 63 S.W.3d 924, 928 n.4. (Tex. App. 2002).

For the foregoing reasons, Bellino and Olson possessed reasonable suspicion at the time they stopped the defendant's SUV. Therefore, the trial court's ruling must be upheld.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the judgment below.

Oral argument is waived pursuant to Supreme Court Rule 16(4)(b).

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Michael A. Delaney
Attorney General



Thomas E. Bocian
NH Bar ID No. 16420
Assistant Attorney General
Criminal Justice Bureau

12

33 Capitol Street
Concord, N.H. 03301-6397
(603) 271-3671

January 14, 2010

CERTIFICATE OF SERVICE

I, Thomas E. Bocian, hereby certify that I have sent two copies of the within memorandum of law to the defendant, Richard Boumil, who is pro se, by first-class mail postage prepaid, at the following address:

Richard Boumil
15 Hamblett Avenue
Dracut, MA 01826



Thomas E. Bocian

January 14, 2010

APPENDIX

Def’s Mot. to Suppress, State v. Boumil, Derry Dist. Ct. No.

07-CR-03404 (Nov. 27, 2007).....1

State’s Obj. to Def’s Mot. to Suppress, State v. Boumil, Derry Dist. Ct.

No. 07-CR-03404 (Dec. 11, 2007).....7

Order, State v. Boumil, Derry Dist. Ct. No. 07-CR-03404 (Coughlin, J.)

(Nov. 27, 2007).....10

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Chaz R. Fisher, Esq. *
Anjali Gupta, Esq.

Donald L. Blaszk, Jr., Esq. **
Martin J. Kenney, Jr., Esq. **
Benjamin Myler, Esq.

November 27, 2007

Lu Ann Gero, Clerk
Derry District Court
10 Manning Street
Derry, NH 03038

Re: State of New Hampshire v. Richard Boumil
Derry District Court Docket No: 07-CR-

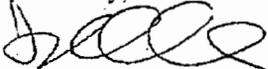
Dear Ms. Gero:

Enclosed please find the following with regard to the above-captioned matter:

- 1. Motion to Suppress;

If you have any questions or concerns regarding this matter, please feel free to contact me at my New Hampshire office. Thank you very much.

Sincerely,


Donald L. Blaszk, Jr.

Enclosures

Cc: Attorney Kevin Coyle, Londonderry Police Prosecutor
Richard Boumil

* Licensed in FL, MA & NY
** Licensed in MA & NH

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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

DERRY DISTRICT COURT
07-CR-3404

STATE OF NEW HAMPSHIRE

v.

RICHARD BOUMIL

MOTION TO SUPPRESS EVIDENCE

NOW COMES the Defendant, Richard Boumil, by and through his counsel, Donald L. Blaszk, Jr., and respectfully requests that this Honorable Court suppress any and all evidence seized as a result of an unlawful stop, detention, seizure and arrest of the Defendant on August 12, 2007 by members of the Londonderry Police Department in violation of Part 1, Articles 15 and 19 of the New Hampshire Constitution and the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and/or dismiss the complaint against him. The Defendant states as follows in support of his motion:

FACTS

1. On or about August 12, 2007 at approximately 8:42 pm, Officer Christopher Olson of the Londonderry Police Department traveled to the intersection of Mammoth Road and Route 102 for a report of a possible drunk driver coming from Hudson, New Hampshire. Officer Olson received information that the vehicle was a black Chevrolet Trail Blazer with Massachusetts registration number 6626RL. Officer Olson did not receive any other information regarding the possible drunk driver.
2. Officer Olson observed a vehicle matching the description that he received making a left turn from Mammoth Road onto Route 102 eastbound. Officer Olson followed the vehicle for approximately one (1) mile before activating his emergency lights and stopping the vehicle. Prior to stopping the vehicle, Officer Olson only observed that the vehicle changed speeds and braked excessively when approaching other vehicles.
3. Officer Olson approached the vehicle and identified the driver as the Defendant, Richard J. Boumil. After a brief investigation, Officer Olson arrested the Defendant for Driving While Intoxicated, a Class B Misdemeanor.
4. All factual assertions in this motion are taken directly from the report of Officer Olson as part of discovery provided to the Defendant by the Londonderry Police Department.

LEGAL ARGUMENT

5. Every citizen has the right to be free from unreasonable searches and seizures as guaranteed by Part I, Article 19 of the New Hampshire Constitution and the Fourth

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and Fourteenth Amendments to the United States Constitution. Warrantless searches are per se unreasonable unless they fit into one of the narrow confines of a judicially crafted exception to the warrant requirement. State v. Brunelle, 145 N.H. 656, 659 (2000); State v. Theodosopoulos, 119 N.H. 573, 578 (1979).

6. The State bears the burden of proving that a seizure falls under a recognized exception. Id. A person is considered seized when "in view of all the circumstances ... a reasonable person would have believed that he was not free to leave." State v. Wong, 138 N.H. 56, 62 (1993); Florida v. Royer, 460 U.S. 491 (1983). "This occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of the person." State v. Beauchesne, 151 N.H. 803, 810 (2005). A police officer's stop and detention of a motor vehicle constitutes a seizure under the Fourth Amendment of the United States Constitution and Part I, Article 19 of the New Hampshire Constitution. United States v. Sharpe, 470 U.S. 675, 682 (1985); State v. Koppel, 127 N.H. 286 (1985).
7. A police officer may make an investigative stop when he has reasonable suspicion that the person had committed, was committing, or was about to commit a crime. State v. Melanson, 140 N.H. 199 (1995); State v. Wong, 138 N.H. 56 (1993); See Terry v. Ohio, 392 U.S. 1, 21 (1968).
8. A police officer must "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." State v. Hight, 146 N.H. 746, 748 (2001); State v. Brodeur, 126 N.H. 411, 415 (1985); See State v. McBreairty, 142 N.H. 12 (1997). Otherwise, the stop will be deemed invalid and all evidence gathered will be inadmissible against the Defendant. State v. Glaude, 131 N.H. 220 (1988); State v. Brodeur, 126 N.H. 411 (1985). The New Hampshire Supreme Court applies the Terry standard to motor vehicle stops. State v. Pellicci, 133 N.H. 523, 530 (1990). The trial court considers the articulable facts in light of all surrounding circumstances and that a trained officer may make inferences and draw conclusions from conduct that may seem unremarkable to an untrained observer. State v. Pellicci, 133 N.H. 523, 530 (1990).
9. The New Hampshire Supreme Court illustrated the following factors are to be utilized by courts when evaluating whether an anonymous tip gives rise to reasonable suspicion based upon the totality of the circumstances. State v. Sousa, 151 N.H. 297, 303 (2005).
10. First, whether there is sufficient quantity of information such as the vehicle's make, model, license plate number, location and bearing, and "similar innocent details" so that the officer may be certain that the vehicle stopped is the one the tipster identified. Id.
11. Second, the time interval between the police receiving the tip and the police locating the suspect vehicle. Id. at 303-304. Third, whether the tip is based upon contemporaneous eyewitness observation. Id. at 304. Fourth, whether the tip is sufficiently detailed to permit the reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense. Id. In Souza, the New Hampshire

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Supreme Court held that the police may act on anonymous tip of reckless or drunk driving only under limited circumstances. Id.

12. Officer Olson responded to a call regarding a possible drunk driver coming from Hudson. Officer Olson traveled to the intersection of Mammoth Road and Route 102 to wait for the vehicle. Officer Olson reported that the information provided to him from Londonderry Police Dispatch was initially given to Hudson Police. Officer Olson did have a description of the vehicle to include the make, model, registration number and approximate location of travel. Officer Olson did not have any information regarding what road the vehicle was traveling on. Officer Olson also did not observe any motor vehicle violations or illegal activity prior to stopping the Defendant's vehicle. The anonymous tip regarding the suspect vehicle did not provide a sufficient quantity of information so that Officer Olson could stop the Defendant's vehicle.
13. Officer Olson did not have any information when the call came into the Hudson Police Department, whether it was based upon an eyewitness observation and was not sufficiently detailed to permit the reasonable inference that the caller actually witnessed an ongoing motor vehicle offense. In fact, the caller provided absolutely no information at all about any criminal or illegal activity when he or she called. The only information was "possible drunk driver." The caller did not provide any information that would support the reasonable inference that he or she was actually witnessing motor vehicle violations.
14. Officer Olson simply observed a vehicle traveling southbound on Mammoth Road onto Route 102 and stopped the Defendant's vehicle without observing any motor vehicle violations or illegal activity. Officer Olson did not observe anything that would indicate the Defendant had committed, was committing or was about to commit a crime never mind that he was a "possible drunk driver."
15. Officer Olson did not have specific and articulable facts to support a conclusion that a person of reasonable caution would believe that a violation of the law or that criminal activity was afoot prior to activating his emergency lights and stopping the Defendant's vehicle. Officer Olson did not have reasonable articulable suspicion to stop and detain the Defendant based upon his personal observations or the anonymous tip received by the Hudson Police Department which was passed on to him by the Londonderry Police Department.
16. Therefore, Officer Olson conducted an unlawful stop and detention of the Defendant in violation of the Fourth Amendment of the United States Constitution and Part 1, Article 19 of the New Hampshire Constitution and all evidence obtained as a result should be suppressed.
17. Part 1, Article 19 of the New Hampshire Constitution places parties in the position preceding the constitutional violation. State v. Canelo, 139 N.H. 376 (1995). Any and all evidence illegally obtained from the unlawful seizure of the Defendant by members of the Londonderry Police Department must be suppressed as "fruits of the poisonous tree" because Officer Olson violated the Defendant's constitutional rights

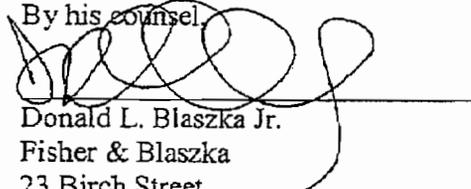
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under the Fourth Amendment of the United States Constitution and Part 1, Article 19 of the New Hampshire Constitution. Wong Sun v. United States, 371 U.S. 471 (1963); Taylor v. Alabama, 457 U.S. 687 (1982); State v. Cobb, 143 N.H. 638, 650 (1999).

WHEREFORE, the Defendant respectfully prays that this Honorable Court:

- A. Grant the Defendant's Motion to Suppress and suppress any and all evidence seized from the Defendant as a result of his unlawful stop, seizure, detention and arrest;
- B. Hear argument on this motion if not granted on the pleading;
- C. Schedule a hearing on this matter, if not granted on the pleadings;
- D. Issue findings of fact and rulings of law if this motion is denied; and
- E. Grant such further relief as justice may require.

Respectfully submitted,
Richard Boumil,
By his counsel,

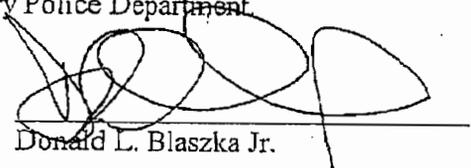


Donald L. Blaszk Jr.
Fisher & Blaszk
23 Birch Street
Derry, NH 03038
603-425-1776

Dated: November 27, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Suppress has this day been forwarded to Kevin Coyle, Prosecutor, Londonderry Police Department.



Donald L. Blaszk Jr.

Dated: November 27, 2007

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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

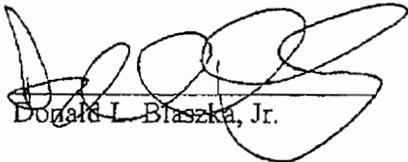
DERRY DISTRICT COURT
07-CR-3404

STATE OF NEW HAMPSHIRE

v.

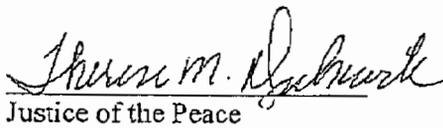
RICHARD BOUMIL

I, Donald L. Blaszk, Jr., do hereby certify that the facts contained in the Defendant's Motion to Suppress are true and correct to the best of my knowledge as taken from the discovery provided by the State through the Londonderry Police Department.


Donald L. Blaszk, Jr.

Dated: November 27, 2007

On the 27th day of November, 2007, Donald L. Blaszk, Jr. appeared before me and on oath attested to the above affidavit.


Justice of the Peace

THERESE M. DUBOWIK, Justice of the Peace
My Commission Expires April 7, 2009

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

DERRY DISTRICT COURT

STATE

V.

RICHARD BOUMIL
DOCKET NO. 07-CR-3404

OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS

NOW COMES the State of New Hampshire by and through its agent the Londonderry Police Department and hereby objects to Defendant's Motion To Suppress and as grounds therefore states as follows:

FACTS

1. The defendant, Richard Boumil, is charged with one count of Driving While Intoxicated.
2. The defendant's vehicle was observed by Michael Robilard of 46 Robinson Pond Drive, Hudson, New Hampshire operating on Route 102 in an erratic manner including stopping in the middle of the road, almost getting into an accident.
3. Michael Robilard phoned the Hudson Police Department and reported this activity to the Hudson police. Mr. Robilard gave the Hudson police an accurate description of the defendant's vehicle as well as his plate number and direction of travel.
4. The Hudson police relayed the information they received from Mr. Robilard to the Londonderry Police.
5. Officer Christopher Olsen of the Londonderry Police observed the vehicle described by Mr. Robilard traveling on Route 102, also as described by Mr. Robilard.
6. Officer Olsen followed the vehicle for a short period of time observing the vehicle driving at inconsistent speeds and braking excessively.
7. Based upon his own observations and the report he received of erratic operation by the vehicle described, Officer Olsen stopped the defendant.

LEGAL ARGUMENTS

- a. The defendant relies on State v. Sousa 151 N.H.. 297 (2004) which involved an anonymous

tip. In this case, although unknown to the officer at the time, the caller identified himself to the Hudson Police, and is available for trial.

- b. Even if the Court were to find that State v. Sousa applies, the caller in this case provided sufficient detailed information about the vehicle to warrant the intrusion. These include the vehicle's make and model, the plate number, as well as the vehicle's direction of travel.
- c.. In addition, Officer Olsen observed the defendant's vehicle operating in a manner that could be described as erratic.
- d. Based upon the observation made by Mr. Robillard and by his own observation Officer Olsen had a reasonable and articulable belief that criminal activity was afoot.

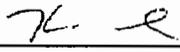
WHEREFORE, the State requests the court hold an evidentiary hearing on the matter and

- 1. Deny defendant's Motion to Suppress
- 2. Issue finding of fact and rulings of law, and
- 3. Grant such further relief as Justice may require..

Respectfully submitted,

The State of New Hampshire
by and through its agent

Date: December 11, 2007



Kevin L. Coyle, Esquire

CERTIFICATION OF SERVICE

I hereby certify that on December 11, 2007 I forwarded a copy of this Objection to Defendant's Motion To Suppress to defendant's counsel, Donald L. Blaszk, Jr., Esquire, 23 Birch Street, 2nd Floor, Derry, New Hampshire 03038.



Kevin L. Coyle, Esquire

File #07-509-AR

AFFIDAVIT

I, Kevin L. Coyle, hereby certify that the facts contained in the State's objections are true and correct to the best of my knowledge and are taken from information contained in defendant's case file.

KL Coyle

Kevin L. Coyle

Dated: December 11, 2007

On the 11th day of December, 2007, Kevin L. Coyle appeared before me and on oath attested to the above affidavit.

James E. Butler

Justice of the Peace

THE STATE OF NEW HAMPSHIRE
DERRY DISTRICT COURT

COPY

Rockingham County

June 23 2008

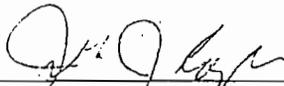
State of New Hampshire
v.
Richard J. Boumil
07-CR-03404

ORDER

The Defendant was charged by complaint of a violation of Driving While Intoxicated in the Derry District Court. The counsel for defense filed a Motion to Suppress Evidence and the State filed an objection. A hearing on the Motion and objection thereto was held on June 16, 2007.

At the conclusion of testimony, discussion and argument the Court finds that the Londonderry police officers received information from Londonderry dispatch of a specific Massachusetts license plate number, model type, direction and suspected activity (road rage and possible DWI) and a request to "Stop and ID". The Londonderry police officers observed a vehicle matching the model description and license number and followed the vehicle as it turned left from Route 128 onto Route 102. The police officers followed the subject vehicle for approximately one mile and made independent observations of the Defendant's driving which included drifting onto but not going over the double center yellow lines and white fog lines at least twice and also speeding up close to the vehicle in front of the Defendant "excessively braking" and then speeding up again close to the vehicle in front of the Defendant and braking "hard" and that this occurred at least twice. The Londonderry police officers both testified that the Defendant's driving as personally observed by them would have caused them to stop the vehicle independent of the information provided to them by the Londonderry dispatch. The Court finds that the basis for the stop of the Defendant's vehicle was the police officers own independent observations of the vehicle's erratic operation and that the police officers had specific and articulable facts to warrant the stop of the Defendant's vehicle. The Court finds that the analysis of State v. Sousa, 151 NH 297 (2005) does not apply as the person providing the information was not anonymous and the police officers made their own independent and personal observations and which formed the basis of the stop. Therefore, the Court denies defense counsel's Motion to Suppress.

Dated: 6/23/08



John J. Coughlin, Justice
Derry District Court