MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 13-7
Docket No. And-12-282

STATE OF MAINE

v.

KELSEY R. CUNLIFFE

Submitted on Briefs January 31, 2013
Decided February 5, 2013

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Kelsey R. Cunliffe appeals from a judgment of conviction of operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A) (2012), entered in the trial court (*MG Kennedy, J.*) following a jury-waived trial. Cunliffe argues on appeal that the suppression court (*Bradford, J.*) erred in its determination that the officer's action in asking Cunliffe to further roll down her window in the course of conducting a valid traffic stop did not constitute an unreasonable intrusion into Cunliffe's vehicle in violation of her Fourth Amendment rights or rights under the Maine Constitution.

Contrary to Cunliffe's contention, the officer's action was objectively reasonable and did not constitute an unreasonable search or seizure in violation of Cunliffe's rights under the Fourth Amendment or Maine Constitution. *See* U.S. Const. amends. IV, XIV; Me. Const. art. I, § 5; *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006); *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968); *State v. Gulick*, 2000 ME 170, ¶¶ 9 n.3, 13, 16, 19-20, 759 A.2d 1085 (discussing "minimal further intrusions" during valid traffic stops); *State v. Huether*, 2000 ME 59, ¶¶ 6, 8, 748 A.2d 993 (same); *see also United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (stating that a "search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed"); *Hearn v. Bd. of Pub. Educ.*,

191 F.3d 1329, 1332 (11th Cir. 1999) ("[T]he Constitution does not provide [an individual] with any expectation of privacy in the odors emanating from her car."); *cf. United States v. Montes-Ramos*, 347 Fed. Appx. 383, 388-90, 393 (10th Cir. 2009) (holding that a warrantless search occurred when an officer placed his nose inside a vehicle to sniff for suspected marijuana, but stating that "no search occurs if a police officer detects an odor of . . . alcohol . . . from a location in which he is entitled to be"); *see generally State v. LaPlante*, 2011 ME 85, ¶ 6, 26 A.3d 337 (reviewing the denial of a motion to suppress de novo as to issues of law). Cunliffe's motion to suppress was properly denied.[1]

The entry is:

Judgment affirmed.

On the briefs:

Leonard I. Sharon, Esq., Leonard I. Sharon, Esq., P.C., Auburn, for appellant Kelsey Cunliffe

Norman R. Croteau, District Attorney, Craig E. Turner, Dep. Dist. Atty., Office of the District Attorney, Auburn, for appellee State of Maine

Androscoggin County Superior Court docket number CR-2011-1208
FOR CLERK REFERENCE ONLY

[1] We view the facts of this case in a light most favorable to the court's order and assume that the suppression court found all facts necessary to support its ruling if those assumed findings are supported by record evidence because Cunliffe did not move the suppression court to make or expand upon its factual findings pursuant to M.R. Crim. P. 41A. *See State v. Kent*, 2011 ME 42, ¶ 2, 15 A.3d 1286; *State v. Connor*, 2009 ME 91, ¶ 9, 977 A.2d 1003.