

STATE OF MAINE

v.

MELISSA BROWN

Submitted on Briefs April 27, 2017
Decided May 9, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Melissa Brown appeals from a judgment of the trial court (Piscataquis County, *Anderson, J.*) finding her guilty of operating under the influence (Class D), 29-A M.R.S. § 2411(1-A)(A) (2016), following a conditional plea of nolo contendere, *see* M.R. U. Crim. P. 11(a)(2). On appeal, Brown argues that the court erred in denying her motion to suppress because it failed to reconcile and address differences noted in testimony given by the arresting officer at the suppression hearing and at a prior Bureau of Motor Vehicles hearing.¹ Brown further argues that the inconsistent testimony requires us to consider the issue of whether the officer committed perjury. We affirm the judgment.

¹ Brown also argues that the court's failure to reconcile and make particularized findings regarding the differences in the officer's testimony deprived her of due process of the law. Because Brown has identified no process as to that challenge that she was due, and of which she has been deprived, this argument is not addressed further.

On the record before us, comparing the officer's initial police report, his testimony at the Bureau of Motor Vehicles hearing, and his testimony at the hearing on Brown's motion to suppress, we do not discern a material inconsistency, let alone perjury. Reviewing the evidence presented by the State and the evidence presented by Brown, there were disputed facts regarding the location of Brown's vehicle when initially observed and the extent of erratic operation of the vehicle. Our trial courts are responsible for reconciling inconsistencies in the evidence and making credibility determinations.² See *State v. McBreairty*, 2016 ME 61, ¶ 14, 137 A.3d 1012 ("[T]he fact-finder is permitted to . . . decide the weight to be given to the evidence and the credibility to be afforded to the witnesses."); *Gordon v. Cheskin*, 2013 ME 113, ¶ 12, 82 A.3d 1221 (we defer to the trial court's determination of witness credibility, and to its resolution of conflicts in testimony). Further, Brown has cited nothing in the record to support her claim that the testimony was perjured—not merely inconsistent—or that the State offered testimony it knew to be false.³ See *State v. True*, 2017 ME 2, ¶¶ 17, 19, 153 A.3d 106. Because she has failed to meet this threshold requirement, that argument is not considered further.

Given the officer's testimony regarding erratic operation of the vehicle Brown was driving, the court did not err in concluding that the officer had a reasonable articulable suspicion, justifying the traffic stop that eventually led to Brown's operating under the influence conviction. See, e.g., *State v. Morrison*, 2015 ME 153, ¶ 7, 128 A.3d 1060 (affirming a finding of reasonable articulable suspicion based on weaving and erratic driving).

² The court explained its credibility determination and reconciliation of the testimony, stating that "the [officer's] testimony, notwithstanding his report's shortcomings, is entitled to belief, especially when the conflicting evidence admitted at hearing comes from two [defense] witnesses who had admittedly consumed substantial amounts of alcohol that evening."

³ Brown cites to our opinions in *State v. True*, 2017 ME 2, 153 A.3d 106, and *State v. Burnette*, 501 A.2d 419 (Me. 1985), to support her claim of perjury. Aside from not being factually analogous, those cases came to us following a jury verdict requiring a beyond a reasonable doubt burden of proof, and, therefore, are not procedurally analogous. Further, in *True*, we explicitly stated that "[a]s a threshold matter, a defendant must satisfy the basic and fundamental burden of demonstrating that the information delivered at trial was perjured—not merely inconsistent with other evidence or previous testimony." 2017 ME 2, ¶ 19, 153 A.3d 106. Brown has not satisfied that burden.

Brown has filed a motion seeking oral argument in this appeal. After our review, the motion for oral argument is denied.

The entry is:

Judgment affirmed.

Timothy C. Woodcock, Esq., Eaton Peabody, Bangor, for appellant Melissa Brown

R. Christopher Almy, District Attorney, and Tracy Collins, Asst. Dist. Atty., Prosecutorial District V, Bangor, for appellee State of Maine

Piscataquis County Unified Criminal Docket docket number CR-2015-262
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