MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 04-180
Docket No. Pen-04-350

STATE OF MAINE

v.

BILLY G. THORNTON

Submitted on Briefs November 16, 2004
Decided December 10, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER, and LEVY, JJ.

MEMORANDUM OF DECISION

Billy G. Thornton appeals from a judgment of conviction of operating under the influence (Class D), 29-A M.R.S.A. § 2411(1) (1996),[1] entered in the Superior Court (Penobscot County, *Mead*, *J.*). Contrary to Thornton's assertions, the court did not err in denying his motion to suppress the results of a blood-alcohol test and other evidence because (1) the officer had "an articulable suspicion that criminal conduct [had] taken place," and Thornton's detention was objectively reasonable,

[1] Title 29-A M.R.S.A. § 2411(1) has since been repealed by P.L. 2003, ch. 452, § Q-77 (effective July 1, 2004), and replaced by P.L. 2003, ch. 452, § Q-78 (effective July 1, 2004), *codified at* 29-A M.R.S.A. § 2411(1-A) (Supp. 2004).

State v. Burgess, 2001 ME 117, ¶ 7, 776 A.2d 1223, 1227; (2) Thornton was not in custody and it was unnecessary for the officer to give him a *Miranda* warning prior to asking him where he would rate himself "on a scale of one to ten, one being completely sober, ten being falling down drunk," *see Dunaway v. New York,* 442 U.S. 200, 212 (1979); *State v. Swett,* 1998 ME 76, ¶ 4, 709 A.2d 729, 730; *State v. Lewis,* 373 A.2d 603, 606-07 (Me. 1977); and (3) the officer had probable cause to administer a blood-alcohol test because he had "probable cause to believe that [Thornton's] senses [were] affected to the slightest degree, or to any extent, by the alcohol that [he] had to drink," *State v. Webster*, 2000 ME 115, ¶ 7, 754 A.2d 976, 977-78.

The entry is:

Judgment affirmed.

Attorneys for State:

R. Christopher Almy, District Attorney
C. Daniel Wood, ADA
Gregory Campbell, ADA
97 Hammond Street
Bangor, ME 04401

Attorney for defendant:

N. Laurence Willey Jr., Esq.
Willey Law Offices
P O Box 924
Bangor, ME 04402-0924