

STATE OF MAINE

v.

MARK A. McNALLY

Submitted on Briefs September 23, 2010

Decided September 30, 2010

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and JABAR, JJ.

MEMORANDUM OF DECISION

Mark A. McNally appeals from a judgment entered in the Superior Court (Androscoggin County, *Cole, J.*) following a jury verdict finding him guilty of operating under the influence (Class C), 29-A M.R.S. § 2411(1-A)(B)(3) (2009). McNally contends that the court (*Delahanty, J.*) hearing his motion to suppress erred in concluding that the arresting officer had a reasonable, articulable suspicion to stop his vehicle. Additionally, McNally contends that two pieces of evidence unfairly prejudiced him at trial, pursuant to M.R. Evid. 403, and should have been excluded: (1) testimony that marijuana and related paraphernalia were observed in McNally's vehicle; and (2) testimony that McNally told the officer he is an alcoholic.

Contrary to McNally's contention, the motion court did not err in concluding that the stop of McNally's vehicle was lawful because the arresting officer, given McNally's operation of his vehicle, had a reasonable belief that McNally posed a safety risk to other vehicles on the road. *See State v. Porter*, 2008 ME 175, ¶ 12, 960 A.2d 321, 323-24 (holding that stop of defendant's vehicle was lawful because officer witnessed the vehicle move across the road from the fog line to the center line and back); *State v. Gulick*, 2000 ME 170, ¶ 14, 759 A.2d 1085, 1088 (holding

that “[s]afety reasons alone can be sufficient to allow the detention of a driver if they are based on specific and articulable facts” (quotation marks omitted).

Furthermore, neither the evidence presented at trial of what the officer believed he saw in McNally’s vehicle, nor McNally’s statement to the officer while being driven to the police station, unfairly prejudiced McNally pursuant to M.R. Evid. 403. *See State v. Millay*, 2001 ME 177, ¶¶ 9-11, 787 A.2d 129, 131-32; *State v. Hayes*, 675 A.2d 106, 109-10 (Me. 1996). Consequently, the court did not abuse its discretion by admitting that testimony over McNally’s objection.

The entry is:

Judgment affirmed.

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