

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2022-0081

State of New Hampshire

v.

LeeAnn O'Brien

Appeal Pursuant to Rule 7 from Judgment
of the Merrimack County Superior Court

BRIEF FOR THE DEFENDANT

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QUESTION PRESENTED

Whether the court erred by denying O'Brien's motion to suppress the motor vehicle stop.

Issue preserved by O'Brien's motion to suppress and the court's order. A32*-A47.

* Citations to the record are as follows:

"A" refers to the Addendum to this brief;

"S" refers to the transcript of suppression hearing held on June 4, 2021;

"T" refers to the transcript of jury trial held on December 7, 2021.

STATEMENT OF THE CASE

LeeAnn O'Brien was charged in the Merrimack County Superior Court with possession of buprenorphine (suboxone) and control of a vehicle in which a controlled drug (buprenorphine) was kept. T 4. The drugs were found during a motor vehicle stop on March 1, 2020. A32.

O'Brien filed a motion to suppress, A38-A47, which the court (Kissinger, J.) denied after a hearing. A32-A37. After a jury trial on December 7, 2021, O'Brien was convicted of both charges. T 83-84.

She was sentenced on both charges to concurrent sentences of ninety days in jail, all suspended for four years. A51-A56. On the felony, she was also sentenced to two years of probation, a suspended fine, and an evaluation by a licensed drug and alcohol counselor. A51-A53.

STATEMENT OF THE FACTS

Facts about the motor vehicle stop

Hooksett Police Department Officer Brandon Carleton testified similarly at the suppression hearing and at trial about stopping O'Brien's car. S 4-21; T 10-35; see also A32-A33 (trial court's factual findings after suppression hearing).

On March 1, 2020, Carleton was on patrol in the area of Bell Avenue and Alice Avenue. S 5-6; T 11-13; A32. At that intersection is a gas station. S 5; T 12-13; A32. Carleton saw O'Brien at the gas station looking at a malfunctioning license plate light on her car. S 11; T 20; A32. He pulled over to wait for her to exit the gas station so he could stop her. S 11-12. He testified that he wanted to stop her to inform her of the license plate light problem. T 21; A32. When he turned on his lights, O'Brien pulled over immediately on Bell Avenue. S 7, 19; T 13.

Carleton testified that the light illuminating the left side of her license plate was out, but the light on the right side was functioning. S 6, 12; A32. He could read the plate sufficiently to call it in to dispatch. S 12; T 24. He testified that his headlights illuminated the license plate, but he did not know whether he would have been able to see the plate

without his headlights. S 12-13. He did not recall whether it was dark out¹. S 7-8.

Carleton testified that, when he approached O'Brien in the driver's seat, he immediately smelled freshly burnt marijuana coming out the window. S 8, 10, 17; T 13; A33. O'Brien provided her license and registration. S 8; T 13.

Carleton informed O'Brien of the reason for the stop and she indicated she knew of the problem with the license plate light, as she had just been informed of it at the gas station. S 8; T 22, 25; A33. He asked her about the smell of marijuana and she said she had smoked some earlier in the day. S 9-10; T 13, 25; A33. When asked, she denied that there was any marijuana or other drugs in the car. *Id.* Because O'Brien was from Massachusetts, Carleton informed her that marijuana is illegal in New Hampshire. S 15.

Carleton asked if he could search the car for any drugs and he testified that she consented to a search. S 9; T 13-14; A33. He called for another officer to come to the scene to witness the search, a process that took five to ten minutes. S 9; T 14, 27; A33. Once the other officer arrived, he stood with O'Brien at the rear of her car while Carleton searched. S 9, 19; T 14, 27-28; A33.

¹ He testified at the suppression hearing that the stop occurred at 7:15, but he did not specify whether it was a.m. or p.m. S 5. Nor did he testify that the stop took place during the evening or at night. When asked whether it was a "slow night," he replied, "Not necessarily." S 12. At trial, he testified that the stop was at 7:15 p.m. T 12. See also A32 (trial court finding that it was 7:15 p.m.).

While searching the car, Carleton found a purse on the back seat. S 9-10; T 15; A33. The purse contained O'Brien's social security card. Id. At the bottom of the purse, Carleton found two wrappers that contained pill fragments he identified as suboxone. Id. When Carleton questioned her about it, O'Brien said the purse was hers, that she knew the pills were suboxone, and that she was holding them for her brother. S 10; T 15-16; A33. Carleton arrested O'Brien. S 10; T 16; A33.

Carleton saw no indications that O'Brien was impaired. S 19. Carleton did not find any marijuana in the car. S 17-18.

Additional facts from trial

Carleton brought O'Brien to the station and advised her of her Miranda rights. T 16-17. O'Brien again said that it was her purse, the pills were suboxone, and that they belonged to her brother. T 18, 34. O'Brien offered similar testimony at trial. T 56-58. The pills were tested at the state laboratory and confirmed as buprenorphine, also known as suboxone. T 36-42.

SUMMARY OF THE ARGUMENT

The officer did not have reasonable and articulable suspicion that O'Brien violated any motor vehicle laws when he initiated the stop. Because a light at the right of her license plate was functioning and the officer had no difficulty seeing the characters on her plate, she did not violate RSA 266:44. That statute does not require every piece of equipment associated with the license plate light or lights to be functioning, so long as the plate is visible.

Even if the motor vehicle equipment violation stop was valid, the officer unlawfully expanded the scope of the stop by engaging in a discussion about drugs, based solely on the smell of freshly burnt marijuana. As this Court found in State v. Francisco Perez, 173 N.H. 251 (2020), given the decriminalization of small amounts of marijuana, that observation cannot solely provide reasonable and articulable suspicion.

Finally, O'Brien gave consent to search while she was being unlawfully detained. All fruits of the stop should be suppressed.

I. THE COURT ERRED IN DENYING O'BRIEN'S MOTION TO SUPPRESS THE FRUITS OF THE MOTOR VEHICLE STOP.

O'Brien filed a motion to suppress the fruits of the motor vehicle stop. A38-A47. Among other points, she argued that the stop was unlawful because her license plate was readable. A39-A40. She cited State v. Hight, 146 N.H. 746 (2001), and argued that her consent to search was not valid under the circumstances of the stop. A39-A41.

The State objected, arguing that the stop was valid under RSA 266:44. A48-A50. The State also argued that the "conversation" between Carleton and O'Brien after the motor vehicle stop did not impermissibly expand the scope of the stop, because the odor of marijuana justified questioning about drugs in the car, and that her consent was valid. A49.

The court denied the motion to suppress. A32-A37. It found that the stop was valid under RSA 266:44. A35. It also found that Carleton was justified in asking O'Brien about drugs based on the odor of marijuana, citing State v. Francisco Perez, 173 N.H. 251 (2020). A36. It therefore concluded that her consent was valid. A35-A37. In so ruling, the court erred.

The State bears the burden of proving a valid seizure. State v. Parker, 127 N.H. 525, 529 (1985). The State also bears the burden of establishing "that the scope of an otherwise valid stop was not exceeded." State v. Morrill, 169

N.H. 709, 716 (2017). Finally, the State bears the burden of proving that any taint to a defendant’s consent from an illegal seizure has been “purged or attenuated.” Id. When reviewing a court’s order on a motion to suppress, this Court accepts the court’s “factual findings unless they lack support in the record or are clearly erroneous.” State v. Monegro-Diaz, ___ N.H. ___ (slip op. at 3)(decided June 14, 2022). The Court reviews legal conclusions de novo. Id.

A. The officer did not have a valid basis to stop O’Brien’s car.

Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment to the United States Constitution prohibit unreasonable searches and seizures. “The essential purpose of the Federal and State constitutional prescriptions against unreasonable searches and seizures is to impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials to safeguard the privacy and security of individuals against arbitrary invasions.” Francisco Perez, 173 N.H. at 257 (quotation and ellipsis omitted).

“A warrantless seizure is per se unreasonable unless it falls within a recognized exception to the warrant requirement.” Monegro-Diaz, (slip op. at 3). A traffic stop is a seizure which can fall under the investigatory stop exception to the warrant requirement. Id. “The scope of . . . an investigative stop must be carefully tailored to its underlying

justification, must be temporary, and last no longer than is necessary to effectuate the purpose of the stop.” Francisco Perez, 173 N.H. at 257; see also Morrill, 169 N.H. at 715 (“A traffic stop is a ‘seizure’ even though the purpose of the stop is limited and the resulting detention quite brief.” (quotation and ellipsis omitted)).

“To undertake an investigatory stop that is consistent with the State Constitution, the officer must have reasonable suspicion – based upon specific, articulable facts taken together with rational inferences drawn from those facts – that the particular person stopped has been, is, or is about to be engaged in criminal activity.” Monegro-Diaz, (slip op. at 3). “To determine the sufficiency of an officer’s suspicion,” the Court “consider[s] the articulable facts in light of all surrounding circumstances, keeping in mind that a trained officer may make inferences and draw conclusions from conduct that may seem unremarkable to an untrained observer.” Id. at 3-4. However, deference to the police officer’s observations “should not be blind.” Francisco Perez, 173 N.H. at 259.

“A reasonable suspicion must be more than a mere hunch.” Monegro-Diaz, (slip op. at 4). “The articulated facts must lead somewhere specific, not just to a general sense that this is probably a bad person who may have committed some kind of crime.” Id. “The officer’s suspicion must have a

particularized and objective basis to warrant that intrusion into protected privacy rights.” Id.

Carleton testified that he stopped O’Brien because her left license plate light was not working. The State argued, and the court found, that this stop was justified by RSA 266:44, “Tail Lamp and Reflectors.” That statute provides²:

[1] Every motor vehicle and trailer or any combination of vehicles, when on the ways of this state at night, shall have on the rear thereof, and to the left of the axis thereof, one lamp displaying a red light visible for a distance of at least 1000 feet to the rear of such vehicle, and a white light illuminating the registration plate of such vehicle so that the characters thereon shall be visible for a distance of at least 50 feet, except that passenger cars manufactured or assembled after January 1, 1952, shall have at least 2 tail lamps, one to either side of the axis thereof. [2] On a combination of vehicles, only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. [3] On vehicles equipped with more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable. [4] All tail lamps on any vehicle shall be located at a height of not more than 72 inches nor less than 20 inches from the

² For purposes of the later discussion of the statute, the sentences have been numbered, though these numbers do not appear in the statute itself.

ground, measured from the ground to the center of the reflector, and shall be placed in such a manner as to indicate the extreme width of the vehicle and load and to reflect rays of light thrown upon such reflector. [5] The visibility of such reflectors shall not be impaired at any time. [6] Whenever a vehicle is manufactured with multiple tail lamps or multiple bulbs or filaments in the tail lamps, each of the lamps, bulbs, or filaments and any other exterior lighting equipment with which the vehicle was manufactured shall be in working order.

The interpretation of a statute presents a question of law, which this Court reviews de novo. State v. Parr, ___ N.H. ___ (slip op. at 3)(decided March 17, 2022). “In matters of statutory interpretation, the intent of the legislature is expressed in the words of the statute considered as a whole.” Id. The Court will “first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” Id. The Court interprets “legislative intent from the statute as written and will not consider what the legislature might have said or add language the legislature did not see fit to include.” Id. The Court interprets “statutes in the context of the overall statutory scheme and not in isolation.” Id. “A statute will not be construed so as to lead to absurd consequences.” Id. at 4 (quotation and brackets omitted).

RSA 266:44 deals primarily with tail lamps and reflectors, items designed to ensure that the car is visible from the rear at night from a sufficient distance. The statute makes clear that tail lamps refer to the lights that are found on modern cars at the left and right edges of the rear of the car. See, e.g., sentence 4. Sentences 2, 3, and 4 deal exclusively with tail lamps. Sentence 5 deals with the reflectors associated with tail lamps. The first and last sentences also explicitly mention tail lamps. The statute’s title – Tail Lamps and Reflectors – supports the interpretation that the statute deals primarily with tail lamps and reflectors. See, e.g., State v. Gunnip, 174 N.H. 778, 782 (2022)(“While the title of a statute is not conclusive of its interpretation, it provides significant indication of the legislature’s intent in enacting the statute.” (quotation omitted)).

The only explicit reference to license plate lights in RSA 266:44 is found in the first sentence. That provision requires that every motor vehicle traveling on a way “at night, shall have on the rear thereof . . . a white light illuminating the registration plate of such vehicle so that the characters thereon shall be visible for a distance of at least 50 feet.”

The evidence at the suppression hearing did not establish a violation of this provision. Carleton testified that he pulled the car over because the light on the left side of the license plate was not working. However, the light at the right

side of the license plate was working, thus satisfying the statute's requirement that each car have "a . . . light illuminating" the license plate.

In addition, Carleton did not testify that the left plate light problem caused the characters on O'Brien's plate to be invisible within 50 feet. Rather, he testified that he could see the characters on her plate when behind her car and he was unsure whether their visibility was impaired by the left plate light problem.

Finally, no other evidence established a violation of this provision. For example, there was no evidence that the working right plate light was a color other than white. Nor did the State admit evidence that O'Brien was operating her car "at night." See RSA 208:8 (illegal night hunting, defining applicable time period); RSA 215-A:4-a (defining "night hours" for purposes of off highway recreational vehicle regulations); RSA 635:1, III (defining "night" for purposes of burglary statute).

The State may argue that the concluding sentence of RSA 266:44 requires that all lights, including plate lights, with which a vehicle is manufactured must be working. That sentence provides that "[w]henver a vehicle is manufactured with multiple tail lamps or multiple bulbs or filaments in the tail lamps, each of the lamps, bulbs, or filaments and any other exterior lighting equipment with which the vehicle was

manufactured shall be in working order.” The plain language of this sentence does not support an interpretation that it includes plate lights within its mandate.

The subject of the sentence is vehicles manufactured “with multiple tail lamps or multiple bulbs or filaments in the tail lamps.” The object of the sentence, *i.e.*, what the subject vehicles must have in working order, are “each of the lamps, bulbs, or filaments and any other exterior lighting equipment with which the vehicle was manufactured.” Thus, the phrase “and any other exterior lighting equipment with which the vehicle was manufactured” expands the list of equipment that must be in working order for those vehicles that have “multiple tail lamps or multiple bulbs or filaments in the tail lamps.”

“Under the principle of *ejusdem generis*, “where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.” *State v. Proctor*, 171 N.H. 800, 806 (2019)(quotation omitted). Here, the catchall phrase is used to describe what types of equipment a car must have in working order *as it relates to tail lamps*.

Had the legislature intended the phrase “any other exterior lighting equipment with which the vehicle was

manufactured” to include a requirement that all plate lights be functional, the legislature would have added it to the subject of the sentence. For example, had the legislature intended that result, it would have passed a law that required “for all vehicles manufactured with multiple tail lamps and/or license plate lamps, all equipment associated with those devices shall be in working order.”

To read the statute as applying the phrase “any other exterior lighting equipment with which the vehicle was manufactured” to apply to any kinds of lights, including plate lights would lead to an absurd result. The requirement to have all lights in working order would apply only to vehicles “manufactured with multiple tail lamps.” There is no reason to only require a car to have all lights in working order if the car has multiple tail lamps.

Finally, the statutory scheme supports the interpretation that the phrase “any other exterior lighting equipment with which the vehicle was manufactured” as used in RSA 266:44 applies only to equipment related to tail lamps. The legislature has enacted a similar requirement that all related equipment be functioning in RSA 266:38, which governs stop lamps. Had the phrase as used in RSA 266:44 applied to all lighting equipment of any kind, including plate lights, there would have been no need for the legislature to

enact the requirement again in the statute governing stop lamps.

In addition, several statutes allow for additional vehicle lighting. See, e.g., RSA 266:37 (permitting spot lamps and auxiliary lamps); RSA 266:41 (permitting back-up lamps); RSA 266:45-a (permitting “additional lighting equipment”). Because these statutes permit but do not require these types of lighting, it would be absurd to require, under RSA 266:44, that those types of optional lighting be in working order.

The plain language of RSA 266:44 compels the conclusion that the final sentence does not apply to plate lights. However, if the Court disagrees, given the reasonable interpretation that the final sentence of the statute only applies to lighting equipment associated with tail lamps, the statute only ambiguously applies to O’Brien’s situation: where a car has one working plate light. See, e.g., State v. Folds, 172 N.H. 513, 524 (2019)(where two interpretations are reasonable, statute is ambiguous). This Court will consider legislative history when statutory language is ambiguous. State v. Williams, 174 N.H. 635, 640-41 (2021).

The legislative history demonstrates that the legislature’s purpose in enacting the final sentence of RSA 266:44 was to require that all equipment related to tail lamps be functional and that that provision was not intended to apply to plate lights. A58-A101. The final sentence of RSA

266:44 was added to the statute in 2002 (as was a similar addition to RSA 266:38 governing stop lamps). Id.

The legislature clearly stated that the purpose of the amendment was to “require[] that when a vehicle is manufactured with multiple stop lamps, multiple tail lamps, or stop lamps or tail lamps with multiple bulbs of filaments, each of the lamps, bulbs, or filaments shall be in working order.” A60, A64, A83; see also A98-A99, A101. In addition, the Director of the Police Standards and Training Council, Earl Sweeney, who had requested the bill, submitted written testimony to both the Senate and House committees discussing the bill. A71, A91-A92. In that testimony, he indicated that the bill was focused on updating the law as it related to changes in the manufacturing of tail lamps and stop lamps and the impact these lights have on traffic safety. Id. There is no mention in the legislative history of plate lights. A57-A101.

For these reasons, the Court should not interpret the final sentence of RSA 266:44 as requiring that all plate lights with which a car is manufactured be in working order. The purpose of plate lights is sufficiently and explicitly governed by the first sentence of the statute, that requires illumination that makes visible the characters on a license plate.

Because Carleton did not have reasonable and articulable suspicion that O’Brien was violating the

requirement of RSA 266:44 that her car have a light illuminating the license plate, the court erred in denying O'Brien's motion to suppress the stop. This Court must reverse.

B. The officer unreasonably expanded the scope of the stop.

“The scope of a stop may be expanded to investigate other suspected illegal activity only if the officer has a reasonable and articulable suspicion that other criminal activity is afoot.” Francisco Perez, 173 N.H. at 257 (quotation omitted). An “investigatory stop may metamorphose into an overly prolonged or intrusive detention and, thus, become unlawful.” Id. “Whether the detention is a lawful investigatory stop, or goes beyond the limits of such a stop, depends upon the facts and circumstances of the particular case.” Id. New Hampshire’s approach “recognizes that the scope requirement was not intended to prevent officers from engaging in facially innocuous dialog which a detained motorist would not reasonably perceive as altering the fundamental nature of the stop.” State v. McKinnon-Andrews, 151 N.H. 19, 25 (2004)(quotation omitted).

To determine whether the scope of an investigatory stop has been exceeded, the Court considers whether:

- (1) the question is reasonably related to the initial justification for the stop; (2)

the law enforcement officer had a reasonable articulable suspicion that would justify the question; and (3) in light of all the circumstances, the question impermissibly prolonged the detention of changed its fundamental nature.

Id.

Even if Carleton had reasonable and articulable suspicion that O'Brien violated RSA 266:44, he unreasonably expanded the scope of the stop. The stated reason for the stop was the non-functioning left license plate light. However, Carleton then engaged in a discussion with O'Brien about drugs. He asked her about the smell of marijuana. He asked her if she had any drugs in her car. He then engaged in a discussion about the legality of marijuana in New Hampshire versus in her home state of Massachusetts. Carleton did not have reasonable and articulable suspicion of a drug crime to expand the scope of the motor vehicle stop.

This Court considered whether, given the decriminalization of marijuana, the odor of marijuana can give rise to reasonable and articulable suspicion of criminal activity in State v. Francisco Perez, 173 N.H. 251, 259-62 (2020). After considering the language of the decriminalization statute and the purpose of the statute, in addition to the medical marijuana statute, the Court rejected the State's argument that "the detected odor of marijuana

alone supports, per se, a reasonable, articulable suspicion that a person possesses an illegal quantity of marijuana.” Id. at 262.

However, in Francisco Perez, the officer made numerous observations in addition to an odor of marijuana that supported a reasonable and articulable suspicion. Id. at 254-56. For example, the defendant had not stopped his car immediately, he appeared nervous, he was driving a rental car, his passenger acted oddly, the defendant volunteered information about their travels, there were three cell phones in the car, the defendant was on parole for murder, and the defendant and the passenger gave inconsistent accounts of their travels. Id. The officer could not recall whether the odor of marijuana he detected was of fresh or burnt marijuana. Id. at 255.

This quantity of evidence has also supported a finding of reasonable and articulable suspicion in other cases. For example, in State v. Sage, 170 N.H. 605 (2018), the officer had reasonable and articulable suspicion to expand the scope of a motor vehicle stop where the defendant had been speeding, there was an odor of alcohol, her eyes were red and watery, her account of her travels varied, and she denied having had anything to drink.

Here, the only evidence supporting an inquiry into drug possession was the smell of burnt marijuana. O’Brien

indicated she had smoked marijuana earlier in the day, which corroborated Carleton's observation of the odor. The smell of burnt marijuana supports the reasonable inference that O'Brien only ever possessed a non-criminal amount and that she no longer possessed it, having already consumed it. There was no reasonable or articulable suspicion that O'Brien then possessed an illegal amount of marijuana, or any other drugs, in her car. Nor did Carleton have reasonable or articulable suspicion that her admitted use of marijuana caused her to be driving under the influence.

Carleton's conversation with O'Brien about drugs impermissibly expanded the scope of the stop in two ways. It extended the length of time that an equipment malfunction motor vehicle stop would take. See, e.g., A71, A91-A92 (Sweeney's testimony establishing that an equipment malfunction stop would typically be very brief). The evidence at the suppression hearing established that during this conversation, Carleton was holding O'Brien's license and registration and he had not yet gone to his cruiser to run them.

In addition, the inquiry into drugs changed the fundamental nature of the stop. "A reasonable motorist in [O'Brien's] position would understand that [an inquiry into drugs] altered the fundamental nature of the stop." Morrill, 169 N.H. at 722 (Hicks, J., concurring). "An investigation

into the possession of contraband is fundamentally different from an investigation of traffic violations.” Id.

Because the discussion of drugs was supported only by the odor of freshly burnt marijuana, the expansion of the scope of the stop was impermissible under Francisco Perez. Moreover, that discussion impermissibly expanded the scope of the stop in terms both of the duration and the nature of the interaction. The court erred in finding that Francisco Perez supported the discussion about drugs in this case. This Court must reverse.

C. O’Brien’s consent was a product of the illegal detention

“The fruit of the poisonous tree doctrine requires the exclusion from trial of evidence derivatively obtained through a violation of Part I, Article 19 of the New Hampshire Constitution.” Morrill, 169 N.H. at 717 (quotation omitted). “[W]hen consent is the product of an unlawful detention during a motor vehicle stop, such consent is ‘tainted’ by the illegality of the detention.” Id.

“When determining whether the State has purged the taint of an unlawful detention followed by a consent to search,” this Court considers the following factors:

- (1) the temporal proximity between the police illegality and the consent to search;
- (2) the presence of intervening

factors; and (3) the purpose and flagrancy of the official misconduct.

Hight, 146 N.H. at 750 (quotations omitted). If the consent occurs while the defendant is being unlawfully detained, “there is absolute temporal proximity between the unlawful detention and the defendant’s consent.” Id. Such was the case here – O’Brien consented after being unlawfully stopped and after Carleton unlawfully expanded the scope of the stop.

If an officer informs a defendant that they have a right to refuse consent, that can be an intervening circumstance that might purge the taint of an unlawful detention. Id. That did not occur here. As such, O’Brien’s consent was not “an act of free will.” Id. (quotation omitted). As in Hight, here, the officer’s “continued possession of the defendant’s license and registration . . . makes it less likely that the defendant’s consent was an act of free will.” Id. at 750-51. A reasonable person would not feel free to leave without these important documents.

Finally, the officer’s conduct here was flagrant. An officer who intended only to advise a motorist that a license plate light was malfunctioning would have approached O’Brien at the gas station. Instead, Carleton pulled over to wait for her to leave the gas station for the express purpose of seizing her and her car. What should have been a brief

equipment malfunction discussion quickly became a far-ranging inquiry into all illegal drugs.

For these reasons, the Court should suppress all fruits of the stop, reverse the trial court, and remand for further proceedings based on the Court's decision.

CONCLUSION

WHEREFORE, LeeAnn O'Brien respectfully requests that this Court reverse the trial court's ruling and remand for further proceedings consistent with the Court's decision.

Undersigned counsel requests fifteen minutes of oral argument before a full panel of this Court.

The appealed decision is in writing and is appended to the brief.

This brief complies with the applicable word limitation and contains under 5400 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been timely provided to the Criminal Bureau of the New Hampshire Attorney General's Office through the electronic filing system's electronic service.

/s/ Stephanie Hausman
Stephanie Hausman

DATED: August 19, 2022

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The State of New Hampshire

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v.

LeeAnn O'Brien

Docket No.: 217-2020-CR-00196

ORDER

The defendant, LeeAnn O'Brien, stands charged with one felony count of Possession of a Narcotic Drug and one misdemeanor count of Control of Premises or Vehicle Where Controlled Drug Illegally Kept. The charges stem from a March 1, 2020 encounter with Hooksett Patrol Officer Brandon Carleton. Presently before the Court is Ms. O'Brien's motion to suppress the evidence obtained during this encounter. The State objects. The Court held an evidentiary hearing on this matter on June 4, 2021. For the reasons set forth below, Ms. O'Brien's motion to suppress is DENIED.

I. Background

The following factual findings are derived from the credible testimony provided by Officer Carleton during the aforementioned hearing. On March 1, 2020, at approximately 7:15 pm, Officer Carleton was traveling on Bell Avenue in Hooksett near the Circle K gas station. Officer Carleton observed a white Acura without a left license plate light. Officer Carleton had previously observed Ms. O'Brien at the gas station, looking at the license plate light. Based on the missing light, Officer Carleton pulled over the vehicle. He approached the vehicle and immediately noticed a strong odor of

marijuana coming from the car, as the driver rolled down the window. Officer Carleton spoke to the driver, Ms. O'Brien, who was the sole occupant in the vehicle. Officer Carleton told her the plate light was out and asked for her license and registration. Ms. O'Brien replied that she was aware that the light was out because "someone was just looking at it at the gas station."

Officer Carleton told Ms. O'Brien that he could smell "freshly burned" marijuana coming from the vehicle. He asked her if she had any marijuana in the car and Ms. O'Brien replied that there was no marijuana in the car, but that she had smoked earlier in the day. Officer Carleton asked Ms. O'Brien if he could search the car, to ensure that there were no drugs inside the car. Officer Carleton made it clear that he would search "everything inside" of the vehicle. Ms. O'Brien said that he could search the vehicle. Officer Carleton called for backup, so that "there was a witness to the search." Ms. O'Brien exited the vehicle and Officer Carleton conducted a search of the car, once his backup came to the scene. Officer Carleton found a brown purse in the back of the car, inside of which was Ms. O'Brien's social security card and two wrappers containing an orange pill split in half. Officer Carleton recognized the pill as suboxone.

Officer Carleton then asked Ms. O'Brien if the purse was hers and she said that it was. He told her that he had found the two pieces of pill and he asked her what it was. Ms. O'Brien confirmed that it was suboxone and that she was "holding it for her brother and it was not hers." At that time, Officer Carleton placed Ms. O'Brien under arrest.

Officer Carleton testified that he had no "institutional knowledge" of Ms. O'Brien having previously had a case involving the Hooksett police thrown out due to an improper search. He testified he had no knowledge of this previous case.

II. Analysis

In her motion to suppress, Ms. O'Brien first argues that the evidence should be suppressed because Officer Carleton lacked reasonable suspicion to pull over Ms. O'Brien's vehicle, in violation of her rights under the Fourth Amendment of the U.S. Constitution, as well as Part I, Article 19 of the New Hampshire Constitution. Although Ms. O'Brien's motion invokes both the New Hampshire Constitution and the Federal Constitution, the State Constitution is at least as protective as its federal counterpart in this area of search and seizure jurisprudence. Compare N.H. CONST. pt. I, art. 19, with U.S. CONST. amend. IV. Accordingly, the Court will address Ms. O'Brien's claims under the State Constitution, citing federal cases for guidance only. See State v. Bell, 164 N.H. 452, 455 (2012).

Part I, Article 19 of the New Hampshire Constitution ensures that all persons are protected from unreasonable searches and seizures by the government. State v. Craveiro, 155 N.H. 423, 426 (2007). "[A seizure] 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. Licks, 154 N.H. 491, 493 (2006) (quotation omitted). While warrantless seizures are generally per se unreasonable, as an exception, a police officer may conduct a brief investigatory stop when the officer has reasonable suspicion "that the person detained has committed, was committing, or was about to commit a crime and the officer is able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." State v. Melanson, 140 N.H. 199, 200-01 (1995) (quotation and brackets omitted).

Reasonable, articulable suspicion means "suspicion based upon specific, articulable facts taken together with rational inferences from those facts—that the particular person stopped has been, is, or is about to be, engaged in criminal activity." McKinnon-Andrews, 151 N.H. at 25–26 (citations and quotations omitted). "Reasonable suspicion may be based upon activity that is consistent with both guilty and innocent behavior," id. at 26–27, and an officer need not "rule out innocent explanations before proceeding," State v. Galgay, 145 N.H. 100, 103 (2000).

In this case, Officer Carleton stopped Ms. O'Brien's vehicle after observing the vehicle's broken license plate light. Ms. O'Brien argues that because Officer Carleton had no difficulty reading the license plate and that Officer Carleton had previously observed Ms. O'Brien at the gas station looking at the broken light, Officer Carleton lacked the reasonable suspicion to pull over Ms. O'Brien's car.¹ (Mot. Supp. ¶¶ 7–9.) The Court, however, disagrees. Ms. O'Brien was driving with a defective license plate, which is a violation of RSA 266:44. The fact that Officer Carleton could read the license plate does not render her defective light beyond the scope of RSA 266:44. Therefore, the initial seizure of the car was justified, as Officer Carleton observed a traffic law violation.

Next, Ms. O'Brien argues that the evidence should be suppressed because she did not freely consent. (Mot. Supp. ¶¶ 16–17.) Under Part I, Article 19 of the New Hampshire Constitution, "warrantless searches are per se unreasonable unless they fall within the narrow confines of a judicially crafted exception." State v. LaBarre, 160 N.H.

¹ Ms. O'Brien alleges that the stop was mere "subterfuge" to harass Ms. O'Brien, who previously had a case with the Hooksett police thrown out for improper search. (Mot. Supp. ¶¶ 7, 16.) Officer Carleton testified that he has no knowledge of this previous case. As such, the Court does not find this theory credible.

1, 7 (2010). “One such exception exists where the officer has consent to search the [property].” State v. Coyman, 130 N.H. 815, 818 (1998). “To determine whether a search has exceeded the scope of the permission granted, we ask whether under the circumstances surrounding the search, it was objectively reasonable for the officers conducting the search to believe that the defendant had consented to it.” State v. Livingston, 153 N.H. 399, 408 (2006).

In support of her argument, Ms. O’Brien argues that Officer Carleton made no observations that Ms. O’Brien was currently high on marijuana, nor if the strong scent of marijuana was emanating from her clothing or hair. (Mot. Supp. ¶¶ 10–11.) However, the scent of the marijuana emanating from the car was sufficient for Officer Carleton to ask for permission to search the car. State v. Perez, 173 N.H. 251, 262–63 (2020) (Holding that while the possession of small amounts of marijuana are decriminalized, the odor of marijuana may serve as a basis for reasonable suspicion that illegal activities involving marijuana are underway, such as operating a vehicle under the influence of marijuana.) Ms. O’Brien also points to the fact that there was no documentation of Ms. O’Brien’s consent, “despite the fact that law enforcement officers are known to carry consent forms in their cruisers.” (Id. ¶ 12.) However, it is not necessary for police officers to have a form filled out to obtain lawful consent. Rather, it is well established that officers can rely on verbal consent. State v. Saunders, 164 N.H. 342 (2012). Ms. O’Brien states in her pleading that Officer Carleton threatened to seize and impound the car and offered her no other options to the search, so that she was forced to consent to the search. (Mot. Supp. ¶¶ 13–16.) However, this is not consistent with the testimony provided to the Court at the hearing, in which Officer Carleton

testified that, after observing a strong scent of freshly burned marijuana, he asked Ms. O'Brien if he could search the car to ensure that there were no drugs in the vehicle, and that she responded that he could. As such, the Court finds that Ms. O'Brien's consent was freely given.

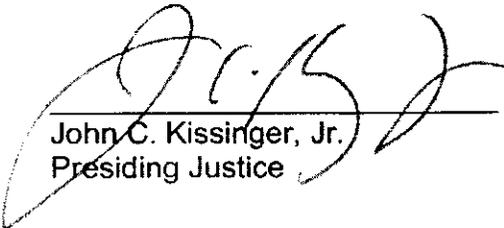
III. Conclusion

For the foregoing reasons, Ms. O'Brien's motion to suppress is DENIED.

SO ORDERED.

Date

7/12/21


John C. Kissinger, Jr.
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 07/19/2021

State of New Hampshire

Merrimack,ss.

Superior Court

20-CR-196

State

v.

LeeAnn O'Brien

MOTION TO SUPPRESS

NOW COMES defendant LeeAnn O'Brien, and says as follows:

1. Ms. O'Brien is charged with a Felony count of Possession of Narcotic Drug (Buprenorphine); and Misdemeanor count of Control of Premises or Vehicle Where Controlled Drug Illegally Kept.

2. The charges grow out of a vehicle stop, in the context of which Ms. O'Brien was the driver, the circumstances of which stop and detention mandate that the evidence against Ms. O'Brien be suppressed for reasons illustrated below.

The Encounter with Law Enforcement

3. On March 1, 2020, at approximately 7:15 PM, Officer Brandon Carleton indicates that he was traveling south on Bell Avenue in Hooksett when he observed a vehicle in front of him had a defective license plate light, so that the left side of the plate was not illuminated. He did not indicate that he had any trouble reading the plate. He initiated a traffic stop, and approached the driver, the sole occupant of the car. He says that he told her that her plate light was out, and by his account, she said she knew, as her friend had just pointed it out to her at the gas station. The officer had in fact driven past her when she was inspecting the plate light moments earlier.

The officer says that he smelled strong odor of marijuana in the car, and asked Ms. O'Brien if she had been smoking. According to the officer, Ms. O'Brien said she had done so earlier in the day. He asked to search the car for drugs and she consented. During the search of the car, he located a brown purse in the rear seat, opened it, searched it, and located in the bottom of the purse two wrappers, which he opened, each of which contained one-half of an orange pill. He surmised that they were likely to be suboxone. He asked Ms. O'Brien, and she said they were indeed suboxone, belonging to her brother. She was arrested and taken to the police station, where she was Mirandized and again asked about the purse, which she identified as hers, and the pills, which she said she was holding for her brother.

Reasonable Suspicion?

4. In order for a stop to be lawful, there must be facts and inferences sufficient to convince the officer that the stopped person is, was, or is about to be engaged in criminal activity. State v. Hight, 1146 NH 746, 748 (2001).

5. The officer in the instant matter unimaginatively relies upon the tried and true rationale regarding insufficient illumination of the license plate lights, under circumstances where he had no problem reading the plate before stopping the vehicle..

6. There is no argument regarding the police ability to stop a vehicle for minor violations if witnessed by an officer, State v. McKinnon-Andrews, 151 NH 19, 23 (2004). Nor is there a dispute that even pretextual stops can be deemed lawful if there is some actual offense objectively observable. State v. McBreairty, 142 NH 12, 15 (1997).

7. The problem here, however, is that the purported license plate violation was false. It was a subterfuge, a pretext for inducing contact with someone that he, and indeed his department had been watching and intentionally encountering, as she was suspected of illegal activity.

8. There were no facts and inferences leading to reasonable suspicion that illegality was afoot. The officer had no problem reading the license plate. He had just seen Ms. O'Brien inspecting the plate light, so he knew that she was aware of it. He waited nearby for the opportunity to stop her, fully intending to do so after she left the gas station.

9. Under the circumstances, there was no lawful basis for the intrusion upon the privacy interests of Ms. O'Brien, such that any evidence resulting from the unlawful stop must be suppressed, in the defendant's exercise of her rights under the 4th Amendment to the United States Constitution, and Part I, Article 19 of the NH Constitution.

Consent?

10. The officer made no observations indicting that Ms. O'Brien had indeed been using marijuana – no indication that her eyes were bloodshot, no lack of motor skills, no unusual appearance nor demeanor. He indicated that he perceived what he termed a strong smell of marijuana, and informed Ms. O'Brien of his perception, to which she responded that she had smoked earlier in the day. He asked if there was marijuana or other drugs in the car. She said no.

11. The officer made no effort to determine whether the purported smell of marijuana was emanating from Ms. O'Brien's clothing or hair. He merely relied on a possibility that there was marijuana in the car, and so asked for her consent to search.

12. There is no documentation of Ms. O'Brien's consent, despite the fact that law enforcement officers are known to carry consent forms in their cruisers. Consequently, any determination of Ms. O'Brien's consent, and of her understanding of the scope of such consent to search, remains to be determined.

13. The officer in fact threatened to seize and impound the car, in order to obtain a search warrant. Such threat, based in nothing more than a purported smell of marijuana, was an empty one, unlikely to result in issuance of a search warrant.

14. The officer did not offer Ms. O'Brien any options, such as deployment of a drug-sniffing canine. Unlike in State v. Livingston, 153 NH 399, 405 (2006), the officer's threat to have the car towed was not merely explanatory, but coercive.

15. Similarly, in State v. Patch, 142, NH 453, 459 (1997), the police provided alternatives to Mr. Patch, which the Court indicated made his consent free, knowing and voluntary, as required for a lawful intrusion.

16. Under circumstances where Ms. O'Brien had endured multiple intrusions by police, and had been deprived of her car for extended period; and where the officer had stopped her for an alleged violation that barely qualified as *de minimis*, yet threatened to impound her car on the basis of an alleged smell of marijuana; and where the officer's threat was an empty one, and he offered no alternatives to consent or seizure, Ms. O'Brien felt that she had no alternative but to consent, so that such consent was not freely given, and cannot support use of any contraband discovered as a result of the unlawful search.

PERSONNEL NARRATIVE FOR PATROL BRANDON A CARLTON
Ref: 20HKS-112-AR

Entered: 03/01/2020 @ 2135 Entry ID: 109
Modified: 03/01/2020 @ 2320 Modified ID: 109
Approved: 03/02/2020 @ 1809 Approval ID: 88

On 3/1/20 at approximately 1915 hours, I, Officer Brandon Carlton was travelling south on Bell Avenue when I observed the following vehicle travelling south in front of me on Bell Avenue

Year:2015
Make:Acura
Model: RDX
Color:White
MA Reg: 7YN988

I observed that the vehicle had a defective left plate light and the left side of the license plate was not illuminated. I activated my emergency lights and stopped the vehicle in the area of 10 Bell Avenue. I approached the vehicle on the driver's side and made contact with the operator identified as

Lecann O'Brien
11/17/89

I informed her of the reason for the stop and asked her for her license and registration. O'Brien handed me her documents and stated that she knew her plate light was defective as her friend had just informed her at the gas station. While I was speaking with her I noticed a strong odor of marijuana coming from inside of the vehicle. I informed O'Brien that I noticed a strong odor of marijuana coming from the inside of her vehicle and she stated she had smoked earlier in the day. I asked her if there was any marijuana or any other illegal drugs inside of the vehicle and she stated there was not. I asked her if it was okay for me to search the vehicle to make sure there was not marijuana or other illegal drugs inside of the vehicle. O'Brien gave me consent to search her vehicle. During my search of the vehicle I located a brown purse in the rear seat of the vehicle. I opened the purse and I noticed O'Brien's social security card inside of the purse. During my search of the purse I noticed two small clear wrappers in the bottom of the purse. I removed the wrappers and observed an orange pill split into two pieces inside one of the wrappers and a small piece of another orange pill inside of the other wrapper. Through my training and experience I suspected the orange pill to be Suboxone. I spoke with O'Brien and I showed her the wrappers with the pieces of orange pills inside. I asked her what was inside of the wrappers and she identified the orange pills as Suboxone. She stated that they were not her's and she let her brother drive her car a few days ago. I secured the pills into an evidence bag to be transported to the police department. I placed O'Brien under arrest for the charges of possession of a controlled substance and transporting drugs inside of a motor vehicle. I placed her in handcuffs, checked for proper fit, and double locked them. I conducted a search of her person for weapons, contraband, and implements of escape and found nothing. I secured her into the rear passenger seat of my cruiser 001 with a shoulder and lap belt to be transported to The Hooksett Police Department to complete the booking process. Her vehicle was released to her boyfriend identified as

Jose Cruz
9/17/77

Ref: 20HKS-112-AR

Entered: 03/01/2020 @ 2135 Entry ID: 109
Modified: 03/01/2020 @ 2320 Modified ID: 109
Approved: 03/02/2020 @ 1809 Approval ID: 88

Upon my arrival to the booking area I conducted a secondary search of her person and found nothing. I read O'Brien her miranda rights and she stated she understood each right and wished to speak with me. I asked her if the brown purse in the back of her vehicle was her purse and she stated it was. I asked her if the orange pills were suboxone and she stated they were. She stated that she was just holding on to them for her brother as he had just got out of jail. O'Brien completed the booking process without issue. She was charged with possession of a controlled substance and transporting drugs inside of a motor vehicle. She requested the services of a bail commissioner and Nancy Ringland arrived and set personal recognizance bail with a court date of 3/19/20 at 1400 hours held at the Merrimack Superior Court. I secured the orange pills into two evidence bags, sealed them both and placed the bag into evidence locker #15. All of the proper paperwork has been scanned into this report.

End of report.

State of New Hampshire

Merrimack,ss.

Superior Court

20-CR-196

State

v.

LeeAnn O'Brien

AFFIDAVIT of LEEANN O'BRIEN

NOW COMES LeeAnn O'Brien, who, being duly sworn, says as follows:

1. On March 1, 2020, I saw the officer who later arrested me drive past the gas station, where my defective plate light had been pointed out to me.

2. When the officer drove by, he saw that my mechanic and I were trying to restore the left light to operate, though the license plate was illuminated and readable despite the fact that one light was not working.

3. The officer waited, not far away from the gas station, and pulled me over immediately upon my entry onto the roadway.

4. Two months earlier, I had a case from an incident in North Manchester, near the Hooksett line, dropped due to an unlawful search. Between January and March of 2020, I was pulled over repeatedly in Manchester and Hooksett, and when driving to and from those locales. I was even stopped for jaywalking at 2:00 AM in Manchester. I had no doubt that these incidents were in retaliation for my success in the case with the earlier unlawful search.

5. In response to the officer's question about marijuana, I told the officer that I had smoked earlier in the day, at my hotel, and that there was nothing in the car.

6. The officer here said that he would seize my car if I did not allow him to search, though he did not explain, and I did not know, the legal basis for such seizure. I assumed it was to search for marijuana, and I knew there was no marijuana in the car. When my car had been seized previously, I was forced to get along without it for 30 days. I could not do that again, so I felt that I had no choice but to consent to the search.

7. He did not tell me, and I certainly did not know, that allowing him to search my car included closed containers like my purse, and closed packages within my purse.

8. I did not have opportunity to object to such extensive search as it was happening, because I was at that time dealing with another officer on scene.

9. It was not my intent to allow such an extensive search.

10. The officer at no point offered me any alternatives – either I consent to the search, or he has the car towed. I felt that I had no choice but to consent.

11. I was honest and cooperative with the officer at all times.

Further the affiant saith not.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

/s/ LeeAnn O'Brien w/p by T. Barnes
Affiant, LeeAnn O'Brien

State of New Hampshire
Merrimack, SS.
Date: 4/22/21

Ms. O'Brien made oath to the truth of the foregoing, to the best of her knowledge and belief; and further authorized counsel to execute her signature for her.

Date: 4/22/21

/s/ Theodore Barnes

Theodore Barnes

Justice of the Peace

NH Bar ID # 214

8 Court Street

Concord, NH 03301

Phone: (603) 225-5663

FAX: (603) 225-7155

Email: ted.barnes@myfairpoint.net

TedBarnesLaw.NH@gmail.com

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

THE STATE OF NEW HAMPSHIRE

V.

LeeAnn O'Brien

2020-CR-196

OBJECTION TO MOTION TO SUPPRESS

NOW COMES, The State of New Hampshire, by and through the Office of the Merrimack County Attorney, Wayne P. Coull, Assistant Merrimack County Attorney, and respectfully objects to the above captioned motion and in support thereof states:

1. On March 1, 2020, Officer Carleton being driving with a defective liense plate. That constitutes a motor vehicle infraction See, RSA 266:44. The officcr stopped the car and spoke with the defendant, who was the driver of the car. As the officer spoke with the defendant, the officer noted a strong odor of marijuana coming from the car. The officer inquired about the sm,ell and if the defendant had other drugs. The defendant denied having any drugs. The officer asked if he could look in the car and the defendant consented. A search of the car discovered drugs.

5. The stop of the car was constitutional. The officer noted an equipment infraction. This is a sufficient basis for the stop. In State v. Kennison, the court said that “an investigative stop passes constitutional muster where it is substantially less intrusive than an arrest, and where the investigating officer undertook the stop ‘on the basis of a reasonable suspicion that the person detained had committed, was committing, or was about to commit a crime’”. State v. Kennison, 134 N.H. 243, 246 (1991) (quoting, State v. Pellicci, 133 N.H. 523 (1990)). The officer must “be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” Kennison, at 247 (quoting State v. Brodeur, 126

N.H. 411, 415, 493 A.2d 1134, 1137-38 (1985) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968)). The New Hampshire Supreme Court has previously held that under certain circumstances an investigative stop based on less than probable cause may be constitutionally permissible when it is substantially less intrusive than an arrest and based on reasonable suspicion. See *State v. Pellicci*, 133 N.H. 523, 528-29, 580 A.2d 710 (1990). In reviewing an investigative stop, the Court will balance the governmental interest in requiring the stop against the right of our citizens to remain free from unreasonable governmental intrusion. See *id.* at 529, 580 A.2d 710. The stop must be based on a "reasonable suspicion" by the investigating officer "that the person detained had committed, was committing, or was about to commit a crime." *Id.*

6. The conversation between the Officer and the defendant was not unconstitutional. A police officer may ask a "detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions" without having to advise the person of Miranda rights. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). "The scope of the detention must be carefully tailored to its underlying justification...must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Maya, Supra* (citing *Florida v. Rover, Supra*). The strong odor of marijuana justified the inquiry about drugs in the car.

7. The defendant consented to the search. A warrantless search is valid if the defendant consented to the search. The State bears the burden of showing, by preponderance of the evidence that the consent was knowingly, freely and voluntarily given. *State v. Pinder*, 126 N.H. 220 (1985) There is no obligation to tell a defendant he can refuse to consent. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *State v. Osborne*, 119 N.H. 457 (1973). Detention of the defendant doesn't presume a lack of consent. In *State v. Livingston*, 153 N.H. 399, 402 (2006) the Supreme Court upheld a consent to search a vehicle after the driver had been stopped by the police. The Trooper had stopped a commercial truck for an inspection and upon smelling freshly burned marijuana, asked the driver for consent. A discussion followed in which the Trooper explained if the defendant did not consent, the Trooper would have is k-9 conduct go around the truck and

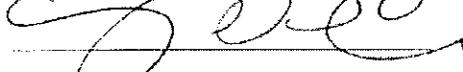
if the k-9 detected drugs he would apply for a warrant. That defendant consented and the consent was upheld.

WHEREFORE, The State respectfully requests that this Honorable Court:

- A. Deny the defendant's motion to suppress; and,
- B. Hold a hearing on this matter; and,
- C. Grant such other and further relief as this Honorable Court deems just and proper.

May 3, 2021

RESPECTFULLY SUBMITTED



Wayne P. Coull

Deputy County Attorney

I hereby certify that a copy of this pleading was forwarded, on the above date to Theodore Barnes Esq., Counsel for the Defendant.



Wayne P. Coull

Deputy County Attorney

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: Merrimack Superior Court
Case Name: State v. Lee Ann E. O'Brien
Case Number: 2020 CR 196 Charge ID Number: 1731582
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty
Crime: Possession of Buprenorphine Date of Crime: 03/01/2020
A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a felony

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____
OR A person similarly situated to _____

CONFINEMENT

- A. The defendant is sentenced to the House of Corrections for a period of 12 months 90 days.
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:

- Stand committed Commencing _____
 Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
 All of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 4 years from today or release on charge ID number _____

_____ of the sentence is deferred for a period of _____
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

- C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

- D. The court recommends to the county correctional authority:
- Work release consistent with administrative regulations.
 Drug and alcohol treatment and counseling.
 Sexual offender program.

Case Name: _____
Case Number: _____
HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of 2 year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. Fines and Fees:
Fine of \$ 350.00, plus a statutory penalty assessment of \$ 84.00 to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10% service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ All of the fine and \$ all of the penalty assessment is suspended for 2 year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. Restitution:
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

- C. Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.
 The Court finds that the defendant has the ability to pay counsel fees and expenses in the amount of \$ _____ payable through _____ in the amount of \$ _____ per month.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: _____

Case Number: _____

HOUSE OF CORRECTIONS SENTENCE

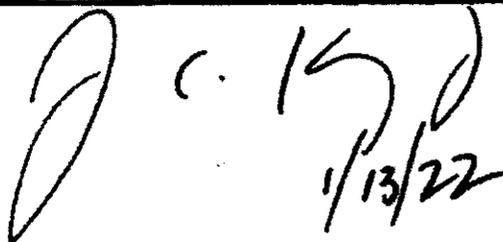
OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

The defendant shall get a LADAC evaluation and comply with any recommended treatment.

Defendant can seek restoration of probation after 1 year if there are no violations.

For Court Use Only


 1/13/22

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: Merrimack Superior Court

Case Name: State v. LeeAnn O'Brien

Case Number: 217-2020-CR-196 Charge ID Number: 1731583
(If known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: <u>Guilty</u>	
Crime: <u>Control of Vehicle where drugs are kept</u>	Date of Crime: <u>03/01/2020</u>

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Misdemeanor

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____

OR A person similarly situated to _____

CONFINEMENT

A. The defendant is sentenced to the House of Corrections for a period of 12 months 70 days
Pretrial confinement credit is _____ days.

B. This sentence is to be served as follows:

Stand committed Commencing _____
 Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____

All _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on charge ID number _____

_____ of the sentence is deferred for a period of _____
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID 2-CR-192-1731583

D. The court recommends to the county correctional authority:

- Work release consistent with administrative regulations.
- Drug and alcohol treatment and counseling.
- Sexual offender program.
- _____

Case Name: _____

Case Number: _____

HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.

Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

A. Fines and Fees:

Fine of \$ _____, plus a statutory penalty assessment of \$ _____ to be paid:

- Today
- By _____

Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. Restitution:

The defendant shall pay restitution of \$ _____ to _____

Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: _____

C. Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ _____

payable through _____ in the amount of \$ _____ per month.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: _____

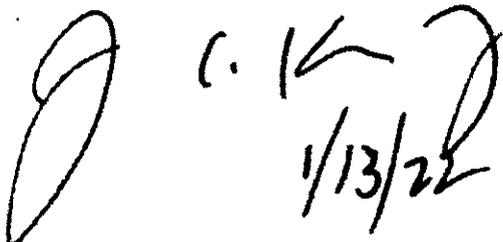
Case Number: _____

HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other.

For Court Use Only



A large rectangular box containing a handwritten signature and the date "1/13/22". The signature is written in black ink and appears to be "C. [unclear]".

Bill as Introduced

HB 1134 - AS INTRODUCED

2001 SESSION

01-2136
03/09

HOUSE BILL **1134**

AN ACT relative to lighting requirements for motor vehicles and trailers.

SPONSORS: Rep. Reid, Straf 12

COMMITTEE: Transportation

ANALYSIS

This bill provides that a motor vehicle, full trailer, or semi-trailer may be equipped with more than one stop lamp, provided that if a vehicle is manufactured with multiple stop lamps, each of the stop lamps shall be in working order.

This bill was requested by the police standards and training council.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to lighting requirements for motor vehicles and trailers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Equipment of Vehicles; Stop Lamps; Multiple Stop Lamps. Amend RSA 266:38 to read as
2 follows:

3 266:38 Stop Lamps. It shall be unlawful for any person to drive any motor vehicle, including
4 any motorcycle or motor-driven cycle, full trailer, trailer, or semi-trailer in this state unless it is
5 equipped with [a] ***one or more*** stop [~~lamp~~] ***lamps*** in working order at all times; provided, however,
6 that stop lamps shall not be required on a farm tractor, ***and further provided that whenever a***
7 ***vehicle is manufactured with multiple stop lamps, each of the lamps shall be in working***
8 ***order.***

9 2 Effective Date. This act shall take effect January 1, 2003.

HB 1134 - AS AMENDED BY THE HOUSE

6mar02...2709h

2001 SESSION

01-2136
03/09

HOUSE BILL **1134**

AN ACT relative to lighting requirements for motor vehicles and trailers.

SPONSORS: Rep. Reid, Straf 12

COMMITTEE: Transportation

AMENDED ANALYSIS

This bill provides that a motor vehicle, full trailer, or semi-trailer may be equipped with more than one stop lamp. This bill also requires that when a vehicle is manufactured with multiple stop lamps, multiple tail lamps, or stop lamps or tail lamps with multiple bulbs or filaments, each of the lamps, bulbs, or filaments shall be in working order.

This bill was requested by the police standards and training council.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to lighting requirements for motor vehicles and trailers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Equipment of Vehicles; Stop Lamps; Multiple Stop Lamps. Amend RSA 266:38 to read as
2 follows:

3 266:38 Stop Lamps. It shall be unlawful for any person to drive any motor vehicle, including
4 any motorcycle, *moped* or motor-driven cycle, full trailer, trailer, or semi-trailer in this state unless
5 it is equipped with [a] *one or more* stop [~~lamp~~] *lamps* in working order at all times; provided,
6 however, that stop lamps shall not be required on a farm tractor, *and further provided that*
7 *whenever a vehicle is manufactured with multiple stop lamps or stop lamps with multiple*
8 *bulbs or filaments, each of the lamps, bulbs, or filaments shall be in working order.*

9 2 Equipment of Vehicles; Tail Lamp and Reflectors; Multiple Tail Lamps. Amend RSA 266:44 to
10 read as follows:

11 266:44 Tail Lamp and Reflectors. Every motor vehicle and trailer or any combination of
12 vehicles, when on the ways of this state at night, shall have on the rear thereof, and to the left of the
13 axis thereof, one lamp, displaying a red light visible for a distance of at least 1000 feet to the rear of
14 such vehicle, and a white light illuminating the registration plate of such vehicle so that the
15 characters thereon shall be visible for a distance of at least 50 feet, except that passenger cars
16 manufactured or assembled after January 1, 1952, shall have at least 2 tail lamps, *one to either*
17 *side of the axis thereof*. On a combination of vehicles, only the tail lamps on the rearmost vehicle
18 need actually be seen from the distance specified. On vehicles equipped with more than one tail
19 lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.
20 All tail lamps on any vehicle shall be located at a height of not more than 72 inches nor less than
21 20 inches from the ground, measured from the ground to the center of the reflector, and shall be
22 placed in such manner as to indicate the extreme width of the vehicle and load and to reflect rays of
23 light thrown upon such reflector. The visibility of such reflectors shall not be impaired at any time.
24 *Whenever a vehicle is manufactured with multiple tail lamps or multiple bulbs or*
25 *filaments in the tail lamps, each of the lamps, bulbs, or filaments and any other exterior*
26 *lighting equipment with which the vehicle was manufactured shall be in working order.*

27 3 Effective Date. This act shall take effect January 1, 2003.

Amendments

Amendment to HB 1134

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to lighting requirements for motor vehicles and trailers and establishing a
4 grants coordinator in the department of safety.
5

6 Amend the bill by replacing all after section 2 with the following:

7

8 3 Department of Safety; Position Established; Grants Coordinator. There is established within
9 the department of safety, division of administration, a grants coordinator position. The grants
10 coordinator shall apply for and administer federal funds and private foundation aid to implement the
11 statewide criminal justice information system, and any additional federal and private foundation
12 funds that may become available to support programs at the department of safety or the police
13 standards and training council. The grants coordinator shall file quarterly reports with the
14 commissioner of safety and the director of police standards and training detailing the grants
15 obtained and managed by the grants coordinator.

16 4 Transfer Authorized; Police Standards and Training Council Training Fund. The police
17 standards and training council is authorized to execute an interagency agreement with the
18 department of safety and may, notwithstanding RSA 188-F:30, transfer to the department of safety
19 up to \$100,000 during the fiscal year ending June 30, 2003 in unappropriated penalty assessment
20 funds from the police standards and training council training fund for the purpose of funding the
21 first-year costs of the grants coordinator position, a clerical assistant, and other costs of the
22 department of safety associated with the grants coordinator. The department of administrative
23 services is authorized, upon request of the department of safety, to establish at appropriate salary
24 grades the necessary classified positions within the department of safety, division of administration,
25 and to allocate the funds transferred pursuant to this section to the appropriate requested class
26 codes for personnel, supplies, equipment, and travel in the department of safety budget for the fiscal
27 year ending June 30, 2003.

28 5 Effective Date. This act shall take effect upon its passage.

2002-3503s

AMENDED ANALYSIS

This bill:

I. Provides that a motor vehicle, full trailer, or semi-trailer may be equipped with more than one stop lamp.

II. Requires that when a vehicle is manufactured with multiple stop lamps, multiple tail lamps, or stop lamps or tail lamps with multiple bulbs or filaments, each of the lamps, bulbs, or filaments shall be in working order.

III. Establishes the position of grants coordinator in the department of safety and authorizes a transfer from the police standards and training council training fund to fund the position.

This bill was requested by the police standards and training council.

Committee Minutes

The second step now is to put a demonstration project together to demonstrate a small basis that the system works.

The third step is going to require, over a period of three or four years, about \$19 million to construct this, (sic) this data warehouse. And maintain it.

Its important for law enforcement. And its obvious that the state of New Hampshire is not going to have \$19 million in readily available state funds to do this.

We've been working with the Department of Safety and with representatives of the Police Chief's Association, Sheriff's Association, and searching for means by which the, (sic) the remainder of this could be funded.

We believe that there are tremendous amounts of money gonna be available from the federal government in the very near future. Terrorism funds and other funds. If someone just had the (unclear) to seek out these grants, and then to manage the grants after they're available.

So conceptually last week at a meeting, we discussed the possibility of allowing the Police Standards and Training Council to go to the Fiscal Committee, once we, (sic) once we gel this idea. And ask to create a position, using some of our funds that we would normally lapse in our, (sic) in our budget from year to year, to create a position of a grants manager who we would place over at the business office of the Department of Safety. Along with an accounting type person, such as an accounting technician.

And their job would be to seek out available federal funds to fund the CJIS program ultimately, and also to fund police training programs, and other, (sic) other programs for criminal justice for the next two or three years. From year to year we, (sic) we, (sic) we would probably, in succeeding years, put the item in our budget, and go through the budget process.

But in order to be able to react quickly and not have to wait until another budget cycle, we'd like to have the authority to go to the Fiscal Committee and do this. We have existing authority in the Police Standards and Training Council statutes, which say in the event there's a training need, that mandated training need can not be satisfied within our ordinary appropriation, that we can ask the Fiscal Committee and Governor and council to go to our fund, and solve that problem.

We've done that in the past, for example when the roof was, (sic) was leaking on the, (sic) on the training facility. We could say we can't train when its raining in the building. So we could do this.

But we don't think that the authority that we have to go to the Fiscal Committee is broad enough to cover a situation like this. So, I have been looking for a vehicle, a bill that looked like it was non-controversial and probably would pass, that we could ask either the Senate or the House to put this amendment on.

I didn't bring the amendment with me. I have it written back at the office. It just occurred to me as I hear Senator O'Neil ask that question about CJIS, that this might be the very vehicle to accomplish what we're looking to accomplish.

So with the committee's permission, I would like to be able to bring over to the chairman, this afternoon or tomorrow morning, some language that would make about a three word change in our authorizing authority that allows us to go to Fiscal Committee. And would say for training purpose or any other valid criminal justice purpose.

And then we would change the effective date of the bill, so that the taillight would remain effective on January 1, 2003. But the transfer authority would take place at the, (sic) at the beginning of, (sic) of, (sic) of this coming fiscal year, July 1 of 2002.

We'd be able to formulate our, (sic) our plan. Put together a small budget for it. I think you're talking probably \$100,000 or less. And simply go to Fiscal Committee, government council, and get that position established. And hopefully hunt down this money and just make sure that the money that's already been invested in designing a CJIS program just doesn't go, (sic) isn't wasted. And so that it doesn't have to be implemented by dribs and drabs, but can be implemented or designed to do over a three or four year period.

I'd be glad to answer any questions about that.

Senator Thomas R. Eaton, D. 10: What, (sic) what would be the difference of the whole bill taking effect on passage?

Earl Sweeney: I beg your pardon?

Senator Thomas R. Eaton, D. 10: What would be the difference of the whole bill taking effect on passage?

Earl Sweeney: That would be perfectly alright with me. I just think that the legislature's intention usually has been when they change the motor

vehicle law that it didn't take effect until the next January. But I see no harm of making it effective on passage.

Senator Thomas R. Eaton, D. 10: Senator McCarley?

Senator Caroline McCarley, D. 6: Yes, I just have one question. Which would be in terms of the, (sic) the idea, which I'm not necessarily opposed to, but I do wonder why you would suggest that you push the idea to fiscal. I mean, if its an idea and we have, I sit on Fiscal. And I watch people go through this every month (mumbled) budgets.

And I'm wondering if you're making the recommendation or would it simply be a part of this bill that the legislature would make a decision on this being a good idea or not. Whether that putting your outlying board here, and actually asking Fiscal to make the decision.

Earl Sweeney: Well, If you'd feel more comfortable with that, we could put in a, (sic) we could put in a guestimate, a sum, and then whatever, ya know, turned out to be what we didn't spend would obviously lapse back. So we could go in either direction.

It just occurred to me that it would make it easier if something like this ever happened in the future. We'd again be poised to be able to do it, rather than have to, ya know, because this came up, and I said 'wow we don't have the vehicle.'

But I have certainly no, (sic) no objections to doing it either way. Which ever way the committee feels is cleanest and the best.

Senator Daniel P. O'Neil, D. 18: I'd just want to make a comment. I, (sic) I appreciate the Director's thinking here. We've had a grant writer for a number of years. And the city of Manchester police department I think pays for itself five or six or maybe seven times.

A lot of money out there, but they're not handing it out. You gotta go get it. And we're talking about having a grant writer in the city fire department this year for the same reasons. So I commend the Director for his thinking in this.

Earl Sweeney: If you'd like, I could give you the language either way. And then the committee could decided which it felt was...

Senator Thomas R. Eaton, D. 10: The one (catch) I see in it is it allows you later on (mumbled) to come back and do it all over.

Earl Sweeney: That's correct. That's correct.

Senator Caroline McCarley, D. 6: I'm only offering the observation that I have known the Fiscal Committee to me somewhat adamant in situations where there was an opportunity to go to legislation, which is being presented here now, and say (no).

That's all. Really, it was truly not an opinion. It was not a judgement on the issue, cause I'd like a chance to think about it. But I just, I (mumbled) there, and I know how hard it can be.

Earl Sweeney: And I've heard that questions asked.

Senator Caroline McCarley, D. 6: That was the observation.

Senator Thomas R. Eaton, D. 10: Any other questions? Hearing none.

Earl Sweeney: Thank you. I'll have that language to you, sir.

Senator Thomas R. Eaton, D. 10: Thank you very much. I will now close the hearing on House Bill 1134.

Senator Eaton closed the public hearing on House Bill 1134 at 12:00 PM.

Respectfully submitted,

Jessica L. Cilley
Senate Secretary

Testimony of Director Earl M. Sweeney
NH Police Standards and Training Council
HB 1134 - Senate Transportation Committee

Mr. Chairman and Members of the Committee:

My name is Earl Sweeney and I am the Director of the Police Standards and Training Council. This bill was introduced by Rep. Reid at our request and we agree with the House amendments to the bill and I am here to support its passage today.

The bill was introduced at our request, to update one of our traffic laws and recognize the new lighting equipment on motor vehicles, and ensure that when an officer stops a vehicle to tell the motorist that the light is not working, that the officer has a legal right to do so.

In today's society where officers are supposed to be alert for everything from serial rapists to domestic terrorism and where some of the most serious crimes are uncovered as a result of what started as a routine traffic stop, it is important that our laws are as up-to-date as possible.

Years ago, the old vehicles with clamshell fenders came from the manufacturer with only one taillight and one brake light, on the left-hand rear of the vehicle, and so that is the way this law was written. Later on as there were more vehicles on the road and traffic became thicker, we put two lights on the rear - one to the left and one to the right. Then as the highway death toll rose to more than 40,000 a year, the National Highway Traffic Safety Administration mandated an additional, high, center-mounted stop lamp to reduce rear-end collisions, and it was successful. However, the light must be in working order to do its job.

Since most of us don't walk around our vehicles and have someone switch the lights on and off for us so we can be sure they are still working, most of us appreciate it if an officer stops us and tells us we have a light out. It is rare that we would get a ticket to go to court for this unless we were repeatedly warned and failed to fix the light. Generally, the officer just tells you about it or gives you an orange "fix-it-card" to take to an inspection station or the police station and have signed after we do the repair.

However, if an officer happens to discover a drunk driver or someone involved in a crime as a result of one of these defective equipment stops, if the vehicle had at least one light on the left rear, the stop is often challenged because the law is not clear that any lights on the vehicle should be in working order.

The result of updating this law will be to the benefit of the motoring public, because it will ensure that officers are not hesitant about stopping people and telling them if they are missing a light; it will reduce the incidence of rear-end collisions by having more of these lights in working order, and it will ensure that when a more serious crime is uncovered as a result of a routine brake or taillight stop, criminals do not go free on a technicality.

Thanks for listening, and I would be happy to answer any questions that you may have.

Speakers

SENATE TRANSPORTATION COMMITTEE

Date 4/2/02 Time 10:30 AM Public Hearing On HB 1134

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
<input checked="" type="checkbox"/>	EARL M. SWEENEY	17 Frohbe Avenue Concord, NH 03301-7142	Mt Police 5th St Quincy
<input type="checkbox"/>			

Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

<input type="checkbox"/>			

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Transportation

to which was referred House Bill 1134

AN ACT relative to lighting requirements for motor vehicles and
trailers.

VOTE: 2-0

AMENDMENT #

Having considered the same, report the same with the following amendment and
recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Thomas R. Eaton
For the Committee

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Transportation

to which was referred House Bill 1134

AN ACT relative to lighting requirements for motor vehicles and
trailers.

VOTE: 2-0

AMENDMENT # 3503,

Having considered the same, report the same with the following amendment and
recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Thomas R. Eaton
For the Committee

[Home](#)[Bill Status](#) ◆[Members](#) ◆[Calendars/Journals](#) ◆[Miscellaneous](#) ◆

HB1134 Docket

[Next](#)|[Prev](#)|[Results List](#)|[Main](#)|[Bill Status](#)

Bill Title: (New Title) relative to lighting requirements for motor vehicles and trailers and establishing a grants coordinator in the department of safety.

<u>Date</u>	<u>Body</u>	<u>Description</u>
6/26/2001	H	Introduced and ref to Transportation; HJ78, p1990
12/17/2001	H	Copy to Chairman on 12/18/2001 Report due on 2/21/2002
12/17/2001	H	Hearing Jan 3 1:45 RM203,LOB
2/19/2002	H	Maj Report OTP/AM for Mar 6 (vote 13-0;CC)
2/19/2002	H	Prop Comm Am{2709}; HC17, p645-646
3/6/2002	H	Passed with Am; HJ25, p972 + 1036
3/14/2002	S	Introduced and Ref. to Transportation; SJ 7, Pg.197
3/26/2002	S	Hearing; April 2, 2002, Room 104, LOB, 10:30 a.m.; SC19
4/17/2002	S	Committee Report; Ought to Pass with Amendment {3503},(New Title) [04/18/02]
4/18/2002	S	Ought to Pass with Amendment {3503},(New Title), AA, VV; SJ 12, Pg.460
4/18/2002	S	OT3rdg, MA, VV; SJ 12, Pg.460
4/25/2002	H	House Nonconc with Sen Am req Conf Comm, Rep Packard MA VV;
4/25/2002	H	(Spkr appts Reps: Packard, Letourneau, P Cote & Wheeler)
4/25/2002	S	Sen. Eaton Accede to House Request for Committee Of Conference, MA, VV
4/25/2002	S	Pres. Appts.; Senators Flanders, Gatsas, Hollingworth
4/29/2002	H	Conf Comm meeting Apr 29 1:00 RM203,LOB
4/30/2002	S	Conference Committee Report; Senate Am {3698}, Filed;
5/2/2002	S	Conference Committee Report; Adopted, VV
5/2/2002	H	Conf Comm Report Adopted VV;

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Docket Abbreviations

Bill as Introduced

HB 1134 - AS INTRODUCED

2001 SESSION

01-2136
03/09

HOUSE BILL **1134**

AN ACT relative to lighting requirements for motor vehicles and trailers.

SPONSORS: Rep. Reid, Straf 12

COMMITTEE: Transportation

ANALYSIS

This bill provides that a motor vehicle, full trailer, or semi-trailer may be equipped with more than one stop lamp, provided that if a vehicle is manufactured with multiple stop lamps, each of the stop lamps shall be in working order.

This bill was requested by the police standards and training council.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to lighting requirements for motor vehicles and trailers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Equipment of Vehicles; Stop Lamps; Multiple Stop Lamps. Amend RSA 266:38 to read as
2 follows:

3 266:38 Stop Lamps. It shall be unlawful for any person to drive any motor vehicle, including
4 any motorcycle or motor-driven cycle, full trailer, trailer, or semi-trailer in this state unless it is
5 equipped with [a] ***one or more*** stop [~~lamp~~] ***lamps*** in working order at all times; provided, however,
6 that stop lamps shall not be required on a farm tractor, ***and further provided that whenever a***
7 ***vehicle is manufactured with multiple stop lamps, each of the lamps shall be in working***
8 ***order.***

9 2 Effective Date. This act shall take effect January 1, 2003.

Amendments

Adopted

Amendment to HB 1134

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Equipment of Vehicles; Stop Lamps; Multiple Stop Lamps. Amend RSA 266:38 to read as
4 follows:

5 266:38 Stop Lamps. It shall be unlawful for any person to drive any motor vehicle, including
6 any motorcycle, *moped* or motor-driven cycle, full trailer, trailer, or semi-trailer in this state unless
7 it is equipped with [a] *one or more* stop [~~lamp~~] *lamps* in working order at all times; provided,
8 however, that stop lamps shall not be required on a farm tractor, *and further provided that*
9 *whenever a vehicle is manufactured with multiple stop lamps or stop lamps with multiple*
10 *bulbs or filaments, each of the lamps, bulbs, or filaments shall be in working order.*

11 2 Equipment of Vehicles; Tail Lamp and Reflectors; Multiple Tail Lamps. Amend RSA 266:44 to
12 read as follows:

13 266:44 Tail Lamp and Reflectors. Every motor vehicle and trailer or any combination of
14 vehicles, when on the ways of this state at night, shall have on the rear thereof, and to the left of the
15 axis thereof, one lamp, displaying a red light visible for a distance of at least 1000 feet to the rear of
16 such vehicle, and a white light illuminating the registration plate of such vehicle so that the
17 characters thereon shall be visible for a distance of at least 50 feet, except that passenger cars
18 manufactured or assembled after January 1, 1952, shall have at least 2 tail lamps, *one to either*
19 *side of the axis thereof*. On a combination of vehicles, only the tail lamps on the rearmost vehicle
20 need actually be seen from the distance specified. On vehicles equipped with more than one tail
21 lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.
22 All tail lamps on any vehicle shall be located at a height of not more than 72 inches nor less than
23 20 inches from the ground, measured from the ground to the center of the reflector, and shall be
24 placed in such manner as to indicate the extreme width of the vehicle and load and to reflect rays of
25 light thrown upon such reflector. The visibility of such reflectors shall not be impaired at any time.
26 *Whenever a vehicle is manufactured with multiple tail lamps or multiple bulbs or*
27 *filaments in the tail lamps, each of the lamps, bulbs, or filaments and any other exterior*
28 *lighting equipment with which the vehicle was manufactured shall be in working order.*

29 3 Effective Date. This act shall take effect January 1, 2003.

2002-2709h

AMENDED ANALYSIS

This bill provides that a motor vehicle, full trailer, or semi-trailer may be equipped with more than one stop lamp. This bill also requires that when a vehicle is manufactured with multiple stop lamps, multiple tail lamps, or stop lamps or tail lamps with multiple bulbs or filaments, each of the lamps, bulbs, or filaments shall be in working order.

This bill was requested by the police standards and training council.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON TRANSPORTATION

PUBLIC HEARING ON HB 1134

BILL TITLE: relative to lighting requirements for motor vehicles and trailers.

DATE: January 3, 2002

LOB ROOM: 203 **Time Public Hearing Called to Order:** 1:45 pm

Time Adjourned: 2:20 pm

(please circle if present)

Committee Members: Reps. Packard, J. Flanders, G. Katsakiores, Bartlett, Milligan, Kobel, Letourneau, Cosslette, Rosen, Artz, Balcom, Bergeron, Chalbeck, Cardin, P. Cote, Haley, B. Ferland, Weed, Woodhill and D. Dionne.

Bill Sponsors: Rep. Reid

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Reid, Sponsor. Introduced the bill and needed to leave immediately for another hearing. Asked the committee to direct this question to Mr. Sweeney.

***Earl Sweeney, Director of Police Standards & Training, Support** – Written Testimony.

OPINION – NOT SPEAKING:

Rep. Lawrence Guay, Self – PRO

Respectfully submitted,

Rep. Robert J. Letourneau, Clerk

HOUSE COMMITTEE ON TRANSPORTATION

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Bill Sponsors: Rep. Reid

TESTIMONY

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2:00

HB 1134

Rep. Reid

Introduced the bill & needed to leave
immediately for another hearing. asked the Com.
to direct this question to Mr. Sweeney.

* Carl Sweeney NH Police Standards & Training Council
2:20

Testimony

Testimony of Director Earl M. Sweeney
NH Police Standards and Training Council
HB 1134

Mr. Chairman and Members of the Committee

My name is Earl Sweeney, and I am the Director of the Police Standards and Training Council. HB 1134 was introduced by Rep. Chris Reid at my request, to update one of our traffic laws and recognize the new lighting requirements on motor vehicles, and ensure that when an officer stops a vehicle with one of its stop lights burnt out, the stop is a valid one.

This seems like almost too simple a matter to write a bill to correct, and it would have been a few years ago, which is probably why the correction wasn't made long ago. But in today's society when police officers are expected to be alert to everything from serial rapists to domestic terrorism, when some of the most serious crimes are uncovered as the result of a routine vehicle stop by a police officer, and when every time a criminal is arrested as a result of such a stop they are ready to cry that they were stopped as a result of illegal profiling or a defect in the law, it is important for the protection of society that our laws catch up with the times that we are living in.

Years ago, the old vehicles with clamshell fenders came from the manufacturer with only one stop light, mounted on the left-hand side, and so that is the way the law was written. Later on as there were more vehicles on the road and traffic grew thicker, the manufacturers realized that we needed more warning that the car ahead had put on its brakes, so they began making their vehicles with two stop lights - one on the left and one on the right rear. Then as the highway death toll rose to 40,000 people or more a year, the National Highway Traffic Safety Act was passed, more research was done into the causes of collisions, and federal safety standards were enacted. One of these standards passed a few years ago created the high center-mounted stoplight that all passenger vehicles and light trucks now have, and it has been proven statistically that there are fewer rear-end collisions since vehicles have been equipped with this third, center-mounted stop lamp. It makes sense, then, that if these lights are on a vehicle, they should be maintained in working order.

Since most of us don't walk around our vehicles periodically and have someone else step on the brakes so we can see if our brake lights are working, we generally discover that one is burnt out in one of two ways - when we have the vehicle inspected once a year at a State Inspection Station, or if a friend or a police officer notices it and tell us about it. And if we are a tourist from some state that does not have a periodic motor vehicle inspection program, the only way we find out is if a friend or a police officer tells us about it. However, as the law currently only requires one stop light instead of requiring that however many stop lights are on the vehicle should be working, technically an officer has no authority to pull us over and tell us about it.

This is not a problem under ordinary circumstances. An officer sees a vehicle with a burnt out stop light, pulls the driver over and informs them about it, or gives them one of those orange "fix-it" tickets which requires them to get the light repaired and mail the stub back in to Concord. It is very seldom that anyone would get an actual citation and have to pay a fine for a stop light that was not working, unless they just refused to fix it and were stopped repeatedly.

The rub comes when the officer discovers something more serious as a result of having

stopped someone for a defective brake light. If that person is driving drunk, driving without a license or one a suspended license, is wanted on a warrant for some crime, has just committed or is about to commit a crime and is fleeing, or in these days of concerns about domestic terrorism the person is another Timothy McVeigh with a trunk full of explosives, a creative lawyer can get him off and have all the evidence suppressed in court because technically the officer had no right to stop him in the first place. Many, many crimes are solved and criminals brought to justice simply because they were discovered during a routine traffic stop for something as minor as a brake light.

Updating this law to reflect the way vehicles are currently equipped will not create "open season" on some poor motorist or trucker who has a burnt-out or non-functional brake light. It does not require a vehicle that was equipped with only one brake light to have more than one. It simply requires that if the vehicle is equipped with more than one light, that they all be working. It is not going to result in the wholesale ticketing and assessment of fines against people who have a burnt-out light. It is very rare, unless there are some really aggravating circumstances such as a person who has been spoken to before and simply refuses to get the light repaired, that anyone would receive an actual court summons for a non-working brake light. The usual scenario is that the officer would simply verbally advise them to get the light fixed, or give them an orange "fix-it" tag to take to an inspection station and verify that the light has been fixed.

The result of updating this law will be to the benefit of the motoring public, because it will ensure that officers are not hesitant about stopping people and telling them if they are missing a brake light; it will reduce the incidence of rear-end collisions by having more of these lights in working order; and it will ensure that when a more serious crime is uncovered as the result of a routine brake light stop, criminals do not go free on a technicality.

Thank you for listening, and I would be happy to answer any questions that you may have.

Voting Sheets

HOUSE COMMITTEE ON TRANSPORTATION

EXECUTIVE SESSION on HB 1134

BILL TITLE: relative to lighting requirements for motor vehicles and trailers.

DATE: February 19, 2002

LOB ROOM: 203

Amendments:

Sponsor: Rep. Packard OLS Document #: 2002 2709h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP (QTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. Flanders

Seconded by Rep. Cote

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Robert J. Letourneau, Clerk

HOUSE COMMITTEE ON TRANSPORTATION

EXECUTIVE SESSION on HB 1134

BILL TITLE: relative to lighting requirements for motor vehicles and trailers.

DATE: 2-19-02

LOB ROOM: 203

Amendments:

Sponsor: Rep.

OLS Document #: 2002-2709 h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Flanders*

Seconded by Rep. *Cote*

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Cote-Flanders

CONSENT CALENDAR VOTE: *13-0 CC* ~~{Type VOTE}~~

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Robert J. Letourneau, Clerk

TRANSPORTATION

Bill #: HB1134 Title: _____

PH Date: _____ / _____ / _____ Exec Session Date: _____ / _____ / _____

Motion: OTP/A Amendment #: _____

MEMBER	YEAS	NAYS
Packard, Sherman A. Chairman	✓	✓
Flanders, John W. V Chairman	✓	✓
Katsakiores, George N. Honorarv Chairma	✓	✓
Bartlett, Gordon E		
Milligan, Robert H	✓	✓
Kobel, Rudolph J	✓	✓
Letourneau, Robert J. Clerk	✓	✓
Cossette, Larrv J	✓	✓
Rosen, Ralph J	✓	✓
Artz, Lawrence A	✓	✓
Balcom, John L		
Bergeron, Jean-Guv J		
Chalbeck, Kevin R	✓	✓
Cardin, Lori		
Cote, Peter R	✓	✓
Halev, Robert J		
Ferland, Brenda L	✓	✓
Weed, Charles F	✓	✓
Woodill, Rodney J		
Dionne, David M		
	13-	13 0 0
TOTAL VOTE:		
Printed:		

Committee Report

COMMITTEE REPORT

COMMITTEE: **Transportation**

BILL NUMBER: **HB 1134**

TITLE: **relative to lighting requirements for motor vehicles and trailers.**

DATE: **February 19, 2002**

CONSENT CALENDAR YES

NO

OUGHT TO PASS

OUGHT TO PASS WITH AMENDMENT

INEXPEDIENT TO LEGISLATE

REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT (Include Committee Vote)

This bill and amendment clarifies the law that if a motor vehicle is manufactured with multiple stop lamps or tail lamps, they must be in working order.

Vote 13-0.

Rep. John W. Flanders
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Transportation

HB 1134, relative to lighting requirements for motor vehicles and trailers. **OUGHT TO PASS WITH AMENDMENT**

Rep. John W. Flanders for Transportation: This bill and amendment clarifies the law that if a motor vehicle is manufactured with multiple stop lamps or tail lamps, they must be in working order. Vote 13-0.

COMMITTEE REPORT

COMMITTEE: **Transportation**

BILL NUMBER: **HB 1134**

TITLE: **relative to lighting requirements for motor vehicles and trailers.**

DATE: **CONSENT CALENDAR** YES NO

- OUGHT TO PASS
- OUGHT TO PASS WITH AMENDMENT
- INEXPEDIENT TO LEGISLATE
- REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT (Include Committee Vote)

Vote {Type VOTE}. **13-0**



Rep. {Type NAME}
FOR THE COMMITTEE

Original: **House Clerk**
cc: **Committee Bill file**

USE ANOTHER REPORT FOR MINORITY REPORT

HB 1134

This Bill and admendment clarifies
the law ~~to~~ that ^{if a} motor vehicle
~~that~~ is manufactured with
multiple stop lamps or
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John F. Sanders

J. Sanders