STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-25-24

STATE OF MAINE

APPELLEE

v.

KENNETH RHOADES

APPELLANT

ON APPEAL FROM THE PENOBSCOT COUNTY UNIFIED CRIMINAL DOCKET, BANGOR, ME

BRIEF OF APPELLEE

R. Christopher Almy
District Attorney

Christopher D. Smith
Assistant District Attorney
christopher.smith@maineprosecutors.com

Eugene Abramov
Student Attorney

Prosecutorial District V
97 Hammond Street
Bangor, ME 04401
(207) 942-8552

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PROCEDURAL HISTORY

On September 28, 2022, Lincoln Police Officer Daren Mason stopped Defendant for speeding, and charged Defendant with criminal OUI.

On November 21, 2022, a criminal complaint was filed alleging OUI, 29-A M.R.S. § 2411(1-A)(B)(2) (Class C).

On March 8, 2023, Defendant filed a Motion to Suppress.

On May 16, 2023, the trial court denied the Motion to Suppress after a hearing. Defendant appeals this denial.

On August 31, 2023, the State filed a Motion for Protective Order, which was granted that day.

On September 7, 2023, Defendant filed a Motion for Sanctions.

On November 29, 2023, the Motion for Sanctions was dismissed without prejudice.

On November 30, 2023, that dismissal was vacated upon a Motion to Reconsider.

On March 8, 2024 the trial court held a hearing on the Motion for Sanctions.

On March 15, 2024, the trial court denied the Motion for Sanctions. Defendant appeals this Denial.

On July 29, 2024, the jury trial was held. **The trial court admitted the Defendant's breath alcohol test result over Defendant's objection to a lack of foundation.** The Defendant appeals the admission of this evidence. The Defendant was found guilty.

On January 16, 2025, the trial court sentenced the Defendant. The Defendant filed a Notice of Appeal, and execution was stayed.

FACTUAL SUMMARY

VEHICLE STOP AND MOTION TO SUPPRESS

On September 28, 2022, in Lincoln, Maine, Officer Daren Mason stopped Appellant for speeding, and then charged Appellant with criminal OUI. Indictment, Appendix p. 58. Defendant moved to suppress the stop, arguing Officer Mason lacked reasonable articulable suspicion. Defendant's MTS, Appendix p. 59.

The trial court held a suppression hearing on May 16, 2023. Officer Mason testified he visually estimated the Defendant was going 55 in a 35. Motion to Suppress Hearing Transcript, Appendix p. 35. Officer Mason testified he was trained to estimate vehicle speeds at the Maine Criminal Justice Academy in 2008. Id. p. 31-32. The trial court denied the motion from the bench.

MOTION FOR SANCTIONS

In late August 2023, the State notified Defendant that there was impeachment evidence for a State's witness. This evidence was *Giglio* information. The State sent the evidence to the Defendant in September 2023. The Defendant moved for sanctions because of the late disclosure.[1] The sanctions hearing was on March 8, 2024. The State explained the circumstances surrounding its oversight, argued that the Defendant was not prejudiced because the trial had not happened yet, and argued that the Defendant's requested remedies of dismissal or exclusion of the witness's testimony were too harsh. Transcript of Hearing on Motion for Sanctions, Appendix p. 73. The trial court denied the Motion for Sanctions.

ADMISSION OF THE INTOXILYZER TEST INTO EVIDENCE

At trial, the State admitted the Intoxilyzer test into evidence.[2] The State then called an expert chemist, Maria Pease, who was in charge of the State's program to test and certify Intoxilyzers. Ms. Pease worked with one assistant chemist. Trial Transcript p. 96. Ms. Pease said the Lincoln Intoxilyzer was certified, but she could not recall whether she personally certified it, or if it was certified by the assistant

[1] Appellant notes that the case was ready for trial as early as July 2023, and that the trial court tried to schedule the trial – but did not. Appeal p. 42.
[2] The Appeal sometimes refers to the Intoxilyzer Test as a *Blood* Alcohol Test. This is a scrivener's error.

chemist. Id. p. 97. The court admitted the Intoxilyzer Test into evidence through Ms. Pease, over the Defendant's objection.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR BY DENYING THE MOTION TO SUPPRESS

The instant appeal questions Officer Mason's visual estimation of the Defendant speeding 20 mph over the speed limit. This is a factual issue. "The nature of the detaining officer's suspicion and the nature of the observations upon which that suspicion is based are questions of fact. Whether an officer's suspicion is objectively reasonable is a pure question of law." State v. Sylvain, 2003 ME 5, ¶ 11.

The Court should review for clear error. "The denial of a motion to suppress is reviewed for clear error as to factual issues and de novo as to issues of law." State v. Fleming, 2020 ME 120, ¶ 25. "We will uphold the court's denial of a motion to suppress if any reasonable view of the evidence supports the trial court's decision." State v. Clark, 2021 ME 12, ¶ 25.

Here, it is reasonable that a seasoned officer could tell that Defendant was speeding, since the defendant significantly exceeded the speed limit, by 20 mph.

Appellant argues that the Court can't trust Officer Mason's perspective or suspicion because Officer Mason's formal training in vehicle pacing was in 2008. The US Supreme Court directs trial courts to favor the Officer's perspective and inferences. "Additionally, reasonable suspicion eschews judicial common sense, in favor of the perspectives and inferences of a reasonable officer viewing the facts through the lens of his police experience and expertise." Kansas v. Glover, 589 U.S. 376, 392 (2020). "The facts and inferences giving rise to a stop must be seen and weighed as understood by those versed in the field of law enforcement." Id.

Defendant had his chance to impeach or present evidence of compliance with the speed limit at the hearing. The trial court properly relied on Officer Mason's professional experience and denied the motion to suppress. "If the court's ruling is proper under the law, it may be affirmed, even if for a reason different than that given by the motion court." State v. Lepenn, 2023 ME 22, ¶ 15.

II. THE TRIAL COURT DID NOT ERR BY DENYING THE MOTION FOR SANCTIONS

Appellant avers that the Court should have sanctioned the State for late disclosure of discoverable *Giglio* impeachment evidence by excluding witness testimony or dismissing the indictment. The Court should review the trial court for

abuse of discretion that prejudiced Defendant at trial. “We review the denial of a motion for sanctions based on a discovery violation for an abuse of discretion.” State v. Gagne, 2017 ME 63, ¶ 27. “The denial of a motion for sanctions will cause us to vacate a judgment only when the defendant can establish that the effect is so significant as to deprive him of a fair trial." State v. Silva, 2012 ME 120, ¶ 8.

"The element of prejudice is satisfied if the undisclosed evidence is material—that is, the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." State v. Twardus, 2013 ME 74, ¶ 32. "A reasonable probability of a different result exists where the government's evidentiary suppression undermines confidence in the outcome of the trial." State v. Gagne, 2017 ME 63, ¶ 28.

The Court should find that the Defendant was not prejudiced because he was, in fact, given the evidence months before his trial. A defendant who receives the evidence before trial—even shortly before trial—is not deprived of due process. Id. ¶ 29. "Because the court found that Gould was made aware of and, in fact, received the lab report prior to trial, he cannot succeed in his claim that his due process rights were violated.” State v. Gould, 2012 ME 60, ¶ 28. "When the defendant is aware, before trial, of the exculpatory evidence alleged to have been withheld, he cannot claim that there has been an unfair trial in violation of due process." Id.

In the instant case, the *Giglio* impeachment evidence was disclosed in September 2023. The trial was held on July 29, 2024, 10 months after the disclosure of the discovery. This did not prejudice Defendant or deprive Defendant of a fair trial. *"See* State v. Gagne, 2017 ME 63, ¶¶ 29-30 (concluding that the State's production of medical records a week before trial did not deprive the defendant of a fair trial); State v. Gould, 2012 ME 60, ¶¶ 7, 25-26, (concluding that the State's delivery of test results to the defendant a half hour before the start of trial was not an unreasonable delay under the circumstances); State v. Kelly, 2000 ME 107, ¶ 26 n.11 (concluding that there was no error when the defendant was aware of the exculpatory evidence before trial)." State v. Williamson, 2017 ME 108, ¶ 23, citations included.

The trial court acted within its discretion when it denied the motion for sanctions, as the Defendant was provided with the information well before trial.

III. THE TRIAL COURT DID NOT ERR BY ADMITTING THE INTOXILYZER TEST INTO EVIDENCE

The Appellant argues that the trial court should not have overruled his lack-of-foundation objection to the admission of the Intoxilyzer test. This issue is reviewed for abuse of discretion. "We review the admission of evidence over an

objection for lack of foundation for an abuse of discretion, but review underlying factual findings for clear error." State v. Gurney, 2012 ME 14, ¶ 36.

The Appellant wrote a few pages about the importance of the Intoxylizer being reliable, and that the trial court should be a "gatekeeper" of the tests. Appeal pp. 38-41. The State enjoyed prima facie evidence of reliability due to the certification made by the DHHS lab pursuant to 29-A M.R.S. § 2431. The Appeal does not raise the issue whether Defendant sufficiently rebutted the prima facie evidence of reliability. Appellant does not present any issues about factual findings. The instant review is only for an abuse of discretion for admitting the Intoxilyzer test with the foundation laid by expert witness Maria Pease. The State's argument satisfied the statutory requirements to support the validity of the prima facie evidence.

The Appellant argues that there was no foundation to admit the test because the State did not satisfy paragraphs H and I of 29-A M.R.S. § 2431(2). Appeal p. 38. Defendant argues: "In practice, the person who administered the test must provide testimony to satisfy the elements of paragraph H, and a 'site coordinator' must provide testimony to satisfy the elements of paragraph I." Appeal p. 38 citing State v. Williamson, 2017 ME 108, ¶¶ 19-20.

Williamson actually held that there is another way admit the test: "To admit the result [of an Intoxilyzer] the State must ***either produce expert testimony*** or present

sufficient evidence to satisfy paragraphs H and I of the statute." State v. Williamson, 2017 ME 108, ¶ 18, emphasis added.

The State produced expert testimony. Maria Pease was the expert. Trial Transcript p. 92. The State did not need to call the person who administered the Intoxilyzer test to satisfy paragraphs H and I of the statute, because the test can be admitted after expert testimony to the certification, reliability, and functioning of the Intoxilyzer.[3]

The trial court did act as the gatekeeper of evidence, and did not admit the result automatically. The trial court sustained the Defendant's objections when the State tried to admit the test through Officer Mason. However, when the State met the requirements of 29-A M.R.S. § 2431 by presenting expert testimony to the proper functioning of the Intoxilyzer, the trial court properly admitted the evidence. There was no abuse of discretion.

[3] **29-A M.R.S. § 2431 (2)(K)**
"The prosecution is not required to produce expert testimony regarding the functioning of self-contained breath-alcohol testing apparatus before test results are admissible, if sufficient evidence is offered to satisfy paragraphs H and I."

CONCLUSION

The Court should affirm the trial court's judgment. There was no clear error in the Court's factual determinations in the motion to suppress hearing. There was no abuse of discretion in denying the motion for sanctions. There was no abuse of discretion in admitting the Intoxilyzer test over the Defendant's objection.

Respectfully Submitted,

Signed: October 3, 2025

Christopher Smith, Esq.
Assistant District Attorney
Prosecutorial District V
Maine Bar No. 7765
christopher.smith@maineprosecutors.com

97 Hammond St.
Bangor, ME 04401
(207) 942-8552

Signed: October 3, 2025

Eugene Abramov
Student Attorney
eabramov@penobscot-county.net

Prosecutorial District V
97 Hammond Street
Bangor, ME 04401
(207) 942-8552

CERTIFICATE OF SERVICE

On October 3, 2025, I sent native .pdf versions of this brief to the Clerk of the Law Court and attorney James Howaniec by email. Upon acceptance by the Clerk of the Law Court, I will deliver ten hard copies to the Law Court and two copies to opposing counsel James Howaniec at 145 Lisbon Street, P.O. Box 655, Lewiston, Maine.

Signed: October 3, 2025

Christopher Smith, Esq.
Assistant District Attorney
Prosecutorial District V
Maine Bar No. 7765
christopher.smith@maineprosecutors.com

97 Hammond St.
Bangor, ME 04401
(207) 942-8552