

STATE OF MAINE  
YORK, SS.

UNIFIED CRIMINAL DOCKET  
LOCATION: YORK  
DOCKET NO. YORCD-CR-118-40856

STATE OF MAINE,	)	
Plaintiff	)	
	)	
v.	)	DEFENDANT’S MOTION TO SUPPRESS
	)	
	)	
ANDREW XXX,	)	
Defendant	)	

NOW COMES Mr. XXX, by and through his attorney, David J. Bobrow, with the this Motion to Suppress particularly stated as follows:

- (1) This matter is currently before the Court on the State’s charges of Operating Under the Influence.
- (2) On or about September 2, 2018, a person unknown to Sgt. Faia, who initiated the stop of Mr. XXX, contacted the Ogunquit Police Department and informed that a vehicle was operating erratically. The person described the vehicle and license plate number. Sgt. Faia observed the vehicle in traffic but did not observe any erratic operation. Despite this, the officer initiated a stop of Mr. XXX’s vehicle.
- (3) For an officer to make a constitutionally sound investigatory traffic stop, there must be an “articulable suspicion that criminal conduct has taken place, is occurring, or imminently will occur, and the officer’s assessment of the existence of specific and articulable facts sufficient to warrant the stop is objectively reasonable in the totality of the circumstances. *State v. Tarvers*, 709 A.2d 726, 727 (Me.1998). “An anonymous tip alone, seldom demonstrates the informant’s basis of knowledge or veracity ... and the truthfulness of anonymous persons supplying information is by hypothesis largely unknown and unknowable.” *State v. Lafond*, 802 A.2d 425 (Me.2002). “Such a tip...does not show that

the tipster has knowledge of criminal activity.” *Florida v. J.L.* 529 U.S. 266, 272 (2000). “Unlike a tip from a known informant whose reputation can be assessed... an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity.” *Id.* quoting *Adams v. Williams*, 407 U.S. 143, 146-147 (1972). Although the informant described the vehicle of the Defendant, this is only for identification purposes. “The tip must be reliable in its assertion of illegality.” *Id.*

- (4) In this matter, the tipster was not known to the officer, the person reporting the information did not witness any criminal activity and the officer did not observe anything that would corroborate the information provided in the tip.
- (5) The stop of Mr. XXX was impermissible because it lacked the necessary reasonable suspicion and therefore, violated the Defendant’s 4<sup>th</sup> Amendment rights. Accordingly, all evidence obtained after the stop should be suppressed.

### ARGUMENT

For an officer to make a constitutionally sound investigatory traffic stop, there must be an “articulable suspicion that criminal conduct has taken place, is occurring, or imminently will occur, and the officer’s assessment of the existence of specific and articulable facts sufficient to warrant the stop is objectively reasonable in the totality of the circumstances. *State v. Tarvers*, 709 A.2d 726, 727 (Me.1998). “An anonymous tip alone, seldom demonstrates the informant’s basis of knowledge or veracity ... and the truthfulness of anonymous persons supplying information is by hypothesis largely unknown and unknowable.” *State v. Lafond*, 802 A.2d 425 (Me.2002). “Such a tip...does not show that the tipster has knowledge of criminal activity.” *Florida v. J.L.* 529 U.S. 266, 272 (2000). “The reasonableness of the official suspicion must be measured by what

the officer's knew before they conducted {a stop}. *Id.* at 271. "Unlike a tip from a known informant whose reputation can be assessed... an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *Id.* quoting *Adams v. Williams*, 407 U.S. 143, 146-147 (1972). Although the informant described the vehicle of the Defendant, this is only for identification purposes. "The tip must be reliable in its assertion of illegality." *Id.* In this matter, it is uncontroverted that the officer had no information about the person making the report.

Since *Florida v. J.L.* was decided, the Maine Law Court has upheld the stop of motor vehicles if the officer had no knowledge of the person reporting where the officer observed something that corroborated the tip or the person reporting witnessed a criminal action. See *Lafond*, 802 A.2d 425 (single straddle confirmed reliability of tip); *State v. McDonald*, 2010 ME 102(vehicle pulled next to officer and informed that other vehicle had erratic operation). In *State v. Littlefield*, 677 A.2d 1055 (Me. 1996), the Court noted that officer was not aware of source of information for purposes of stop, but allowed stop after vehicle pulled into a driveway the officer knew was not his. In this matter, the officer or the tipster did not witness any erratic operation or unusual activity.

Subsequent to *J.L.*, several state courts have concluded that anonymous tips of drunk driving are unreliable alone unless there is corroboration of the informant or tip's details by the officer. See *State v. Boyle*, So.2d 1281 (La.App. 2 Cir. 2001)(tip absent additional corroboration not enough to justify stop); *Washington v. State*, 740 N.E.2d 1241 (Ind.App.2000)(tip alleging drunk driver with information on driver and vehicle was not enough to justify stop absent officer corroboration); *Stewart v. State*, 22 S.W.3d 646 (Tex.App. 2000)(tip alleging reckless driving and description of vehicle not enough to justify stop where officer did not observe illegal activity).

In *Commonwealth v. Lubiejewski*, 729 N.E.2d 288 (2000), our neighbor, Massachusetts, held that "anyone can telephone the police for any reason" and that officer needed independent corroboration of "non-obvious details." In that matter, the Court suppressed a stop where the caller observed erratic driving and provided information about the vehicle. In New Hampshire, the tip must provide some indication of erratic operation. See *State v. Sousa*, 855 A.2d 1284 (N.H.2004).

Since Sgt. Faia did not have any information as to the veracity of the person making the report about the Defendant's intoxication and did not observe erratic operation, the only basis for the stop was identification information supplied by the anonymous tip, which is impermissible under *Florida v. J.L.* Accordingly, the Motion to Suppress should be granted.

WHEREFORE the Defendant respectfully requests that this Honorable Court suppress everything that occurred after the unconstitutional stop of the Defendant on September 2, 2018 together with any and all other relief that this Honorable Court deems fit and just.

RESPECTFULLY SUBMITTED:  
ANDREW XXX  
By His Attorney  
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Date: \_\_\_\_\_

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David J. Bobrow, Esq.

#### CERTIFICATE OF SERVICE

I hereby certify that on this date I mailed, postage paid, a copy of this Motion to Assistant District Attorney of the York County District Attorney's Office, York, Maine.

Date: \_\_\_\_\_

\_\_\_\_\_  
David J. Bobrow, Esq.