

STATE OF MAINE
KENNEBEC, SS.
0388

RECEIVED AND FILED
KENNEBEC SUPERIOR COURT

2004 JAN 29 P 1:18

SUPERIOR COURT

Docket No. CR-03-0388

JMJ - KEN - 1/29/2004

STATE OF MAINE

NANCY DESJARDIN
CLERK OF COURTS

v.

ORDER ON MOTION TO SUPPRESS

Robert Greely,
Defendant.

DONALD L. GARRECHT
LAW LIBRARY

FEB 5 2004

Before this court is the Defendant's Motion To Suppress. Sean Farris for the Defendant and Alan Kelly, Deputy District Attorney for the State.

On July 28, 2003, the Defendant was the operator of a motor vehicle involved in accident that resulted in a fatality. Pursuant to Title 29-A M.R.S.A. Section 2522, Officer Guilmette notified the Defendant that he had to submit to blood alcohol test.. The Defendant agreed to the test which was conducted at Maine General Hospital in Augusta. The Defendant was not advised of his Miranda rights.

The Defendant raises one issue in its Motion To Suppress. The Defendant argues that compliance with section 2522 is unconstitutional because it violates Maine's Constitution Article 6. This Article of the Maine Constitution states that a person cannot be compelled to give evidence against himself. Since the Defendant was compelled pursuant to section 2522 to give a blood sample that incriminated him it was in violation of Article 6. The Defendant was not able to present any cases supporting this legal position.

This court finds and concludes that section 2522 does not compel a Defendant to give evidence against himself in violation of Article 6 of the Maine Constitution. The United States Supreme Court case of Schmerber v California 384 U.S. 757, 86 S. Ct. 1826 (1966) is directly on point. The Supreme Court held that the privilege against self incrimination protected

an accused only from being compelled to testify against himself or otherwise provide the State with evidence of a testimonial or communicative nature and that the withdrawal of blood and the use of the analysis did not involve compulsion to these ends. In footnote 6 the Supreme Court compared the language in the US Constitution with the language in many state constitutions wherein the language phrases the privilege in terms of compelling a person to give evidence against himself. The Court stated that notwithstanding the different phraseology, the same interpretation is called for. The Supreme Court indicated that the privilege is a bar against compelling communications or testimony, and the compulsion which makes a suspect or accused the source of real or physical evidence does not violate the privilege.

For reasons stated above the Defendant's Motion to Suppress is hereby denied.

Dated: January 26, 2004



JOSEPH JABAR
JUSTICE, SUPERIOR COURT

STATE OF MAINE
vs
ROBERT DAVID GREELY
34 WASHINGTON AVENUE
GARDINER ME 04345

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2003-00388

DOCKET RECORD

DOB: 09/20/1983

Attorney: SEAN FARRIS
FARRIS HESELTON LADD & BOBROWIECKI, PA
251 WATER STREET
PO BOX 120
GARDINER ME 04345-0120
RETAINED 09/15/2003

State's Attorney: EVERT FOWLE

Filing Document: INDICTMENT
Filing Date: 09/12/2003

Major Case Type: FELONY (CLASS A,B,C)

Charge (s)

1	MANSLAUGHTER		07/28/2003 GARDINER
	17-A 203(1)(A)	Class A	
2	OPERATING UNDER THE INFLUENCE		07/28/2003 GARDINER
	29-A 2411(1)	Class C	
3	RECKLESS CONDUCT WITH A DANGEROUS WEAPON		07/28/2003 GARDINER
	17-A 211(1)	Class C	

Docket Events:

09/12/2003 FILING DOCUMENT - INDICTMENT FILED ON 09/12/2003

TRANSFER - BAIL AND PLEADING GRANTED ON 09/12/2003

TRANSFER - BAIL AND PLEADING REQUESTED ON 09/12/2003

09/12/2003 Charge(s): 1,2,3

HEARING - ARRAIGNMENT SCHEDULED FOR 09/19/2003 @ 9:00

NOTICE TO PARTIES/COUNSEL

09/12/2003 WARRANT - ON COMP/INDICTMENT REQUESTED ON 09/12/2003

09/12/2003 WARRANT - ON COMP/INDICTMENT ORDERED ON 09/12/2003

S KIRK STUDSTRUP , JUSTICE

09/12/2003 BAIL BOND - \$10,000.00 SURETY BAIL BOND SET BY COURT ON 09/12/2003

S KIRK STUDSTRUP , JUSTICE

OR \$300.00 CASH

09/12/2003 WARRANT - ON COMP/INDICTMENT ISSUED ON 09/12/2003

CERTIFIED COPY TO WARRANT REPOSITORY

09/15/2003 WARRANT - ON COMP/INDICTMENT EXECUTED ON 09/12/2003

ARRESTED BY GARDINER PD

09/15/2003 BAIL BOND - \$300.00 CASH BAIL BOND FILED ON 09/15/2003

Bail Receipt Type: CR

Bail Amt: \$300

Date Bailed: 09/12/2003

Receipt Type: CA

Prvdr Name: ROBERT GREELY

Rtrn Name: ROBERT GREELY

Conditions of Bail:

09/24/2003 Charge(s): 1,2,3

HEARING - ARRAIGNMENT HELD ON 09/19/2003

JOHN R ATWOOD , JUSTICE

Attorney: SEAN FARRIS

DA: PAUL RUCHA

Reporter: TAMMY DROUIN

Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO DEFENDANT. 21 DAYS TO FILE MOTIONS

09/24/2003 Charge(s): 1,2,3

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 09/19/2003

09/24/2003 Charge(s): 1,2,3

PLEA - NOT GUILTY ACCEPTED BY COURT ON 09/19/2003

09/24/2003 BAIL BOND - CASH BAIL BOND CONTINUED AS POSTED ON 09/19/2003

09/24/2003 BAIL BOND - CASH BAIL BOND COND RELEASE ISSUED ON 09/19/2003

10/10/2003 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 10/08/2003

10/10/2003 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 10/08/2003

10/10/2003 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/02/2003 @ 9:00

S KIRK STUDSTRUP , JUSTICE

NOTICE TO PARTIES/COUNSEL

10/10/2003 HEARING - MOTION TO DISMISS SCHEDULED FOR 12/02/2003 @ 9:00

S KIRK STUDSTRUP , JUSTICE

NOTICE TO PARTIES/COUNSEL

11/25/2003 ORDER - SPECIAL ASSIGNMENT ENTERED ON 10/16/2003

JOSEPH M JABAR , JUSTICE

12/17/2003 HEARING - MOTION TO DISMISS NOT HELD ON 12/02/2003

12/17/2003 HEARING - MOTION TO SUPPRESS NOT HELD ON 12/02/2003

12/17/2003 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/23/2004 @ 1:00

JOSEPH M JABAR , JUSTICE

NOTICE TO PARTIES/COUNSEL

COUNTY SUPERIOR COURT

IN SOMERSET

12/17/2003 HEARING - MOTION TO DISMISS SCHEDULED FOR 01/23/2004 @ 1:00

JOSEPH M JABAR , JUSTICE

NOTICE TO PARTIES/COUNSEL

IN SOMERSET

COUNTY SUPERIOR COURT

12/17/2003 HEARING - MOTION TO DISMISS NOTICE SENT ON 12/17/2003

12/17/2003 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 12/07/2003

01/29/2004 HEARING - MOTION TO SUPPRESS HELD ON 01/23/2004

JOSEPH M JABAR , JUSTICE

Attorney: SEAN FARRIS

DA: ALAN KELLEY

Reporter: KIMBERLY MCCULLOCH

Defendant Present in Court

STATE WITNESSES: STANLEY GUILMETTE, OFFICER GIOIA; DEFENSE WITNESSES: ANNE GREELEY AND
DAVID GREELEY

01/29/2004 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 01/23/2004

JOSEPH M JABAR , JUSTICE

01/29/2004 MOTION - MOTION TO SUPPRESS DENIED ON 01/29/2004

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

01/29/2004 ORDER - COURT ORDER FILED ON 01/29/2004

ORDER ON MOTION TO SUPPRESS

A TRUE COPY

ATTEST: _____

Clerk