

STATE OF MAINE

KENNEBEC, ss.

STATE OF MAINE

v.

SCOTT HEWITT,

Defendant

RECEIVED AND FILED  
KENNEBEC SUPERIOR COURT

2006 JAN -9 A 11:46

HENRY DESJARDIN  
CLERK OF COURTS

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-05-595

SKS-KEN/15/00

DECISION ON MOTION

This matter comes before the court on the motion of defendant, Scott Hewitt, to suppress any statements he may have made to law enforcement officials following the motor vehicle accident which occurred on July 29, 2005. Hewitt claims that he was not properly advised of his constitutional rights prior to questioning and that his statements were not voluntary. However, the court finds that the State has met its burden of proof with regard to the motion and the motion will be denied on both theories.

**Background**

Solely for purposes of this Motion to Suppress, the court finds the following. On July 29, 2005, defendant Hewitt was involved in a serious motor vehicle accident on the Maine Turnpike in Hallowell, and Hewitt injured his kneecap. According to Hewitt's statement to the trooper at the hospital, he had been given two tablets of Percocet by the staff to help relieve his knee pain. At hearing, Hewitt testified that he had been given a "bunch" of medications and he did not know what they were. The court found this later testimony to be self-serving and unpersuasive. The defendant's earlier statement to the trooper concerning the two tablets of Percocet was more persuasive. The medication administered was also confirmed by the information given to Trooper Burke by the trauma nurse at the hospital.

While the State Police troopers were busy at the scene of the accident, they were joined by an assistant district attorney (ADA), who was aware of the seriousness of the accident and who wanted to make certain that any search was properly conducted. In the process of the scene investigation, the officers found a marijuana pipe in the cab of the defendant's truck. The presence of this paraphernalia changed the scope of the investigation and the ADA called for a Drug Recognition Expert (DRE) to look at the defendant at the hospital. The ADA then joined the troopers already at the hospital.

One of the troopers questioned the defendant at the hospital, with the ADA present. Before that interview, the trooper advised the defendant of his right to remain silent and his right to counsel, as required by the *Miranda* decision. The trooper read this information from a preprinted card, and the defendant indicated that he understood each line in the card (State's Exh. 1). The defendant waived his right to remain silent and indicated that he would answer questions. During the interview, the defendant sat in a wheelchair due to his broken kneecap. He exhibited no signs of impairment and his answers to the questions seemed appropriate.

When the DRE arrived at the hospital, he initially conducted a blood test to rule out the presence of alcohol in the defendant's blood. The test came back 0.0% blood alcohol content. The intoxilyzer test was performed at the Kennebec County Sheriff's Office. The DRE then proceeded to administer tests including horizontal gaze nystagmus and finger to nose tests. Prior to the testing, the defendant had been given a second set of *Miranda* warnings. The conclusion of the examination was that the defendant was not under the influence of intoxicants. There was some sign of the Percocet which had been taken for pain control, but the medication had no effect upon the defendant's mental abilities or his ability to answer questions.

After questioning at the Kennebec County Sheriff's Office, the defendant returned to the hospital for further observation and was eventually arrested on an outstanding warrant for other charges. The defendant was taken to the Cumberland County Jail, where he was subsequently interviewed by another State Police Trooper on September 14, 2005. The defendant was again given his *Miranda* warnings. The defendant waived his rights and again answered questions concerning the incident.

### **Discussion**

In light of the foregoing, the defendant argues that he was seriously injured in a significant accident, and that as the result of these injuries and the medication he received to help control pain, his statements to law enforcement officers at the hospital were not voluntary. He further argues that the involuntariness of the hospital statements taints the subsequent questioning at the county jail, in that the defendant answered the officer's questions because he felt obliged to do so in light of his earlier statements and he believed the officers were there to help him. In light of this argument, it is the State's burden to prove beyond a reasonable doubt that the statements were voluntarily made. The State has met that burden.

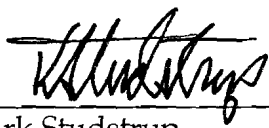
First, the court was generally unpersuaded by the defendant's testimony and, therefore, gives little credence to his version of the events. Second, the law enforcement officials at the scene of the accident, at the hospital and at the jail were scrupulous in educating the defendant concerning his rights to remain silent and to be represented by counsel. They observed nothing in the defendant's behavior or statements which would lead them to believe that the statements were not voluntarily given. The defendant was suffering from a broken kneecap, but when interviewed, the defendant was either seated in a wheelchair or supported by crutches, and he had been medicated for pain. Neither any residual pain nor other effects of the medication had effect on the

defendant's mental abilities or his ability to voluntarily answer questions. Considering all of these circumstances, the State has met its burden beyond a reasonable doubt, both as to statements made at the hospital and later at the jail.

The entry will be:

Motion DENIED.

Dated: January 5, 2006

  
\_\_\_\_\_  
S. Kirk Studstrup  
Justice, Superior Court

STATE OF MAINE  
vs  
SCOTT HEWITT  
DELWOOD TRAILER PARK LOT 49  
CARIBOU ME 04736

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2005-00595

**DOCKET RECORD**

DOB: 10/20/1972

Attorney: JOEL VINCENT  
VINCENT, KANTZ & RUFFNER  
80 EXCHANGE ST., SUITE 32  
PORTLAND ME 04101  
APPOINTED 09/26/2005

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 09/21/2005

Major Case Type: MISDEMEANOR (CLASS D,E)

**Charge(s)**

1	OPERATING WHILE LICENSE SUSPENDED OR REVOKED Seq 9888 29-A 2412-A(1-A) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
2	UNLAWFUL USE OF LICENSE Seq 9874 29-A 2102(1-A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
3	FAILING TO OBTAIN OPERATING AUTHORITY LICENSE Seq 1261 29-A 552(1) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
4	RULE VIOLATION Z NOT LISTED PRIOR Seq 10040 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
5	RULE VIOLATION, OPERATION WITH FALSE DUTY Seq 10006 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
6	RULE VIOLATION, OPERATION WITH FALSE DUTY Seq 10006 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
7	RULE VIOLATION OPERATE WITHOUT MEDICAL CERTIFICATE Seq 10011 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
8	RADAR DETECTOR IN COMMERCIAL VEHICLE Seq 10053 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL
9	DRIVER USES OR IN POSSESSION OF DRUGS Seq 10056 29-A 558(1-B) (A) REYNOLDS / MSP	Class E	07/29/2005 HALLOWELL

**Docket Events:**

09/29/2005 Charge(s): 1,2,3,4,5,6,7,8,9

TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 09/29/2005 @ 20:00

TRANSFERRED CASE: SENDING COURT CASEID AUGDCCR200502367

FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 09/21/2005

Charge(s): 1,2,3,4,5,6,7,8,9

HEARING - ARRAIGNMENT SCHEDULED FOR 09/26/2005 @ 1:00 in Room No. 1

NOTICE TO PARTIES/COUNSEL

Charge(s): 1,2,3,4,5,6,7,8,9

HEARING - ARRAIGNMENT HELD ON 09/26/2005

RAE ANN FRENCH , JUDGE

DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS

BAIL BOND - \$100,000.00 CASH BAIL BOND SET BY COURT ON 09/21/2005

VENDEAN V VAFIADES , JUDGE

Charge(s): 1,2,3,4,5,6,7,8,9

MOTION - MOTION TO IMPOUND FILED BY STATE ON 09/21/2005

Charge(s): 1,2,3,4,5,6,7,8,9

MOTION - MOTION TO IMPOUND GRANTED ON 09/21/2005

VENDEAN V VAFIADES , JUDGE

COPY TO PARTIES/COUNSEL

AS TO THE

AFFIDAVIT...

WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 09/21/2005

CERTIFIED COPY TO SHERIFF DEPT.

Charge(s): 1,2,3,4,5,6,7,8,9

PLEA - NO ANSWER ENTERED BY DEFENDANT ON 09/26/2005

TRIAL - BENCH SCHEDULED FOR 12/23/2005 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

TRIAL - BENCH NOT HELD ON 09/29/2005

TRIAL - BENCH NOTICE SENT ON 09/26/2005

BAIL BOND - CASH BAIL BOND TRANSFERRED ON 09/29/2005

AUGSC

BAIL BOND - \$100,000.00 CASH BAIL BOND COMMITMENT ISSUED ON 09/26/2005

RAE ANN FRENCH , JUDGE

MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 09/26/2005

MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 09/26/2005

RAE ANN FRENCH , JUDGE

COPY TO PARTIES/COUNSEL

Party(s): SCOTT HEWITT

ATTORNEY - APPOINTED ORDERED ON 09/26/2005

Attorney: JOEL VINCENT  
Charge(s): 1,2,3,4,5,6,7,8,9  
TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 09/29/2005

Attorney: JOEL VINCENT  
Charge(s): 1,2,3,4,5,6,7,8,9  
FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 09/29/2005

AUGSC

10/04/2005 Charge(s): 1,2,3,4,5,6,7,8,9  
TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 10/04/2005

AUGDC-CR-05-2367

10/06/2005 TRIAL - DOCKET CALL SCHEDULED FOR 11/07/2005 @ 3:30

10/18/2005 HEARING - BAIL HEARING SCHEDULED FOR 10/21/2005 @ 2:30

NOTICE TO PARTIES/COUNSEL

10/18/2005 HEARING - BAIL HEARING NOTICE SENT ON 10/18/2005

10/20/2005 LETTER - FROM PARTY FILED ON 10/19/2005

DA: EVERT FOWLE  
DISCOVERY LETTER

10/20/2005 MOTION - MOTION FOR BAIL RECONSID. FILED BY DEFENDANT ON 10/20/2005

10/24/2005 HEARING - BAIL HEARING HELD ON 10/21/2005

S KIRK STUDSTRUP , JUSTICE

Attorney: JOEL VINCENT

Reporter: JANETTE COOK

Defendant Present in Court

10/24/2005 MOTION - MOTION FOR BAIL RECONSID. DENIED ON 10/21/2005

S KIRK STUDSTRUP , JUSTICE

W/OUT PREJUDICE

11/01/2005 MOTION - MOTION TO SUPPRESS STATEMENT FILED BY DEFENDANT ON 10/31/2005

11/14/2005 TRIAL - DOCKET CALL HELD ON 11/07/2005

11/14/2005 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 11/29/2005 @ 1:00

NOTICE TO PARTIES/COUNSEL

11/14/2005 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 11/14/2005

11/23/2005 WRIT - HABEAS CORPUS TO TESTIFY ISSUED ON 11/23/2005

CERTIFIED COPY TO SHERIFF DEPT.

11/30/2005 HEARING - MOTION TO SUPPRESS HELD ON 11/29/2005

S KIRK STUDSTRUP , JUSTICE

Attorney: JOEL VINCENT

DA: ALAN KELLEY

Reporter: TAMMY DROUIN

Defendant Present in Court

STATE WITNESSES: DAVID DRAYSON, BRAD GRANT, ROBERT BOURQUE  
11/30/2005 CASE STATUS - DECISION UNDER ADVISEMENT ON 11/29/2005  
S KIRK STUDSTRUP , JUSTICE  
01/09/2006 MOTION - MOTION TO SUPPRESS STATEMENT DENIED ON 01/09/2006  
S KIRK STUDSTRUP , JUSTICE  
COPY TO PARTIES/COUNSEL  
01/09/2006 OTHER FILING - OTHER DOCUMENT FILED ON 01/09/2006

DECISION ON MOTION TO SUPPRESS STATEMENTS

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk