

STATE OF MAINE
KENNEBEC, ss

RECEIVED AND FILED
KENNEBEC SUPERIOR COURT
2006 SEP -8 P 1:31

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-06-739

SKS-KEN-09/06

HARVEY DESJARDIN
CLERK OF COURTS

STATE OF MAINE

v.

KEVIN GERVAIS,

Defendant

ORDER ON DEFENDANT'S
MOTION TO SUPPRESS

The defendant seeks to suppress evidence obtained as a result of the detention of the defendant and statements made by the defendant to Officer Anderson at the police station. The court has considered the testimony and has watched the videotape. See State's Ex. 1. For the following reasons, the motion is granted in part and denied in part.

FINDINGS

On 3/26/06 at 1:00 a.m., Waterville Police Officer Lawrence Anderson was monitoring traffic near Pete and Larry's, a bar in Waterville. In his rear view mirror, the officer noticed a Volkswagen traveling through the Elm Plaza parking lot, approximately 70 yards away. The vehicle slowed and stopped completely. The driver leaned out of the driver's side door, which was open. The officer considered this unusual behavior for an operator of a motor vehicle and noted also that the vehicle's right brake light was out. The officer pulled behind the vehicle and activated his blue lights.

Later, the officer placed the operator under arrest and transported him to the police station. The two were in the booking room for approximately one hour. The

operator eventually took a breath test. The officer did not advise the operator of his Miranda rights.

CONCLUSIONS

An officer may detain a citizen only when "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." State v. Gulick, 2000 ME 170, ¶¶ 12, 18, 759 A.2d 1085, 1088-89 (quoting State v. Dulac, 600 A.2d 1121, 1122 (Me. 1992)) (quoting Terry v. Ohio, 392 U.S. 1, 21, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)). Based on his observations of the operator and the brake light, the officer was justified in detaining the operator.

The operator was under arrest and in custody in the booking room when the officer asked questions. The required Miranda warnings were not given prior to the officer's interrogation. See State v. Holloway, 2000 ME 172, ¶ 13, 760 A.2d 223, 228. The answers to the following questions asked by the officer are suppressed:

1. whether the operator had three beers (asked twice);
2. whether the defendant was taking any drugs;
3. whether the operator said he had a beer before leaving Pete and Larry's;
4. how the operator ended up going to the parking lot.

The entry is

The Defendant's Motion to Suppress is DENIED regarding evidence obtained as a result of the detention of the operator and GRANTED regarding the above-listed statements of the defendant.

Date: September 8, 2006


Nancy Mills
Justice, Superior Court

STATE OF MAINE
vs
KEVIN R GERVAIS
284 UPPER RIDGE ROAD
FAIRFIELD ME 04937

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2006-00739

DOCKET RECORD

DOB: 02/28/1969

Attorney: WAYNE FOOTE
LAW OFFICE OF WAYNE R FOOTE
273 HAMMOND ST
PO BOX 1576
BANGOR ME 04402-1576
RETAINED 04/07/2006

State's Attorney: TRACY DEVOLL

Charge(s)

1 OPERATING UNDER THE INFLUENCE **03/26/2006 WATERVILLE**
Seq 9878 29-A 2411(1-A)(A) **Class D**
ANDERSON / WAT

Docket Events:

07/10/2006 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 07/10/2006 @ 18:01

TRANSFERRED CASE: SENDING COURT CASEID WATDCCR200600706
FILING DOCUMENT - NON CASH BAIL BOND FILED ON 03/28/2006

Charge(s): 1

HEARING - ARRAIGNMENT SCHEDULED FOR 06/14/2006 @ 8:30

NOTICE TO PARTIES/COUNSEL

Charge(s): 1

HEARING - ARRAIGNMENT WAIVED ON 04/07/2006

07/10/2006 BAIL BOND - \$500.00 UNSECURED BAIL BOND FILED ON 03/28/2006

Bail Amt: \$500

Date Bailed: 03/26/2006

Charge(s): 1

SUPPLEMENTAL FILING - COMPLAINT FILED ON 06/06/2006

Party(s): KEVIN R GERVAIS

ATTORNEY - RETAINED ENTERED ON 04/07/2006

Attorney: WAYNE FOOTE

Charge(s): 1

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 04/07/2006

MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 07/07/2006

Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL GRANTED ON 07/10/2006

Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 07/07/2006

Charge(s): 1

FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 07/07/2006

AUGSC

07/11/2006 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 07/11/2006

WATDC-CR-2006-00706

07/11/2006 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/10/2006 @ 8:00

NOTICE TO PARTIES/COUNSEL

09/08/2006 HEARING - MOTION TO SUPPRESS HELD ON 08/10/2006

NANCY MILLS , JUSTICE

Defendant Present in Court

09/08/2006 MOTION - MOTION TO SUPPRESS DENIED ON 09/08/2006

COPY TO PARTIES/COUNSEL

A TRUE COPY

ATTEST: _____

Clerk