STATE OF MAINE KENNEBEC, ss

RECEIVED AND FILED KENNEBEC SUPEMOR COURT SUPERIOR COURT CRIMINAL ACTION DOCKET NO. CR-07-773 NM- KEN-12/21/2007

2001 DEC 21 A 9:45

MICHELECTIVOCO

CLERK OF COURTS

STATE OF MAINE

v.

ERNEST CALL,

Defendant

# ORDER ON DEFENDANT'S MOTION TO SUPPRESS

DONALD L. GARDRECHT LAW LIBRARY

## JAN 24 2008

The findings of fact made on the record at the close of the hearing are incorporated into this order by reference.

## CONCLUSIONS OF LAW

An "ordinary traffic stop to ask a few questions and to conduct field sobriety tests on a driver suspected of operating under the influence does not amount to custodial interrogation" that requires <u>Miranda</u> warnings. <u>See State v. Lewry</u>, 550 A.2d 64, 65 (Me. 1988); <u>see also Berkemer v. McCarty</u>, 468 U.S. 420, 423 (1984) (defendant questioned outside his vehicle on side of road); <u>State v. Swett</u>, 1998 ME 76, ¶ 4, 709 A.2d 727, 730 (defendant interviewed either while seated in his vehicle or outside his vehicle on side of road). An officer is permitted to ask routine booking questions or administrative questions whether a defendant is or is not in custody. <u>See State v. Lockhart</u>, 2003 ME 108, ¶ 18, 830 A.2d 433, 441; <u>State v. Rossignol</u>, 627 A.2d 524, 526 (Me. 1993).

The officer's asking the defendant to rate his sobriety on a scale of one to ten is not a field sobriety test and is not an administrative question. It is a question designed to elicit an incriminating response. <u>See State v. Nixon</u>, 599 A.2d 66, 67 (Me. 1991). The issue is whether the defendant was in custody.

1

Considering the factors outlined in <u>State v. Michaud</u>, viewed in their totality, the court concludes that the defendant was not in custody. <u>See Berkemer</u>, 468 U.S. at 437-441; <u>State v. Michaud</u>, 1998 ME 251, ¶ 4, 724 A.2d 1222, 1226. On this record, a reasonable person in the defendant's position would not have concluded that he was "in police custody and constrained to a degree associated with formal arrest." <u>See id</u>. Accordingly, no <u>Miranda</u> warnings were required in order for the defendant's answers to the officer's questions to be admissible. <u>See State v. Holloway</u>, 2000 ME 172, ¶ 13, 760 A.2d 223, 228.

The entry is

The Defendant's Motion to Suppress is DENIED.

Date: December 20, 2007

m ncy Mills

Justice, Superior Court

STATE OF MAINE vs EARNEST V CALL 15 WABON ST AUGUSTA ME 04330 SUPERIOR COURT KENNEBEC, ss. Docket No AUGSC-CR-2007-00773

### DOCKET RECORD

State's Attorney: EVERT FOWLE

DOB: 07/31/1947 Attorney: WALTER MCKEE LIPMAN & KATZ & MCKEE, PA 227 WATER STREET PO BOX 1051 AUGUSTA ME 04332-1051 RETAINED 07/25/2007

Charge(s)

1 OPERATING UNDER THE INFLUENCE Seq 9878 29-A 2411(1-A)(A) GOVE / GAR

Class D

07/13/2007 GARDINER

### Docket Events:

08/23/2007 Charge(s): 1 TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 08/23/2007 @ 18:00 TRANSFERRED CASE: SENDING COURT CASEID AUGDCCR200701577 FILING DOCUMENT - CASH BAIL BOND FILED ON 07/14/2007 Charge(s): 1 HEARING - ARRAIGNMENT SCHEDULED FOR 08/15/2007 @ 10:00 in Room No. 1 NOTICE TO PARTIES/COUNSEL Charge(s): 1 HEARING - ARRAIGNMENT WAIVED ON 08/15/2007 BAIL BOND - \$200.00 CASH BAIL BOND FILED ON 07/16/2007 BAIL BOND - CASH BAIL BOND DISBURSEMENT ON 08/23/2007 Party(s): EARNEST V CALL ATTORNEY - RETAINED ENTERED ON 07/25/2007 Attorney: WALTER MCKEE Charge(s): 1 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 07/25/2007 Charge(s): 1 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 07/25/2007 Charge(s): 1 SUPPLEMENTAL FILING - COMPLAINT FILED ON 08/08/2007 Charge(s): 1 PLEA - NOT GUILTY ENTERED BY COUNSEL ON 08/15/2007

Page 1 of 3

Printed on: 12/21/2007

Charge(s): 1 TRANSFER - TRANSFER FOR JURY TRIAL GRANTED ON 08/23/2007 Charge(s): 1TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 07/25/2007 Attorney: WALTER MCKEE Charge(s): 1 FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 08/23/2007 AUGSC 08/28/2007 Charge(s): 1 TRANSFER - TRANSFER FOR JURY TRIAL RECVD BY COURT ON 08/27/2007 AUGUSTA DC - CR-07-1577 08/28/2007 BAIL BOND - \$200.00 CASH BAIL BOND FILED ON 08/28/2007 Bail Receipt Type: CR Bail Amt: \$200 Receipt Type: CK Date Bailed: 07/14/2007 Prvdr Name: PATRICIA MERRILL Rtrn Name: PATRICIA MERRILL 08/28/2007 Charge(s): 1 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 10/04/2007 @ 8:00 NOTICE TO PARTIES/COUNSEL 08/28/2007 Charge(s): 1 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 10/04/2007 @ 8:00 NOTICE TO PARTIES/COUNSEL 10/10/2007 ORDER - TRANSCRIPT ORDER FILED ON 10/09/2007 COPY SENT TO MAUREEN BRADFORD 10/10/2007 Charge(s): 1 HEARING - MOTION TO SUPPRESS HELD ON 10/04/2007 NANCY MILLS , JUSTICE Reporter: MAUREEN WHITEHOUSE Defendant Present in Court 10/10/2007 Charge(s): 1 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 10/04/2007 NANCY MILLS , JUSTICE 10/30/2007 OTHER FILING - TRANSCRIPT FILED ON 10/30/2007 RE: MOTION TO SUPPRESS HELD ON 10/4/07 12/21/2007 Charge(s): 1 HEARING - MOTION FOR DISCOVERY HELD ON 10/04/2007 NANCY MILLS , JUSTICE Defendant Present in Court 12/21/2007 Charge(s): 1 MOTION - MOTION FOR DISCOVERY GRANTED ON 10/04/2007 NANCY MILLS , JUSTICE COPY TO PARTIES/COUNSEL

Page 2 of 3

Printed on: 12/21/2007

•

12/21/2007 Charge(s): 1 MOTION - MOTION TO SUPPRESS DENIED ON 12/20/2007 NANCY MILLS , JUSTICE COPY TO PARTIES/COUNSEL 12/21/2007 Charge(s): 1 TRIAL - DOCKET CALL SCHEDULED FOR 02/04/2008

A TRUE COPY

ATTEST:

Clerk

Page 3 of 3

Printed on: 12/21/2007

.