

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-02-90

STATE OF MAINE

v.

LELAND MARKHAM,

Defendant

DECISION ON MOTION
TO SUPPRESS **DONALD L. GARBRECHT**
LAW LIBRARY

OCT 1 2002

This matter comes before the court on the defendant's motion to suppress certain statements he made to law enforcement officials following his arrest in conjunction with a search performed at the residence of Franklin Arbour. The defendant challenges his arrest under the warrant since it was not his residence that was being searched, and also challenges the voluntariness of his statements.

A review of the affidavit in support of the application for a search warrant of the Arbour residence clearly provides probable cause for the Magistrate to approve such search. The search was the result of a long-standing investigation and was based upon information provided by a number of individuals, plus direct evidence of purchases of drugs at the Arbour residence.

The portion of the search warrant of particular interest to the defendant is the inclusion among those places or persons to be seized, "any and all other persons or vehicles present or arriving on the premises of Franklin Arbour, dob: 05/03/1976 at the time of the execution of this Search Warrant, except for persons/vehicles present or arriving in the regular course of their legitimate business activities."

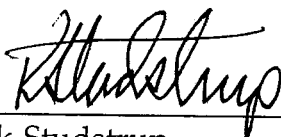
This extension of the warrant to include other individuals is reasonable under the circumstances since the affidavit concerned the sale of illegal drugs out of the Arbour residence and others present or arriving would likely be customers or other dealers. The court finds sufficient probable cause to support this portion of the warrant.

With regard to the voluntariness of the defendant's statements, he points to the fact that he had administered heroin to himself shortly before the search took place and that his statements to the police at the police headquarters were exaggerated on his part in order to obtain leniency. The heroin undoubtedly had an effect upon the defendant, but from his own testimony that effect was a calming one rather than an effect which would make him feel coerced by the law enforcement officials. The court believed the testimony of the State's witnesses that no promises of leniency were made to Mr. Markham. The defendant may have hoped that information he was providing would benefit his situation, but any embellishments he made to the truth go to the believability of the statements rather than their voluntariness.

For the reasons stated, the entry will be:

Motion DENIED.

Dated: September 17, 2002



S. Kirk Studstrup
Justice, Superior Court

STATE OF MAINE
vs
LELAND MARKHAM
301 CAPITOL STREET
AUGUSTA ME 04330

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2002-00090

DOCKET RECORD

DOB: 04/18/1977

Attorney: RONALD BOURGET
BOURGET & BOURGET PA
64 STATE STREET
AUGUSTA ME 04330-5194
APPOINTED 03/22/2002

State's Attorney: LARA NOMANI

Filing Document: INDICTMENT
Filing Date: 03/18/2002

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

Charge(s)

- | | | |
|---|---|--------------------|
| 1 | UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS | 03/08/2002 AUGUSTA |
| | 17-A 1103(1) | Class B |
| 2 | UNLAWFUL POSSESSION OF SCHEDULED DRUGS | 03/08/2002 AUGUSTA |
| | 17-A 1107(1) | Class C |

Docket Events:

03/18/2002 FILING DOCUMENT - INDICTMENT FILED ON 03/18/2002

TRANSFER - BAIL AND PLEADING GRANTED ON 03/18/2002

TRANSFER - BAIL AND PLEADING REQUESTED ON 03/18/2002

03/18/2002 Charge(s): 1,2

HEARING - ARRAIGNMENT SCHEDULED FOR 03/22/2002 @ 8:30

NOTICE TO PARTIES/COUNSEL

03/18/2002 Charge(s): 1,2

SUMMONS - SUMMONS TO APPEAR FOR ARRAIGN ISSUED FOR 03/18/2002

03/25/2002 Charge(s): 1,2

HEARING - ARRAIGNMENT HELD ON 03/22/2002

DONALD H MARDEN , JUSTICE

Attorney: RONALD BOURGET

DA: LARA NOMANI

Reporter: TIMOTHY THOMPSON

Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO DEFENDANT. 21 DAYS TO FILE MOTIONS. BAIL SET AT \$15,000 SURETY OR \$3,000 CASH.

03/25/2002 Charge(s): 1,2

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 03/22/2002

DONALD H MARDEN , JUSTICE

Attorney: RONALD BOURGET

DA: LARA NOMANI

Reporter: TIMOTHY THOMPSON

Page 1 of 4

Printed on: 09/18/2002

Defendant Present in Court

03/25/2002 BAIL BOND - SURETY BAIL BOND SET BY COURT ON 03/22/2002
DONALD H MARDEN , JUSTICE
Defendant Present in Court

BAIL SET AT \$15,000 SURETY OR \$3,000 CASH. NO CONTACT WITH FRANK ARBOR. NO USE/POSSESSION
ALCOHOL, ILLEGAL DRUGS. RANDOM SEARCH AND TESTING.

04/05/2002 TRANSFER - BAIL AND PLEADING RECVD BY COURT ON 04/05/2002

RECEIVED FROM SO. KEN. DOCKET NO. 2002-659

04/16/2002 MOTION - MOTION FOR EXTENSION OF TIME FILED BY DEFENDANT ON 04/16/2002

NO OBJECTION BY LARA NOMANI, AAG

04/18/2002 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 04/17/2002

Attorney: RONALD BOURGET

DEFENDANT THROUGH HIS ATTORNEY MOVES TO SUPPRESS STATEMENTS MADE ON OR ABOUT MARCH 8,
2002. MOVES TO SUPPRESS ALL STATEMENTS MADE BY DEFENDANT AS VIOLATIVE OF DEFENDANT'S 4TH,
5TH, AND 6TH AMENDMENT RIGHTS, STATEMENTS WERE INVOLUNTARILY MADE. STATEMENTS WERE
OBTAINED IN VIOLATION OF MIRANDA V. ARIZONA.

04/26/2002 MOTION - MOTION FOR EXTENSION OF TIME GRANTED ON 04/23/2002

JOHN R ATWOOD , JUSTICE

COPY TO PARTIES/COUNSEL. TIME FOR FILING MOITONS IS EXTENDED UNTIL MAY 31, 2002. COPIES OF
THIS GRANTED MOTION WERE MAILED TO COUNSEL ON 4/26/02.

05/28/2002 BAIL BOND - CASH BAIL BOND FILED ON 05/28/2002

Bail Receipt Type: CR

Bail Amt: \$3,000

Receipt Type: CA

Date Bailed: 05/27/2002

Prvdr Name: JOSEPH RAYMOND

Rtrn Name: JOSEPH RAYMOND

LELAND MARKHAM

Conditions of Bail:

BAIL DISBURSEMENT ON 08/27/2002
Check No. 5304 Check Amount: 3,000.00
Paid To: JOSEPH RAYMOND
FORWARDED TO BAIL PROVIDER

07/31/2002 OTHER FILING - OTHER DOCUMENT FILED ON 07/31/2002

Attorney: RONALD BOURGET

FILES AMENDED REQUEST FOR HEARING - AMENDED TO TESTIMONIAL FOR ONE HOUR.

07/31/2002 HEARING - MOTION TO SUPPRESS STATEMENT SCHEDULED FOR 08/13/2002

S KIRK STUDSTRUP , JUSTICE

NOTICE TO PARTIES/COUNSEL MAILED 7/23/02

08/21/2002 HEARING - MOTION TO SUPPRESS STATEMENT NOT HELD ON 08/13/2002

08/21/2002 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/16/2002

NOTICE TO PARTIES/COUNSEL

08/21/2002 HEARING - MOTION TO SUPPRESS HELD ON 08/16/2002

S KIRK STUDSTRUP , JUSTICE

Attorney: RONALD BOURGET

DA: ALAN KELLEY Reporter: DONALD MITCHELL

Defendant Present in Court

STATE CALLED JOHN BOURQUE, DEFENSE MADE ORAL MOTIONS TO SEQUESTER WITNESSES AND IT WAS GRANTED. STATE'S 2ND WITNESS LOWELL WOODMAN. DEFENSE WITNESS WAS LELAND MARKHAM. STATE CALLED 3RD WITNESS STACEY BLAIR. DEFENSE TO SUBMIT MOTIONS AS STATED AT HEARING, STATE TO FOLLOW UP WITHIN 10 DAYS, DEFENDANT TO SUBMIT BY THE 21ST AND STATE'S REPLY BY THE 30TH.

08/21/2002 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 08/21/2002

DA: LARA NOMANI

FILED BY LARA NOMANI, THE DEFENDANT HAS BEEN CHARGED AND ARRESTED ON AUGUST 17, 2002 WITH VIOLATING THE CONDITIONS OF HIS RELEASE BY ASSAULTING HIS LIVE IN GIRLFRIEND.

08/22/2002 MOTION - MOTION TO REVOKE BAIL GRANTED ON 08/21/2002

S KIRK STUDSTRUP , JUSTICE

COPY TO PARTIES/COUNSEL. COPIES MAILED AND WARRANT ISSUED.

08/22/2002 WARRANT - VIOLATION OF BAIL ISSUED ON 08/22/2002

S KIRK STUDSTRUP , JUSTICE

DEFENDANT IS CHARGED WITH NEW CRIMINAL CONDUCT IN VIOLATION OF PRE-CONVICTION BAIL.

08/26/2002 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 08/26/2002

08/26/2002 WARRANT - VIOLATION OF BAIL EXECUTED ON 08/22/2002

ARRESTED BY KSO JOHNSON

08/26/2002 WARRANT - VIOLATION OF BAIL RETURNED ON 08/26/2002

08/27/2002 BAIL BOND - CASH BAIL BOND DISBURSEMENT ON 08/27/2002

Date Bailed: 05/27/2002

LELAND MARKHAM

BAIL DISBURSEMENT ON 08/27/2002

Check No. 5304 Check Amount: 3,000.00

Paid To: JOSEPH RAYMOND

FORWARDED TO BAIL PROVIDER

08/30/2002 HEARING - MOTION TO REVOKE BAIL SCHEDULED FOR 08/27/2002

NOTICE TO PARTIES/COUNSEL

08/30/2002 HEARING - MOTION TO REVOKE BAIL HELD ON 08/27/2002 @ 8:15

S KIRK STUDSTRUP , JUSTICE

Attorney: STEPHEN BOURGET

DA: LARA NOMANI Reporter: JANETTE COOK

Defendant Present in Court

BAIL INCREASED TO \$30,000 SURETY OR \$4,000 CASH.

08/30/2002 BAIL BOND - COMMITMENT ORDER W/ CONDITIONS ISSUED ON 08/27/2002

\$4,000 CASH OR \$30,000 SURETY, NO DIRECT OR INDIRECT CONTACT WITH TRACY DODGE.

08/30/2002 BAIL BOND - CASH BAIL BOND SET BY COURT ON 08/27/2002

S KIRK STUDSTRUP , JUSTICE

Attorney: STEPHEN BOURGET
DA: LARA NOMANI Reporter: JANETTE COOK
Defendant Present in Court

\$4,000 CASH OR \$30,000 SURETY

09/17/2002 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 08/16/2002.
S KIRK STUDSTRUP , JUSTICE

09/17/2002 MOTION - MOTION TO SUPPRESS DENIED ON 09/17/2002
S KIRK STUDSTRUP , JUSTICE

COPY TO PARTIES/COUNSEL

09/18/2002 MOTION - MOTION TO SUPPRESS DENIED ON 09/17/2002
DONALD H MARDEN , JUSTICE

COPY TO PARTIES/COUNSEL, DENIED AFTER HEARING ON 8/16/02

09/18/2002 OTHER FILING - MEMORANDUM OF LAW FILED ON 09/03/2002

STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTIONS TO SUPPRESS.

09/18/2002 OTHER FILING - MEMORANDUM OF LAW FILED ON 09/06/2002

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

A TRUE COPY

ATTEST: _____
Clerk