

STATE OF MAINE  
KENNEBEC, ss

RECEIVED AND FILED  
KENNEBEC SUPERIOR COURT

2007 DEC 21 A 9:45

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-07-773  
NM- KEN-12/21/2007

STATE OF MAINE

NICHOLE H. WOOD  
CLERK OF COURTS

v.

ORDER ON DEFENDANT'S  
MOTION TO SUPPRESS

ERNEST CALL,

DONALD L. GARDRECH  
LAW LIBRARY

Defendant

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 Miranda warnings. See State v. Lewry, 550 A.2d 64, 65 (Me. 1988); see also Berkemer v. McCarty, 468 U.S. 420, 423 (1984) (defendant questioned outside his vehicle on side of road); State v. Swett, 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. See State v. Lockhart, 2003 ME 108, ¶ 18, 830 A.2d 433, 441; State v. Rossignol, 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. See State v. Nixon, 599 A.2d 66, 67 (Me. 1991). The issue is whether the defendant was in custody.

Considering the factors outlined in State v. Michaud, viewed in their totality, the court concludes that the defendant was not in custody. See Berkemer, 468 U.S. at 437-441; State v. Michaud, 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." See id. Accordingly, no Miranda warnings were required in order for the defendant's answers to the officer's questions to be admissible. See State v. Holloway, 2000 ME 172, ¶ 13, 760 A.2d 223, 228.

The entry is

The Defendant's Motion to Suppress is DENIED.

Date: December 20, 2007

  
Nancy 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**

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

State's Attorney: EVERT FOWLE

**Charge(s)**

1 OPERATING UNDER THE INFLUENCE 07/13/2007 GARDINER  
Seq 9878 29-A 2411(1-A) (A) Class D  
GOVE / GAR

**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

Charge(s) : 1  
TRANSFER - TRANSFER FOR JURY TRIAL GRANTED ON 08/23/2007

Charge(s) : 1  
TRANSFER - 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

Date Bailed: 07/14/2007  
Receipt Type: CK  
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

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