

STATE OF MAINE  
KENNEBEC, ss

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-09-006  
NM - KEN - 6/12/2009

STATE OF MAINE

v.

ORDER ON DEFENDANT'S  
MOTION TO SUPPRESS

KEVIN COLLINS,

Defendant

The defendant argues that the warrantless search of his vehicle and all evidence obtained should be suppressed. The findings of fact made at the conclusion of the hearing are incorporated into this order by reference. For the following reasons, the motion to suppress is denied.

#### Conclusions of Law

The defendant argues that there was no basis for the warrantless search of the defendant's vehicle because the officers had no significant concerns for their safety, the defendant was not able to re-enter his vehicle, and the officers had no reasonable belief that evidence connected to the crime for which the defendant was under arrest would be found in the vehicle. The officers agreed that they had no significant officer safety concerns and the defendant was not able to re-enter his vehicle. The officers did, however, have a reasonable belief that evidence connected to the marijuana cultivation charge could be found in the vehicle.

#### Search Incident to Arrest

In Arizona v. Gant, 129 S. Ct. 1710 (2009), the defendant was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car. The officers then searched the defendant's car and found a gun and cocaine. Id. at 1714. The Court concluded that the search was unreasonable because there was no possibility

that the defendant could have accessed his vehicle and there was no likelihood that the officers would discover offense-related evidence during the search. Id. at 1719. The Court held that officers are authorized "to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." Id. The Court also concluded, however, that a search incident to a lawful arrest would be justified when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." Id. (quoting Thornton v. United States, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in judgment)).

In this case, the defendant was told he would be charged with marijuana cultivation. Prior to the search of the vehicle operated by the defendant, Agent Struck had received information that drug activity was suspected in the downstairs apartment, #1, at number 943 on Route 202 in Monmouth, where the defendant resided, and Agent Struck had obtained a search warrant for that address. Because the agents had begun their execution of the search warrant prior to the time of the search of the vehicle, Agents Struck, Richards, and Dubois knew that the defendant's apartment was being used entirely for a marijuana grow operation and had found, among other things, marijuana plants, a hydroponic grow operation, documents with the defendant's name on them, and loose marijuana. Agent Richards knew that the defendant had been involved in a drug-related case in Somerset County in the 1990s and was familiar with the defendant's methods of operation. The officers were reasonable in their belief that evidence connected to the marijuana grow operation might be found in the vehicle. See United States v. Smith, 510 F.3d 641, 649 (6th Cir. 2007).

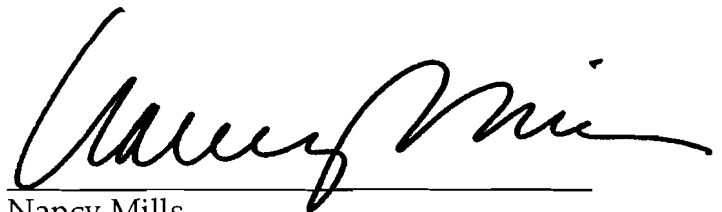
Search Warrant and Probable Cause to Search

Probable cause to believe a vehicle contains evidence of criminal activity authorizes a search of any area of the vehicle in which the evidence might be found. United States v. Ross, 456 U.S. 798, 820-21 (1982); see also Smith, 510 F.3d at 647. In this case, the District Court Judge's determination of probable cause concerned vehicles "present at the above described premises at the time of the execution of the search warrant." (State's Ex. 1.) Although the defendant's vehicle slowed into the breakdown lane at the edge of the parking lot as if to enter the parking lot, the vehicle did not enter the parking lot of the apartment building. The vehicle was not subject to the probable cause determination in the search warrant. See United States v. Gereb, 547 F. Supp. 2d 658, 665-66 (W.D. Tex. 2008). The search of the vehicle also could not properly be conducted pursuant to the search warrant. See Smith, 510 F.3d at 647.

The entry is

The Defendant's Motion to Suppress is DENIED.

Date: June 12, 2009



Nancy Mills  
Justice, Superior Court

STATE OF MAINE  
vs  
KEVIN COLLINS  
7 HILLCREST STREET  
AUGUSTA ME 04330

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2009-00006

**DOCKET RECORD**

DOB: 02/10/1960

Attorney: LISA WHITTIER  
LAW OFFICE OF LISA W D WHITTIER, ESQ  
21 WESTERN AVENUE  
AUGUSTA ME 04330  
APPOINTED 05/18/2009

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 01/07/2009

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

**Charge(s)**

1 AGGRAVATED TRAFFICKING OF SCHEDULED DRUGS 01/05/2009 MONMOUTH  
Seq 8558 17-A 1105-A(1)(B)(4) Class B

2 AGGRAVATED CULTIVATING OF MARIJUANA 01/05/2009 MONMOUTH  
Seq 9097 17-A 1105-D(1)(A)(3) Class C

3 CRIMINAL FORFEITURE OF PROPERTY 01/05/2009 MONMOUTH  
Seq 7049 15 5826 Class U Charged with INDICTMENT on Supplem

**Docket Events:**

01/07/2009 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 01/07/2009

01/13/2009 Charge(s): 1,2  
HEARING - INITIAL APPEARANCE HELD ON 01/07/2009

Defendant Present in Court

01/13/2009 Charge(s): 1,2  
HEARING - STATUS CONFERENCE SCHEDULED FOR 03/10/2009 @ 8:30

01/13/2009 Charge(s): 1,2  
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 01/07/2009

01/13/2009 BAIL BOND - \$50,000.00 CASH BAIL BOND SET BY COURT ON 01/07/2009

OR 300,000 SURETY

01/13/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 01/07/2009

01/13/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 01/12/2009  
JOSEPH M JABAR , JUSTICE  
COPY TO PARTIES/COUNSEL

01/13/2009 Party(s): KEVIN COLLINS  
ATTORNEY - APPOINTED ORDERED ON 01/12/2009

Attorney: JAMES FLICK  
01/13/2009 Charge(s): 1,2  
HEARING - STATUS CONFERENCE NOTICE SENT ON 01/13/2009

01/28/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 01/28/2009

01/30/2009 MOTION - MOTION FOR RETURN OF PROPERTY FILED BY DEFENDANT ON 01/30/2009

01/30/2009 HEARING - MOTION FOR RETURN OF PROPERTY SCHEDULED FOR 03/05/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL  
01/30/2009 HEARING - MOTION FOR RETURN OF PROPERTY NOTICE SENT ON 01/30/2009

02/04/2009 Party(s): KEVIN COLLINS  
ATTORNEY - RETAINED ENTERED ON 02/04/2009

Attorney: LISA WHITTIER  
02/05/2009 Charge(s): 1,2,3  
SUPPLEMENTAL FILING - INDICTMENT FILED ON 02/05/2009

02/05/2009 Charge(s): 1,2,3  
HEARING - ARRAIGNMENT SCHEDULED FOR 02/17/2008 @ 8:30  
JOHN NIVISON , JUSTICE

02/05/2009 Charge(s): 1,2,3  
HEARING - ARRAIGNMENT NOTICE SENT ON 02/05/2009

02/05/2009 Charge(s): 1,2  
HEARING - STATUS CONFERENCE NOT HELD ON 02/05/2009

02/06/2009 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 02/05/2009  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

02/13/2009 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 02/12/2009

02/13/2009 HEARING - MOTION TO AMEND BAIL SCHEDULED FOR 02/17/2009 @ 8:30  
JOHN NIVISON , JUSTICE  
NOTICE TO PARTIES/COUNSEL

02/17/2009 Charge(s): 1,2,3  
HEARING - ARRAIGNMENT HELD ON 02/17/2009  
JOHN NIVISON , JUSTICE  
Attorney: LISA WHITTIER  
DA: ALAN KELLEY  
Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO  
DEFENDANT. 21 DAYS TO FILE MOTIONS

02/17/2009 Charge(s): 1,2,3  
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 02/17/2009

02/17/2009 TRIAL - DOCKET CALL SCHEDULED FOR 04/07/2009 @ 2:45

02/17/2009 HEARING - MOTION TO AMEND BAIL HELD ON 02/17/2009  
JOHN NIVISON , JUSTICE

Attorney: LISA WHITTIER  
DA: ALAN KELLEY  
TAPE 1093, INDEX#4050

02/17/2009 MOTION - MOTION TO AMEND BAIL GRANTED ON 02/17/2009  
JOHN NIVISON , JUSTICE  
COPY TO PARTIES/COUNSEL  
02/17/2009 BAIL BOND - \$10,000.00 CASH BAIL BOND SET BY COURT ON 02/17/2009  
JOHN NIVISON , JUSTICE  
\$10,000 CASH, 75,000 SURETY  
02/24/2009 BAIL BOND - CASH BAIL BOND FILED ON 02/24/2009  
02/24/2009 BAIL BOND - \$10,000.00 CASH BAIL BOND FILED ON 02/24/2009

Bail Receipt Type: CR  
Bail Amt: \$10,000

Date Bailed: 02/23/2009  
Receipt Type: CK  
Prvdr Name: DONNA TAVERNIER  
Rtrn Name: DONNA TAVERNIER

BAIL DISBURSEMENT ON 06/10/2009  
Check No. 7785 Check Amount: 10,000.00  
Paid To: DONNA TAVERNIER  
FORWARDED TO BAIL PROVIDER

03/05/2009 HEARING - MOTION FOR RETURN OF PROPERTY NOT HELD ON 03/05/2009

03/09/2009 Party(s): KEVIN COLLINS  
ATTORNEY - WITHDRAWN ORDERED ON 03/09/2009

Attorney: JAMES FLICK

03/10/2009 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 03/09/2009  
03/10/2009 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 03/09/2009  
03/10/2009 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 03/09/2009  
03/10/2009 MOTION - OTHER MOTION FILED BY DEFENDANT ON 03/09/2009

MOTION FOR BRADY MATERIAL

03/10/2009 MOTION - MOTION FOR RETURN OF PROPERTY FILED BY DEFENDANT ON 03/09/2009  
03/10/2009 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED BY DEFENDANT ON 03/09/2009  
03/13/2009 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 03/11/2009  
JOSEPH M JABAR , JUSTICE  
COPY TO PARTIES/COUNSEL  
03/13/2009 HEARING - MOTION TO AMEND BAIL SCHEDULED FOR 03/16/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

03/16/2009 HEARING - MOTION TO AMEND BAIL HELD ON 03/16/2009  
JOSEPH M JABAR , JUSTICE  
03/16/2009 MOTION - MOTION TO AMEND BAIL GRANTED ON 03/16/2009  
JOSEPH M JABAR , JUSTICE

GRANTED IN

COPY TO PARTIES/COUNSEL  
PART, DEFENDANT'S CURFEW MAY BE EXTENDED FOR WORK PURPOSES WITH THE CONDITION THAT THE  
CONDITIONS OF EMPLOYMENT DOCUMENTED AND PROVIDED TO THE DA BEFORE EMPLOYMENT BEGINS

03/16/2009 BAIL BOND - CASH BAIL BOND AMENDED ON 03/16/2009

JOSEPH M JABAR , JUSTICE

Date Bailed: 02/23/2009

BAIL DISBURSEMENT ON 06/10/2009

Check No. 7785 Check Amount: 10,000.00

Paid To: DONNA TAVERNIER

FORWARDED TO BAIL PROVIDER

03/24/2009 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 03/23/2009

03/24/2009 MOTION - MOTION TO CONTINUE GRANTED ON 03/24/2009

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

03/24/2009 TRIAL - DOCKET CALL CONTINUED ON 03/24/2009

NANCY MILLS , JUSTICE

03/27/2009 OTHER FILING - TRANSCRIPT FILED ON 03/25/2009

Reporter: JANETTE COOK

MOTION TO AMEND BAIL

04/03/2009 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 04/02/2009

04/03/2009 Charge(s): 1,2,3

HEARING - INITIAL APPEARANCE HELD ON 04/03/2009

JOSEPH M JABAR , JUSTICE

Defendant Present in Court

04/03/2009 BAIL BOND - NO BAIL ALLOWED SET BY COURT ON 04/03/2009

JOSEPH M JABAR , JUSTICE

04/03/2009 HEARING - MOTION TO REVOKE BAIL SCHEDULED FOR 06/10/2009 @ 8:30

05/04/2009 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 05/04/2009

05/04/2009 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 05/04/2009

05/04/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 06/10/2009 @ 8:30

05/04/2009 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 06/10/2009 @ 8:30

05/15/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 05/14/2009

05/19/2009 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 05/18/2009

NANCY MILLS , JUSTICE

05/19/2009 Party(s): KEVIN COLLINS

ATTORNEY - APPOINTED ORDERED ON 05/18/2009

Attorney: LISA WHITTIER

05/19/2009 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 05/19/2009

05/19/2009 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 05/19/2009

05/19/2009 HEARING - MOTION TO REVOKE BAIL NOTICE SENT ON 05/19/2009

06/01/2009 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 06/01/2009

06/04/2009 MOTION - MOTION FOR FUNDS GRANTED ON 06/01/2009

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

06/10/2009 BAIL BOND - CASH BAIL BOND DISBURSEMENT ON 06/10/2009

Date Bailed: 02/23/2009

BAIL DISBURSEMENT ON 06/10/2009

Check No. 7785 Check Amount: 10,000.00

Paid To: DONNA TAVERNIER

FORWARDED TO BAIL PROVIDER

06/15/2009 HEARING - MOTION FOR DISCOVERY NOT HELD ON 06/10/2009

06/15/2009 MOTION - MOTION FOR DISCOVERY WITHDRAWN ON 06/10/2009

06/15/2009 HEARING - MOTION TO REVOKE BAIL HELD ON 06/10/2009

NANCY MILLS , JUSTICE

Attorney: LISA WHITTIER

DA: ALAN KELLEY

Defendant Present in Court

06/15/2009 MOTION - MOTION TO REVOKE BAIL GRANTED ON 06/10/2009

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

PARTIES

STIPULATE THERE IS PROBABLE CAUSE TO BELIEVE THE DEFENDANT COMMITTED NEW CRIMINAL CONDUCT.

BY AGREEMENT, DEFENDANT TO BE HELD WITHOUT BAIL, BAIL REVOKED CASH BAIL TO BE RETURNED TO PERSON WHO POSTED CASH BAIL

06/15/2009 MOTION - MOTION FOR DISCOVERY WITHDRAWN ON 06/10/2009

06/15/2009 HEARING - MOTION TO SUPPRESS HELD ON 06/10/2009

NANCY MILLS , JUSTICE

Attorney: LISA WHITTIER

DA: ALAN KELLEY

Defendant Present in Court

ER, TAPE#1208, INDEX#1178-3507

06/15/2009 MOTION - MOTION TO SUPPRESS DENIED ON 06/12/2009

NANCY MILLS , JUSTICE

06/15/2009 HEARING - MOTION FOR RETURN OF PROPERTY SCHEDULED FOR 09/02/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

06/15/2009 HEARING - OTHER MOTION SCHEDULED FOR 09/02/2009 @ 8:30

MOTION FOR BRADY MATERIAL

06/15/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/02/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

MOTION TO

SUPPRESS AND QUASH SUBSEQUENT SEARCH WARRANT

06/15/2009 ORDER - COURT ORDER FILED ON 06/12/2009

NANCY MILLS , JUSTICE

ORDER ON DEFENDANT'S MOTION TO SUPPRESS. THE DEFENDANT ARGUES THAT THE WARRANTLESS SEARCH



OF HIS VEHICLE AND ALL EVIDENCE OBTAINED SHOULD BE SUPPRESSED. THE FINDINGS OF FACT MADE AT THE CONCLUSION OF THE HEARING ARE INCORPORATED INTO THIS ORDER BY REFERENCE. FOR THE FOLLOWING REASONS, THE MOTION TO SUPPRESS IS DENIED.

A TRUE COPY

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

Clerk